

**PUBLIC UTILITY COMMISSION OF OREGON  
ADMINISTRATIVE HEARINGS REPORT  
PUBLIC MEETING DATE: December 3, 2002**

**REGULAR** \_\_\_\_\_ **CONSENT**  X  **EFFECTIVE DATE** \_\_\_\_\_

**DATE:** November 4, 2002

**TO:** Commissioners Hemmingway, Beyer and Smith

**FROM:** Allan J. Arlow, Administrative Law Judge

**REVIEWED BY:** Terry Lambeth

**SUBJECT:** AR 451: Initiate a rulemaking to amend OAR 860-012-0035, Rules of Practice, to delegate general authority to the Administrative Law Judge (ALJ) to issue appropriate protective orders.

**ADMINISTRATIVE LAW JUDGE RECOMMENDATION:**

I recommend that the Commission initiate a rulemaking to amend OAR 860-012-0035, Rules of Practice, to delegate general authority to the ALJ to issue appropriate protective orders.

**DISCUSSION:**

OAR 860-012-0035(1)(k) provides that the Commission delegates to the Administrative Law Judge the authority to issue a “*standard protective order adopted by the Commission...*” Due to the limitations set forth in the rule, whenever any party requires a protective order that deviates from the standard language, the Commission, rather than the ALJ, must issue the order, even if no party to the proceeding objects to the proposed language. The proceedings are delayed and additional, unnecessary paperwork is generated when compared to the issuance of a standard protective order by the ALJ. The proposed change would allow the ALJ to issue a protective order with language appropriate to the circumstances without first obtaining Commission approval.

**PROPOSED COMMISSION MOTION:**

Initiate a rulemaking to amend OAR 860-012-0035 as set forth in Appendix A.

**860-012-0035**

**Administrative Law Judges**

(1) The Commission delegates to the Administrative Law Judge (ALJ) authority to:

- (a) Regulate the course of hearings including scheduling, recessing, reconvening, and adjourning;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas;
- (d) Make evidentiary rulings, with or without objection;
- (e) Limit, supervise, and control discovery;
- (f) Hold appropriate conferences before, during or after hearings;
- (g) Decide procedural matters but not to grant motions to dismiss or other motions which involve final determination of the proceedings;
- (h) Limit or extend filing periods and grant waivers;
- (i) Certify a question to the Commission for consideration and disposition;
- (j) Take any other action consistent with the duties of an ALJ;
- (k) Upon request by a party, and for good cause shown, issue a **standard** protective order ~~adopted by the Commission~~, which may include language agreed upon by all parties to a proceeding and the ALJ, to limit disclosure of confidential information. Decisions by the ALJ regarding the **standard** protective order may be appealed to the Commission pursuant to OAR 860-014-0091.

(2) The ALJ shall conduct a fair and impartial hearing and maintain order. If a person engages in conduct which interferes with this duty, the ALJ may suspend the hearing or exclude the person from the hearing.

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

Stats. Implemented: ORS 756.040, 756.055, & 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); PUC 11-1989, f. & cert. ef. 7-10-89 (Order No. 89-817); PUC 12-1999, f. & ef. 11-18-99 (Order No. 99-709)