

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 24, 2007**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ Upon Commission approval

DATE: April 16, 2007

TO: Public Utility Commission

FROM: Deborah Garcia

THROUGH: Lee Sparling, Ed Busch, and Judy Johnson

SUBJECT: PACIFIC POWER & LIGHT AND HCA MANAGEMENT COMPANY:
(Docket No. DR 38) Joint Petition for Declaratory Ruling pursuant to
ORS 756.450 regarding landlord billing for resale of power.

STAFF RECOMMENDATION:

I recommend that Pacific Power & Light and HCA Management Company's joint petition for a declaratory ruling be granted and that the Commission open an investigation.

DISCUSSION:

Pacific Power & Light (PPL or Company) and HCA Management Company (HCA), operator of the Myra Lynne Mobile Home Park (Myra Lynne) (collectively, Petitioners) have filed a request asking the Commission to resolve a potential conflict between PPL's General Service rate schedules and its Rule 2, Section O, and ORS 90.536, which was recently enacted during the 2005 Legislative session. The Legislative history associated with ORS 90.536 indicates the Commission was involved in the drafting of the statute but because PPL's rates and rules also have force and effect of law once approved by the Commission, the Petitioners seek resolution concerning whether PPL's rate schedule and Rule 2, Section O, or ORS 90.536, controls.

Briefly, the general facts of the apparent conflict are:

1. Service to Myra Lynne is delivered in accordance with Schedule 48 by PPL to HCA, the customer of record, via a master meter. Schedule 48 is a rate schedule designated for commercial service.
2. PPL Rule 2, Section O, requires that resale of service by landlords shall be metered and billed to each tenant at PPL's regular tariff rate schedule applicable to the type

- of service actually furnished the tenant. In this case the applicable schedule would be PPL's Residential Rate Schedule 4. Schedule 4 rates exceed Schedule 48 rates.
3. ORS 90.536 is a result of House Bill 2247 which added new provisions to Oregon's landlord/tenant law contained in ORS Chapter 90. Arguably, ORS 90.536 (2)(a) states that a tenant may not be charged a rate for utility service that exceeds the rate paid by the landlord.

Prior to the Commission's receipt of the request for a declaratory ruling, it came to Staff's attention that there appeared to be a discrepancy between the rates paid by landlords and the rates paid by other residential ratepayers, for residential electric and natural gas usage. Staff had decided the best course of action was to open a rulemaking, rather than address the issue on a utility-by-utility basis.

Staff has sent a letter (See Attachment A.) advising interested parties that a rulemaking to address the applicability of residential rates for electric and natural gas service to multi-family buildings served by master meters will be opened. PUC Staff will host and has scheduled two informal workshops to gather information and discuss this matter with interested parties before filing a public notice of rulemaking with the office of the Oregon Secretary of State.

Initially, after Staff notified PPL and HCA of the impending rulemaking, the Petitioners were willing to send to the Commission a request that this petition be held in abeyance until the rulemaking was complete because the final result may effectively deal with some or all of the issues raised by the Petitioners. However, the Petitioners advised Staff's counsel that the tenants of Myra Lynne have filed a suit in Jackson County Circuit Court in which they raise the same legal issue PacifiCorp and HCA raised in their request for a declaratory ruling from the Commission. Staff's attorneys and I believe that the Commission should approve the request for a declaratory ruling, so that the Commission can decide the legal issue first.

Staff's attorneys advised Staff that should the Commission approve the request, the court is likely to wait for the Commission's ruling. When both an agency and a court have jurisdiction to decide the same issue and the agency has expertise, courts typically defer to the agency under a doctrine known as primary jurisdiction. If the court follows that doctrine, then the Commission will be able to decide the issue first.

Staff's attorneys have advised Staff that the rulemaking and the investigation should not interfere with each other. Although they will no doubt run parallel courses, the legal issues raised in the petition should not affect the outcome of the rulemaking.

PPL/HCA DR 38
April 16, 2007
Page 3

PROPOSED COMMISSION MOTION:

Approve PPL and HCA's joint petition for a declaratory ruling, Docket No. DR 38, and open an investigation.

April 5, 2007

The purpose of this letter is to advise you that the Public Utility Commission (PUC) will open a rulemaking to address the applicability of residential rates for electric and natural gas service to multi-family buildings served by master meters. PUC Staff will host two informal workshops to gather information and discuss this matter with interested parties before filing a public notice of rulemaking with the office of the Oregon Secretary of State.

It has recently come to Staff's attention that there may be some discrepancy between the rates paid by landlords, and rates paid by other residential ratepayers, for residential usage. Attached to this letter is Staff's list of issues for consideration and discussion at the first workshop. In addition to the content of the rules, this rulemaking must address the estimated fiscal impact created by adoption of the rules, so this issue will be included on the agenda. Staff anticipates that parties will have additional topics that also should be included on the agenda. To make the best use of the workshop participants' time and to facilitate discussion, I invite you to send your list of comments or topics to me by May 1, 2007 so that I may forward it to the others who have received this letter, and add it to the agenda for the first workshop.

Staff's proposed schedule is as follows:

Tuesday, May 8, 2007 at 1:00 PM – 1st informal workshop, Small Hearing Room - 2nd Floor

Tuesday, May 22, 2007 at 1:00 PM -- 2nd informal workshop, Main Hearing Room - 1st Floor

June 15, 2007 -- Notice of rulemaking and proposed rules sent to Secretary of State

July 1, 2007 -- Public notice published in the Secretary of State's Bulletin

Tuesday, July 10, 2007 at 1:00 PM – Workshop, Small Hearing Room - 2nd Floor

Tuesday, July 24, 2007 at 1:00 PM – Workshop, Main Hearing Room - 1st Floor

Tuesday, August 7, 2007 at 1:00 PM -- Public Hearing, Small Hearing Room – 2nd Floor

Tuesday, August 14, 2007 at 5:00 PM-- Deadline for final comments

Commission decision by order

April 5, 2007
Page 2

The address for the PUC Hearing Rooms is:
550 Capitol St NE Suite 215
Salem, OR 97308-2148

If you have any questions, please don't hesitate to contact me.

Deborah Garcia
Utility Analyst
Phone 503.378.6688
deborah.garcia@state.or.us

Enc

Staff Topics for 1st Informal Workshop

1. Should energy utilities charge residential rates to master metered buildings where the primary purpose of the usage is residential? (Staff does not propose to amend residential service definitions to include transient service such as hotels, RV parks, etc.)
 - a. For electric service – How should the rules apply to sites established prior to the 1977 change in Building Code requirements that specify a separate meter for each unit?
 - b. For natural gas service – How should the rules apply to established sites and new sites?
 - c. For natural gas service – Should natural gas utility tariffs require sub metering at new sites?

Discussion Points:

- At the time of ratemaking, the Commission intent is that all residential usage be charged at residential rates.
- A change in landlord tenant law (ORS 90.536) prohibits a landlord from charging an energy rate to a tenant that exceeds the rate paid by the landlord.

2. Should energy utility tariffs be required to state (in accordance with ORS 90.536) that landlords may not charge tenants a rate that exceeds the utility residential rate or add other charges, for costs a landlord may incur for maintenance or billing, to a tenant's energy bill? (This question is not intended to cover a landlord's right to establish various components of the rent it charges a tenant.)

Discussion Points:

- The definition of "Public Utility" found in ORS 757.005(1)(a).
- A landlord has a choice of incurring a one time cost to establish facilities designed for energy service to be directly delivered by the utility, or recurring costs associated with maintenance and billing.

3. Should energy utility tariffs be amended to establish a per unit monthly charge, consisting of the utility's monthly residential charge, less the incremental cost associated with serving an individual meter such as maintenance, meter reading, and billing?

Discussion Point:

- A utility's fixed costs are collected through monthly customer charges as well as through a portion of usage rates.