

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT**

PUBLIC MEETING DATE: May 1, 2001

REGULAR AGENDA x CONSENT AGENDA ___ EFFECTIVE DATE ___

DATE: April 25, 2001

TO: Phil Nyegaard

FROM: Marc Hellman and Lee Sparling

SUBJECT: AR 416

SUMMARY RECOMMENDATION:

We recommend the Commission adopt a temporary rule amending OAR 860-038-0080(1) regarding its policies on the treatment of existing and new generating resources (AR 416). The revised rule is shown in Attachment 1.

DISCUSSION:

At the April 17, 2001, Public Meeting, the Commission directed staff and interested parties to continue discussing revised temporary administrative rule language relating to treatment of new generating resources. On Friday, April 20, 2001, representatives of Portland General Electric, PacifiCorp, generation developers and Staff met to discuss amendment language. The purpose of the amendment is to take into account both the revised timing for Commission review of electric company resource plans as well as recent unprecedented levels of wholesale market prices. At this meeting all parties agreed that once a Resource Plan is adopted, which requires consent by both the company and the Commission, new generating resources should be included in revenue requirement at market prices. However, consensus has not been reached for treating new generating resources during the time before adoption of a Resource Plan. Staff, Portland General Electric and PacifiCorp also met briefly on Tuesday, April 24. These discussions led to the temporary rule language contained in Attachment 1. Staff and PacifiCorp support the proposed language. Staff believes Portland General Electric does not support the proposed language.

Also included in Attachment 1 is amending language to OAR 860-038-0080 (1)(a). At the April 24, 2001, Public Meeting, we recall that the Commission agreed with the proposed change but deferred action on it to the May 1, 2001, Public Meeting.

The rules at issue are those the Commission adopted in a Special Public Meeting held August 29, 2000, to implement SB 1149. (Order No. 00-596 was issued September 28, 2000.) With respect to temporary rules, Staff recommends amending OAR 860-038-0080(1) that established policies relating to the revenue requirement treatment of electric company resources. Subsection (1)(b) relates to the revenue requirement treatment of new generating resources.

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Staff recommends the Commission adopt temporary rules because the existing rules were developed at a time when parties believed that resource plans would be completed fairly quickly. The timing was to have the Commission resource plan orders issued by April 1, 2001, a date well before October 1, 2001. However, the review of electric company resource plan filings has been suspended. In AR 417, Staff is proposing that the Commission resource plan orders be issued by December 31, 2002. With this significant delay in the review of resource plan filings, Staff recommends that temporary rules are needed to reflect Commission treatment of electric company generating resources pending Commission orders on the resource plans.

Staff also notes that temporary rules are needed to address the near-term energy crisis. The current wholesale electric markets are very volatile with historic high levels of prices for wholesale power. The existing language of the rules require new generating resources be included in revenue requirements at market prices. For a period of time, Staff believes that a revised policy is needed to provide opportunities for the electric companies to identify resource alternatives that cost less than market and share these savings between the companies and customers. Near-term wholesale electric prices do not appear to reflect the costs of new resources, but rather may reflect both the lack of electric supply and perceived risks of selling power to financially-strapped California utilities. A proposed order for adopting the temporary rules is attached as Attachment 2.

The proposed temporary rule clarifies and provides certainty for treatment of new generating resources. New resources that begin to be constructed during the period from the effective date of the temporary rule to the date a Resource Plan is adopted will be rate based unless the Commission and electric company agree to an alternative treatment. If alternative treatment is agreed to, then once the Resource Plan is adopted, those resources will be included in revenue requirement at market prices. The "Interim Rate Plan" could represent a compact between the Commission and the electric company to establish the terms and conditions for the new generating resource. These terms and provisions would not be subject to revision absent agreement by the Commission and the electric company.

Staff does have an alternative idea that was considered, but is not reflected in the temporary rule language. The alternative is to classify a portion of a new generating resource as "regulated" and the remaining portion as nonregulated. The regulated portion would be included in rate base unless the Commission and the electric company agree on an alternative method for handling the costs and outputs of the resource with respect to rates. The nonregulated portion would not be recognized by the Commission for rates or earnings purposes. The attractive feature of this alternative idea is that it aligns the interest of consumers and the electric company. With respect to percentages, Staff would propose consumers be assigned between 50% and 67% of each new generating resource, with shareholders the remainder. The same percentage would apply to all new generating resources that either come on line, or have construction commence prior to the date of the Commission adoption of a Resource Plan.

At the April 17, 2001, the Commission adopted Staff's recommendation to open a rulemaking docket to consider permanent amendments to existing SB 1149 rule language. If the Commission adopts temporary rule language at the May 1, 2001, Public Meeting, staff proposes

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that the language adopted replace the rulemaking language contained in the proposed permanent rulemaking docket AR 417.

STAFF RECOMMENDATIONS:

We recommend the Commission adopt the proposed AR 416 temporary rules shown in Attachment 1.

OREGON ADMINISTRATIVE RULES
CHAPTER 860, DIVISION 038 - PUBLIC UTILITY COMMISSION

DIVISION 038

860-038-0080

Resource Policies and Plans

(1) The Commission adopts the following policies with respect to the Oregon share of generating resources (generating assets and power purchase contracts with a duration of at least one year) of each electric company:

(a) At such time as the Resource Plan is implemented. Each electric company will retain in its Oregon revenue requirement costs associated with a level of generating resources that is not greater than that necessary to meet the current and reasonably expected future loads of its Oregon residential and small nonresidential consumers. In determining whether an electric company has excess generating resources, the Commission will consider the projected useful lives and mix of fuels of the electric company's generating resources. To encourage the development of a competitive retail energy market, it is the policy of the Commission to release to the competitive market generating resources in excess of such reasonably expected future loads. It is also the policy of the Commission to determine a one-time valuation for the Oregon large nonresidential consumers' share of an electric company's generating resources;

(b) The Commission will not require an electric company to acquire new generating resources except as provided in ORS 757.663. Major capital improvements to existing generating resources that are included in an electric company's revenue requirement will continue to be subject to least cost planning processes and analyses and the Oregon share of their prudently-incurred costs will be included in an electric company's Oregon revenue requirement, which for a multi-state electric company shall be consistent with Commission decisions pursuant to subsection (3)(a)(G) of this rule. If an Electric Company commences construction of a new generating resource or a new resource goes into service subsequent to the effective date of this rule, but prior to the adoption of its Resource Plan, it may propose to the Commission a means of reflecting such resource in its Oregon revenue requirement, only until such time as its Resource Plan is approved, that is different from the effect of including such resource in its rate base. In evaluating such a proposal, the Commission shall consider: (i) the

attributes of the generating resource, including its fixed and variable costs and the timing of its construction, (ii) the proposed allocation of risks between consumers and the electric company under the electric company's proposal, (iii) projected wholesale market conditions and (iv) such other factors as the Commission deems relevant. Unless the Commission approves such a plan in a form that is acceptable to the electric company ("Interim Rate Plan"), the generating resource shall be treated for ratemaking purposes in the same manner as generating resources constructed prior to the effective date of this rule. After such time as a Resource Plan is adopted, ~~Electric companies must all generating resources subject to an Interim Rate Plan and all generating resources whose construction was commenced subsequent to the date the Resource Plan was adopted shall be included new generating resources~~ in an electric company's revenue requirement at market prices, and not at cost, and such new generating resources will not be added to an electric company's rate base even if owned by the electric company.

ORDER NO.

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 416

In the Matter of a Temporary Rulemaking)
to Amend OAR 860-038-0080(1).) ORDER

DISPOSITION: TEMPORARY RULE ADOPTED

The Commission adopted a number of rules implementing SB 1149, including OAR 860-038-0080(1), during a special public meeting held August 29, 2000. Order No. 00-596, issued September 28, 2000. OAR 860-038-0080(1) established policies relating to the revenue requirement treatment of electric company resources. For example, Subsection (1)(a) relates primarily to the level of electric company resources that would be recognized in revenue requirements. Subsection (1)(b) relates to the revenue requirement treatment of new generating resources.

At a Commission Public Meeting on May 1, 2001, Staff recommended that the Commission adopt temporary rules amending OAR 860-038-0080(1). Staff advised that temporary rules are needed because the existing rules were developed when parties believed that resource plans would be completed by April 1, 2001, a date well before the October 1, 2001 implementation of SB 1149. However, as noted in other cases before the Commission, the review of electric company resource plan filings has been suspended. In AR 417, Staff is proposing that the Commission resource plan orders be issued by December 31, 2002. With this significant delay in the review of resource plan filings, Staff recommends that temporary rules are needed to clarify Commission treatment of electric company generating resources pending Commission orders on the resource plans.

Staff also noted that temporary rules are needed to address the near-term energy crisis. The current wholesale electric markets are very volatile with historic high levels of prices for wholesale power. The existing language of the rules require new generating resources be included in revenue requirements at market prices. Staff believes that relying on market prices for establishing revenue requirements for new resources must be placed on hold temporarily to allow for a portion of the benefits of lower-cost alternatives to flow through to consumers. At its May 1, 2001, Public Meeting, the Commission adopted a temporary rule

amending OAR 860-038-0080(1) as requested and opened a rulemaking docket to permanently amend the administrative rules to implement SB 1149.

The Commission finds good cause to adopt temporary rule language.

ORDER

IT IS ORDERED that:

1. The temporary rule attached as Appendix A is adopted.
2. The temporary rule shall be effective for a maximum of 180 days beginning May 1, 2001.

Made, entered, and effective

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BY THE COMMISSION:

Vikie Bailey-Goggins
Commission Secretary