

ITEM NO. 12

PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: September 23, 2003

REGULAR	<input checked="" type="checkbox"/>	CONSENT	_____	EFFECTIVE DATE	Upon Filing with the Secretary of State
DATE:				September 10, 2003	
TO:				Commissioners Beyer, Savage, and Baum	
FROM:				Kathryn Logan, Administrative Law Judge	
REVIEWED BY:				Terry Lambeth, Rules Project Leader	
SUBJECT:				<u>AR 468</u> : Adopt temporary Administrative Rule 860-038-0270 to implement HB 3376.	

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

Adopt temporary rule.

DISCUSSION:

On June 24, 2003, HB 3376 related to direct access became law. The bill requires the Commission to establish a date on which all electric companies must announce their electricity prices for the next calendar year. It further requires that retail electricity consumers must have at least three business days after the date set by the Commission to elect whether to use direct access or purchase electricity from an electric company. Finally, the bill requires all electricity service suppliers (ESSs) and electric companies to announce estimated prices that will be charged for electricity in the next calendar year at least five days before the date set by Commission.

A temporary rule was drafted and circulated among the UM 1081 direct access participants. PacifiCorp had three concerns: that the shopping window not include a weekend, but be a five day business week (Monday through Friday), that the term "price" be defined as the electric company's current tariff rates plus its transition adjustment for the upcoming year, and that the rule clearly state that an electric company may seek a rate change subsequent to a price announcement.

AR 468
September 10, 2003
Page 2

Staff and Strategic Energy, LLC opposed these changes. The attached order briefly summarizes the position of the participants.

PROPOSED COMMISSION MOTION:

Adopt temporary OAR 860-038-0270.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 468

In the Matter of a Temporary Rulemaking to)
Adopt Rules Pursuant to HB 3376.) ORDER

DISPOSITION: TEMPORARY RULE ADOPTED

During the 2003 session, the Oregon Legislative Assembly passed HB 3376 relating to direct access. The Governor signed the bill on June 24, 2003, which became effective immediately upon signing.

HB 3376 requires the Public Utility Commission of Oregon (Commission) to set a date on which all electric companies must announce their electricity prices for the next calendar year. It further requires that retail electricity consumers must have at least three business days after the date set by the Commission to elect whether to use direct access or purchase electricity from an electric company. Finally, the bill requires:

All electricity service suppliers and electric companies must announce estimated prices that will be charged for electricity by the suppliers and companies in the subsequent calendar year or contract period at least five days before the date set by the commission . . .

During the workshops held in docket UM 1081, discussions were held with various participants about the contents of a temporary rule implementing HB 3376. A draft temporary rule was circulated on August 11, 2003, and comments were solicited from the parties.¹ Initially, only PacifiCorp submitted comments. Its comments, however, sparked a response from Strategic Energy LLC (Strategic), which in turn caused a reply from PacifiCorp. Staff filed its comments on September 3, 2003.

The proposed rule sets a date and time, called the Announcement Date, by when an electric company must announce the prices to be charged for the next calendar year. Under the rule, electric companies must allow retail electricity customers at least

¹ The draft rule was served on the 76 named participants in UM 1081, representing approximately 48 different entities.

five business days after the Announcement Date to choose service under a cost-of-service rate option, or to purchase electricity from an electricity service supplier (ESS) or the electric company. ESSs and electric companies must continuously post estimated prices on their web sites at least five business days before the Announcement Date. If an ESS does not intend to sell electricity services in the subsequent calendar year, the ESS must post such a statement on its website. Finally, the electric companies and ESSs must provide the Commission with a Uniform Resource Locator (URL) address, which the Commission will post on its website.

Position of the participants

PacifiCorp. PacifiCorp suggested several changes to the rule. First, PacifiCorp does not want the shopping window to extend over a weekend, which increases the risk of market movement. It recommends that the proposed rule be clarified to include the Announcement Date within the five-day period, as long as prices are announced by 9:00 am on the Announcement Date. Next, PacifiCorp asks that "price" be defined as the electric company's current tariff rates plus its transition adjustment for the upcoming year. Finally, PacifiCorp requests that the rule be clear that an electric company may seek a rate change subsequent to a price announcement.

Strategic. Strategic initially raised a procedural issue, arguing that PacifiCorp's comments were filed late, and should not be considered. Strategic further claimed that adopting PacifiCorp's change to the window period would render Portland General Electric's (PGE's) previously approved tariffs inconsistent with the rule, and would make a minimal shopping window even shorter. Finally, Strategic claims that PacifiCorp's proposal to clarify the definition of price is vague, and should be the subject of a workshop.

PacifiCorp's response. PacifiCorp acknowledges that it filed its response several days after the deadline, but argues that this process, along with the UM 1081 process, has been informal. PacifiCorp argues that substance, not procedure, should prevail.

PacifiCorp states that the Monday-to-Monday window discussions were always focused on PGE, because it did not offer a daily shopping program similar to PacifiCorp's program. Once HB 3376 passed, PacifiCorp agreed to offer a three-day shopping window consistent with the legislation. PacifiCorp states:

After some gentle arm-twisting from Staff, PacifiCorp agreed to extend this [window] by two additional days to a total of five days. PacifiCorp was never asked about and PacifiCorp never agreed to a six-day, Monday-to-Monday shopping window.

Staff. Staff states that PacifiCorp's proposed changes to the draft rule should not be included in the temporary rule. Staff states that in drafting the rule, it balanced PacifiCorp's concerns regarding market movement with Strategic's concerns about additional time to negotiate customer contracts. Staff determined that the additional opportunity for an ESS to work with potential customers outweighed the risk of additional market movement over the weekend.

Discussion

Although it is unusual to circulate a temporary rule for comment, the UM 1081 participants had been discussing the same issues codified by HB 3376 and discussed in the rule – indicative prices and length of shopping window periods for selecting direct access. Therefore, the Administrative Law Judge (ALJ) circulated the rule so that the participants were provided an opportunity to present their opinions. A date for comment was set so the ALJ could incorporate those comments into an order for the September 11, 2003 public meeting. Rather than disallow comments, the ALJ moved the date on which we would consider this rule. We find it is appropriate to consider the comments submitted by the parties.

We next turn to PacifiCorp's suggested changes to the temporary rule. First, PacifiCorp want to shorten the shopping window if it posted its prices by 9:00 am on Announcement Day. Customers could then shop until 5:00 pm on Friday, giving them essentially five business days in which to negotiate a contract. While five business days is better than the one and two day windows provided by the electric companies last year, it is significantly less than the two weeks asked for by customers and ESSs. We agree with Staff that the risk of market movement is outweighed by the benefit to ESSs and customers. We do not adopt PacifiCorp's change to the shopping window.

The other two recommendations are also not adopted. The definition of "price" for purposes of the bill and rule will need further comment, and perhaps workshops, prior to the implementation of a permanent rule. We are not willing to adopt a definition in this temporary rule. Finally, it is axiomatic that an electric company may seek a tariff change subsequent to the price announcement. We see no need to add such language to the rule.

Finally, this temporary rule is needed for the implementation of HB 3376, which became effective on June 24, 2003. We find good cause to adopt the temporary rule language.

ORDER

IT IS ORDERED that:

1. The temporary rule attached as Appendix A is adopted.
2. The temporary rule shall be effective for a maximum of 180 days beginning September 24, 2003.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
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.

860-038-0270

Direct Access Annual Announcement and Election Period

(1) On November 15 of each year (or the next business day if November 15 falls on a Saturday, Sunday or legal holiday as defined by ORS 187.010), by no later than 2 p.m., each electric company must announce the prices to be charged for electricity services in the next calendar year. The date on which the electric companies are required to announce such prices is “the Announcement Date.”

(2) Electric companies must allow retail electricity customers that are eligible for direct access at least five business days after the Announcement Date to choose service under a cost-of-service rate option or to purchase electricity from either an electricity service supplier through direct access or an electric company through a standard rate offer.

(3) At least five business days before the Announcement Date, electric companies and electricity service suppliers must announce, and post on a web site, estimates of prices for electricity services in the subsequent calendar year, or subsequent contract period if different than a calendar year.

(a) Each electric company and electricity service supplier must continuously post the estimated prices announced under this rule on a website until the Announcement Date.

(b) Electric companies’ estimated prices will be the companies’ estimates of the electricity service prices that will be in effect for the calendar year subsequent to the Announcement Date.

(c) Electricity service suppliers will determine estimated prices that will allow electricity consumers to compare the estimated prices of the electric company and electricity service supplier for the subsequent calendar year, or contract period if different than a calendar year.

(d) Announcing estimated prices as required by this rule creates no obligation on the part of the electric companies and/or electricity service suppliers to provide electricity service to any consumer at the estimated prices.

(e) If an electricity service supplier does not intend to sell electricity services in the subsequent calendar year or contract period, the electricity service supplier must announce, and post on a web site, that it does not intend to sell electricity services in the subsequent calendar year or contract period.

(4) Thirty days prior to the Announcement Date, electric companies and electricity service suppliers shall provide to the Commission a URL address for a web site where the individual electric company or electricity service supplier will post prices and announcements as prescribed by this rule. The Commission will post the URL addresses on its web site.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW