

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS REPORT
PUBLIC MEETING DATE: October 22, 2001**

REGULAR X **CONSENT** **EFFECTIVE DATE** _____

DATE: October 10, 2001

TO: Commissioners Hemmingway, Beyer, and Smith

FROM: Kathryn Logan, Administrative Law Judge

SUBJECT: AR 417: Request for adoption of a permanent rule amending OAR 860-038-0080(1)(a) and repeal of temporary rule OAR 860-038-0080(1)(a) pertaining to resource plans, resource valuation and service options.

SUMMARY RECOMMENDATION:

Adopt new permanent rule and repeal existing temporary administrative rule.

DISCUSSION:

On May 1, 2001, the Commission adopted a temporary rule amending OAR 860-038-0080(1)(a). This temporary rule is due to expire on October 30, 2001. This one rule, to which none of the participants objected, is being separated from the rest of the AR 417 docket. The remainder of the docket will be presented at the November 20, 2001, regular public meeting.

The rationale for adopting a permanent rule is the same as for the temporary rule. Until the electric companies have a Resource Plan, which is implemented and fully executed, the electric companies may retain in their Oregon revenue requirement costs associated with a level of generating resources greater than necessary to meet the loads of Oregon residential and small nonresidential consumers.

One change was made to the language of the temporary rule. To make clear that OAR 860-038-0080(1)(a) is not controlling until the electric companies have fulfilled all the requirements of their respective Resource Plans, the italicized language was added:

At such time as the Resource Plan is implemented *and fully executed* . . .

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

I recommend adoption of the permanent rule amending OAR 860-038-0080(1)(a) as set forth in Appendix A of the attached order, and repeal of the temporary rule.

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ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 417

In the Matter of the Rulemaking)
Proceeding to Permanently Amend Rules) ORDER
Pertaining to Resource Plans, Resource)
Valuation, and Service Options in)
OAR 860, Division 038.)

DISPOSITION: RULE AMENDED; TEMPORARY RULE REPEALED

At the Commission public meeting held April 17, 2001, PUC Staff (Staff) recommended that the Commission adopt a temporary rule amending OAR 860-038-0080(1)(a) and (b). Staff further recommended that a rulemaking docket be opened to permanently amend seven rules, including OAR 860-038-0080(1)(a) and (b), which involve electric restructuring under SB 1149.¹ At that meeting, the Commission opened this rulemaking docket to consider all of the recommended changes, and directed Staff and interested participants to continue discussing revised temporary administrative rule language regarding treatment of new generating resources.

At the May 1, 2001, regular public meeting, the Commission adopted a temporary rule amending OAR 860-038-0080(1)(a). This temporary rule was filed with the Oregon Secretary of State on May 4, 2001.

On May 15, 2001, notice of the rulemaking and a statement of need and fiscal impact were filed with the Oregon Secretary of State. Notice of the rulemaking was published in the Oregon Bulletin on June 1, 2001. Persons were given until June 22, 2001, to file public comment. The comment time was later extended to September 11, 2001, to allow additional comments in light of the passage of HB 3633, which moved the implementation of electric restructuring in Oregon from October 1, 2001 to March 1, 2002. Persons were also given an opportunity to comment on the rule during the October 22, 2001 regular public meeting.

¹ The temporary rule request was docketed as AR 416. The permanent rulemaking request was docketed as AR 417.

Comments were filed by Staff, the Citizens' Utility Board (CUB), PG&E National Energy Group (NEG), PacifiCorp, the Industrial Customers of Northwest Utilities (ICNU), and Portland General Electric (PGE). Staff, NEG, PGE, PacifiCorp, and ICNU filed reply comments. Staff and PGE filed additional comments relating to the impact of HB 3633. No comments were filed in opposition to OAR 860-038-0080(1)(a).

The temporary rule is due to expire on October 30, 2001. Due to this time constraint, the Commission is making its determination on this portion of the rule separately from the other proposed rules in the docket. The remainder of the proposed rules, including additional provisions of OAR 860-038-0080(1)(a), will be addressed at the regular public meeting scheduled for November 20, 2001.

Discussion and Resolution

When this rule was initially adopted, it was contemplated that a Commission determination on the electric companies' resource plans would occur by April 1, 2001. Due to the changing schedule for reviewing resource plans, Staff believed that OAR 860-038-0080(1)(a) should be amended to clarify Commission treatment of electric company generating resources pending Commission orders on resource plans. None of the other involved participants had any objections to the amendment. We agreed with the Staff recommendation, and adopted a temporary rule adding the language, "At such time as the Resource Plan is implemented," to OAR 860-038-0080(1)(a).

We agree that this clarification needs to be maintained. Otherwise, the rule would require an electric company to *currently* retain in its Oregon revenue requirement only those costs associated with a level of generating resources not greater than is necessary to meet the current and reasonably expected future loads of its Oregon residential and small nonresidential consumers. This was not the intent of the Commission at the time this rule was adopted.

Comments to this rule were limited, and reiterated the intent of the participants. None of the participants opposed the OAR 860-038-0080(1)(a) language adopted in the temporary rule.

We are making one minor change to the language. Although the involved participants may understand what is meant by a Resource Plan being *implemented*, this language is not clear on its face. As we understand the concept, once the Resource Plan requirements have been fulfilled, then the level of the electric company's generating resources recognized in revenue requirement cannot be greater than is necessary to meet current and reasonably expected future loads of its Oregon residential and small residential consumers. The Resource Plan requirements which must be fulfilled are the final valuation of generating resources either through administrative valuation or auction of assets. Therefore, we add the language, *and fully executed*, to the phrase to make certain that all participants understand when the electric companies must meet the requirements of OAR 860-038-0080(1)(a). The beginning of the sentence will read as follows:

- (a) At such time as the Resource Plan is implemented and fully executed, . . .

ORDER

IT IS ORDERED that:

1. The proposed amended OAR 860-038-0080(1)(a) is adopted as set forth in Appendix A.
2. The temporary OAR 860-038-0080(1)(a) is repealed on the effective date of the amended rule.
3. The amended rule will be effective upon filing with the Oregon Secretary of State.

Made, entered and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party 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.

860-038-0080

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 and fully executed, 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 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. Electric companies must include new generating resources in 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;

(c) The Oregon share of the costs of each generating resource may be either completely in, completely out, or "mixed" with respect to inclusion in an electric company's Oregon revenue requirement. The Commission will permit mixed status unless it finds that mixed status will:

- (A) Reduce the generating resource's operating efficiency;
- (B) Harm the development of a competitive market; and
- (C) Prevent the owners from making economic decisions about the operation of the generating resource.

(d) For a multi-state electric company for which the Commission adopts a fixed-allocated Oregon share amount, and a Resource Plan is implemented, such generating allocation amount will be used for developing cost-of-service rates, transition charges and credits, and Operations and Maintenance allocations as well as other allocations that use generation-based factors.

(2) For purposes of this rule and OARs 860-038-0100 and 860-038-0140, the Oregon large nonresidential share of the total Oregon share of a generating resource will equal the ratio of the class's total Oregon retail load measured in weather-normalized kilowatt-hour sales in the 12 months ending September 30, 2001, to total Oregon retail load measured in weather-normalized kilowatt-hour sales in the 12 months ending September 30, 2001. To

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the extent such shares are not known as of October 1, 2001, the electric company will use estimates until relevant data are available.

(3) On or before November 1, 2000, each electric company must file with the Commission a resource plan that meets the following requirements:

(a) Information. The resource plan must include the following information:

(A) Consistent with paragraph subsection (3)(a)(G) of this rule, the amount of capacity and energy and the availability of each generating resource that is attributable to the Oregon residential and small nonresidential consumers' share of the electric company's load, and the amount that is attributable to the Oregon large nonresidential consumers' share of the electric company's load;

(B) A forecast of the revenue requirements associated with each generating resource over both its projected remaining useful life and economic life, with sensitivities for major assumptions, and identification of deferred taxes, excess deferred taxes, FASB 109 assets, and any investment tax credits associated with each generating resource;

(C) The other characteristics of the generating resource that could affect its value including but not limited to its capability to provide or support ancillary services, the value of its site and environmental or operating permits, and any environmental issues associated with it;

(D) A forecast of future market prices for electricity, including forecasts of major fuel inputs and sensitivity analyses;

(E) A forecast of loads of the electric company's Oregon residential and small nonresidential consumers covering at least the period of the longest-lived generating resource;

(F) The estimated fair market value of the Oregon share of each generating resource; and

(G) For a multi-state electric company, how the electric company proposes to allocate a share of its generating resources to Oregon. The multi-state electric company must also propose a fixed Oregon-allocated generating resource share based on the following factors:

(i) A forecasted allocation of each generating resource for the 12 months ending September 30, 2001, using traditional allocation methods recognized by the Commission;

(ii) The projected potential changes in Oregon share, due to alternative inter-jurisdictional allocation methods, over the life of each resource absent implementation of these rules; and

(iii) The change in risk borne by parties by fixing the Oregon share of generating resource.

(b) Recommended Valuation Methodology. The resource plan must identify, for each generating resource, or portion thereof if the resource meets the criteria for mixed status, whether the Oregon share of each generating resource should be:

(A) Retained in the electric company's Oregon revenue requirement for the purpose of serving Oregon residential and small nonresidential consumers and administratively valued through a process to be specified by rule;

(B) Sold through the auction process specified in OAR 860-038-0100, and if so:

(i) The general terms and conditions that should apply to the sale, including but not limited to, a prototype purchase and sale agreement; and

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(ii) Any sales incentives that the electric company proposes to apply to Oregon nonresidential consumers for the Oregon nonresidential consumers' share of the generating resource. Such incentives may be structured to encourage the electric company to follow the recommended timeline provided under subsection (3)(d) of this rule; or

(C) Removed from the electric company's Oregon revenue requirement and administratively valued through a process to be specified by rule, and if so, any incentive to apply to Oregon nonresidential consumers for removing the nonresidential consumers' share of the generating resource from revenue requirement. Such incentives may be structured to encourage the electric company to follow the recommended timeline provided under subsection (3)(d) of this rule.

(c) Results of the Resource Plan. The resource plan must identify the impacts of implementing it, including the following:

(A) The approximate load/resource balance, and the availability of each generating resource based on the electric company's current and forecasted load for Oregon residential and small nonresidential consumers;

(B) The estimated rates to each Oregon customer class that will result from implementation of the resource plan, including:

(i) The amount of estimated transition charges and credits;

(ii) A comparison to the rates filed by the electric company on October 1, 2000; and

(iii) An estimate of the cost-of-service rates for Oregon residential and small nonresidential consumers 10 years after implementation of the resource plan.

(C) How the resource plan is consistent with the purposes of SB 1149 in that the plan:

(i) Facilitates a fully competitive market;

(ii) Provides consumers fair, non-discriminatory access to competitive markets; and

(iii) Retains the benefits of low-cost resources for consumers.

(D) Any other implications of the resource plan that could help inform the Commissioners in their decision.

(d) Process. The electric company must develop the resource plan in a public process designed to inform and solicit input from Commission staff, representatives of Oregon residential, small nonresidential and large nonresidential consumers, and other interested parties.

(4) The Commission must consider the electric company's recommended resource plan in a contested case proceeding. The schedule in the contested case proceeding must be set to produce a Commission decision on the resource plan by April 1, 2001. The Commission's order must identify those resources that, at the option of the electric company, may be auctioned immediately, before final administrative valuation of other resources and potential modification of the electric company's Resource Plan. The Commission's order must also approve, modify, or reject the resource plan.

(a) If the Commission modifies the resource plan, the electric company will have 30 days from the date of the Commission's order to accept or reject the modifications. If the electric company rejects the Commission's modifications, the electric company must file a second recommended resource plan within 60 days of the date of rejection;

(b) If the Commission rejects the resource plan, the order rejecting the plan must specifically describe the deficiencies in the resource plan. In that event, the electric

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company must file a second recommended resource plan within 60 days of the order rejecting the original plan;

(c) If the Commission modifies the second recommended resource plan, the electric company will have 30 days from the date of the order to accept or reject the modifications. If the electric company rejects the Commission's modifications, future attempts at reaching a resource plan may be initiated by either the electric company or the Commission. The timelines outlined in subsection (4)(a) of this rule shall apply once a new resource plan is submitted or modifications to a former plan are suggested. Until a resource plan is approved by the Commission, the ongoing valuation method described in OAR 860-038-0140 will be used to establish transition charges and credits.

(5) An electric company or any nonresidential consumer may propose to change the definition of "large nonresidential consumer" provided in OAR 860-038-0005(23), by making a written request to the Commission no later than October 15, 2000, in which case the following shall apply;

(a) The Commission shall initiate a proceeding open to all interested parties to determine on an expedited basis whether to change the definition of "large nonresidential consumer." The schedule shall be set to obtain a Commission decision on this issue as soon as practical prior to March 1, 2001.

(b) The Commission shall only change the definition of "large nonresidential consumer" if the Commission determines it is in the public interest based on the following factors, and such other factors as the Commission deems relevant:

(A) Each electric company may have the same definition of large nonresidential consumer;

(B) For each class of consumers deemed "large nonresidential consumers," prices for electricity services, taking into account transition charges, transition credits, and incentive payments, if any, should not materially exceed prices for electricity services such class of consumers would pay under a cost-of-service rate;

(C) Consistent with ORS 757.646, the Commission should define large non-residential consumers to encompass as many nonresidential consumers as is feasible; and

(D) The potential benefits available due to new products, service options, and product innovations.

(c) Notwithstanding section (5) of this rule, each electric company shall file its resource plan on November 1, 2000, based on the definition of "large nonresidential consumer" contained in OAR 860-038-0005. In the event the Commission modifies the definition of "large nonresidential consumer" pursuant to section (5) of this rule, each electric company shall promptly modify its resource plan to reflect such change; and

(d) Each electric company shall identify the changes that would be necessary to implement any alternate definition of "large nonresidential consumer" proposed by a party to the proceeding initiated pursuant to this section (5) of this rule.

(6) A resource plan that has been recommended by the electric company and approved by the Commission, or modified by the Commission and accepted by the electric company, is referred to in these rules as a "Resource Plan." The electric company must implement the Resource Plan consistent with OAR 860-038-0100 and a process for administrative valuation to be specified by rule. Until a Resource Plan is implemented, including the

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establishment of final values for generating resources, the electric company must determine transition charges and credits using an ongoing valuation method permitted under OAR 860-038-0140.

(7) For a multi-state electric company, pending the implementation of a Resource Plan and establishing final values for generating resources in accordance with these rules, the following will guide developing rates for Oregon consumers of the electric company for the period October 1, 2001, through December 31, 2002:

(a) Cost-of-service rates will be based upon traditional allocation methods;

(b) Transition charges or credits shall not include assumed costs and revenues of the portion of generating resources not needed to serve Oregon loads associated with residential and small nonresidential consumers choosing portfolio access, small nonresidential consumers choosing direct access or standard offer rate options, and large nonresidential consumers when, and to the extent, the costs and revenues of the generating resources that are not needed are recognized and included in the electric company's revenue requirement in another state, less the costs and revenues of such generating resources which have been included in the electric company's revenue requirement by another state prior to October 1, 2001; and

(c) Beginning January 1, 2003, transition charges and transition credits will be calculated without regard to subsection (7)(b) of this rule.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00 (Order No. 00-596); PUC 5-2001 (Temp) f. & cert. ef. 2-6-01 (Order No. 01-153); PUC 12-2001 (Temp), f. & cert. ef. 5-4-01 (Order No. 01-393).