

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 8, 2004

REGULAR _____ CONSENT X EFFECTIVE DATE _____ Upon approval by the Commission

DATE: May 26, 2004

TO: Lee Sparling through Ed Busch & Bonnie Tatom

FROM: Deborah Garcia

SUBJECT: PACIFIC POWER & LIGHT: (Docket No. UM 1143) Requests a partial waiver of OAR 860-021-0200(3)(a) to revise the conditions under which a customer qualifies as a responsible party on behalf of another customer.

STAFF RECOMMENDATION:

I recommend that the Commission approve the request of Pacific Power & Light (PPL or Company) for a waiver of the current provisions of OAR 860-021-0200(1) when utilized under the provisions of OAR 860-021-0200(3)(a) to define a customer's eligibility to be a responsible party (guarantor) for the purpose of entering into a surety agreement.

DISCUSSION:

On April 15, 2004, PPL filed, pursuant to the provisions of ORS 756.040¹ and OAR 860-011-0035(9)², a petition seeking a Commission order waiving the current provisions of OAR 860-021-0200(1) when utilized under the provisions of OAR 860-021-0200(3) to define a guarantor's eligibility to enter into a surety agreement . On May 11, 2004, PPL filed an amended petition to include OAR 860-021-0005³ as a basis for filing the petition.

Background

As the Oregon Administrative Rules (OAR) regulating the issues in this filing must be jointly considered for a complete understanding of PPL's request, the following is a brief

¹ ORS 756.040 General Powers describes the general powers of the Commission within the context of all matters in which the Commission has jurisdiction.

² OAR 860-011-0035(9) defines "petitioner" within the context of Commission rulings.

³ OAR 860-021-0005 says in part, "Upon application by a utility, the Commission may relieve the utility of any obligations under these rules."

explanation of those rules, how they relate to one another, and includes any relevant change made by Order 03-550 in Docket AR 452⁴.

OAR 860-021-0200(1), modified in AR 452, outlines how an applicant may establish credit to receive utility service without paying a surety deposit. Section (1) options now are: (a) received 12 months of continuous utility service during the preceding 24 months that the utility can verify and the applicant or customer voluntarily terminated service; (b) meets Commission-approved minimum credit requirements based on a third party credit report;⁵ or (c) proof of ability to pay. Section (1) (b-c) are new options that tightened the previous requirement that an applicant with no credit history simply had to show positive identification to be eligible to establish service without paying a deposit.

OAR 860-021-0200(2)(a-c) outlines when a customer must pay a deposit. An applicant is not eligible to establish credit under the OAR 860-021-0200(1) options, thereby avoiding payment of a deposit, if any part of OAR 860-021-0200(2)(a-c) applies. Section (2) includes (a) not able to establish credit as defined in Section (1); (b) nonpayment of a previous utility account within the last 24 months; and (c) termination for theft of service, or tampering with utility facilities, or was otherwise found to have diverted utility service.

OAR 860-021-0200(3)(a) provides one more option for an applicant who cannot meet the requirements of OAR 860-021-0200(1) to establish credit and does not have the means to pay a deposit. Under this rule, an applicant may present the utility with a signed surety agreement from a responsible party (guarantor) in lieu of paying a deposit. The surety agreement is for an amount equal to the deposit the applicant is obliged to pay and continues in effect until the applicant establishes good credit. This allows an individual, such as a recently relocated domestic abuse victim, to secure essential utility service. The rule defines a guarantor as a current customer that meets any one of the requirements in OAR 860-021-0200(1). Before being modified in AR 452, the definition of a guarantor was a "...utility customer who has received service continuously for the preceding 12 months from the same utility without late payment..."

OAR 860-021-0215(2) contains the criteria a customer must meet to establish credit and have a deposit refunded. Twelve months after a deposit is made, a customer will establish or reestablish credit when all of the following are true: (a) the account is current; (b) not more than two five-day disconnection notices were issued to the customer during the previous 12 months; and (c) the customer was not disconnected for nonpayment during the previous 12 months.

⁴ AR 452 was opened during the Commission's last triennial rule review for the purpose of investigating proposed changes to Division 021 of the Commission's rules.

⁵ At this time, no energy utility has a Commission-approved program in place to offer this option.

PPL's Filing

Currently, the rules allow any customer to qualify as a guarantor for another customer or applicant simply on the basis that they initially established credit with the Company by paying a deposit or by providing proof of ability to pay. This means that a customer who is otherwise unknown to the Company can sign up for service by establishing credit by either of these methods and instantly become eligible to be a guarantor for one or more applicants or customers whose payment history is also unknown to the Company.

In its filing, PPL asserts this is an unintended consequence and the requirement that a guarantor having been a customer of the utility for the preceding 12 months without a late payment was inadvertently omitted in the final adopted rule in AR 452.

PPL's position is that a customer should not be eligible to qualify as a guarantor under a surety agreement without first having established 12 months of continuous utility service with the same utility without a late payment. This position is based on the following:

(a) The first option for establishing credit under the currently effective OAR 860-021-0200(1)(a) is a demonstration of 12 months of continuous utility service.

The two additional options (1)(b) and (1)(c) are new to the rule, and were added as a result of the AR 452 docket because participating utilities were seeking to improve the rules with respect to the establishment of credit for applicants that had no verifiable previous history with any Oregon-regulated utility. It is PPL's understanding that the resulting changes from the AR 452 docket were never intended to diminish the use of 12 months of continuous service as a fundamental measure of credit establishment.

(b) OAR 860-021-0215(2), which was not revised in AR 452, states that credit is considered to be established or reestablished if the customer has met specified conditions within one year after a deposit is made. As such, a customer that paid a deposit does not actually establish credit with the utility until a full 12 months of service in good standing has passed.

Rule 9B 1. of PPL's General Rules and Regulations provides that in the absence of prior electric service, an applicant can establish credit by supplying the Company with a

written surety agreement in the amount of an average two months' billing. However, the responsible party signing the surety agreement must be a current Company customer who has received service continuously for the preceding 12 months without a late payment. If PPL's petition is granted, this would allow the Company's currently approved Rule 9B 1. to define who qualifies as a responsible party for purposes of a surety agreement.

It is my understanding that a request that the Commission open a rulemaking related to the issues raised in this filing may be made at a subsequent public meeting. The rulemaking would also address other related issues that were raised in comments by a party to AR 479⁶. If the rulemaking proceeds, it is likely that the waiver requested in this filing will no longer be necessary and could be withdrawn at that time.

I agree that the language of OAR 860-021-0200(3)(a) does not appear to reflect the intent of the parties to AR 452 and allows unintended consequences that increase the risk to other customers. If the utility must take a surety agreement for one or more applicants from an individual with no credit history with the company, a likely outcome is an increase in the number of PPL's customer accounts that it is not able to collect. This outcome would unfavorably affect the rates of other customers, and could adversely affect the Company. Generally, Staff does not recommend and the Commission does not favor exempting an entity from compliance with any administrative rule. However, the Commission has on occasion, found it to be in the public interest to grant such a request. Additionally, the Commission has recently approved a similar request for a waiver of the same rule made by NW Natural by Order 04-243. I am persuaded that PPL's request for a waiver is in the public interest and recommend the Commission approve it.

COMMISSION MOTION:

Pacific Power & Light's petition docketed as UM 1143 be granted, and the Company's currently approved Rule 9B 1. tariff be allowed to stay in effect.

⁶ AR 479, a rulemaking to clarify rules regarding establishment of credit that were modified during the AR 452 docket.