

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: February 18, 2003**

REGULAR	X	CONSENT	EFFECTIVE DATE	Upon Filing with the Secretary of State
DATE:			January 31, 2003	
TO:			Commissioners Hemmingway, Beyer, and Smith	
FROM:			Ruth Crowley, Administrative Law Judge	
REVIEWED BY:			Terry Lambeth, Rules Project Leader	
SUBJECT:			<u>AR 445</u> : Adoption of a rule to define "major proceeding" for the purposes of ORS 756.518(2).	

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

I recommend that the Commission adopt the proposed rule defining "major proceeding" in ORS 756.518(2), as modified.

DISCUSSION:

In 2001, the Legislature passed HB 2988, codified as ORS 756.518(2). That subsection provides:

(2) Upon request of any party in a major proceeding before the commission, the commission shall afford the parties an opportunity for oral argument before a final order is issued. There must be a quorum of the commission present at the time the oral argument is made. The commission shall adopt rules that establish criteria for determining which proceedings give rise to a right to oral argument under this subsection. In addition, the commission may adopt rules governing participation in oral arguments, cross-examination of witnesses, draft or proposed orders or such other matters as the commission deems appropriate.

The statute calls for the Commission to adopt a rule establishing criteria for determining which proceedings give rise to a right to oral argument. The proposed rule, attached, defines "major proceeding" for purposes of ORS 756.518(2) as a case that has a substantial impact on utility rates or service quality for utilities with more than 50,000 customers, or has a substantial impact on utility customers or the operations of a regulated utility for utilities with more than 50,000 customers. The proposed rule also provides for oral argument at the Commission's discretion for cases that do not qualify as "major proceedings" if those cases are likely to result in a significant change in regulatory policy or raise novel questions of fact or law. Further, the rule describes the procedural steps for classification as a major case, who may present oral argument, and the role of the Administrative Law Judge in structuring the parties' presentation to the Commission.

The proposed rule was published in the Secretary of State's Oregon Bulletin, along with a deadline for comments and requests for hearing. Qwest Corporation (Qwest) filed comments but did not request a hearing. Portland General Electric Company (PGE) filed comments in AR 450. Because that docket dealt with the temporary rule, which was identical to the rule proposed here, we assume that PGE's comments should have been addressed to AR 445 and will consider them here. PGE does not request a hearing.

Qwest's comments. Qwest agrees generally with the proposed rule but believes that for the sake of consistency with other Oregon statutes and rules, the language for telecommunications utilities in section (1) of the proposed rule should be based on the telecommunications utility's number of lines rather than on the number of customers. Qwest notes that it is easier for telecommunications utilities to count lines than number of customers. The standard language, according to Qwest, appears to be "(telecommunications) utilities with fewer than 50,000 access lines" (referring to ORS 759.040(1)). Qwest states that this language would be added as a qualifier for telecommunications utilities only, since the energy utilities would still need to count customers.

I agree with Qwest's change.

PGE's comments. PGE believes that the statute, ORS 756.518(2), requires that the rule contemplate formal oral argument, not just an opportunity to appear in front of the Commission. Appearing in front of the Commission is possible at most public meetings on most issues. PGE argues that a party should have the right to oral argument under the rule only where there will be a full record developed by formal evidence in contested cases and formal comments in rulemakings. The evidence and comments then form the basis for the oral argument. PGE argues that mandatory formal oral argument

would serve little purpose in other cases. PGE suggests that subsection (1) of the proposed rule be rewritten to provide:

(1) For purposes of ORS 756.518(2), a “major proceeding” is a proceeding that has, or is expected to have, a full procedural schedule with written testimony or written comments and that:

I agree with PGE's comments.

The modified rule, reflecting the changes suggested by Qwest and PGE, is attached.

PROPOSED COMMISSION MOTION:

Adopt the proposed rule defining “major proceeding” for purposes of ORS 756.518(2), as modified.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 445

In the Matter of a Rulemaking to Define)
“Major Proceeding” for the Purposes of) ORDER
ORS 756.518(2).)

DISPOSITION: RULE ADOPTED AS MODIFIED

In 2001, the Legislature passed HB 2988, codified as ORS 756.518(2). That subsection provides:

(2) Upon request of any party in a major proceeding before the commission, the commission shall afford the parties an opportunity for oral argument before a final order is issued. There must be a quorum of the commission present at the time the oral argument is made. The commission shall adopt rules that establish criteria for determining which proceedings give rise to a right to oral argument under this subsection. In addition, the commission may adopt rules governing participation in oral arguments, cross-examination of witnesses, draft or proposed orders or such other matters as the commission deems appropriate.

The statute calls for the Commission to adopt a rule establishing criteria for determining which proceedings give rise to a right to oral argument.

The Administrative Law Judge for this docket supplied two reports to the Commission for the November 19, 2002, Regular Public Meeting. One report, in docket AR 450, recommended that the Commission approve a temporary rule defining “major proceeding” to make clear Commission policy while the permanent rule is under consideration. Because of the large number of contentious cases in which parties are requesting oral argument, the Commission voted to adopt a temporary rule. The wording of the temporary rule was identical to the wording of the permanent rule proposed in AR 445. *See* Order No. 02-836.

The second report for the November 19, 2002, Regular Public Meeting recommended that the Commission initiate a rulemaking to define “major proceeding” for purposes of ORS 756.518(2). The Commission voted to initiate such a rulemaking.

ORDER NO. DRAFT

The proposed rule defined “major proceeding” for purposes of ORS 756.518(2) as a case that has a substantial impact on utility rates or service quality for utilities with more than 50,000 customers, or has a substantial impact on utility customers or the operations of a regulated utility for utilities with more than 50,000 customers. The proposed rule also provided for oral argument at the Commission’s discretion for cases that do not qualify as “major proceedings” if those cases are likely to result in a significant change in regulatory policy or raise novel questions of fact or law. Further, the rule described the procedural steps for classification as a major case, who may present oral argument, and the role of the Administrative Law Judge in structuring the parties’ presentation to the Commission.

The proposed rule was published in the Secretary of State’s Oregon Bulletin, along with a deadline for comments and requests for hearing. Qwest Corporation (Qwest) filed comments but did not request a hearing. Portland General Electric Company (PGE) filed comments in AR 450. Because that docket dealt with the temporary rule, which was identical to the rule proposed here, we assume that PGE’s comments should have been addressed to AR 445 and will consider them here. PGE does not request a hearing.

Qwest’s comments. Qwest agrees generally with the proposed rule but believes that for the sake of consistency with other Oregon statutes and rules, the language for telecommunications utilities in section (1) of the proposed rule should be based on the telecommunications utility’s number of lines rather than on the number of customers. Qwest notes that it is easier for telecommunications utilities to count lines than number of customers. The standard language, according to Qwest, appears to be “(telecommunications) utilities with fewer than 50,000 access lines” (referring to ORS 759.040(1)). Qwest states that this language would be added as a qualifier for telecommunications utilities only, since the energy utilities would still need to count customers.

Qwest makes a good point. We will modify section (1) of the proposed rule to read:

(a) Has a substantial impact on utility rates or service quality for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines; or

(b) Has a significant impact on utility customers or the operations of a regulated utility for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines.

PGE’s comments. PGE believes that the statute, ORS 756.518(2), requires that the rule contemplate formal oral argument, not just an opportunity to appear in front of the Commission. Appearing in front of the Commission is possible at most public meetings on most issues. PGE argues that a party should have the right to oral argument under the rule only where there will be a full record developed by formal evidence in contested cases and formal comments in rulemakings. The evidence and comments then form the basis for the oral argument. PGE

argues that mandatory formal oral argument would serve little purpose in other cases. PGE suggests that subsection (1) of the proposed rule be rewritten to provide:

(1) For purposes of ORS 756.518(2), a “major proceeding” is a proceeding that has, or is expected to have, a full procedural schedule with written testimony or written comments and that:

We agree with PGE’s comments and will further modify subsection (1) of the proposed rule as PGE proposes.

The modified rule is set out in Appendix A and incorporated herein by reference.

At its Regular Public Meeting of February 18, 2003, the Commission considered and adopted the rule as modified, as contained in Appendix A.

ORDER

IT IS ORDERED that:

1. The proposed modified rule, OAR 860-014-0023, attached as Appendix A, is adopted.
2. The rule shall be effective upon filing with the Secretary of State.
3. The temporary rule adopted in AR 450, OAR 860-014-0023, is repealed upon the rule in this docket becoming effective.

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.

860-014-0023

Major Proceeding

(1) For purposes of ORS 756.518(2), a “major proceeding” is a proceeding that has, or is expected to have, a full procedural schedule with written testimony or written comments and that:

(a) Has a substantial impact on utility rates or service quality for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines; or

(b) Has a significant impact on utility customers or the operations of a regulated utility for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines.

(2) A party in a proceeding that does not meet the criteria in section (1) of this rule may petition the ALJ for major case status if the case:

(a) Is likely to result in a significant change in regulatory policy; or

(b) Raises novel questions of fact or law.

(3) When a docket is opened, any party may file a motion with the Administrative Law Judge (ALJ) requesting that the case be classified as a major proceeding.

(a) The motion shall:

(A) Set out with specificity how the case qualifies as a major proceeding under the criteria listed in section (1) of this rule; or

(B) Argue how the case qualifies as a major proceeding under section (2) of this rule.

(b) Answers to the motion are due within 10 days of filing.

(c) The ALJ shall rule on the motion within 15 days of filing.

(4) If a case is classified as a major proceeding, parties shall schedule a date for oral argument before the Commission at the prehearing conference or as soon thereafter as possible.

(5) Any party to a case may present argument before the Commission if the case is defined as a major proceeding.

(6) The ALJ shall determine the length of each party’s presentation to the Commission, the right of any party to rebuttal of any other party’s presentation, and the order of presentation.

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

Stats. Implemented: ORS 756.040 & 756.500 through 756.575

Hist.: New