

ITEM NO. 8

PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: May 7, 2003

REGULAR X CONSENT EFFECTIVE DATE Upon Publication with Secretary of State

DATE: April 22, 2003

TO: Commissioners Hemmingway and Beyer

FROM: Tom Barkin

REVIEWED BY: Terry Lambeth

SUBJECT: AR 447: Adopt Amendments to OAR 860, Division 036, Relating to Water Utilities to Address Theft of Service, Contributions in Aid of Construction, Acquisition Adjustments, and Appointment of a Regent

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

Adopt the order and rules (OARs 860-036-0365, 860-036-0716, 860-036-0756 and 860-036-0250) attached to this memo.

DISCUSSION:

At its public meeting on February 4, 2003, the Public Utility Commission (Commission) initiated this rulemaking proceeding. Notice of the proposed rules was published in the Secretary of State's Bulletin on March 1, 2003. The deadline for comments was March 21, 2003.

Staff proposed these rules to implement the recommendations of the Water Issues Steering Committee (WISC). The Commission created the WISC to address concerns expressed by the 2001 Legislature. To address those concerns the WISC conducted a broad review of the state's water regulation. The Committee made its Report to the Commission in August 2002. The proposed rules would implement several WISC recommendations. In addition, the rulemaking includes a proposed rule on theft of service and would make a number of housekeeping changes to Division 036.

The attached order adopts three WISC recommendations and the proposal regarding theft of service. The housekeeping changes are set aside for a future rulemaking.

Establish procedures for third-party operational control of a water utility when the operator has abandoned the system. (860-036-0365)

The new rule would give the Commission authority to act on behalf of the customers when a utility operator cannot or will not operate the water utility in compliance with the Commission's rules. Because an operator's failure to act imperils the customers' health, safety, and peace of mind, the situation requires immediate and appropriate action by the Commission. The proposed rule implements the WISC recommendation. No comments were received. The rule should be adopted.

Encourage consolidation of water utilities by allowing an acquisition adjustment in rates contingent on a showing that customers benefit overall. (860-036-0716)

According to the WISC, Oregon has many small struggling water companies/utilities. Often these companies provide unsafe and inadequate service. Due to the age, condition, and noncompliance issues, potential buyers of the system view the utility as a liability, with little earnings potential. Customers of the water company would likely benefit from increased operating efficiencies and capital improvements if the water company was purchased by another company.

One way to attract potential buyers is to adopt policies whereby the purchaser may seek a declaration from the Commission, under ORS 756.450, that some or all of the difference between the net book value and the purchase price will be included in rate base.

The WISC recommended that the Commission establish a policy identifying the criteria and procedures for acquisition adjustments in cases involving purchase of water/wastewater systems by water utilities. The principal criterion should be that the Commission would permit an acquisition adjustment only when it finds that new ownership will benefit customers.

The proposed rule implements the WISC recommendation. No comments were received. The rule should be adopted.

Improve long-term financial health of water utilities by no longer including contributed plant in rates. (860-036-0756)

The WISC recommended that the Commission amend its rules to prohibit Contributions In Aid of Construction (CIAC) from being included in utility rates. The WISC report explains that, when a developer plans a new subdivision, the developer is often required to provide the residences with access to water/wastewater services. The developer is responsible to provide pipes, valves, and fittings (system) inside the subdivision. When a customer buys a home in the subdivision, the cost of the system is generally included in the price of the home, whether or not it is identified as such. The developer is typically not interested in operating a utility, so the facilities are assigned to the local company/utility, in the form of a gift or zero-cost transfer.

These facilities, constructed by the developer and transferred to the utility, are classified as CIAC. Because CIAC is contributed and as such has a zero purchase price, Commission policy is to not provide a rate of return on CIAC. However, the CIAC plant is depreciated at the developer's installed cost. While the utility recovers the depreciation expense in rates, the depreciation expenses are also accumulated and deducted from the utility's total rate base. Left unchecked, the accumulated depreciation eventually consumes the rate base (because the original CIAC was transferred to rate base at a zero value), resulting in a zero or negative balance. No rate base equals no return. No return reduces the incentive for further investment. Without new investment, the infrastructure will eventually wear out and no longer provide adequate water service.

The WISC recommended that the Commission prohibit CIAC from being included in utility ratemaking. Under the rule, if this policy causes financial harm to a water public utility, the Commission should adopt ratemaking methods that mitigate the financial harm by allowing for a transition period that, at its conclusion, would have CIAC completely removed from ratemaking. The Commission should also consider allowing a water/wastewater utility to buyback historical CIAC that cannot be identified and removed.

The proposed rule implements the WISC recommendation. No comments were received. The rule should be adopted.

Establish Procedures for Theft of Service (860-036-0250)

At the request of Avion Water Company (Avion), Staff proposed new rule 860-036-0250 addressing theft of service. Avion's irrigation water is distributed from a ditch and is not metered. However, each customer's irrigation allowance is regulated by a flow meter. Avion informed the Commission that some customers desiring more water than allotted, tamper with the flow meter, which results in increasing the amount of irrigation water the customer receives. When Avion discovers the tampering, the flow meter is replaced and the customer is charged for the repair, which is about \$30. The nominal charge does not discourage tampering and theft of water, therefore Avion requested a rule that would deter those actions.

This rule allows a water utility to charge a deposit of no less than \$250 for restoration of service for a first tampering offense. For a second or higher offense, the water utility may charge an additional \$250 deposit, without benefit of an installment payment plan. In addition, the water utility may refuse service to the repeat offender.

In comments filed March 21, 2003, Staff recommended several amendments to the proposed rule. Staff recommends the Commission allow the water utility to implement the deposit requirements without first obtaining Commission approval. The proposal also allows the water utility flexibility in determining the amount of the deposit. In addition, there are a number of changes clarifying the language in the proposed rule.

No additional comments were received. The proposed rule should be adopted as set forth in the attached order.

Housekeeping Changes

Staff recommended that the Commission make a number of housekeeping changes to Division 036 to make the rules clearer and to lessen the likelihood of misinterpretation. My review of these changes indicates that they are, for the most part, substantive. As a result, Staff should republish the changes in a new docket, giving proper notice to the public.

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Staff Memo
April 22, 2003
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PROPOSED COMMISSION MOTION:

Adopt the order and rules attached to this memo.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 447

In the Matter of A Rulemaking to Amend)
OAR 860 Division 36 Relating to Water) ORDER
Utilities to Address Theft of Service,)
Contributions in Aid of Construction,)
Acquisition Adjustments, and Appointment)
of a Regent.)

DISPOSITION: RULES ADOPTED

At its public meeting on February 4, 2003, the Public Utility Commission (Commission) initiated this rulemaking proceeding. Notice of the proposed rules was published in the Secretary of State’s Bulletin on March 1, 2003. The deadline for comments was March 21, 2003.

Staff proposed these rules to implement the recommendations of the Water Issues Steering Committee (WISC). The Commission created the WISC to address concerns expressed by the 2001 Legislature. To address those concerns the WISC conducted a broad review of the state’s water regulation. The Committee made its Report to the Commission in August 2002. This rulemaking implements the several WISC recommendations, proposes a new rule on theft of service, and makes housekeeping changes to Division 036. The rules are attached as Appendix A.

Establish procedures for third-party operational control of a water utility when the operator has abandoned the system. (860-036-0365)

In rare instances, the Commission is called upon to act on behalf of the customers when a utility operator cannot or will not operate the water utility in compliance with the Commission's rules. The operator’s failure to act imperils the customers’ health and safety. This situation requires immediate and appropriate action by the Commission.

In one such instance in the past, the Commission appointed a regent and temporarily assigned the duties of the operator, who had abandoned the system, to others

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appointed by the Commission until a long-term solution was reached. This rule would specify criteria for the Commission to appoint a regent to oversee a utility. The rule provides that the Commission act only if it finds that the owner/operator of the company is either unwilling or unable to provide adequate and nondiscriminatory service.

The proposed rule implements the WISC recommendation. No comments were received. The rule is adopted.

Encourage consolidation of water utilities by allowing an acquisition adjustment in rates contingent on a showing that customers benefit overall. (860-036-0716)

The WISC recommended that the Commission amend its administrative rules to make it more financially attractive for the consolidation of small water utilities. According to the WISC, Oregon has many small struggling water companies/utilities. Often these companies provide unsafe and inadequate service. Due to the age, condition, and noncompliance issues, potential buyers of the system view the utility as a liability, with little earnings potential. Customers would likely benefit from increased operating efficiencies and capital improvements if the water company was purchased by another company.

One way to attract potential buyers is to adopt policies whereby the purchaser may seek a declaration from the Commission, under ORS 756.450, that some or all of the difference between the net book value and the purchase price will be included in rate base. For example, a purchasing utility might ask the Commission to allow some or all of the difference between net book value and the purchase price into the rate base if it finds that customers are better off under the acquisition and the purchase price is reasonable. A financially stable utility may be more willing to consolidate or absorb a struggling company if it realizes a benefit from the transaction.

The WISC recommended that the Commission establish a policy identifying the criteria and procedures for acquisition adjustments when water utilities purchase water/wastewater systems. The principal criterion should be that the Commission would permit an acquisition adjustment only when it finds that new ownership will benefit customers.

The proposed rule implements the WISC recommendation. No comments were received. The rule is adopted.

Improve long-term financial health of water utilities by no longer including contributed plant in rates. (860-036-0756)

The WISC recommended that the Commission amend its rules to prohibit Contributions In Aid of Construction (CIAC) from being included in utility rates. The WISC report explains that, when a developer plans a new subdivision, the developer is often required to provide the residences with access to water/wastewater services. The developer is responsible to provide pipes, valves, and fittings (system) inside the subdivision. When a customer buys a home in the subdivision, the cost of the system is generally included in the price of the home, whether or not it is identified as such. The developer is typically not interested in operating a utility, so the facilities are assigned to the local company/utility, in the form of a gift or zero-cost transfer.

These facilities, constructed by the developer and transferred to the utility, are classified as CIAC. Because CIAC is contributed and as such has a zero purchase price, Commission policy is to not provide a rate of return on CIAC. However, the CIAC plant is depreciated at the developer's installed cost. While the utility recovers the depreciation expense in rates, the depreciation expenses are also accumulated and deducted from the utility's total rate base. Left unchecked, the accumulated depreciation eventually consumes the rate base (because the original CIAC was transferred to rate base at a zero value), resulting in a zero or negative balance. No rate base equals no return. No return reduces the incentive for further investment. Without new investment, the infrastructure will eventually wear out and no longer provide adequate water service.

The WISC recommended that the Commission prohibit CIAC from being included in utility ratemaking. If this policy causes financial harm to a water public utility, the Commission should adopt ratemaking methods that mitigate the financial harm by allowing for a transition period that, at its conclusion, would have CIAC completely removed from ratemaking. The Commission should also consider allowing a water/wastewater utility to buy back historical CIAC that cannot be identified and removed.

The proposed rule implements the WISC recommendation. No comments were received. The rule is adopted.

Establish Procedures for Theft of Service (860-036-0250)

At the request of Avion Water Company (Avion), Staff proposed a new rule 860-036-0250 addressing theft of service. Avion's irrigation water is distributed from a ditch and is not metered. However, each customer's irrigation allowance is regulated by a flow meter. Avion informed the Commission that some customers desiring more water than allotted, tamper with the flow meter, which results in increasing the amount of irrigation water the customer receives.

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When Avion discovers the tampering, the flow meter is replaced and the customer is charged for the repair, which is about \$30. The nominal charge does not discourage tampering and theft of water, therefore Avion requested a rule that would deter those actions. This rule allows a water utility to charge a deposit of no less than \$250 for restoration of service for a first tampering offense. For a second or higher offense, the water utility may charge an additional \$250 deposit, without benefit of an installment payment plan. In addition, the water utility may refuse service to the repeat offender.

In comments filed March 21, 2003, Staff recommended several amendments to the proposed rule. Staff recommends the Commission allow the water utility to implement the deposit requirements without first obtaining Commission approval. The proposal also allows the water utility flexibility in determining the amount of the deposit. In addition, there are a number of changes clarifying the language in the proposed rule.

No additional comments were received. We adopt Staff's amended proposed rule, with modifications for clarity, as set forth below:

860-036-0250

Unapproved Diversion of Irrigation Water by Tampering with or Damaging Water Utility Equipment

- (1) A customer may not tamper with or damage water utility equipment in order to divert irrigation water flow without written permission of the water utility.
- (2) If the water utility's equipment is tampered with or damaged by a customer, the utility may take any of the following actions:
 - (a) Replace or repair the equipment and require the customer to reimburse the water utility for the actual reasonable cost to replace or repair.
 - (b) Require the customer to pay a reconnection fee in compliance with OAR 860-036-0240.
 - (c) Require the customer pay a deposit up to \$250 for the restoration of irrigation service. The payment of this deposit will be made in compliance with OAR 860-036-0045(4) and OAR 860-036-0055(4).
 - (d) For repeat offenses, require the customer to pay an additional deposit of \$250. Notwithstanding the requirements of OAR 860-036-0045, no installment payment plan will be available to the customer to restore services. Such additional deposits must be made immediately at the time irrigation service is restored.

- (e) Refuse irrigation service to the customer pursuant to OAR 860-036-0080.

Housekeeping Changes

Staff recommended that the Commission make a number of housekeeping changes to Division 036 to make the rules clearer and to lessen the likelihood of misinterpretation. Our review of these changes indicates that they are, for the most part, substantive. As a result, Staff should republish the changes in a new docket, giving proper notice to the public.

ORDER

IT IS ORDERED that the rules set forth in Appendix A are adopted.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

860-036-0250

Unapproved Diversion of Irrigation Water by Tampering with or Damaging Water Utility Equipment

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(c) Require the customer pay a deposit up to \$250 for the restoration of irrigation service. The payment of this deposit will be made in compliance with OAR 860-036-0045(4) and OAR 860-036-0055(4).

(d) For repeat offenses, require the customer to pay an additional deposit of \$250. Notwithstanding the requirements of OAR 860-036-0045, no installment payment plan will be available to the customer to restore services. Such additional deposits must be made immediately at the time irrigation service is restored.

(e) Refuse irrigation service to the customer pursuant to OAR 860-036-0080.

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

Stats. Implemented: ORS 756.040 & 757.105, 757.120, 757.125 & 757.135

Hist.: NEW

860-036-0365

Compliance Enforcement by Commission Appointment of Regent(s) to Operate and Manage a Water System

(1) In extreme circumstances when the water utility owner, operator, or representative demonstrates to the Commission's satisfaction an unwillingness or incapacity or refusal to effectively operate and manage the water system to provide safe and adequate service to its customers in compliance with Oregon statutes, rules, and standards, the Commission may appoint a regent(s) to operate and manage the water system. This procedure will be accomplished under an Interim Operating Agreement until long-term water provision can be ensured.

(2) The regent(s) appointed to operate, maintain, and repair the system must be a certified operator(s) or a qualified water utility(ies).

(3) The appointment of the regent(s) may also include responsibility for billing and collection, customer service, and administration of the system.

(4) If the Commission authorizes an operating account for receiving and dispersing funds by the regent(s), a Commission staff member will be a signator on such account to monitor all transactions.

(5) The regent will record all transactions in a general ledger and shall supply a copy of the ledger and bank statement to Commission staff member each month.

(6) At the end of the Interim Operating Agreement, Commission staff will make a final accounting of all monies received and transacted. Disbursement of surplus funds will be determined by the Commission.

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

Stats. Implemented: ORS 756.040 & 757.105, 757.120, 757.125 & 757.135

Hist.: NEW

860-036-0716

Acquisition Adjustments

(1) A rate-regulated water utility may petition the Commission for approval of an acquisition adjustment in rates for acquiring a water system when the benefits of the acquisition outweigh the increase to customers' rates resulting from an acquisition adjustment.

(2) The Commission will consider the merits of the utility's petition based on the benefit to the customers being acquired and the public interest on a case-by-case basis.

(3) The approval and determination of an acquisition adjustment is at the sole discretion of the Commission.

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

Stats. Implemented: ORS 756.040 & 757.105, 757.120, 757.125 & 757.135

Hist.: NEW

860-036-0756

Accounting for Contributions in Aid of Construction (CIAC)

(1) Each water utility shall provide an accounting of CIAC upon Commission request in its annual reports and in its rate application. CIAC accounting shall include contributions in any form including, but not limited to, contributed utility plant. CIAC record keeping will identify the contributed plant, original date of installation, and original cost.

(2) Each water utility must keep a record as described in section (1) of this rule and record CIAC on a separate plant and depreciation schedule.

(3) As of November 2002, CIAC and its resulting depreciation will be excluded from water utility ratemaking. CIAC will be separated from utility plant and accounted for and depreciated on a separate schedule outside the ratemaking process.

(4) In cases where previous CIAC depreciation was included in rates and removing it all at once would cause irreparable harm to the water utility, the Commission may systematically remove CIAC from rates over a period of time set forth in a schedule to be approved by the Commission.

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

Stats. Implemented: ORS 756.040 & 757.105, 757.120, 757.125 & 757.135

Hist.: NEW