

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: March 5, 2002**

REGULAR CONSENT EFFECTIVE DATE Upon filing with the Secretary of State

DATE: February 7, 2002

TO: Commissioners Hemmingway, Beyer, and Smith

FROM: Michael Grant, Administrative Law Judge

SUBJECT: Docket AR 426: Requests permanent adoption of the Division OAR 038 rules necessary to implement House Bill 3633.

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

Permanently adopt rules necessary to implement HB 3633.

DISCUSSION:

House Bill 3633 delayed the commencement of direct access and made other changes to Senate Bill 1149. In Order No. 01-788, the Commission adopted temporary rule changes to implement HB 3633.

At the September 25, 2001 Public Meeting, the Commission granted the Commission Staff's request to open a rulemaking docket to permanently adopt these rule changes. After notice, the Commission received comments from Portland General Electric Company (PGE) and Building Owners and Managers – Portland (BOMA). No person requested a hearing. The attached draft order summarizes the positions of the participants.

PROPOSED COMMISSION MOTION:

Recommend adoption of the Administrative Law Judge's order and rule attached to this report.

ORDER NO. *DRAFT*

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 426

In the Matter of a Rulemaking to Consider)
Implementation of Changes to Division 038) ORDER
required by House Bill 3633 on a Permanent)
Basis.)

DISPOSITION: AMENDED RULES ADOPTED

In House Bill 3633, the 2001 Legislative Assembly postponed the implementation of Senate Bill 1149, an electric restructuring act passed during the previous legislative session. In House Bill 3633, the legislature delayed the commencement of direct access from October 1, 2001 to March 1, 2002, and required electric companies to offer a cost-of-service option to large nonresidential customers. These changes required corresponding changes in administrative rules set forth in OAR Division 038, which the Commission previously promulgated to implement Senate Bill 1149.

At our September 11, 2001 Public Meeting, we adopted temporary rules to bring Division 038 into compliance with House Bill 3633. In that temporary rulemaking, we also adopted numerous housekeeping changes. *See* Order No. 01-788. At our September 25, 2001 Public Meeting, we granted the Commission Staff's request to open a rulemaking docket to permanently adopt these rule changes.

On October 2, 2001, we filed a Notice of the Proposed Rulemaking with the Secretary of State, and subsequently served it on persons interested in such matters. The notice set out the amendments proposed by Staff, and included a Statement of Need, Statutory Authority, Principal Documents Relied Upon, and Fiscal and Economic Impact. The notice was published in the Secretary of State's *Oregon Bulletin* on November 1, 2001. The Commission received comments from Portland General Electric Company (PGE) and Building Owners and Managers – Portland (BOMA). No person requested a hearing.

At its March 5, 2002 Public Meeting, the Commission considered the comments and recommendations of the participants in this matter and entered the decisions set out in this order.

DISCUSSION**Staff's Proposed Rulemaking**

Staff makes two primary recommendations. First, it asks the Commission to permanently adopt the temporary rules approved in Order 01-788. Second, Staff recommends two additional changes proposed by Staff and the Oregon Office of Energy (OOE). Those two changes are summarized as follows:

Modify OAR 860-038-0001 to allow the Commission to consider a waiver of Division 038 rules

Staff believes that Division 038 should be amended to allow an entity to petition the Commission for a waiver of rules related to electric restructuring. Staff notes that Divisions 011, 021, 036, and 037 have waiver provisions, and contend that the Commission should have the similar flexibility to consider a petition for a waiver of a rule within Division 038. Staff adds that a waiver is not something that should be taken lightly, and that an entity seeking such relief would be required to show good cause.

Modify OAR 860-038-0480(15) to change the date for the schools allocation formula.

The OOE proposes two changes to OAR 860-038-0480(15), which governs the allocation of public purpose funds for schools. First, OOE recommends that the determination date for the schools' allocation in OAR 860-038-0480(15) be changed from July 15 to January 1 of each year to coincide with the schools' budgeting process and the Oregon Department of Education's calculation of average daily membership data. Second, OOE proposes changing the computation date in OAR 860-038-0480(15)(e) from September to March of each year, given the delay of Senate Bill 1149.

Public Comments

No rulemaking participant objected to Staff's first recommendation that the Commission permanently adopt the temporary rules approved in Order 01-788. We find Staff's recommendation reasonable and adopt it.

PGE and BOMA filed comments concerning the additional modifications proposed by Staff and OOE. PGE does not object to OOE's recommendation to modify OAR 860-038-0480(15)(e). In order to more appropriately track with the standard calendar year accounting for utilities, however, PGE proposes that the rule be modified to read as follows:

Compute the percentage of the total ADMw represented by each Education Service District. These are the percentages that will be used to allocate the public purpose funds for schools to Education Service Districts for the 12-month period with the exception of 2002 where the funds will be allocated for a 10-month period beginning March 1, 2002. After 2002, the 12-month period will begin on January 1 of each year.

We find PGE's proposal to be reasonable and amend the rule accordingly.

BOMA raises two issues. First, it opposes Staff's proposed waiver of rules as currently written. BOMA notes that the proposed language provides no criteria on which the Commission would decide whether to grant a requested waiver from Division 038 rules. BOMA contends that language reads as if the Commission is giving itself authority to essentially gut the intent of Senate Bill 1149 and House Bill 3633.

The Commission generally does not favor exempting an entity from compliance with any administrative rule. Nonetheless, entities are currently allowed to seek a waiver from the application of certain rules, and we have, on occasion, found it to be in the public interest to grant such a request.¹ In such instances, the waiver provided benefits to the petitioning entity and its customers. Therefore, we agree with Staff that Division 038 should be modified to include a waiver provision. We further agree with BOMA, however, that any provision allowing an entity to request a waiver from Commission rules should be carefully crafted. Such a waiver should include standards for review of any such request, and contain language clarifying that a waiver, if granted, shall not relieve the entity from complying with any statutory laws of this state.

Accordingly, we conclude that OAR 860-038-0001 should be amended to read as follows:

(4) These rules shall not in any way relieve any entity from its duties under Oregon law. Upon application by an entity subject to these rules and for good cause shown, the Commission may relieve it of any obligations under these rules.

Second, BOMA contends that the definition of a "large nonresidential customer" set forth in OAR 860-038-0005(28) should be modified from 30kW to 1 MW of demand for any two months within the prior 13 month period. We previously addressed BOMA's argument in rulemaking docket AR 394. We decline to revisit that issue here.

¹ See e.g., South Hills Water System, Inc., April 21, 1998 Public Meeting (OAR 860-036-0235 & 0120(3)), and Agate & Apache Water, August 10, 1999 (OAR 860-036-0015, 0235(2)).

ORDER

IT IS ORDERED that:

1. The modifications to the rules set out in Appendix A, attached to and made part of this order, are adopted.
2. The rule modifications shall become effective upon filing with the Secretary of State.

Made, entered and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

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.

860-038-0001

Scope and Applicability of Rules

(1) The rules contained in this division apply to electric companies and electricity service suppliers, except that these rules do not apply to an electric company serving fewer than 25,000 consumers in this state unless the electric company:

(a) Offers direct access to any of its retail electricity consumers in this state; or

(b) Offers to sell electricity services available under direct access to more than one retail electricity consumer of another electric company in this state.

(2) Except as otherwise provided in these rules, an electric company must comply with all other divisions of OAR Chapter 860.

(3) OAR 860-038-0380, sections (1) through (9), apply to aggregators; section (10) applies to electric companies.

(4) These rules shall not in any way relieve any entity from its duties under Oregon law. Upon application by an entity subject to these rules and for good cause shown, the Commission may relieve it of any obligations under these rules.

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 2-2001, f. & cert. ef. 1-5-01 (Order No. 01-073)

860-038-0005

Definitions

As used in this Division:

(1) “Above-market costs of new renewable energy resources” means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.

(2) “Advisory committee” means a group appointed by the Commission, consisting of representatives from Commission Staff, the Office of Energy, and the following:

(a) Local governments;

(b) Electric companies;

(c) Residential consumers;

(d) Public or regional interest groups; and

(e) Small nonresidential consumers.

(3) “Affiliate” means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.

(4) “Aggregate” means combining retail electricity consumers into a buying group for the purchase of electricity and related services. “Aggregator” means an entity that aggregates.

(5) “Ancillary services” means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.

(6) “Commission” means the Public Utility Commission of Oregon.

(7) “Common costs” means costs that cannot be directly assigned to a particular function.

(8) “Competitive operation” means any activities related to the provision of electricity services conducted by the electric company’s nonregulated operation or the electric company’s affiliate.

(9) “Consumer-owned utility” means a municipal electric utility, a people’s utility district or an electric cooperative.

(10) “Default supplier” means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.

(11) “Direct access” means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.

(12) “Direct service industrial consumer” means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(13) “Distribution” means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(14) “Distribution utility” means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(15) “Divestiture” means the sale of all or a portion of an electric company’s ownership share of a generation asset to a third party.

(16) “Economic utility investment” means all Oregon allocated investments made by an electric company prior to the date the electric company offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. “Economic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(17) “Electric company” means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(18) “Electric company operational information” means information relating to the interconnection of customers to an electric company’s transmission or distribution systems, trade secrets, competitive information relating to internal processes, market analysis reports, market forecasts, and information about an electric company’s transmission or distribution system, operations, or plans or strategies for expansion.

(19) “Electric cooperative” means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(20) “Electric utility” means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(21) “Electricity” means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(22) “Electricity services” means electricity distribution, transmission, generation or generation-related services.

(23) “Electricity service supplier” or “ESS” means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity

consumer. “Electricity service supplier” does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(24) “Emergency default service” means a service option provided by an electric company to a nonresidential consumer that requires less than five business days’ notice by the consumer or its electricity service supplier.

(25) “Fully distributed cost” means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.

(26) “Functional separation” means separating the costs of the electric company’s business functions and recording the results within its accounting records, including allocation of common costs.

(27) “Joint marketing” means the offering (including marketing, promotion, and/or advertising) of retail electric services by an electric company in conjunction with its competitive operation to consumers either through contact initiated by the electric company, its affiliate, or through contact initiated by the consumer.

(28) “Large nonresidential consumer” means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.

(29) “Load” means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(30) “Local energy conservation” means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.

(31) “Low-income weatherization” means repairs, weatherization and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(32) “Market transformation” means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(33) “Multi-state electric company” means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.

(34) “Municipal electric utility” means an electric distribution utility owned and operated by or on behalf of a city.

(35) “Net system power mix” means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Office of Energy.

(36) “New” as it refers to energy conservation, market transformation and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company.

(37) “New renewable energy resource” means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation on or before July 23, 1999. “New renewable energy resource” does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

(38) “Nonresidential consumer” means a retail electricity consumer who is not a residential consumer.

(39) “Office of Energy” means the Oregon Office of Energy created under ORS 469.030.

(40) “Ongoing valuation” means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at forecast market prices for a one-year period to an estimate of the revenue requirement of the asset for the same time period.

(41) “One-time administrative valuation” means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

(42) “One average megawatt” means 8,760,000 kilowatt-hours of electricity per year.

(43) “Oregon share” means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.

(44) “People’s utility district” has the meaning given that term in ORS 261.010.

(45) “Portfolio” means a set of product and pricing options for electricity.

(46) “Proprietary consumer information” means any information compiled by an electric company on a consumer in the normal course of providing electric service that makes possible the identification of any individual consumer by matching such information with the consumer’s name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the consumer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the consumer to whom the information relates does not constitute proprietary consumer information.

(47) “Qualifying expenditures” means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Office of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(48) “Registered dispute” means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission’s Consumer Services Division but is not the subject of a formal complaint.

(49) “Regulated charges” means charges for services subject to the jurisdiction of the Commission.

(50) “Regulatory assets” means assets that result from rate actions of regulatory agencies.

(51) “Renewable energy resources” means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; and

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(52) “Residential consumer” means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. “Residential consumer” does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, “dwelling” includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.

(53) “Retail electricity consumer” means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric company on or after July 23, 1999, whether or not each end user purchases the electricity from the electric company. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after ~~October~~March 1, 20012, at the site.

(54) “Self-directing consumer” means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Office of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company’s tariff regarding public purpose credits.

(55) “Serious injury to person” has the meaning given in OAR 860-024-0050.

(56) “Serious injury to property” has the meaning given in OAR 860-024-0050.

(57) “Site” means:

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;

(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings and structures; and

(C) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.

(58) “Small nonresidential consumer” means a nonresidential consumer that is not a large nonresidential consumer.

(59) “Special contract” means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.

(60) “Structural separation” means separating the electric company’s assets by transferring assets to an affiliated interest of the electric company.

(61) “Total transition amount” means the sum of an electric company’s transition costs and transition benefits.

(62) “Traditional allocation methods” means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company’s last Oregon rate proceeding completed prior to December 31, 2000.

(63) “Transition benefits” means the value of the below-market costs of an economic utility investment.

(64) “Transition charge” means a charge or fee that recovers all or a portion of an uneconomic utility investment.

(65) “Transition costs” means the value of the above-market costs of an uneconomic utility investment.

(66) “Transition credit” means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

(67) “Transmission grid” means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries.

(68) “Unbundling” means the process of assigning and allocating a utility’s costs into functional categories.

(69) “Uneconomic utility investment” means all Oregon allocated investments made by an electric company prior to the date the electric company offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. “Uneconomic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.

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

Stat. Implemented: ORS 756.040 & 757.600 to 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00 (Order No. 00-596); PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073); PUC 21-2001 (Temp), f. & cert. ef. 9-11-01 thru 3-10-02 (Order No. 01-788); PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839 – Errata Order No. 01-1047); PUC 5-2002, f. & cert. ef. 2-8-02 (Order No. 02-053)

860-038-0160

Transition Costs and Credits

(1) Except as provided for in OAR 860-038-0080(7), each Oregon retail electricity consumer of an electric company will receive a transition credit or pay a transition charge equal to 100 percent of the net value of the Oregon share of all economic utility investments and all uneconomic utility investments of the electric company as determined pursuant to an auction, an administrative valuation, or an ongoing valuation. The transition charge or credit applicable to a retail electricity consumer will not change based on the service option chosen by the consumer.

(2) The Oregon residential and small nonresidential consumers of that electric company will bear the entire revenue requirement of generating resources, or portions thereof, retained in an electric company’s Oregon revenue requirement for the purpose of serving Oregon residential and small nonresidential consumers. In addition, the electric company will:

(a) Collect from Oregon residential and small nonresidential consumers the funds necessary to provide any transition credits related to such resources to Oregon large nonresidential consumers exclusive of incentive payments; or

(b) Credit to Oregon residential and small nonresidential consumers the funds received from any transition charges related to such resources from Oregon large nonresidential consumers exclusive of incentive payments.

(3) For purposes of determining transition costs and transition credits:

(a) The value of generating resources determined through an auction conducted pursuant to OAR 860-038-0100 will equal the proceeds of such auction, less any reasonable costs of sale and any tax effects of the sale;

(b) The value applicable to Oregon nonresidential consumers will be reduced for any incentives provided under the Resource Plan;

(c) The net value of generating resources determined through an auction conducted pursuant to OAR 860-038-0100 will equal the Oregon residential and nonresidential respective values of generating resources minus the book value as recorded for regulatory purposes;

(d) The value of generating resources determined through an administrative valuation conducted pursuant to a process to be specified by rule will equal the final valuation inclusive of any tax effects less allowed appraisal costs. The treatment of the tax effects of a potential future sale of an administratively valued asset will be addressed in a future rulemaking;

(e) The value applicable to Oregon nonresidential consumers will be reduced for any incentives provided under the Resource Plan; and

(f) The net value of generating resources determined through an administrative valuation conducted pursuant to a process to be specified by rule will equal the Oregon residential and nonresidential respective values of generating resources minus the book value as recorded for regulatory purposes.

(4) For the Oregon share of: (a) economic and uneconomic investments that are not resources, (b) other regulatory assets, (c) demand side management assets existing as of ~~October~~ **March** 1, 20012, and (d) retired or abandoned plant for which the Commission established cost recovery before July 23, 1999, transition costs or benefits will be allocated 100 percent to Oregon retail electricity consumers.

(5) Each electric company must maintain records to properly record and amortize transition costs and transition credits using a transition balancing account. Any unamortized balance in the transition balancing account will accrue interest at the electric company's Oregon authorized cost of capital.

(6) The transition costs or transition benefits allocated to a customer class for a specific time period will be charged or credited to Oregon retail electricity consumers on a weather normalized equal cents per kilowatt-hour basis adjusted for losses. To the extent weather-normalized kilowatt-hour sales are not known, as of ~~October~~ **March** 1, 20012, estimates will be used until relevant data are available.

(7) The Commission will determine the period of payment or recovery of transition costs or transition credits, provided such period will not exceed 10 years.

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 21-2001 (Temp), f. & cert. ef. 9-11-01 thru 3-10-02 (Order No. 01-788)

860-038-0220

Portfolio Options

(1) By ~~October~~ **March** 1, 20012, an electric company must provide each residential consumer who is connected to its distribution system with a portfolio of product and pricing options. Portfolio options will not be offered to large nonresidential consumers.

(2) Sections (3) through (8) of this rule apply to residential portfolio product and pricing options.

(3) The Advisory Committee, as defined in OAR 860-038-0005, will recommend portfolio options to the Commission for the ~~15~~10-month service period beginning ~~October~~March 1, 200~~1~~2, and the 12-month service period beginning January 1, 2003, and each calendar year thereafter. The Advisory Committee will make its recommendations six months prior to the date of implementation of the portfolio product and pricing options each year. The Commission is not bound by the recommendations of the Advisory Committee.

(4) The portfolio must include at least one product and rate that reflects renewable energy resources and one market-based rate. The Advisory Committee will recommend the resource content of each renewable energy resource product. At least one renewable energy resource product will contain “significant new” resources. The Advisory Committee will recommend a definition of “significant” based on an evaluation of resource availability, resource cost, and other factors. The portfolio options may include options for the collection of funds for future renewable resource purchases or collection of funds for energy related environmental mitigation measures such as salmon recovery.

(5) Each electric company is responsible for administering the options, including but not limited to marketing and billing.

(6) Each electric company must acquire the renewable supply resources necessary to provide the renewable energy resources product through a Commission-approved bidding process or other Commission-approved means. Each electric company may acquire the resources necessary to provide the other product and pricing options at its discretion.

~~(7) Residential consumers may choose the cost-of-service rate option or a portfolio option in August for the 15-month service period beginning October 1, 2001. Beginning October 1, 2002, and each year thereafter, the residential consumer may choose the cost-of-service rate option or a portfolio option in October for the 12-month service period beginning January 1. A residential consumer who does not make an affirmative choice in the open enrollment period will be assigned to the option under which service is currently received. If the option the residential consumer is currently receiving is not available in the next service period, the consumer who does not make an affirmative choice in the enrollment period will be assigned to the cost-of-service rate option. The Advisory Committee may recommend an alternative enrollment process to the Commission, including but not limited to continuous open enrollment, but in no case may market rate participants change options more frequently than once per year.~~

~~(8)~~ Four months prior to the implementation of the portfolio product and pricing options each year, an electric company must file tariffs for its portfolio options.

~~(9)~~ This section applies to residential and small nonresidential product and pricing options. An electric company must develop portfolio rates as follows:

(a) The portfolio rates must be based on the unbundled costs identified through the application of OAR 860-038-0200;

(b) The portfolio rates for any class of customer must be based on the unbundled costs to serve that class;

(c) The portfolio rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the portfolio rate option;

(d) The portfolio rates must exclude electric company costs that are avoided when a consumer chooses to be served under the portfolio rate option;

(e) An electric company may impose nonrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

~~(109)~~ This section applies to small nonresidential portfolio product and pricing options. The Advisory Committee will recommend portfolio product and pricing options, if any, to the Commission for approval. The electric company must implement small nonresidential portfolio product and pricing options adopted by the Commission.

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 21-2001 (Temp), f. & cert. ef. 9-11-01 thru 3-10-02 (Order No. 01-788)

860-038-0240

Cost-of-Service Rate

(1) By ~~October~~**March** 1, 200**12**, an electric company must provide a cost-of-service rate option to ~~residential and small nonresidential~~ consumers. Only one cost-of-service rate option may be offered by schedule to each class of customers. ~~A cost-of-service rate option will not be offered to large nonresidential consumers.~~

(2) Unless a new residential or small nonresidential consumer elects otherwise, the electric company will serve the consumer under the cost-of-service option.

(3) An electric company must develop cost-of-service rates as follows:

(a) The cost-of service rates must be based on the unbundled costs identified through the application of OAR 860-038-0200;

(b) The cost-of-service rates for any class of customer must be based on the unbundled costs to serve that class;

(c) The cost-of-service rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the cost-of-service rate option;

(d) The cost-of-service rates must exclude electric company costs that are avoided when a consumer chooses to be served under the cost-of-service rate option;

(e) An electric company may impose nonrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

(4) An electric company must separately state in its tariffs transition charges or credits and the rates associated with the revenue requirement of retained resources and purchases assigned to residential and small nonresidential consumers.

(5) An electric company must separately identify in its tariffs other credits or charges such as the credit associated with power supply contracts with the Bonneville Power Administration.

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 21-2001 (Temp), f. & cert. ef. 9-11-01 thru 3-10-02 (Order No. 01-788)

860-038-0250

Nonresidential Standard Offer

(1) By ~~October~~March 1, 2001~~2~~, each electric company shall provide one or more standard offer rate options to large nonresidential retail electricity consumers and one or more standard offer rate options to small nonresidential consumers. Each electric company must designate one of the standard offers available to each customer class as the non-emergency default supply option.

(2) An electric company must develop the standard offer rate as follows:

(a) A standard offer rate option shall be a tariff approved by the Commission, which is based on supply purchases made on a competitive basis from the wholesale market plus the transition credit or transition charge and all other unbundled costs of providing standard offer service. A standard offer rate must reflect the full costs of providing standard offer service;

(b) The standard offer rates for any class of customer must be based on the unbundled costs to serve that class;

(c) The standard offer rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the standard offer rate option;

(d) The standard offer rates must exclude electric company costs that are avoided when a consumer chooses to be served under the standard offer rate option;

(e) An electric company may impose no nrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

(3) Large nonresidential retail electricity consumers that do not choose direct access will automatically receive standard offer service beginning October 1, 2001. After October 1, 2001, new large nonresidential consumers will be served under the standard offer rate if they do not elect direct access.

(4) The electric company must design its cost-of-service rate and one-time charges associated with returning to a cost-of-service rate so that consumers served under a cost-of-service rate are not harmed by other consumers switching between direct access or standard offer and the cost-of-service rate.

(5) An electric company must, for nonresidential consumers, identify transition charges or credits.

(6) An electric company must separately identify other credits or charges such as the credit associated with power supply contracts with the Bonneville Power Administration.

(7) The notice and deposit requirements listed in OAR 860-038-0280(4) and (5) apply to standard offer service.

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 21-2001 (Temp), f. & cert. ef. 9-11-01 thru 3-10-02 (Order No. 01-788)

860-038-0260

Direct Access

(1) By ~~October~~March 1, 2001~~2~~, an electric company must allow nonresidential consumers to choose direct access.

(2) An electric company must develop direct access rates as follows:

(a) The direct access rates must be based on the unbundled costs identified through the application of OAR 860-038-0200;

(b) The direct access rates for any class of customer must be based on the unbundled costs to serve that class;

(c) The direct access rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the direct access rate option;

(d) The direct access rates must exclude electric company costs that are avoided when a consumer chooses to be served under the direct access rate option;

(e) An electric company may impose nonrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

(3) The electric company must design its cost-of-service rate options and one-time charges associated with returning to a cost-of-service rate so that consumers served under a cost-of-service rate option are not harmed by other consumers switching between direct access or standard offer and the cost-of-service rate.

(4) After ~~October~~March 1, 20012, subject to Commission approval, an electric company may enter into special contracts for distribution service but may not enter into special contracts for power supply.

(5) Operation of a special contract approved by the Commission prior to ~~October~~March 1, 20012, between an electric company and a retail electricity consumer that extends beyond ~~October~~March 1, 20012, will be governed by the terms of the contract.

(6) Line extension charges must be independent of the power supply option elected by a retail electricity consumer.

(7) Unless directed otherwise by the Commission, the electric company must standardize its direct access tariffs and contracts to the extent possible to conform to industry and national standards, and should include at least the following:

(a) Definitions of services;

(b) Rules for application for direct access service, including notice periods;

(c) Rules for switching among forms of service, including notice periods;

(d) Termination rights;

(e) Dispute resolution;

(f) Descriptions of required ancillary services, including statements of the conditions on self-supply, if any;

(g) Billing and payment;

(h) Liability and indemnification;

(i) All necessary service schedules and technical requirements; and

(j) Other provisions that the Commission determines are reasonable and necessary for direct access.

(8) An electric company must file direct access tariffs that are practical and workable in combination with tariffs required by the Federal Energy Regulatory Commission (FERC). The electric company must:

(a) Ensure the minimization of differences in service definitions between retail direct-access and wholesale open-access;

(b) Ensure that services that are permitted to be self-supplied by the FERC are permitted to be self-supplied by the electric company, unless the company obtains an exception from the Commission; and

(c) State rates, terms, and conditions in its Oregon tariffs that properly work in conjunction with the electric company's FERC tariffs and, if not identical to, can at least be easily compared with those required by the FERC.

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 21-2001 (Temp), f. & cert. ef. 9-11-01 thru 3-10-02 (Order No. 01-788)

860-038-0420

Electricity Service Supplier Consumer Protection

(1) All advertising and marketing activities by electricity service suppliers must be truthful, not misleading, and in compliance with Oregon's Unfair Trade Practices Act (ORS 646.605 through 646.656).

(2) No person or entity may offer to sell electricity services available pursuant to direct access unless it has been certified by the Commission as an ESS.

(3) Sections (3) through (6) of this rule do not apply when a consumer is changing suppliers. Sections (3) through (6) apply when an ESS is discontinuing service to a consumer. An ESS must give its customers at least 10 business days written notice, as prescribed in section (5) of this rule, before the ESS may discontinue service.

(4) The written notice of intent to discontinue service to the ESS customer must be printed in boldface type and must state in easy to understand language:

(a) The name and contact information of the ESS and the service location intended to be discontinued;

(b) The reasons for the proposed discontinuance;

(c) The earliest date for discontinuance; and

(d) The amount necessary to be paid to avoid discontinuance of services, if applicable.

(5) The ESS must serve the notice of discontinuance in person or send it by first class mail to the last known address of the ESS customer. Service is complete on the date of personal delivery or, if service is by U. S. mail, on the day after the U. S. Postal Service postmark or the day after the date of postage metering.

(6) Not less than 10 business days prior to discontinuance of service to an ESS customer, the ESS must notify the serving electric company, by mutually acceptable means, that the ESS will no longer be supplying energy to that ESS customer. If an ESS and a consumer waive the 10-day notice, pursuant to section (8) of this rule, the ESS must still notify the electric company of its intent to discontinue a consumer's service as soon as it notifies the consumer that service is to be discontinued. The written notice must contain the following:

(a) Name and contact information of the ESS that is discontinuing service, the consumer's name, account number, service location and, if applicable, the electric company's unique location identifier;

(b) Earliest date for discontinuance; and

(c) Necessary information applicable to the transfer of the consumer's service.

(7) ~~This Sections (7) through (10)~~ of this rule applies to any alleged violation of the rules in Division 038 applicable to electricity service suppliers.

(a) When a dispute occurs between an ESS and its consumer about any bill, charge, or service, the electricity service supplier must acknowledge the dispute with a response to the consumer within five calendar days. The ESS must thoroughly investigate the matter and report the results of its investigation to the ESS consumer within 15 calendar days. If the ESS is unable to resolve the matter with its consumer within 15 calendar days, the ESS must advise the consumer of the option to request internal supervisory review of unregulated disputes and to request the Commission's assistance in resolving a dispute within the Commission's jurisdiction;

(b) An ESS customer may request the Commission's assistance in resolving a dispute within the Commission's jurisdiction by contacting the Commission's Consumer Services Division at 1-800-522-2404; TDD 1-800-648-3458; or at 550 Capitol Street NE, Suite 215, Salem, Oregon 97301-2551. The Commission must notify the electricity service supplier upon receipt of such a request;

(c) The Commission's Consumer Services Division will assist the complainant and the electricity service supplier in an effort to reach an informal resolution of the dispute. The ESS must provide the Commission with the necessary information to assist in resolving the dispute. The electricity service supplier must answer the registered ESS dispute within 15 calendar days of service of the complaint;

(d) If a registered ESS dispute cannot be resolved informally, the Commission's Consumer Services Division will advise the complainant of the right to file a formal written complaint with the Commission. The complaint must state the facts of the dispute and the relief requested. The electricity service supplier must answer the complaint within 15 calendar days of service of the complaint. The matter will then be set for expedited hearing. A hearing may be held on less than 10 calendar days' notice when good cause is shown.

(8) Within the terms of a written contract, a consumer and an ESS may agree to arrangements other than those specified in sections (3), (4), (5), and (6) of this rule, if the following requirements are met:

(a) The contract must include an exact copy of the paragraphs in subsection (8)(b) of this rule. The paragraphs must be in bold type of at least 12-font size. Immediately following the paragraphs, there must be a line for the consumer's signature and the date.

(b) The agreement must contain the following notice:

IF YOU SIGN THIS AGREEMENT, YOU MAY GIVE UP CERTAIN RIGHTS YOU HAVE UNDER OAR 860-038-0420(3) through (6). These rules state:

~~(1) An electric service supplier (ESS) must give its customers at least 10 business days' written notice before the ESS may discontinue service.~~

~~—(2) The written notice of intent to discontinue service to the ESS customer must be printed in boldface type and must state in easy to understand language:~~

~~—(a) The name and contact information of the ESS and the service location intended to be discontinued;~~

~~—(b) The reasons for the proposed discontinuance;~~

~~—(c) The earliest date for discontinuance; and~~

~~—(d) The amount necessary to be paid to avoid discontinuance of services, if applicable.~~

~~—(3) The electricity service supplier must serve the notice of discontinuance in person or send it by first class mail to the last known address of the ESS customer. Service is~~

~~complete on the date of personal delivery or, if service is by U. S. mail, on the day after the U. S. Postal Service postmark or the day after the date of postage metering.~~

~~—(4) Not less than 10 business days prior to discontinuance of service to an ESS customer, the electricity service supplier must notify the serving electric company, by mutually acceptable means, that the electricity service supplier will no longer be supplying energy to that ESS customer. If an electricity service supplier and a consumer waive the 10-day notice, pursuant to section (8) of this rule, the ESS must still notify the electric company of its intent to discontinue a consumer's service as soon as it notifies the consumer that service is to be discontinued. The written notice must contain the following:~~

~~—(a) Name and contact information of the ESS that is discontinuing service, the consumer's name, account number, service location and, if applicable, the electric company's unique location identifier;~~

~~—(b) Earliest date for discontinuance; and~~

~~—(c) Necessary information applicable to the transfer of the consumer's service.~~

The ESS must insert the complete text of OAR 860-038-0420 (3) through (6).

THIS MAY AFFECT YOUR ABILITY TO ARRANGE FOR OTHER ENERGY SERVICE.

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 21-2001 (Temp), f. & cert. ef. 9-11-01 thru 3-10-02 (Order No. 01-788)

860-038-0480

Public Purposes

(1) Each electric company that offers direct access to its retail electricity consumers and each electricity service supplier that provides electricity services to direct access consumers in the electric company's service territory will collect a public purpose charge from its retail electricity consumers for 10 years beginning on the date direct access is first offered.

(2) Except as provided in sections (6) and (9) of this rule, electric companies and electricity service suppliers will bill and collect from each of their retail electricity consumers a public purpose charge equal to 3 percent of the total revenues billed to those consumers for electricity services, distribution, ancillary services, metering and billing, transition charges, and other types of costs that were included in electric rates on July 23, 1999.

(3) The electricity service suppliers will remit monthly to each electric company the public purpose charges they collect from the customers of each electric company.

(4) The electricity service suppliers will remit monthly the public purpose charges collected from direct service industrial consumers they serve to the electric company in whose service territory the direct service industrial site is located.

(5) The electric company whose territory abuts the greatest percentage of the site of an aluminum plant that averages more than 100 average megawatts of electricity use per year will collect monthly from the aluminum company a public purpose charge. The aluminum company will remit to the appropriate electric company a public purpose charge equal to 1 percent of the total revenue from the sale of electricity services to the aluminum plant from any source. Annually, the aluminum company will submit to the electric company an affidavit from a certified public accountant verifying that the costs for electricity services at the site of the

aluminum plant and the remittance of the public purpose charges are accurate for the previous calendar year.

(6) A retail electricity consumer, including an aluminum plant as described in section (5) of this rule, may receive credits against its public purpose charges for qualifying expenditures incurred for new energy conservation and the above-market costs of new renewable energy resources at any site if the following qualifications for becoming a self-directing consumer is met:

(a) The consumer has used more than one average megawatt of electricity at any such site in the prior calendar year;

(b) The consumer has received final certification from the Office of Energy for expenditures for new energy conservation and/or new renewable energy resources; and

(c) The consumer has notified its electric company or, in the case of a direct service industrial consumer or aluminum company, the electric company in whose service territory the consumer site is located that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.

(7) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to January 1, 2000. For energy conservation measures that were started on or after January 1, 2000, but prior to the implementation of direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions is met:

(a) The energy conservation measure did not receive funding from an electric company conservation program and was certified by the Office of Energy after July 23, 1999; or

(b) The energy conservation measure did receive funding from an electric company conservation program and was certified by the Office of Energy after July 23, 1999, but the self-directing consumer repaid the amount of such funding (cost of audit and incentives plus interest) no later than 90 days following the implementation of direct access; provided that, a self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures.

For purposes of this subsection, "started" means that a contract has been executed to install or implement an energy conservation measure.

(8) The Office of Energy will establish specific rules and procedures that are consistent with these rules for qualifying a self-directing consumer and for determining how the credit process is implemented.

(9) The electric companies and electricity service suppliers will not bill a self-directing consumer for public purpose charges.

(10) Annually, a self-directing consumer will submit to the Office of Energy an affidavit from a certified public accountant verifying that the costs for electricity services at the site and the remittance of the public purpose charges are accurate for the previous calendar year.

(11) Each electric company will establish five separate accounts for the public purpose charges to be funded from its collections of public purpose charges as follows:

(a) Energy conservation in schools;

(b) New cost-effective local energy conservation and new market transformation;

(c) Above-market costs of new renewable energy resources;

(d) New low-income weatherization; and

(e) Construction and rehabilitation of low-income housing.

(12) Each electric company will allocate the public purpose funds it collects (billed less uncollectible amounts) from electricity service suppliers and nonself-directing consumers to the five public purpose accounts as follows:

- (a) Energy conservation in schools - 10.0 percent;
- (b) Local and market transformation conservation - 56.7 percent;
- (c) Renewable energy resources - 17.1 percent;
- (d) Low-income weatherization - 11.7 percent; and
- (e) Low-income housing - 4.5 percent.

(13) Each electric company will allocate the funds it collects from each self-directing consumer to the public purpose accounts as reported by the self-directing consumer according to the allocations set forth in section (12) of this rule and the Office of Energy's administrative rules on credits for self-direction.

(14) Each electric company will distribute funds from the public purpose accounts at least monthly as follows:

- (a) The funds for conservation in schools to the education service districts located in its service territory;
- (b) The funds for local and market transformation conservation as directed by the Commission;
- (c) The funds for renewable energy resources as directed by the Commission;
- (d) The funds for low-income weatherization to the Housing and Community Services Department; and
- (e) The funds for low-income housing to the Housing and Community Services Department Revolving Account.

(15) Each electric company will determine by ~~July~~January ~~15~~ of each year the allocation of public purpose funds for schools to the Education Service Districts according to the following methodology:

- (a) From the Department of Education, collect current total weighted average daily membership (ADMw) as defined in ORS 327.013 and average daily membership (ADM) for each Education Service District that contains schools served by the electric company;
- (b) For each of the Education Service Districts, compute the ratio of ADM in schools served by the electric company to total ADM;
- (c) For each Education Service District, multiply its total ADMw by the ratio of ADM in schools served by the electric company to total ADM. The result is an estimate of ADMw in schools served by the electric company;
- (d) Add the estimates of ADMw for each Education Service District; and
- (e) Compute the percentage of the total ADMw represented by each Education Service District. These are the percentages that will be used to allocate the public purpose funds for schools to Education Service Districts for the 12-month period ~~beginning in September 1 of each year~~with the exception of 2002 where the funds will be allocated for a 10-month period beginning March 1, 2002. After 2002, the 12-month period will begin on January 1 of each year.

(16) The electric company may be reimbursed for the reasonable administrative costs it incurs to collect and distribute the public purpose funds. Those administrative costs will be deducted from the total amount of public purpose funds collected by the electric company before the funds are allocated to the five public purpose accounts. The electric company will also pay

from the total public purpose funds collected or from a specific fund any other administrative costs the Commission directs to be paid for implementation of the public purpose requirements. The entities responsible for administering the public purpose funds will pay for their costs of implementing the public purpose requirements from the public purpose funds they receive from the electric company.

(17) The electric companies and the administrators of the public purpose funds will collect sufficient information so that biennial reports can be made to the Legislature on what has been accomplished with the public purpose funds and how those funds have benefited the consumers of each electric company. Specifically, information must be collected so that the reporting requirements of ORS 757.617 can be fulfilled.

(a) Each electric company must report the total funds collected by source (that is, electric company customers, electricity service suppliers and self-directing consumers) for public purposes, the amounts distributed to the administrators of each public purpose fund, and its administrative costs;

(b) Each administrator of public purpose funds must report, at a minimum:

(A) The amount of funds received;

(B) The amount of funds spent;

(C) Its administrative costs; and

(D) Its results, for example, measures installed, projects funded, energy saved, homes weatherized and low-income homes built/rehabilitated.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: PUC 1-2001, f. & ef. 1-5-01 (Order No. 01-072); PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073)