

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: October 15, 2002**

REGULAR _____ CONSENT x EFFECTIVE DATE _____ Upon filing with
Secretary of State

DATE: October 7, 2002

TO: Commission Chair Roy Hemmingway; Commissioner Lee Beyer;
Commissioner Joan H. Smith

FROM: Ruth Crowley

REVIEWED BY: Terry Lambeth

SUBJECT: AR 429: Request adoption of changes to OAR 860-021-0335, 860-034-0250, 860-036-0080, and 860-037-0075, Refusal of Utility Service

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

I recommend the Commission adopt the staff and Northwest Natural Gas (NWN) recommendations for changes to the Refusal of Utility Service rules of OAR 860-021-0335, 860-034-0250, 860-036-0080, and 860-037-0075.

DISCUSSION:

On November 21, 2000, the Commission opened AR 395 for the purpose of reviewing its administrative rules, as required by ORS 183.545. On August 17, 2001, the Commission ordered in Order No. 01-728 a separate rulemaking docket to consider revisions to OAR 860-021-0335, 860-034-0250, 860-036-0080, and 860-037-0075, Refusal of Utility Service. Two changes were proposed to these rules. First, the proposal adds language to allow utilities to collect the total amount due before restoring service following disconnection. That would eliminate the current requirement for the customer to pay half the amount due prior to reconnection and the balance within 30 days. Second, the proposal prohibits utilities from refusing regulated services for nonpayment of unregulated charges. This proposed amendment responds to the changes with open access, deregulation, and equipment financing collected within utility bills.

Staff opposed the first of the proposed changes, which was proposed by PacifiCorp. Staff points out that the option of paying half the amount due prior to reconnection is available only to applicants who made partial payments during the time service was disconnected. Staff therefore believes that the utilities are substantially protected by the current rule.

Staff, NWN, Qwest, and Verizon submitted comments on the second proposed change. The comments of Qwest and Verizon identify the proposed change as substantial. However, in OAR 860-021-0505(8), Large Telecommunications Utilities are already prohibited from denying local dial tone to an applicant or a customer for failure to pay for unregulated services:

A large telecommunications utility shall not disconnect or deny local exchange service for an applicant's or customer's failure to pay for services not under the local exchange utility's tariff or price list.

Qwest's comments in its December 31, 2001, letter ("The proposed revisions would no longer allow a utility to refuse to provide service to a customer who paid regulated charges but has an outstanding balance of unregulated charges, whatever the amounts of those charges.") indicate a misunderstanding of the current rules.

NWN comments that the rule should apply only to residential customers. Staff agrees.

PROPOSED COMMISSION MOTION:

Move to adopt the proposed changes to OAR 860-021-0335, 860-034-0250, 860-036-0080, and 860-037-0075.

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ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 429

In the Matter of a Rulemaking Opened as a Result)
of AR 395 (Triennial Review) to Amend 860) ORDER
Divisions 021, 034, 036, and 037.)

DISPOSITION: RULES AMENDED

Pursuant to ORS 183.545, the Commission reviews its rules every three years. As a result of the triennial rule review, docketed as AR 395, the Commission determined to amend OAR 860-021-0335, 860-034-0250, 860-036-0080, and 860-037-0075 pertaining to refusal of utility service. *See* Order No. 01-728.

On September 6, 2001, the Commission filed a Notice of Proposed Rulemaking with the Secretary of State, proposing to amend the above rules. The notice informed the public that a public rulemaking hearing may be requested in writing by 10 or more people or by an association with 10 or more members within a given time frame. No requests for hearing were received within the time frame.¹

Proposed Changes. Initially, two changes were proposed to these rules. A first proposal by PacifiCorp added language to allow utilities to collect the total amount due before restoring service following disconnection. That would eliminate the current requirement for the customer to pay half the amount due prior to reconnection and the balance within 30 days. Staff reviewed this proposal and recommended against it. The current rule allows customers or applicants to be reconnected on payment of half the outstanding amount *only if* the customers have made reasonable partial payments on the account during the time service was discontinued. See OAR 860-021-0335(2). That condition itself limits the use of the 50 percent provision. We agree with Staff that this language is not necessary to protect utilities from loss, and do not adopt it.

¹ Qwest and Verizon requested a hearing after the time for the request was past. Even had their requests been timely, fewer than 10 persons requested a hearing, so none would have been held.

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The second proposed change prohibits utilities from refusing regulated services for nonpayment of unregulated charges. This proposal responds to the changes with open access, deregulation, and equipment financing collected within utility bills. The change is illustrated by the bolded and underlined language in the sections of OAR 860-021-0335 below:² See Appendix A for similar changes in all four rules under consideration.

860-021-0335

Refusal of Utility Service

(1) Except as provided in section (2) of this rule, an electric or gas utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount **of an Oregon tariffed or price-listed charge** and any other **like** obligation related to an Oregon prior account.

(2) Except for a **residential** customer or applicant who was disconnected for theft of service, an electric or gas utility shall provide service to a **residential** customer or applicant upon receiving payment equal to at least one-half of any overdue amount **of an Oregon tariffed or price-listed charge** and any other **like** obligation related to a prior account, except deposits which must be paid in full, provided the customer or applicant has made reasonable partial payment on the account during the time service has been discontinued.

Comments and Discussion. Staff, NW Natural (NWN), Verizon Northwest Inc. (Verizon), Qwest Corporation, and Malheur Telephone Company submitted comments on the second proposed change. The comments of Qwest and Verizon identify the proposed change as substantial. However, OAR 860-021-0505(8) already prohibits large telecommunications utilities from denying local dial tone to an applicant or a customer for failure to pay for unregulated services:

A large telecommunications utility shall not disconnect or deny local exchange service for an applicant's or customer's failure to pay for services not under the local exchange utility's tariff or price list.

Qwest's comments in its December 31, 2001, letter ("The proposed revisions would no longer allow a utility to refuse to provide service to a customer who paid regulated charges but has an outstanding balance of unregulated charges, whatever the amounts of those charges.") indicate a misunderstanding of the current rules. Verizon's comment is similar to Qwest's. We conclude that the proposed amendment does not change the existing prohibition on large telecommunications utilities' refusal of regulated service. This rulemaking applies the same standard to the small telecommunications utilities, electric and gas utilities, water utilities,

² The rule change is illustrated using OAR 860-021-0335(1) and (2). Analogous changes were made to OAR 860-021-0335(4) and to OAR 860-034-0250, 860-036-0080, and 860-037-0075. The subsections below also show the addition of "residential" to restrict the application of the rule, discussed below.

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and wastewater utilities involved in this docket. Staff argues, and we agree, that this rule change does not affect the utilities' rights with regard to the collection or denial of unregulated services.

NWN asked to clarify that sections of the rule apply only to residential service. Staff agrees and has supplied language to implement NWN's suggestion, inserting "residential" before "customer" or "applicant" in the rule where applicable. The rules currently distinguish between residential and nonresidential customers in a number of areas: establishing credit, assessing late payment charges, making deposit payment arrangements, noticing customers of pending disconnection, availability of an equal pay plan option, availability of time payment agreements, and disconnection procedures. The provisions in section (2) of OAR 860-021-0335 mandate a payment arrangement, which is not available to nonresidential customers. Section (2) also refers to OAR 860-021-0405, which deals with disconnection notices for residential customers. The distinction between residential and nonresidential customers should be retained consistently throughout the rules.

NWN took no position on whether the clarification that certain sections apply to residential customers should be extended to the other utilities involved in this proceeding. We believe that it should apply to them as well. We have made changes analogous to those illustrated by the excerpt from OAR 860-021-0335 above to OAR 860-034-0250 (small telecommunications utilities); 860-036-0080 (water utilities); and 860-037-0075 (wastewater utilities). These changes make clear that the utilities in question may not refuse regulated services for nonpayment of unregulated charges and clarify that sections of the rule apply only to residential service.

Disposition. At its Public Meeting of October 15, 2002, the Commission considered and adopted the amended rules as modified, as contained in Appendix A.

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ORDER

IT IS ORDERED that:

1. The modifications to Oregon Administrative Rule 860-021-0335, 860-034-0250, 860-036-0080, and 860-037-0075, attached as Appendix A, are adopted.
2. The amended rules shall be 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.

860-021-0335

Refusal of Utility Service

(1) Except as provided in section (2) of this rule, an electric or gas utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount **of an Oregon tariffed or price-listed charge** and any other **like** obligation related to an Oregon prior account.

(2) Except for a **residential** customer or applicant who was disconnected for theft of service, an electric or gas utility shall provide service to a **residential** customer or applicant upon receiving payment equal to at least one-half of any overdue amount **of an Oregon tariffed or price-listed charge** and any other **like** obligation related to a prior account, except deposits which must be paid in full, provided the customer or applicant has made reasonable partial payment on the account during the time service has been discontinued. The customer shall pay the balance of the amount owed to the gas or electric utility within 30 days of the date service is initiated. Upon failure to pay, the gas or electric utility may disconnect service after providing a five-day notice to the customer. The notice shall contain the information set forth in OAR 860-021-0405(2)(a),(b), (c), (f), and (g) and shall be served as required by OAR 860-021-0405(5). If a customer or applicant whose service was terminated applies for service within 20 days of the termination, the provisions of this rule apply.

(3) If electric or gas service is disconnected for a **residential** customer's failure to comply with the payment terms in section (2) of this rule, the utility may refuse to restore service until the utility receives full payment of any overdue obligation **of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account**, including any reconnection fee, late payment fee, and past due bill.

(4) Refusal of service by a large telecommunications utility:

(a) A large telecommunications utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount **of an Oregon tariffed or price-listed charge** and any other **like** obligation related to a prior account except for telecommunications service applicants who are eligible for OTAP.

(b) A large telecommunications utility may refuse to provide service to a **residential** customer or applicant who is eligible for OTAP until the utility receives full payment of any overdue amount relating to a prior account for tariffed local exchange and price-listed services, excluding any toll charges.

(5) An energy or large telecommunications utility may refuse to provide service until the utility receives payment when all the following circumstances exist:

(a) An overdue balance has been incurred by a **residential** customer or applicant at a service address;

(b) A **residential** applicant for service resided at the service address described in subsection (5)(a) of this rule during the time the overdue balance was incurred; and

(c) The **residential** customer or applicant described in subsection (5)(a) of this rule will reside at the location to be served under the new application.

(6) Any energy or large telecommunications utility shall refuse to provide service if a customer or applicant has not complied with state and city codes and regulations governing service and with the utility's rules and regulations.

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(7) An energy or large telecommunications utility shall reject an application for service or materially change service to a customer or applicant if, in the best judgment of the utility, the utility lacks adequate facilities to render the service applied for or if the desired service is likely to unfavorably affect service to other customers.

(8) An energy or large telecommunications utility shall refuse to serve a customer or applicant, if, in the best judgment of the utility, the facilities of the customer or applicant cannot provide safe and satisfactory service.

(9) When an energy or large telecommunications utility refuses to provide service, the utility shall notify the customer or applicant of the reasons for refusal and of the Commission's complaint process.

Stat. Auth.: ORS Ch. 183, 756, 757, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 757.035, 757.225 & Ch. 290, OL 1987

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0060 and 860-021-0100; PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 17-1997, f. 12-11-97 (Temp), ef. 1-1-98 (Order No. 97-469); PUC 5-1998, f. & cert. ef. 3-13-98 (Order No. 98-058); PUC 16-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)

860-034-0250

Refusal of Utility Service

(1) Refusal of utility service by a small telecommunications utility:

(a) A small telecommunications utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount **of an Oregon tariffed or price-listed charge** and any other **like** obligation related to a prior account except for **residential** utility service applicants who are eligible for OTAP.

(b) A small telecommunications utility may refuse to provide utility service to a **residential** customer or applicant who is eligible for OTAP until the utility receives full payment of any overdue amount relating to a prior account for tariffed local exchange and price-listed utility services, excluding any toll charges.

(2) A small telecommunications utility may refuse to provide utility service until the utility receives payment when all the following circumstances exist:

(a) An overdue balance has been incurred by a **residential** customer or applicant at a service address;

(b) A **residential** applicant for utility service resided at the service address described in subsection (2)(a) of this rule during the time the overdue balance was incurred; and

(c) The **residential** customer or applicant described in subsection (2)(a) of this rule will reside at the location to be served under the new application.

(3) Any small telecommunications utility shall refuse to provide utility service if a customer or applicant has not complied with state and city codes and regulations governing service and with the small telecommunications utility's rules and regulations.

(4) A small telecommunications utility shall not provide utility service or materially change service to a customer if, in the utility's best judgment, the desired service is likely to unfavorably affect service to other customers.

(5) A small telecommunications utility shall refuse to serve a customer or applicant if, in the best judgment of the utility, the facilities of the customer or applicant cannot provide safe and satisfactory utility service.

(6) When the small telecommunications utility refuses to provide utility service, the small telecommunications utility shall notify the customer or applicant of the reasons for refusal and of the Commission's complaint process.

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

Stat. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 17-1997, f. 12-11-97 (Temp), ef. 1-1-98 (Order No. 97-469); PUC 5-1998, f. & cert. ef. 3-13-98 (Order No. 98-058); PUC 15-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)

860-036-0080

Refusal of Service

(1) A water utility may refuse to provide service to a customer or applicant until it receives full payment of any overdue amount **of an Oregon tariffed or price-listed charge** and any other **like** obligation related to a prior account except as provided below:

(a) Except for **residential** customers or applicants who were disconnected for theft of service, a water utility shall provide service to an **residential** applicant upon receipt of payment equal to at least one-half of any overdue amount. The balance of the amount owed to the utility shall be paid within 30 days of the date service is initiated. Except for the last payment, installments shall be the greater of \$30 or one-half the overdue amount. Upon failure to pay, the water utility may disconnect service after providing a written five-day notice. The notice shall contain the information and be served in the manner prescribed as provided in OAR 860-036-0245. When a customer whose service was terminated applies for service within 20 days of the termination, the provisions of this rule apply.

(2) If water service is disconnected for failure to comply with the payment terms set forth in section (1)(a) of this rule, the water utility may refuse to restore service until it receives full payment of any overdue obligation **of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account**, including any reconnection fee, late payment fee, and past due bill.

(3) A water utility may refuse to provide service until payment is received when the following circumstances exist:

- (a) ~~The~~ **A residential** customer has incurred an overdue balance at a service address;
- (b) An **residential** applicant for service resided at the service address described in subsection (1)(a) of this rule during the time the overdue balance was incurred; and
- (c) The **residential** customer described in subsection (1)(a) of this rule will reside at the location to be served under the new application.

(4) Any water utility shall refuse to provide service if a customer or applicant has not complied with state and municipal codes and regulations governing service and with the rules and regulations of the water utility.

(5) A water utility shall refuse to serve a customer or applicant, if, in the best judgment of the water utility, the facilities of the customer or applicant are of such a character that safe and satisfactory service cannot be given.

(6) If service is refused, the water utility shall provide written notification within 10 working days to the customer or applicant of the reasons for refusal and of the Commission's complaint process. A copy of the notice shall also be sent to the Commission unless service was refused for nonpayment.

(7) A water utility shall not accept an application for service or materially change service to a customer if it does not have adequate facilities or water resources to render the service applied for, or if the desired service is of a character that is likely to unfavorably affect service to other customers.

(a) If a water utility refuses service on the grounds of inadequate facilities or water resources, the water utility shall:

(1) Provide the customer or applicant with a written letter of refusal, a copy of which shall be sent to the Commission, stating:

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- (A) Provide the reason for the refusal;
- (B) Inform the customer or applicant that he/she may request the details upon which the water utility's decision was based, including but not limited to current capacity and load measured in gallons or cubic feet per minute and pounds per square inch (psi);
- (C) When capacity does not exist, provide the costs to provide capacity for the customer or applicant; and
- (D) Inform the customer or applicant that he/she may challenge the water utility's refusal of service through the Commission's dispute resolution process pursuant to OAR 860-036-0025.

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

Stats. Implemented: ORS 756.040, 757.035 & 757.225

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 15-1998, f. & ef. 8-27-98 (Order No. 98-359)

860-037-0075

Refusal of Service

(1) A water/wastewater utility may refuse to provide wastewater service to an applicant applying for wastewater service until it receives full payment of any overdue amount **of an Oregon tariffed or price-listed charge** and any other **like** obligation related to a prior account except as provided below:

(a) Except for **residential** customers or applicants who were disconnected for theft of service, a water/wastewater utility shall provide service to an **residential** applicant upon receipt of payment equal to at least one-half of any overdue amount **of an Oregon tariffed or price-listed charge**. The balance of the amount owed to the utility shall be paid within 30 days of the date service is initiated. Except for the last payment, installments shall be the greater of \$30 or one-half the overdue amount;

(b) Upon failure to pay, the water/wastewater utility may disconnect water service after providing a written five-day notice. The notice shall contain the information and be served in the manner prescribed as provided in OAR 860-036-0245. When a **residential** customer whose service was terminated applies for wastewater service within 20 days of the termination, the provisions of this rule apply.

(2) If water service is disconnected for failure to comply with the payment terms for wastewater service set forth in section (1)(a) of this rule, the water/wastewater utility may refuse to restore water service until it receives full payment of any overdue obligation **of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account**, including any reconnection fee, late payment fee, and past due bill.

(3) A water/wastewater utility may refuse to provide wastewater service until payment is received when the following circumstances exist:

(a) ~~The~~ **A residential** customer has incurred an overdue balance at a service address;

(b) An **residential** applicant for service resided at the service address described in subsection (1)(a) of this rule during the time the overdue balance was incurred; and

(c) The **residential** customer described in subsection (1)(a) of this rule will reside at the location to be served under the new application.

(4) Any water/wastewater utility shall refuse to provide wastewater service if a customer or applicant has not complied with state and municipal codes and regulations governing service and with the rules and regulations of the water/wastewater utility.

(5) A water/wastewater utility shall refuse to serve a customer or applicant, if, in the best judgment of the water/wastewater utility, the facilities of the customer or applicant are of such a character that safe and satisfactory service cannot be given.

(6) If service is refused, the water/wastewater utility shall provide written notification within 10 working days to the customer or applicant of the reasons for refusal and of the Commission's complaint process. A copy of the notice shall also be sent to the Commission unless service was refused for nonpayment.

(7) A water/wastewater utility shall not accept an application for wastewater service or materially change service to a customer if it does not have adequate facilities or water/wastewater resources to render the service applied for, or if the desired service is of a character that is likely to unfavorably affect service to other customers.

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(a) If a water/wastewater utility refuses wastewater service on the grounds of inadequate facilities or resources, the water/wastewater utility shall:

(A) Provide the customer or applicant with a written letter of refusal, a copy of which shall be sent to the Commission, stating the reason for the refusal;

(B) Inform the customer or applicant that he/she may request the details upon which the water/wastewater utility's decision was based, including but not limited to current capacity and demand;

(C) When capacity does not exist, provide the estimated costs to provide capacity for the customer or applicant; and

(D) Inform the customer or applicant that he/she may challenge the water/wastewater utility's refusal of wastewater service through the Commission's dispute resolution process pursuant to OAR 860-037-0025.

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

Stats. Implemented: ORS 756.040, 757.005, 757.035, 757.061 & 757.225

Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194)