

4. Amend the law to allow the Commission to impose penalties up to \$500 for violations of statutes, rules and orders.
5. Revise current statutes to include water utilities associations providing water services to retail consumers.
6. Amend the law to make it the utility's discretion whether it applies for an exclusive service territory.
7. Amend the law to remove the 300-customer threshold that qualifies water companies as "public utilities."

The 2003 Legislature approved the above-named statute revisions in HB 2226 and HB 2227. In addition, HB 2227 included a law that allows the PUC to use up to \$5,000 per biennium to make emergency repairs to water systems when the public health or safety are at risk and the owner is unable or willing to make the repairs. This temporary rulemaking proposes to adopt rules to implement all the legislative changes in HB 2226 and HB 2227.

Chapter 082, OR Laws 2003 (HB 2226) and Chapter 202, OR Laws 2003 (HB 2227), become effective January 1, 2004. A temporary rulemaking allows these rules to become effective at the same time as the law becomes effective while a permanent rulemaking is proceeding. Immediate action is needed, as there is insufficient time to complete a formal rule process prior to January 1, 2004.

Attachment A to this memo is a draft order adopting staff's proposed rules on an emergency basis. Attachment B contains the Steering Committee's reasons for recommending the rules.

PROPOSED COMMISSION MOTION:

Temporary rules be adopted to implement legislative changes to water regulation in HB 2226 and HB 2227, effective January 1, 2004.

ORDER

IT IS ORDERED that:

1. The temporary rules attached as Appendix A are adopted.
2. The temporary rules shall be effective for a maximum of 180 days beginning January 1, 2004.

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.

860-036-0010

Definitions for Water Utilities and Associations

As used in Division 036:

(1) "Actual cost" means the direct cost of parts, materials and labor of a specific item or project separated from indirect costs.

(2) "Applicant" means a person who:

(a) Applies for service with a utility; or

(b) Reapplies for service at a new or existing location after service has been discontinued.

(3) "Association" means an incorporated or homeowner association providing water service, as defined in ORS 757.005.

(4) "Co-customer" means a person who meets the definition of "customer" and is jointly responsible with another person for payments for water utility service on an account with the water utility. If only one of the co-customers discontinues service in his/her name, the remaining co-customer shall retain customer status only if he/she reapplies for service in his/her own name within 20 days of such discontinuance provided the water utility contacts the co-customer or mails a written request for an application to the remaining co-customer within one business day of the discontinuance.

(5) "Commercial customer" means a customer who performs or produces a service or product that is a source of revenue, income or livelihood to the customer or others using the premises.

(6) "Commission" means the Public Utility Commission of Oregon.

(7) "Contributions in aid of construction" means any money, services or property received by a water utility to fund capital investments at no cost to the company with no obligation to repay.

(8) "Construction work in progress (CWIP)" means account 105 in the utility plant section of the balance sheet representing the costs of utility plant under construction but not yet placed in service.

~~(98)~~ "Cooperative" means a cooperative corporation as defined in ORS Chapter 62.

~~(109)~~ "Cost-based" means the direct and indirect costs of a specific item or project, including overhead and a reasonable expected return on investment.

~~(110)~~ "Customer" means a person who has applied for, been accepted, and is currently receiving service unless otherwise noted. Notwithstanding section (1) of this rule, a customer who voluntarily disconnects service and subsequently asks for service with the same water utility at a new or existing location within 20 days after disconnection retains customer status.

~~(121)~~ "District" means a corporation as defined under ORS Chapter 553.

~~(132)~~ "Emergency" means an extraordinary interruption of the usual course of water service by a natural cause, an unforeseen event, or a combination of unexpected circumstances; an urgent need for assistance or relief; or the resulting state that calls for immediate action.

~~(143)~~ "End-user" means a domestic water user.

~~(154)~~ "Exempt water company" means a water company that meets the definition of a public utility in ORS 757.005, but is exempt from regulation as provided in ORS 757.005(1)(b)(E).

~~(165)~~ "Forced connection" means a water utility or its customers being required by law, regulation, rule, or company policy to retrofit, improve, or change the original service connection. All retrofits, improvements, additions or changes to the original service connection will be the operational and financial responsibility of the company, with the following exceptions

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(1) any national or state laws or rules clearly assigning such costs to the customer, or (2) the Commission otherwise approves as provided in OAR 860-036-0105(1) and (2).

(176) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(187) "Large commercial customer" means a commercial customer with a meter or pipe diameter of two inches or larger.

(198) "Mainline extension" means the extension of a main line to an area not previously served. If the main line extension is required at the request of a potential customer to receive service, the cost of such extension shall comply with the water utility's main line extension policy.

(209) "Meter set" means the parts, material, and labor necessary to install a meter. The meter set assembly is owned, installed, and maintained by the utility. The meter set does not include any components of the service connection required to provide unmetered service.

(210) "People's utility district" (PUD) means a corporation as defined in ORS Chapter 261.

(224) "Public utility" has the meaning given the term in ORS 757.005 and ORS 757.061. The term does not include districts, People's Utility Districts (PUDs), cooperatives, or municipalities.

(232) "Rate-regulated utility" means a water utility that is not exempt from certain financial regulations and conditions under ORS 757.061.

(243) "Registered dispute" means an unresolved issue between a customer or applicant and a water utility that is under investigation by the Commission's Consumer Services, but is not the subject of a formal complaint.

(254) "Residential customer" means a customer who receives domestic or irrigation water in residential areas and is not considered a commercial customer.

(265) "Small commercial customer" means a commercial customer with a meter or pipe diameter of less than two inches.

(276) "System development fee or charge" is the proportionate fee charged by a water company prior to service being initiated that encompasses the cost of the system allocated to all potential customers.

(287) "Utility" means any water utility, except when a more limited scope is explicitly stated.

(298) "Water utility" has the same meaning as public utility in section (21) of this rule, except if a more limited scope is explicitly stated.

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

Stats. Implemented: ORS 756.040 & 756.105

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 9-2001, f. & cert. ef. 3-21-01 (Order No. 01-248); PUC 22-2001 (Temp), f. & ef. 9-26-01 (Order No. 01-828); PUC 8-2002, f. & ef. 2-26-2002 (Order No. 02-116); PUC 18-2003, f. & ef. 10-6-03 (Order No. 03-592)

860-036-0330

Service Credit for Inadequate Service

~~—(1) Upon finding that a water utility rendered inadequate service, the Commission may require the water utility to provide service credits to affected customers as follows:~~

~~—(a) Credits shall be based upon the duration of the inadequate service as follows: 1–30 days, one third of customer regular fixed or flat monthly charges; 31–60 days, one half of customer regular fixed or flat monthly charges; 61–90 days, two thirds of customer regular fixed or flat monthly charges; 91 days until corrected, credit entire monthly fixed or flat charges.~~

~~—(b) Such credits shall be limited to a six-month period unless otherwise extended by the Commission.~~

~~—(2) Inadequate service credits are applicable only to deficiencies found in the water utility's system or those found to be in the control of the water utility. Deficiencies originating on the customer's portion of the system caused by the customer's negligence or willful misconduct, a natural disaster, or damage to the water system caused by a third party unaffiliated with the water utility will not be eligible for inadequate service credits.~~

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

~~— Stat. Implemented: ORS 756.040~~

~~— Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 8-2002, f. & ef. 2-26-2002 (Order No. 02-116)~~

860-036-0370

Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs

(1) The Commission may use up to \$5,000 per biennium of the fees collected under ORS 756.310 to make emergency repairs for water utilities. The Commission may expend monies under the provisions of this rule if the Commission determines that:

(a) Customers of a utility are without service and are likely to remain without service for an unreasonable period of time;

(b) The utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and

(c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The Commission shall promptly attempt to recover fees used under this rule from the utility providing water service. No interest shall accrue on the outstanding balance.

(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the fees are expended.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003

Hist.: NEW

860-036-0380

Commission-Assessed Civil Penalties for Noncompliance

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 for each violation of state statutes, Oregon administrative rules, or Commission orders related to water utilities.

(2) Prior to assessing civil penalties, the Commission may send a warning letter to the water utility by registered or certified mail. The warning letter must include, but not be limited to, the following:

(a) A statement that the water utility is in violation of state statutes, Oregon administrative rules, or Commission orders;

(b) The time allowed for correcting the violation(s); and

(c) A statement that, if the violations are not corrected within the time allowed, staff may make a recommendation to the Commission to assess civil penalties.

(3) The Commission must give notice of civil penalties by registered or certified mail to the water utility incurring the penalties. The notice must include, but is not limited to the following:

(a) The section of the statute, rule, or order violated;

(b) A concise statement of the violation(s) asserted or charged;

(c) A statement of the amount of civil penalties that may be assessed;

(d) A statement of the water utility's right to request a hearing within 20 calendar days of the date of service of the notice; and

(e) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) Within 20 calendar days of the date of service of the notice, the water utility incurring the penalties may request a hearing. Such request must be in writing and shall state what actions, if any, have been made to correct the violation(s) stated in the notice. If the water utility does not request a hearing within the time allowed, or if the water utility requesting a hearing fails to appear, the Commission may issue a final order imposing the penalty.

(5) The Commission may require that penalties imposed under this rule be used for the benefit of the customers of water utilities affected by the violation(s).

Stat. Auth.: ORS Ch. 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 183.090, 756.040 & Ch. 202, OL 2003

Hist.: NEW

860-036-0412

Request for Rate Regulation of an Association by Members

(1) Association members may submit a petition to the Commission at any time for full rate regulation of a water system owned or operated by an association. Petitioners must be current members of the water association.

(2) Petitions must be in writing, state the purpose of the petition, and include the member's name, address, telephone number, and signature.

(3) Individual members may submit letters in lieu of a petition.

(4) If 20 percent of association members petition the Commission, the Commission must issue an order notifying the association of its change in regulatory status to a rate-regulated water utility.

(5) The association must file tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.

(6) If the association fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(7) Petitions filed with the Commission may not be withdrawn or rescinded and are valid for six months.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 082, OL 2003

Stat. Implemented: ORS 756.040 & Ch. 082, OL 2003

Hist.: NEW

860-036-0420

Request for Rate Regulation by a Water Utility

(1) Any water utility serving fewer than 500 customers may, at any time, file a petition with the Commission for full rate regulation of the water utility.

(2) When the water utility files the petition with the Commission requesting rate regulation, the water utility must also provide written notification to its customers. The water utility must provide the Commission with a copy of the notice. At a minimum, the notice must include the following information:

(a) Name, address, and telephone number of the water utility;

(b) Purpose of the notice;

(c) The reason(s) the water utility is seeking rate regulation;

(d) The Commission's toll-free telephone number, TTY number, and its mailing and location addresses. The information is available on the Commission website or by calling the Commission; and

(e) A statement informing customers that ORS 757.061 was amended in 2003 to allow water utilities to petition the Commission for rate regulation.

(3) Within 30 days after the water utility files its petition requesting rate regulation, the Commission must issue an order notifying the water utility of its change in regulatory status to a rate-regulated water utility.

(4) Within 60 days after the Commission notifies the water utility of its change in regulatory status, the water utility must file appropriate tariffs pursuant to ORS 757.205.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 082, OL 2003

Stat. Implemented: ORS 756.040 & Ch. 082, OL 2003

Hist.: NEW

860-036-0757

Accounting for Construction Work In Progress (CWIP)

The Commission may allow into rates the costs of a specific capital improvement project in progress if:

(1) The water utility uses the additional revenues solely for the purpose of completing the capital improvement project;

(2) The water utility demonstrates that its access to capital is limited and it is in the public interest to provide funding for the capitol improvement through rates; and

(3) Such costs are approved through tariffs filed with the Commission.

Stat. Auth.: ORS 183, 756, 757& Ch. 202, OL 2003

Stats. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003

Hist.: NEW

860-036-0900

Service Territory Allocation

(1) For purposes of service territory allocation OAR 860-036-0900 through OAR 860-036-0930:

(a) “Allocated territory” means an approved area with boundaries set out in a Commission order granting an application for the allocation of service territory.

(b) “Community water supply system” means a water source and distribution system, whether publicly or privately owned, that serves more than three residences or other users to whom water is provided for public consumption, including but not limited to schools, farm labor camps, industrial establishments, recreational facilities, restaurants, motels, mobile home parks, or group care homes.

(c) “Utility service” means service provided by a water utility as defined in subsection (1)(d) of this rule, any equipment, plant, or facility for the distribution of water to users through a connected and interrelated distribution system. “Utility service” does not include service provided through or by the use of any equipment, plant, or facilities solely for the production and sale of water to other water utilities.

(d) “Water utility” as used in OAR 860-036-0900 through OAR 860-036-0930 means any water system that meets the definition of a water utility in ORS 758.300.

(2) The requirements of this rule apply to all water utilities.

(3) A water utility providing water service ~~may~~**shall** make application to the Commission, on forms provided by the Commission, for an order designating the territory it serves adequately and exclusively as its exclusive service territory.

(4) The Commission shall recognize the **exclusive** service territory of a water utility that has an existing franchise as of October 23, 1999, with a municipality, ~~as an exclusive service territory. Upon application, any such~~ **A** water utility may **apply request an order from to** the Commission to designate exclusive service territory **area other than that in addition to those** identified in the franchise agreement, if the water utility is **currently** providing adequate and exclusive service to areas ~~outside the areas~~ identified in the franchise agreement.

Stat. Auth.: ORS Ch. 183, 756, 757, & 758 **& Ch. 202, OL 2003**

Stats. Implemented: ORS 758.300 through 758.320 **& Ch. 202, OL 2003**

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); PUC 8-2002, f. & ef. 2-26-2002 (Order No. 02-116); PUC 18-2003, f. & ef. 10-6-03 (Order No. 03-592)

860-036-0905

Original Application Requirements

(1) A completed application requesting an exclusive service territory for area the water utility is currently serving shall include the following:

- (a) The water utility's complete name, address, and telephone number;
- (b) The nature of the water utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;
- (c) The name(s) and address(es) of all corporate officers, directors, partners, or any other person(s) owning an interest in the water utility;
- (d) A statement showing the financial and technical ability of the applicant to provide service to the current territory;
- (e) A detailed map or maps of the water system showing the existing lines and facilities;
- (f) A detailed map or maps identifying the boundaries of the water utility's current service territory marked with a fine-tipped RED pen. The map must identify the map source and the date of the map in the upper left corner of the map. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the utility's current service territory boundaries and enable correlation with a written description of such territory;
- (g) A complete and accurate written description of the water utility's current service territory. The description may be a legal description or may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;
- (h) Evidence that the water utility owns the land upon which the water utility facilities are located, or a copy of an agreement that provides for the continued use of the land, such as an easement or 99-year lease;
- (i) A schedule showing the number of customers currently served, by class and meter size, as well as the number of customers projected to be served when the current service territory is fully occupied; and
- (j) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities having concern with the application, and all known water utilities and community water supply systems in the general area of the current service territory.

(2) The application may also include any adjacent territory that the water utility plans to serve within six months following the date of the application:

- (a) If another water utility or community water supply system is not serving such territory; and

(b) If the applicant demonstrates that it is more economical and feasible to serve the area by an extension of the applicant's existing facilities than by an extension of the facilities of another water utility or community water supply system. Application requirements for expanded service territory are contained in OAR 860-036-0915.

(3) Within 15 days of making its proposed service territory filing pursuant to OAR 860-036-0906, a water utility must provide written notice to its customers by mail or hand delivery. The notice shall include the following information:

- (a) Name, address, and telephone number of water utility;
- (b) The purpose of the notice;
- (c) An accurate and detailed written description of the territory applied for;
- (d) Filing date;
- (e) A statement that customers may file a protest with the Commission's Administrative Hearings Division; and
- (f) The Commission's toll-free telephone number, TTY number, and mailing and location addresses.

(4) The water utility's application to the Commission must include a copy of the notice to customers and a customer mailing list.

(5) In reviewing a completed application ~~submitted under Chapter 695 Sections 2-4, Oregon Laws 1999~~ for current exclusive service territory, the Commission shall consider the applicant's ability to provide adequate and exclusive service to its existing customers which may include but is not limited to, financial resources, technical ability, customer service history, physical facilities, system capacity, revenue and cost studies, and system compliance with the Oregon Health Division's water rules and regulations.

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 through 758.320

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); PUC 13-2002, f & ef. 3-26-02 (Order No. 02-179); PUC 18-2003, f. & ef. 10-6-03 (Order No. 03-592)

860-036-0910

Commission Notice and Procedure

(1) Within 30 days of receipt of a completed service territory application, the Commission shall give **written** notice to any municipality, county, planning council, and governmental authority known to have a concern with the application, and to all known water utilities and community water supply systems **in the general area that the water utility is applying for exclusive service territory in the areas adjacent to the proposed area described in the application.**

(2) The Commission shall publish notice of the filing in a newspaper or newspapers of general circulation in the proposed territory at least once weekly for two consecutive weeks.

(3) Any objections to the application must be filed with the Commission no later than 30 days after the last date that the notice was mailed or published, whichever is later.

(4) The Commission may, on its own motion, hold a hearing on the application; **however, but** the Commission must hold a hearing on the application if a customer of the water utility requests a hearing on the application within 30 days **after the final publication of notice as required in section (2) of this rule of the notice.**

(5) If a hearing is scheduled, the Commission shall give notice of the hearing, setting the **time, date, and place of hearing.** If the hearing is **at by reason of** a customer's request, the Commission shall give notice of the hearing within 30 days **after of the request is received by the Commission.** The hearing shall be held at a place within or conveniently accessible to the **territory covered by area described in** the application.

(6) The Commission shall enter an order granting or denying an application for an exclusive service territory under OAR 860-036-0900. The Commission may grant an application subject to such conditions and limitations as the Commission deems appropriate.

(7) The applicable provisions of ORS 756.500 through 756.610 shall govern the conduct of hearings under this section and any appeal of the Commission's order.

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 through 758.320

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)

860-036-0915

Filing an Application to Expand Exclusive Service Territory

(1) A water utility may apply to expand its service territory to serve an area not currently being provided water service. It shall file an expanded service territory application with the Commission.

(2) Upon application by the water utility or by the Commission's own motion, an approved service territory may be expanded to include unserved areas.

(3) In reviewing a completed application **submitted under Chapter 695 Sections 2-4, Oregon Laws 1999** for an expanded exclusive service territory, the Commission shall consider the applicant's ability to adequately and exclusively provide service to the expanded territory, which may include but is not limited to, financial resources, technical ability, physical facilities, customer demand, system capacity, revenue and cost studies, regional planning, environmental impact, customer service history, impact on existing customers, compliance with the Oregon Health Division's water rules and regulations, economic and feasibility studies, and availability of alternate service.

(4) Notice and hearing of the proposed expansion shall be given as provided in OAR 860-036-0910.

(5) The application must include:

(a) The water utility's complete name and address;

(b) The nature of the utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;

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(c) The name and address of any other water utility or community water supply system that could potentially provide water service within the proposed expanded territory;

(d) The name and address of all corporate officers, directors, partners, or any other person owning an interest in the utility;

(e) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities that may have a concern with the application, and all known water utilities and community water supply systems in the general area of the proposed expanded service territory;

(f) A map identifying the boundaries of the proposed expanded service territory (currently unserved) marked with a fine-tipped BLUE pen. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the expanded service territory boundaries and enable correlation with the description of the proposed expanded territory;

(g) A complete and accurate written description of the proposed expanded territory. The description may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;

(h) The total projected number of customers to be served in the proposed expanded territory by meter size and customer class, that is, single family homes, mobile homes, duplexes, golf course clubhouse, commercial, etc.;

(i) The estimated date applicant plans to begin providing service to customers in the proposed expanded territory;

(j) The estimated flat rate or base and usage rate structure to be utilized, unless an alternative rate structure is supported by the applicant and authorized by the Commission;

(k) A cost study including customer growth projections supporting the proposed water service rates and charges;

(l) A schedule showing by account the projected operating expenses of the water system to serve the expanded service territory when 100 percent of the system is being utilized;

(m) A schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 100 percent of the design capacity of the system;

(n) A statement describing the need for water service in the proposed expanded service territory;

(o) Evidence demonstrating adequate existing or proposed capacities of the system and facilities to serve the proposed expanded territory in terms of estimated average daily customer demand, customer peak demand, and daily pumping capacity per water source in gallons or cubic feet. If development will be in phases, separate this information by phases;

(p) A written description of the type of water treatment required, if necessary;

(q) A schedule showing the projected cost of the proposed system(s) by accounts. If the system is to be built in phases, show information for each phase individually;

(r) A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the water utility for capital improvement, and an explanation of the manner and

amount of such funding, including their financial statements and a copy of all contracts or agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility;

(s) Financial statements demonstrating applicant's financial capability to provide service;

(t) A statement showing applicant's technical ability or capacity to procure technical skill necessary to provide service;

(u) A statement describing any impact the expansion of service territory may have on existing customers.

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 through 758.320

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)

860-037-0308

Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs

(1) The Commission may use up to \$5,000 per biennium of the fees collected under ORS 756.310 to make emergency repairs for privately-owned wastewater utilities that provide service within the boundaries of a city. The Commission may expend monies under the provisions of this rule if the Commission determines that:

(a) Customers of a wastewater utility are without service and are likely to remain without service for an unreasonable period of time;

(b) The wastewater utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and

(c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The Commission shall promptly attempt to recover fees used under this rule from the utility providing water service. No interest shall accrue on the outstanding balance.

(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the fees are expended.

Stat. Auth.: ORS Ch. 183, 756, 757 & Ch. 202, OL 2003

Stats. Implemented: ORS 757.061 & Ch. 202, OL 2003

Hist.: NEW

860-037-0309

Commission-Assessed Civil Penalties for Noncompliance

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 for each violation of state statutes, Oregon administrative rules, or Commission orders related to wastewater utilities.

(2) Prior to assessing civil penalties, the Commission may send a warning letter to the wastewater utility by registered or certified mail. The warning letter must include, but not be limited to, the following:

(a) A statement that the wastewater utility is in violation of state statutes, Oregon administrative rules, or Commission orders;

(b) The time allowed for correcting the violation(s); and

(c) A statement that, if the violations are not corrected within the time allowed, staff may make a recommendation to the Commission to assess civil penalties.

(3) The Commission must give notice of civil penalties by registered or certified mail to the wastewater utility incurring the penalties. The notice must include, but is not limited to the following:

(a) The section of the statute, rule, or order violated;

(b) A concise statement of the violation(s) asserted or charged;

(c) A statement of the amount of civil penalties that may be assessed;

(d) A statement of the wastewater utility's right to request a hearing within 20 calendar days of the date of service of the notice; and

(e) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) Within 20 calendar days of the date of service of the notice, the wastewater utility incurring the penalties may request a hearing. Such request must be in writing and shall state what actions, if any, have been made to correct the violation(s) stated in the notice. If the wastewater utility does not request a hearing within the time allowed, or if the wastewater utility requesting a hearing fails to appear, the Commission may issue a final order imposing the penalty.

(5) The Commission may require that penalties imposed under this rule be used for the benefit of the customers of wastewater utilities affected by the violation(s).

Stat. Auth.: ORS Ch. 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 183.090, 756.040 & Ch. 202, OL 2003

Hist.: NEW

860-037-0407

Request for Rate Regulation of an Association within the Boundaries of a City

(1) Association members may submit a petition to the Commission at any time for full rate regulation of a wastewater utility owned or operated by an association located within the boundaries of a city. Petitioners must be current customers of the wastewater utility.

(2) Petitions must be in writing, state the purpose of the petition, and include the customer's name, address, telephone number, and signature.

(3) Individual members may submit letters in lieu of a petition.

(4) If 20 percent of association members petition the Commission, the Commission shall issue an order notifying the association of its change in regulatory status to a rate-regulated utility.

(5) The association must file tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.

(6) If the association fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(7) Petitions filed with the Commission may not be withdrawn or rescinded and are valid for six months.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 082, OL 2003

Stat. Implemented: ORS 756.040 & Ch. 082, OL 2003

Hist.: NEW

860-037-0547

Allocation of Costs by a Wastewater Utility

(1) As used in this rule:

(a) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a wastewater utility;

(b) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a wastewater utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the wastewater utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single wastewater utility;

(c) "Asset" means any tangible or intangible property of a wastewater utility or other right, entitlement, business opportunity, or other thing of value to which a wastewater utility holds claim that is recorded or should be recorded as a capital expenditure in the wastewater utility's financial statements. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services or supplies;

(d) "Cost" means fully distributed cost, including the wastewater utility's authorized rate of return and all overheads;

(e) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(f) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(g) "Net book value" means original cost less accumulated depreciation;

(h) "Nonregulated activity" means an activity that is not a regulated activity of the wastewater utility as defined in subsection (1)(i) of this rule;

(i) "Regulated activity" means a Commission regulated activity that is provided by a wastewater utility directly or indirectly relating to the general operations of the wastewater utility such as production, transmission, delivery, or furnishing of water, and the provision

of wastewater services to the public inside the boundaries of a city unless the Commission has determined the activity to be exempt from regulation;

(j) "Services" means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies; and

(k) "Supplies" means any tangible or intangible property of a wastewater utility or other thing of value to which a wastewater utility holds claim that is recorded or should be recorded as an operating expense in the wastewater utility's financial statements. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities and things of value should be considered assets, services, or supplies.

(2) For purposes of this rule, regulated and nonregulated activities of a wastewater utility shall be accounted for in accordance with the Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners as modified by the Commission.

(3) When a wastewater utility is conducting an affiliate interest transaction, as defined in this rule, the wastewater utility must use the following cost allocation methods:

(a) When an asset is transferred to a wastewater utility from an affiliate, the transfer shall be recorded in the wastewater utility's accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from a wastewater utility to an affiliate, the transfer shall be recorded in the wastewater utility's accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall be recorded in the wastewater utility's accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from a wastewater utility to an affiliate at a fair market value that is greater than net book value, the difference shall be considered a gain to the wastewater utility. The wastewater utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a wastewater utility to an affiliate, sales shall be recorded in the wastewater utility's accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in the wastewater utility's accounts at the wastewater utility's cost or the market rate, whichever is higher.

(e) When services or supplies are sold to a wastewater utility by an affiliate, sales shall be recorded in the wastewater utility's accounts at the wastewater utility's cost or the market rate, whichever is lower. The affiliate's cost shall be calculated using the wastewater utility's most recently authorized rate of return.

(f) Income taxes shall be calculated for the wastewater utility on a standalone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the wastewater utility shall record income tax expense as if it were determined for the wastewater utility separately for all time periods.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.490 & 757.495

Hist.: NEW

860-037-0570

Accounting for Construction Work In Progress (CWIP)

This rule applies to wastewater utilities that provide service inside the boundaries of a city. The Commission may allow into rates the costs of a specific capital improvement project in progress if:

(1) The wastewater utility uses the additional revenues solely for the purpose of completing the capital improvement project;

(2) The wastewater utility demonstrates that its access to capital is limited and it is in the public interest to provide funding for the capital improvement through rates; and

(3) Such costs are approved through tariffs filed with the Commission.

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

Stat. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003

Hist.: NEW

Rules to Implement 2003 Legislative Changes (HB 2226 & HB 2227)

1. Once a water utility meets the definition of a "public utility" it remains a public utility thereafter. (860-036-0010(21)) The Commission's Water Program frequently deals with water companies that are providing inadequate service. These "problem" water companies typically are not being assessed a fee because, prior to the inadequate service complaints, they did not meet the definition of a "public utility." Therefore, within the Water Program itself, the Commission activities associated with these "problem" water companies are subsidized by the water public utilities that pay the Commission fee. Under this rule, once a company fits the definition of a "public utility," it will remain a public utility thereafter and will be assessed the Commission fee.
2. Construction Work in Progress (CWIP) will be allowed into rates for water/wastewater company capital improvements. (860-036-0010(8) & 860-037-0570) Many water and joint water/wastewater utilities find it difficult to attract capital to fund construction projects. Currently a water public utility is prohibited from charging in rates the cost of capital projects until the project is completed and providing service to consumers. Therefore, to fund the project, under current rules, a utility must either borrow the funds to make the necessary capital improvements or fund the project using internally generated monies. Neither of these funding alternatives is available to most water public utilities.
3. Water companies may request rate regulation. (860-036-0420) Water and joint water/wastewater utilities may find it beneficial to be subject to Commission rate regulation. With Commission regulation, the Commission will review and verify the proposed rate changes and in so doing provide justification for the new rate levels. Further, the Commission could review the utility's operations and offer recommendations and identify system improvements to better serve customers.
4. The PUC is authorized to assess civil penalties on water/wastewater companies for noncompliance with Oregon statutes, Oregon administrative rules, and Commission orders. (860-036-0380 & 860-037-0309) When water and joint water/wastewater public utilities are out of compliance with Commission statutes and rules, the current enforcement processes are cumbersome and lengthy and do not sufficiently motivate a utility to make improvements. Noncompliance and inadequate service by a water utility is difficult to resolve without cooperation. If there is no cooperation, by the time civil penalties can be accomplished, the utility may have abandoned its service, filed for bankruptcy, gone out of business, or provided inadequate or discriminatory service to its customers for an extended period. This rule will provide more effective protection to consumers, by providing an additional enforcement tool for the Commission. Penalties

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imposed under this rule may be used for the benefit of the customers who have been harmed by inadequate service.

5. Members of an association may petition for rate regulation of an association. (860-036-0412 & 860-037-0407) There are perhaps as many as 200 associations providing water service to end consumers in Oregon. Associations have typically been found not to be public utilities because they do not directly or indirectly serve the public. Under this rule, members served by associations can petition the Commission to obtain the same Commission protections as those available to consumers of privately owned water systems.

6. Application for Service Territory is Voluntary. (860-036-0900) Previously all water systems that met the definition of a water utility were required to file an application with the Commission for an exclusive service territory. To streamline and reduce the utility cost of regulation, and because service territory allocation is a protection for water utilities, these companies should have the option whether to seek a Commission-approved service territory.

7. The definition of a public utility is simplified by deleting the 300-customer threshold criteria for qualifying as a public utility. (860-036-0010(21)) A benefit of this rule is that water companies with close to 300 customers will no longer be motivated to refuse service to new customers, or split company operations into two companies in order to avoid Commission service regulation by reason of number of customers.

8. The PUC is authorized to use up to \$5,000 of gross revenue fees per biennium to make emergency repairs for water/wastewater utilities when the public health or safety are at risk and the owner is unable or willing to make the repairs. (860-036-0370 & 860-037-0308)