

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: January 8, 2002**

**REGULAR**            **CONSENT**    **X**    **EFFECTIVE DATE**            **Upon filing with  
Secretary of State**

**DATE:**            December 27, 2001

**TO:**                Phil Nyegaard

**FROM:**            Thien-Huong Palmer/Sam Petrillo

**SUBJECT:**    AR 432 – Adoption of revisions to procedural rules relating to depositions, data requests, pleading deadlines, and prior conflicting rules in OARs 860-013-0050, 860-014-0065, 860-014-0070 and 860-014-0096.

**STAFF RECOMMENDATION:**

The Commission should adopt Staff's proposed amendments to 860-013-0050, 860-014-0065, 860-014-0070 and repeal 860-014-0096.

**DISCUSSION:**

At its August 7, 2001, Public Meeting, the Public Utility Commission (PUC) opened docket AR 432, a rulemaking proceeding to consider proposed changes to procedural rules relating to depositions, data requests, pleading deadlines, and prior conflicting rules (rules 860-013-0050, 860-014-0065, 860-014-0070 & 860-014-0096).

The changes were proposed during the Triennial Review of PUC's administrative rules (AR 395), the proposed amendment to 860-013-0050 (a) adds language to subsection(1)(a) to clarify that the Commission or Administrative Law Judge may modify time lines for filing answers, replies or motions; (b) amends subsection (1)(a) to shorten the time for responding to petitions to intervene from 20 days to 10 days; (c) amends section (1)(b) to delete the word "consumer" to correspond with other rule changes and; (d) amends section (2) to delete the phrase "a motion or" because it duplicates language in subsection (3)(d).

The proposed amendment to 860-014-0065 deletes language in section (2) requiring that parties notify the Commission or Administrative Law Judge of a proposed deposition.

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The proposed amendment to 860-014-0070 combines sections (2) and (4) regarding disputes associated with data requests.

Although 860-014-0096 is listed in the Notice of Proposed Rulemaking as being amended, the proposed amendment to 860-014-0096 would delete this rule in its entirety.

The Commission filed Notice of the Proposed Rulemaking with the Secretary of State on October 11, 2001, and subsequently provided notice to all interested persons on the Commission's rule changes list. The notice was published in the November 1, 2001, *Oregon Bulletin*. No one opposed Staff's proposed amendments to OAR 860-013-0050, 860-014-0065, 860-014-0070 and repeal of 860-014-0096.

The amendments proposed for adoption today are identical to the amendments proposed by Staff at the August 7, 2001, Public Meeting. The draft order and rule (Appendix A) are attached to this memo for your review.

**PROPOSED COMMISSION MOTION:**

Staff's proposed amendments to OARs 860-013-0050, 860-014-0065, 860-014-0070 and 860-014-0096 be adopted.

AR 432

ORDER NO.

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 432

In the Matter of a proposed rulemaking )  
opened as a result of AR 395 (Triennial )  
Rules Review) to amend Oregon ) ORDER  
Administrative Rules 860-013-0050, )  
860-014-0065, 860-014-0070 and repeal )  
860-014-0096. )

**DISPOSITION: RULES AMENDED; RULE REPEALED**

At its August 7, 2001, Public Meeting, the Public Utility Commission (PUC) opened docket AR 432, a rulemaking proceeding to consider proposed changes to procedural rules relating to depositions, data requests, pleading deadlines, and prior conflicting rules. The changes were proposed during the Triennial Review of PUC's administrative rules (AR 395).

The Commission filed Notice of the Proposed Rulemaking with the Secretary of State on October 11, 2001, and subsequently provided notice to all interested persons on the Commission's rule changes list. 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 November 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 January 8, 2002, Public Meeting, the Commission approved Staff's recommendation to adopt the proposed rules. Staff's report and the proposed rules are attached and incorporated by reference as Appendix A.

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**ORDER**

IT IS ORDERED that:

1. Oregon Administrative Rules 860-013-0050, 860-014-0065, 860-014-0070 and 860-014-0096, as set forth in Appendix A, are adopted.
2. The amended rule shall be effective upon filing with the Secretary of State.

Made, entered, and effective \_\_\_\_\_.

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**Roy Hemmingway**  
Chairman

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**Lee Beyer**  
Commissioner

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**Joan H. Smith**  
Commissioner

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.

**860-013-0050**

**Time for Answer, Reply, or Motion**

(1) Unless otherwise specified or directed by the Commission or Administrative Law Judge, Answers shall be filed as follows:

(a) An answer to a complaint, application, or petition shall be filed within 20 days after service.

(b) An answer to a ~~consumer~~ complaint under OAR 860-021-0015 shall be filed within 15 days after service.

(c) An answer to a petition to intervene shall be filed within 10 days after service.

(2) A reply to ~~a motion or~~ a responsive pleading shall be filed within 15 days of service of the pleading against which the reply is directed.

(3) Motions shall be filed as follows:

(a) A motion against a complaint, application, or petition shall be filed within 20 days of service.

(b) A motion against an answer or protest shall be filed within 15 days of service.

(c) A motion against a reply shall be filed within ten days of service.

(d) Unless otherwise specified by these rules or the Administrative Law Judge, a written response to a motion shall be filed within 15 days of service of the motion.

(4) Objections to the Commission's jurisdiction or that a pleading does not state facts sufficient to constitute grounds for relief are never waived.

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

Stats. Implemented: ORS 756.040 & 756.500 through 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-13-010; PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & ef. 11-20-97 (Order No. 97-443); PUC 12-1999, f. & ef. 11-18-99 (Order No. 99-709)

**860-014-0065**

**Depositions**

(1) The testimony of any witness may be taken by deposition at any time before the hearing is closed.

(2) A party proposing to take a deposition shall notify in writing every other party ~~and the Commission or Administrative Law Judge (ALJ)~~. Unless notice is waived, a party shall provide ten days' notice to the parties of a deposition to be taken within the state and 15 days' notice for a deposition to be taken elsewhere. The notice shall state the witness's name and address, the subject matter on which the witness is expected to testify, the time and place of taking the deposition, the name and address of the officer before whom the deposition is to be taken, and the reason why the deposition is to be

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taken. Other parties in the proceeding may make any appropriate response to the notice of deposition.

(3) A party may take a deposition before a person designated in the notice or agreed upon by the parties. The Commission **or Administrative Law Judge (ALJ)** may impose such conditions on the taking of the deposition as may be necessary to ensure fairness in the proceeding.

(4) Every person whose testimony is taken by deposition shall swear or affirm concerning the matter about which s/he shall testify. The testimony shall be transcribed. The person before whom the deposition was taken shall certify, under oath on the transcript, that the witness was sworn in the reporter's or transcriber's presence, and the transcript is a true record of the testimony or a correct transcription of the recording.

(5) The deposition shall conform to the requirements of OAR 860-013-0040.

(6) A party may examine a deponent on any matter not privileged which appears reasonably calculated to lead to the discovery of evidence relevant to the issues involved in the pending proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts.

(7) Unless received in evidence by the Commission or ALJ, no portion of a deposition shall constitute a part of the record in the proceeding. A party may object at the hearing in the proceeding to receiving in evidence any portion of the deposition. Upon request, the party examining the deponent shall provide the Commission or ALJ a transcribed copy of any deposition taken in the proceeding.

(8) The party requesting the deposition shall pay the deponents and the person taking the deposition the same fees as are paid for like services in the courts of record of the state in which the deposition is taken.

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

Stats. Implemented: ORS 756.040 & 756.500 through 756.575

Hist.: PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 15-1997, f. & ef. 11-20-97 (Order No. 97-443); PUC 12-1999, f. & ef. 11-18-99 (Order No. 99-709)

**860-014-0070**

**Data Requests**

(1) Subject to limitations imposed by the Commission or Administrative Law Judge (ALJ), the Commission, ALJ, or any party may submit data requests to any party. Data requests are written interrogatories or requests for production of documents. The data requests shall be answered within ten Commission business days from the date of service. Each data request shall be answered fully and separately in writing or by production of documents, unless objected to, in which event the objection shall be written in lieu of answer.

(2) If the party to whom the data requests are directed refuses to answer or objects to any data request, the Commission or ALJ shall rule upon the objection and may compel an answer or impose sanctions for refusal to answer. **Any motion regarding disputed data requests submitted to the Commission or ALJ, whether by motion or otherwise, shall contain a certification that the parties have conferred and been unable to resolve the dispute. The certification may be included in the body of the motion. Any motion which does not contain this certification will be denied.**

(3) Any party may offer into evidence data requests and the answers to the data requests. Upon request, the party answering the data request shall provide the Commission or ALJ a copy of the answer to any data request. Any objection to substance or form of any data requests or answers shall be attached to the submitted data requests with specific reference and grounds. The Commission or ALJ shall rule on objections before receiving the submitted data requests in evidence. Every remedy available to a party using deposition procedures shall be available to a party using data requests.

~~(4) Any motion regarding disputed data requests submitted to the Commission or ALJ, whether by motion or otherwise, shall contain a certification that the parties have conferred and been unable to resolve the dispute. The certification may be included in the body of the motion. Any motion which does not contain this certification will be denied.~~

(5) Parties are not required to file data requests or responses to data requests with the Commission, except when requesting resolution of a discovery dispute under these rules.

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

Stats. Implemented: ORS 756.040 & 756.500 through 756.575

Hist.: PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & ef. 7-21-94 (Order No. 94-1127); PUC 11-1995, f. & ef. 11-27-95 (Order No. 95-1217); PUC 13-1995, f. & ef. 12-12-95 (Order No. 95-1284); PUC 1-1996, f. & ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & ef. 11-20-97 (Order No. 97-443); PUC 12-1999, f. & ef. 11-18-99 (Order No. 99-709)

**860-014-0096**

**Prior Rules**

~~Any prior rules conflicting with these rules are superseded.~~

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

~~Stats. Implemented: ORS 756.040 & 756.500 through 756.575~~

~~Hist.: PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); Repealed~~