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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 349

In the Matter of a Rulemaking to Amend)	
OAR Chapter 860, Divisions 021-028 and)	
030-036 to Clarify What Rules Apply to)	ORDER
Associations and Cooperatives that Provide)	
Electric, Gas, Steam Heat, Water, and)	
Telecommunications Services.)	
)	

DISPOSITION: RULES ADOPTED AS AMENDED

On April 24, 1998, this docket was opened at the request of Commission Staff (Staff). The purpose of the docket was to propose changes to OAR Chapter 860 Divisions 021-028 and 030-036 to clarify what rules apply to associations and cooperatives that provide electric, gas, steam heat, water, and telecommunications services. At its May 19, 1998, public meeting the Commission officially opened the rulemaking.

A Notice of Proposed Rulemaking was filed with the Secretary of State on May 26, 1998. Notice was published in the July 1998 *Oregon Bulletin*. Notice was also sent to the list of persons interested in such matters. A hearing was set for August 12, 1998, and was held before Ruth Crowley, Administrative Law Judge (ALJ).

Prior to the hearing, the Commission received comments from Beaver Creek Cooperative Telephone Company (Beaver Creek) and the Oregon Telecommunications Association (OTA).

At the hearing, participants conferred with Staff and agreed that OTA would submit proposed rules by August 21, 1998. The proposed rules would group all the rules pertaining to cooperatives in Division 034 of Chapter 860. A workshop was to be convened on August 25, 1998. Participants were to report to the ALJ on any progress toward negotiating a rule. By letter of October 21, 1998, Staff memorialized the changes in its proposed rules that resulted from the workshop. OTA and Beaver Creek filed comments.

Notice of the proposed rulemaking was again filed with the Secretary of State on December 15, 1998, and published in the *Oregon Bulletin* on January 1, 1999. Notice was also sent to the Commission's list of interested persons. Beaver Creek requested a hearing, and a hearing was set for February 18, 1999, then reset to March 17, 1999. The Commission received comments from Tumalo Rim Water Association and OTA. At hearing, Staff identified eight additional rules that needed to be amended for purposes of cross reference.

Notice was refiled with the Secretary of State on April 8, 1999, with comments due May 17, 1999, and a hearing set for May 26, 1999. Notice was published in the May 1, 1999, *Oregon Bulletin*. On May 14, 1999, Staff filed a letter with proposed revisions to the current proposed rules, and a summary of Docket AR 349 with the full text of revisions to date.

At the May 26, 1999, hearing, Gary Bauer appeared for OTA and Joseph McNaught, Assistant Attorney General, appeared for Staff. Mr. Bauer commented that although OTA disagrees with the view that the Commission can regulate rates on through services and require reports from cooperatively owned telecommunications companies, OTA was grateful to Staff for its willingness to listen to OTA's position and modify its position in part.

Current Proposal

The current proposal revises the Commission's rules to:

Use clear language and consistent terms.

Remove cross references to other rules.

Define cooperatives and explicitly identify which divisions do not apply to them.

Move the rules for telecommunications cooperatives from Divisions 021-028 to a single division, Division 034.

Clarify which rules apply only to a telecommunications cooperative that charges joint rates or provides through services.

Permit easy identification of rules that would be affected by a decision in the telecommunications cooperatives' appeal of Order No. 98-060 (AR 330 and AR 331).

Disputed Issues

Tumalo Rim Water Association takes issue with proposed OAR 860-036-0010(4), which revises the rule to define a cooperative corporation, unincorporated association, or homeowner association as an entity "that provides water service solely to its membership." Tumalo asks the Commission to remove "solely" from the proposed definition, so that it can provide service to a small number of nonmembers.

Staff believes that deleting "solely" would significantly alter the definition, because it would allow an entity to provide water to an unlimited number of nonmembers. ORS 757.005(1)(a)(A) does not say "some" members of the public; it implies "any" members. Therefore, Staff believes that "solely" is the appropriate modifier.

OTA filed comments on July 21, 1998, and February 2, 1999. Some of the earlier comments have been obviated by changes to the proposed rules as a result of workshops and consultations among participants. The same is true for *Beaver Creek's* comments, filed July 21, 1998; November 6, 1998; January 13, 1999; and March 16, 1999. OTA and Beaver Creek also ask that their comments in AR 330 and AR 331 be incorporated into the current docket. Beaver Creek also asks that its brief to the Court of Appeals in its appeal of Order No. 98-060 be considered by the Commission. Essentially, OTA and Beaver Creek question the extent of the Commission's jurisdiction over cooperatives.

Staff responds that this position raises two questions. First, does the appeal of Order No. 98-060 (AR 330 and AR 331) have any effect on this rulemaking? Staff points out that if the court finds in favor of the cooperatives, the Commission will have to open a rulemaking to revise rules related to telecommunications cooperatives, such as OAR 860-027-0070 (2). The participants wrote the telecommunications revisions to permit easy identification of rules that would be affected by a court opinion adverse to the Commission.

Second, Staff asks what effect SB 1085 might have on this docket.

SB 1085 was introduced to specify the Commission's "authority to regulate telecommunications joint rates and through service." Staff notes that the current proposal isolates the rules for telecommunications cooperatives from the rules for large and small telecommunications utilities. The current proposal also adds definitions that could readily be revised to reflect the passage of SB 1085. The proposed changes would allow the Commission to revise the rules for "Type 2" cooperatives on a timely basis.

Conclusions

The Commission has considered all participants' comments as well as OTA's and Beaver Creek's comments in AR 330 and AR 331 and Beaver Creek's comments in its brief to the Court of Appeals. The issues that were decided in AR 330 and AR 331, and that are currently before the Court of Appeals, will not be addressed here. The Commission has not

changed its position on its jurisdiction, as reflected in our decision in Order No. 98-060.

We agree with Staff's position on the water issue and the telecommunications issues in this docket. If the Court of Appeals or the Legislature acts to alter our understanding of our jurisdiction over cooperatives, the new rules allow us to isolate and change affected rules easily. The rules as proposed meet the goals of clarity and consistency that Staff set for itself. They give easy access to and oversight over the rules that apply only to telecommunications cooperatives, and the two-tiered approach (Types 1 and 2) to telecommunications cooperatives differentiates usefully between types of cooperative. The rules should be approved as filed on October 21, 1998, incorporating the revisions Staff circulated on October 30, 1998, December 4, 1998, March 17, 1999, and May 14, 1999. Appendix A is the version of the rules as filed, with all of Staff's revisions. It is incorporated into this order by reference.

ORDER

IT IS ORDERED that the rules filed on October 21, 1998, and revised on October 30, 1998, December 4, 1998, March 17, 1999, and May 14, 1999, attached to this order as Appendix A and incorporated herein by reference, be adopted.

Made, entered, and effective .

BY THE COMMISSION:

Vikie Bailey-Goggins

Commission Secretary

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.

860-021-0000

Exemptions

The rules contained in this ~~d~~Division do not apply to:

- (1) **Unincorporated associations and cooperative corporations.**
- (2) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).
- ~~(2)~~(3) Water utilities (see Division 036 requirements).

Stat. Auth.: ORS Ch. 183, 756, ~~757~~ & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040, ~~&~~ 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185)~~;~~; PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442)

860-022-0000

Exemptions

The rules contained in this ~~d~~Division do not apply to:

(1) Unincorporated associations and cooperative corporations.

(2) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).

~~(2)~~(3) Water utilities (see Division 036 requirements).

Stat. Auth.: ORS Ch. 183, 756, ~~757~~ & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442)

860-022-0040

Relating to City Fees, Taxes, and Other Assessments for Electric, Gas, and Steam, ~~and Water~~ Utilities

(1) The aggregate amount of all business or occupation taxes, license, franchise or operating permit fees, or other similar exactions imposed upon gas, electric, ~~or steam, or water~~ utilities by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, which does not exceed 3 percent for gas utilities or 3.5 percent for electric, ~~and steam, and water~~ utilities, applied to gross revenues as defined herein, shall be allowed as operating expenses of such utilities for rate-making purposes and shall not be itemized or billed separately.

(2) Except as otherwise provided herein, "gross revenues" means revenues received from utility operations within the city less related net uncollectibles. Gross revenues of gas, electric, and steam utilities shall include revenues from the use, rental, or lease of the utility's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

(3) Permit fees or similar charges for street opening, installations, construction, and the like to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in exercising its police powers, and the value of any utility services or use of facilities provided on November 6, 1967, to a city without charge, shall not be considered in computing the percentage levels herein set forth. Any such services may be continued within the same category or type of use. The value of any additional category of utility service or use of facilities provided after November 6, 1967, to a city without charge shall be considered in computing the percentage levels herein set forth.

(4) This rule shall not affect franchises existing on November 6, 1967, granted by a city. Payments made or value of service rendered by a utility under such franchises shall not be itemized or billed separately. When compensation different from the percentage levels in section (1) of this rule is specified in a franchise existing on November 6, 1967, such compensation shall continue to be treated by the affected utility as an operating expense during the balance of the term of such franchise. Any tax, fee, or other exaction set forth in section (1) of this rule, unilaterally imposed or increased by any city during the unexpired term of a franchise existing on November 6, 1967, and containing a provision for compensation for use and occupancy of streets and public ways, shall be charged pro rata to local users as herein provided.

(5) Except as provided in section (4) of this rule, to the extent any city tax, fee, or other exaction referred to in section (1) of this rule exceeds the percentage levels allowable as operating expenses in section (1) of this rule, such excess amount shall be charged pro rata to utility customers within said city and shall be separately stated on the regular billings to such customers.

(6) The percentage levels in section (1) of this rule may be changed if the Commission determines after such notice and hearing, as required by law, that fair and reasonable compensation to a city or all cities should be fixed at a different level or that by law or the particular circumstances involved a different level should be established.

Stat. Auth.: ORS Ch. 183, ~~& 756-**& 767**~~

Stat. Implemented: ORS 756.040

Hist.: **Order No. 43223; Order No. 43377; Order No. 43946;** PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 3-1990, f. & cert. ef. 4-6-90 (Order No. 90-417); PUC 14-1990, f. & cert. ef. 7-11-90 (Order No. 90-1031)

860-023-0000

Exemptions

The rules contained in this ~~d~~Division do not apply to:

- (1) **Unincorporated associations and cooperative corporations.**
- (2) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).
- ~~(2)~~(3) Water utilities (see Division 036 requirements).

Stat. Auth.: ORS Ch. 183, 756, **757** & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185)~~;~~; PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442)

860-024-0000

Exemptions

The rules contained in this ~~d~~Division do not apply to:

- (1) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).
- (2) **Unincorporated associations and cooperative corporations which only provide telecommunications services (see Division 034 requirements).**
- ~~(2)~~(3) Water utilities (see Division 036 requirements).

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185)~~;~~; PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442)

860-025-0000

Exemptions

The rules contained in this ~~d~~Division do not apply to:

- (1) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).
- (2) **Unincorporated associations and cooperative corporations that only provide telecommunications services (see Division 034 requirements).**

~~(2)~~(3) Water utilities (see Division 036 requirements).

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442)

860-026-0000

Exemptions

The rules contained in this ~~d~~**D**ivision do not apply to:

(1) Unincorporated associations and cooperative corporations.

(2) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).

~~(2)~~(3) Water utilities (see Division 036 requirements).

Stat. Auth.: ORS Ch. 183, 756, ~~756~~ **757** & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045

Hist.: PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442)

860-027-0000

Exemptions

~~(1)~~The rules contained in this ~~d~~**D**ivision do not apply to:

~~(a)~~(1) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).

~~(b)~~(2) ~~Nonfully regulated w~~Water utilities (see Division 036 requirements).

~~(c) Fully regulated water utilities, except for OAR 860-027-0030 through 860-027-0041 (see Division 036 requirements):~~

~~(2) Except for OAR 860-027-0050 and 860-027-0070, these rules do not apply to cooperative corporations organized under ORS Chapter 62.~~

(3) Unincorporated associations and cooperative corporations.

Stat. Auth.: ORS Ch. 183, 756, ~~756~~ **757** & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 4-1995, f. & ef. 6-19-95 (Order No. 95-516); PUC 2-1996, f. & ef. 4-18-96 (Order No. 96-102); PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442)

860-027-0070

~~Electric, Telephone~~ Telecommunications, Gas, and Steam Heat Utilities

(1) Annual Reports will be submitted by electric, gas, water, and steam heat utilities. The report shall be submitted on or before April 1, using the most current forms approved by the Commission.

(2) Annual Reports will be submitted by telecommunications utilities ~~and unincorporated associations and cooperative corporations who are subject to ORS 759.225~~. The report Form O for the previous calendar year shall be submitted on or before April 1, using the most current forms approved by the Commission. The intrastate report Form I for the previous calendar year shall be submitted on or before October 31 using the most current forms approved by the Commission.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS **756.040**, 756.105, 757.120, 757.125, 757.135 & 759.225

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1985, f. & ef. 6-25-85 (Order No. 85-574); PUC 4-1995, f. & ef. 6-19-95 (Order No. 95-516); PUC 13-1997, f. & cert. ef. 11-12-97 (Order No. 97-434); PUC 2-1998, f. & cert. ef. 2-24-98 (Order No. 98-060)

860-028-0000

Exemptions

The rules contained in this ~~d~~Division do not apply to:

(1) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).

(2) Water utilities, **cooperatives, and associations** (see OAR 860-036-0760 requirements).

(3) Unincorporated associations and cooperative corporations who only provide telecommunications services (see requirements in OARs 860-034-0570 and 860-034-0580).

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 654.715, 756.040, 756.105, 757.035, 759.030, 759.040 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442)

860-028-0005

Reports

(1) As used in this rule:

(a) "Serious injury to person" means, in the case of an employee, an injury which results in hospitalization. In the case of a nonemployee, "serious injury" means any contact with an energized high-voltage line, or any accident which results in hospitalization. Treatment in an emergency room is not hospitalization.

(b) "Serious injury to property" means:

(A) Damage to utility or nonutility property exceeding \$25,000 (\$5,000 in the case of gas utilities); or

(B) Damage to property which causes a loss of service to over 500 utility customers (50 customers in the case of gas utilities) for over two hours (five hours for electric utilities serving less than 15,000 customers); however, "serious injury to property" does not include damage which is restricted to a single feeder line and results in an electric outage of less than four hours.

(c) "Utility" means every person, municipality, public utility, or telecommunications utility as defined in ORS 756.010 **except telecommunications utilities, cooperatives, and associations that are subject to Division 034 or Division 036 requirements**, their agents, lessees, or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership, or control of gas pipelines; or telegraph, telephone, signal, or power lines and serving 20 customers or more within ~~this state~~ **Oregon**.

(2) Except as provided in (5), every utility shall give immediate notice by telephone, **by** telegraph, or personally to the Commission, of accidents attended by loss of life or limb, or serious injury to person or property, occurring in Oregon upon the premises of or directly or indirectly arising from or connected with the maintenance or operation of a utility.

(3) Except as provided in (5), accidents attended by loss of life or limb, or serious injury to person or property, occurring in Oregon upon the premises of or directly or indirectly arising from or connected with the maintenance or operation of a utility shall, in addition to the immediate notice given by telegraph, **by** telephone, or personally to the Commission, be reported in writing to the Commission within 20 days of the occurrence. In the case of injuries to employees, a copy of the accident report form that is submitted to Oregon OSHA, Department of Insurance and Finance, for reporting accident injuries, will normally suffice for a written report. In the case of gas utilities, copies of accident or leak reports submitted under 49 CFR Part 191 will normally suffice.

(4) An accident report filed by a utility in accordance with ORS 654.715 cannot be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.

(5) A Peoples Utility District (PUD) is exempt from this rule if the PUD agrees, by signing an agreement, to comply voluntarily with the filing requirements set forth in (2) and (3).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Public Utility Commission.]

Stat. Auth.: ORS Ch. 183, 654, 756, 757 & 759

Stats. Implemented: ORS 654.715, 756.040, 756.105, 757.035, 759.030, 759.040 & 759.045

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 21-1985, f. & ef. 11-25-85 (Order No. 85-1130); ~~PUC~~ **PUC** 12-1989, f. & cert. ef. 8-11-89 (Order No. 89-946); PUC 4-1992, f. & ef. 2-14-92 (Order No. 92-234); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016)

860-030-0000

Exemptions

The rules contained in this Division do not apply to unincorporated associations and cooperative corporations.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stat. Implemented: ORS 756.040

Hist.: NEW

860-031-0001

Applicability

The rules contained in this Division apply to all pipeline operators identified in ORS 757.039.

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

Stats. Implemented: ORS 756.040 & 759.039

Hist.: NEW

860-032-0005

Application for New or Amended Certificate of Authority

- (1) No person shall provide telecommunications services within the State of Oregon except as authorized in a certificate of authority from the Commission.
- (2) Any person intending to provide telecommunications services in Oregon shall file an application, on forms provided by the Commission, for a new or amended certificate of authority to provide telecommunications services. The application may include a petition to exempt services from regulation under OAR 860-032-0025, or to price list services under OAR 860-032-0035.
- (3) An application shall contain:
 - (a) The name, address, and telephone number of the applicant;
 - (b) A description of the service the applicant seeks to provide and the territory where the service is to be offered. An application to provide local exchange services shall include a map describing the local exchange service boundaries;
 - (c) The names and addresses of affiliates of the applicant, as defined in ORS 759.010, which are certified to provide or are actually providing telecommunications services in Oregon; **and**
 - (d) A request for classification as a public utility or competitive provider. The request shall set forth the information required under OAR 860-032-0010 to classify the provider. Each applicant shall designate whether it is proposing to provide local exchange, shared, or toll service.
- (4) If an application, in any material respect, is incomplete, inaccurate, false, or misleading, the Commission shall reject the application.
- (5) Within 30 days of filing, the Commission shall serve notice of the application on all providers and all persons on the Commission's telecommunications mailing list.
- (6)(a) Within 20 days of the date of service under section (5) of this rule, any affected provider or other interested person may file a protest to an application. The protest shall set forth the grounds for the protest. Failure to protest within the time limit shall be deemed consent to the application. Except as provided in subsection (7)(b) of this rule, the Commission may require a person filing a protest to show that it is affected by the application or that its appearance and participation will not unreasonably broaden the issues or burden the record.
- (b) The applicant shall serve protestants with copies of amendments and additional information submitted in the course of the application process. If an applicant intends to broaden the authority requested during the application process, it shall follow the procedures set forth in sections (2) through (6) of this rule. However, it may narrow its request by serving its amendment on each protestant.
- (7)(a) Unless a hearing is held on the Commission's own motion or under subsection (b) of this section, the Commission may consider the protests and grant or deny the application without hearing. If an application is denied in whole or in part, without hearing, the Commission shall set forth in writing the reasons for the denial. Within 30 days of the date of service of the denial, the applicant may, in writing, request a hearing.
- (b) If the application is to provide local exchange service, other than shared services within the service territory of a public utility, and the utility protests the application, the Commission shall hold a hearing on the application.
- (8) The Commission may find an application to provide local exchange service other than shared services is in the public interest, and may grant the application, if:

- (a) The public utility in whose service territory the applicant seeks to provide local exchange service consents or does not protest; or
- (b) After hearing, the Commission finds the public utility in whose service territory the applicant seeks to provide local exchange service is unable to provide local exchange service. Failure by the public utility to provide reasonable and adequate local exchange service after having been ordered to do so by the Commission shall constitute inability to provide service.
- (9) A certificate to provide telecommunications services shall be subject to the following conditions:
- (a) The certificate holder shall provide only the telecommunications services authorized in the certificate;
- (b) The certificate holder shall not abandon service except as authorized under the Commission's rules;
- (c) For public utilities, the records and books of the certificate holder are open to inspection by the Commission, and shall be maintained according to the Commission's rules;
- (d) For competitive providers, the books and records of the certificate holder shall be open to inspection by the Commission to the extent necessary to verify information required of the certificate holder by the Commission's rules. The books and records shall be maintained according to generally accepted accounting principles and the applicable rules of the Commission;
- (e) The certificate holder agrees to pay all access charges and subsidies imposed pursuant to the Commission's rules;
- (f) The certificate holder involved in the provision of an operator service shall:
- (A) Notify all callers at the beginning of each call of the telecommunications provider's name; however, a local exchange telephone company providing operator services for another local exchange telephone company may "brand" the call by identifying the other local exchange company.
- (B) Disclose rate and service information to the caller when requested;
- (C) Maintain a current list of emergency numbers for each service territory it serves;
- (D) Transfer an emergency call to the appropriate emergency number when requested, free of charge;
- (E) Transfer a call to, or instruct the caller how to reach, the originating local exchange company's operator service upon request of the caller, free of charge;
- (F) Not transfer a call to another operator service provider without the caller's notification and consent;
- (G) Not bill or collect for calls not completed to the caller's destination; **and**
- (H) Not screen calls and prevent or "block" the completion of calls which would allow the caller to reach an operator service company different from the certificate holder. In addition, the certificate holder shall, through contract provisions with its call aggregator clients, prohibit the blocking of a caller's access to his or her operator service company of choice. A certificate holder may apply for a waiver from the Commission if necessary to prevent fraudulent use of its services.
- (g) Telecommunications providers who enter into operator service contract or arrangements with call aggregators shall include in those contracts or arrangements provisions for public notification as follows:
- (A) A sticker or name plate identifying the name of the certificate holder shall be attached to each telephone available to the public;
- (B) A brochure, pamphlet, or other notice shall be available in the immediate vicinity of the telephone giving the name

of the operator service provider, stating that rate quotes are available upon request, listing a toll-free telephone number for customer inquiry, and giving instructions on how the caller may access other operator service providers.

(h) Competitive providers may contract with local telephone utilities for customer billing and collection under the following conditions:

(A) The telephone utility, in billing for the competitive provider, shall include on the bill the name of a company with the information and authority to provide information and resolve disputes about billing entries, a toll-free number to reach that company, and details of the services and charges billed;

(B) The telephone utility shall not deny telephone service to customers for failure to pay charges for competitive provider services or unregulated utility services.

(i) The certificate holder agrees to comply with the Commission's rules applicable to the certificate holder; and

(j) A public utility shall meet the service standards for regulated services set forth in the Commission's rules.

(10) Cooperative corporations organized under ORS Chapter 62 are not subject to ORS 759.015, et seq. or Division ~~032~~ of the Commission's rules except OARs ~~860-027-0070~~ **860-034-0750** and 860-032-0100. Nothing in Division ~~032~~ shall have any effect on the integrity of a cooperative's territorial allocation granted under ORS 758.400 et seq.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.025, 759.225 & 759.690

Hist.: PUC 27-1985 (Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1989 (Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 23-1990, f. & cert. ef. 12-31-90 (Order No. 90-1918); PUC 9-1991, f. & ef. 7-16-91 (Order No. 91-854); PUC 13-1997, f. & cert. ef. 11-12-97 (Order No. 97-434); PUC 2-1998, f. & cert. ef. 2-24-98 (Order No. 98-060); PUC 10-1998, f. & ef. 4-28-98 (Order No. 98-170)

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

860-032-0055

Regulation of Interexchange Telecommunications Utilities

(1) This rule applies to telecommunications utilities who only provide service between exchanges.

(2) Except upon order of the Commission, a telecommunications utility under section (1) of this rule need not comply with rules relating to telecommunications utilities or other requirements of ORS Chapters 757, 758, and 759, except:

(a) The restrictions on abandonment of service under OAR 860-032-0020;

(b) The service standards applicable to interexchange carriers under OARs 860-023-0055(10) **and 860-034-0390**;

(c) The prohibition against, directly or indirectly, by any device, charging, demanding, collecting, or receiving from any person a greater or lesser compensation for any service rendered or to be rendered by it than it charges, demands, collects, or receives from any other person for a like and contemporaneous service under substantially similar circumstances; ~~and~~

(d) The prohibition against making or giving undue or unreasonable preference or advantage to any particular person or locality, or subjecting any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect; **and**

(e) A telecommunications utility providing service under this rule:

(A) May charge no more than maximum rates filed with and approved by the Commission on the effective date of this rule. Subject to a maximum rate, rates for message toll service are eligible to be price listed under OAR 860-032-0035; and

(B) May petition the Commission to change the maximum allowable toll rate schedules. If ordered by the Commission, the petition to change the maximum rate shall be subject to hearing.

(3) A telecommunications utility providing service under this rule also may provide services which the Commission finds are competitive or subject to competition under OAR 860-032-0010 or OAR 860-032-0025.

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: ORS 756.040, 759.195 & 759.275

Hist.: PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1998, f. & ef. 4-28-98 (Order No. 98-170)

860-032-0060

Reporting Requirements

(1) General:

(a) Telecommunications utilities shall maintain books and records in accordance with the Uniform System of Accounts (USOA) as provided in OARs 860-027-0050 and ~~860-034-0530~~ **860-034-0395**. Competitive providers shall maintain books and records in accordance with the USOA or Generally Accepted Accounting Principles (GAAP); and

(b) The books and records of all telecommunications providers shall be open to the Commission and subject to audit to the extent needed to verify required reports.

(2) Annual report – form and filing date:

(a) Competitive providers – On forms provided by the Commission, each competitive provider, including shared service providers, shall submit an annual report before March 1, containing data required by section (3) of this rule relating to its operations for the preceding calendar year. Competitive providers need not file any other reports with the Commission, except on special order.

(b) Telecommunications utilities – On forms provided by the Commission, each telecommunications utility shall submit an annual report before March 1, containing data required by section (3) of this rule, related to its toll operations for the preceding calendar year. Data must be submitted only for the items designated in subsections (3)(a), (3)(b), (3)(d), and (3)(e) of this rule. Reports required by this rule are in addition to and not in lieu of; reports otherwise required by the Commission for telecommunications utilities.

(3) Annual report – contents:

(a) Business name and address, including:

(A) Name, address, and position of the person in Oregon designated by the telecommunications provider as contact for the Commission staff; and

(B) Name, address, and position of the person in Oregon designated by the telecommunications provider as contact for the general public;

(b) A description of toll services being provided in Oregon, including a list of areas actually served and a designation of the new service areas added during the year;

- (c) Interests, as defined by ORS 759.010, which are affiliated with the telecommunications provider;
- (d) Originating conversation minutes tabulated for each calendar quarter and totaled for the year;
- (e) Percentage of originating minutes which is intrastate and percentage which is interstate. No such separation shall be required of competitive providers whose sole responsibility is to provide building tenants direct access to local exchange carriers;
- (f) In reports from shared service providers, the name of lines or commercial trunks used to provide the shared services. The number of lines or trunks shall be tabulated by calendar quarter; **and**
- (g) If the Commission receives a public records request for materials submitted pursuant to subsections (3)(d), (3)(e), and (3)(f) of this rule, the Commission shall assert that the materials are trade secrets and, therefore, exempt from disclosure. The material that utilities and competitive providers provide shall be submitted in a separate envelope, marked "EXEMPT FROM PUBLIC DISCLOSURE AS TRADE SECRETS." Access to this material shall be limited to Commissioners, their Counsel, and Commission employees who are assigned to compile or analyze the information. The materials shall be segregated and maintained in a locked file.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Public Utility Commission.]

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 756.105, 759.120, 759.125 & 759.130

Hist.: PUC 17-1988, f. & cert. ef. 11-15-88 (Order No. 88-1306); PUC 12-1997, f. & ef. 10-30-97 (Order No. 97-413); PUC 10-1998, f. & ef. 4-28-98 (Order No. 98-170)

860-033-0001

Applicability

The rules contained in this Division apply to all local exchange telecommunications service providers, including telecommunications utilities, unincorporated associations, and cooperative corporations.

Stat. Auth.: ORS Ch. 183, 756 & 759 & Ch. 290, OR Laws 1987

Stats. Implemented: ORS 756.040 and Ch. 290, OR Laws 1987

Hist.: NEW

DIVISION 034

SMALL TELECOMMUNICATIONS UTILITIES

AND COOPERATIVES

860-034-0010

Scope of the Rules

(1) The adoption of these rules shall not preclude the Commission from altering or amending them in whole or in part or from requiring any other or additional service, equipment, facility, or standard upon a complaint, Commission motion, or utility application. Furthermore, these rules shall not in any way relieve any utility from any of its duties under Oregon law.

(2) The rules contained in this ~~d~~Division apply exclusively to telecommunications utilities partially exempt from regulation under ORS 759.040, except as provided in section (4) of this rule.

(3) As used in this Division, except as provided in section (4) of this rule:

(a) "Telecommunications utility" has the meaning given the term in ORS 759.005~~;~~.

(b) "Utility" means a telecommunications utility partially exempt from regulation under ORS 759.040~~;~~.

(c) "Telecommunications cooperative" or "Type 1 cooperative" means an unincorporated association or cooperative corporation that provides telecommunications services; and

(d) "Type 2 cooperative" means an unincorporated association or cooperative corporation that charges joint rates or provides through services as defined in OAR 860-034-0015.

~~(4) As used in OARs 860-034-0600 through 860-034-0670, "utility" has the meaning given that term in subsection (3)(b) of this rule and also includes, as provided in ORS 759.225, any unincorporated association or cooperative corporation providing intrastate telecommunications services.~~

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, ~~& 759.045,~~ **759.220 & 759.225**

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1994, f. & ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-02950015

Through Service

"Through service" means an Oregon intrastate telecommunications service the provision of which involves the facilities, equipment, or services of two or more telecommunications utilities and/or cooperatives. Examples of "through services" may include, but are not limited to, intrastate toll/access service, extended area service, and E 9-1-1 service. Whether a service is a "through service" is determined on a case-by-case basis.

Stat. Authority: ORS Ch. 183 & 759

Stats. Implemented: ORS **756.040 &** 759.220

Hist.: PUC 3-1998, f. & cert. ef. 2-24-98 (Order No. 98-060)

Utilities, General

GENERAL

860-034-0295

Renumbered as 860-034-0015

Utility Rates

860-034-0300

Tariffs of Utilities

(1) Utilities not subject to ORS 759.175 shall, upon the Commission's request, provide copies of any schedules showing rates, tolls, and charges, including all rules and regulations that in any manner affect the rates charged or to be charged for any service.

(2) Utilities subject to ORS 759.175 shall file tariffs in accordance with the following provisions:

(a) Form and style of tariffs:

(A) All tariffs must be in book, sheet, or pamphlet form. Loose leaf plan may be used so that changes can be made by reprinting and inserting a single leaf;

(B) The initial tariff filed by each utility shall be designated as PUC Oregon No. 1, and thereafter as other tariffs are filed, they shall be designated with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff shall be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariff sheets shall be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.; **and**

(C) The title page should be uniform. Rates, rules, and regulations shall be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used. Blank forms will be furnished upon request;

(b) Size of tariffs and copies required:

(A) Tariffs and supplements thereto must be typewritten or printed on 8-1/2 x 11 inch paper; and

(B) The original and four conformed copies of each tariff, rate schedule, or revision or supplement shall be filed with the Commission. The advice letter accompanying the tariff sheets shall bear the signature of the issuing officer. The tariff sheets do not require a signature;

(c) Tariffs must explicitly state the rates and charges for each class of service rendered, designating the area or district to which they apply;

(d) The utility's rules and regulations that in any manner affect the rates charged or to be charged or that define the extent or character of the service to be given shall be included with each tariff;

(e) Changes in tariffs may be made by filing an entirely new tariff or by filing revised sheets which shall refer to the tariff sheets on file. Additions to the tariff on file may be made by filing additional sheets;

(f) Each utility filing tariffs or schedules changing existing tariffs or schedules shall submit in the advice letter or other document the following information:

(A) A statement plainly indicating the increase, decrease, or other change thereby made in existing rates, charges, tolls, or rules and regulations;

(B) A statement setting forth the number of customers affected by the proposed change and the resulting change in annual revenue; **and**

(C) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed change;

(g) All tariff changes shall be made applicable with service rendered on and after the effective date of the changes, unless the Commission by order provides otherwise. As used in this rule, "service rendered" means units of toll calls connected, basic service provided, or likewise as the context requires;

(h) Utilities entering into special contracts with certain customers prescribing and providing rates, services, and practices not covered by or permitted in the general tariffs, schedules, and rules filed by such utilities are in legal effect tariffs and are subject to supervision, regulation, and control to the extent not exempted under ORS 759.040; and

(i) All special agreements designating service to be furnished at rates other than those shown in tariffs now on file in the Commission's office shall be classified as rate schedules. A true and certified copy shall be filed pursuant to requirements of this Division.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS **756.040 &** 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0310

Announcement of Rate Increases by Utilities

(1) A utility which increases any rate for intrastate telecommunications services shall notify its affected customers at least 45 days before the proposed effective date of the increase. A copy of such notification shall at the same time be provided to the Commission.

(2) The utility shall notify its customers by:

(a) Inserting an announcement in the utility's regular billing to its customers; or

(b) Mailing an announcement to each customer.

(3) The announcement shall contain the following information:

(a) The list of services subject to increase, current and proposed rates, and amount and percentage of increase for each service;

(b) The reasons for the proposed rate increase;

(c) The effective date of the proposed rate increase; and

(d) The following statement:

"Customers may petition the Public Utility Commission of Oregon to investigate the rate increase. The Commission will investigate the rate increase if it receives petitions signed by customers (10 percent of customers or 500, whichever is the lesser), on or before (ten days before the proposed effective date). If the Commission does not receive sufficient petitions by (ten days before the proposed effective date), the proposed rates will become effective on (the proposed effective date) without Commission review. Petitions should be sent to: Public Utility Commission of Oregon, Consumer Services Division, 550 Capitol Street NE, Salem, Oregon 97310-1380, or call 1-800-522-2404 or TDD 1-800-648-3458. The Company will provide a current copy of the local exchange directory and its service territory map within ten days of a request from any customer."

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS **756.040 &** 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

Service Standards for Utilities

860-034-0390

Telecommunications-Utility Service Standards

Every ~~telecommunications~~ utility shall adhere to the following standards:

(1) Definitions.

(a) "Access ~~L~~line" – Refers to a dial tone line that provides basic exchange services extending from the telecommunications provider's switching equipment to a point of termination at the premises of the telecommunications provider's end user customer.

(b) "Held ~~A~~access ~~L~~line ~~S~~service orders" – Requests for access line service delayed beyond the commitment date due to lack of facilities. Orders requiring the customer to meet specific reasonable prerequisites (e.g., line extension charges) shall be measured from the time the prerequisites have been met.

(c) "Trouble ~~R~~report" – Means a report of a malfunction on existing lines, circuits, or features made to a Local Exchange Carrier (LEC) by or on behalf of that LEC's customer in the LEC's network up to and including the point of demarcation at the customer's location. Trouble found to be caused by conditions on the customer's side of the demarcation point, or by a connecting carrier, shall not be counted. Trouble reports shall also not be counted if the Commission finds that the trouble was caused by factors beyond the ~~telecommunications~~ utility's control.

(d) "Wire ~~C~~center" – Refers to the LEC-owned facility wherein the local exchange cables terminate and are accessible for connection to the switching or call processing equipment. Wire centers also have common language codes assigned to them.

(2) Provisioning.

(a) At the time a request for access line service is taken, a customer shall be given a committed due date of no more than five business days (unless a later date is mutually agreed to). Access line service is a dial tone line that provides basic exchange services from a ~~telecommunications~~ utility's switching equipment to a point of termination at the end user's premises. Access line service installation orders include orders for new or transferred service or additional lines or change orders.

(b) A ~~telecommunications~~ utility shall meet at least 90 percent of commitments for service.

(c) Held Access Line Service Orders. Once a request for service becomes a held order, commitments to fill the order must be made in writing to the customer within 15 business days.

(d) The average number of held access line orders shall not exceed the greater of ~~2~~ two per wire center per month averaged over the ~~telecommunications~~ utility's Oregon service territory, or ~~4~~ four held orders per 1,000 inward orders.

(e) A record of why each order is held shall be maintained, together with the commitment date.

(f) Held orders shall be reported to the Commission upon request, by total number and those held over 30 days past the initial commitment date.

(3) Access to ~~Telecommunications~~ Utility Representatives.

(a) Business Office. Eighty-five percent of calls to each ~~of a telecommunications~~ utility's business office centers shall be answered within 20 seconds each month.

(b) Repair Service. Eighty-five percent of calls to each ~~of a telecommunications~~ utility's repair service centers shall be answered within 20 seconds each month.

(c) No more than 1 percent of calls to each business office and to each repair service center shall encounter a busy signal or other busy indication.

(d) Equivalent measurements to those specified in this paragraph may be used when approved by the Commission.

(4) Repair Commitment and Restoral Times.

(a) A ~~telecommunications~~ utility shall clear at least 95 percent of all reports within 48 hours each month.

(b) A ~~telecommunications~~ utility shall provide each customer making a network trouble report with a commitment time by which the repair will be completed.

(5) Trouble Reports.

(a) Each ~~telecommunications~~ utility shall establish and compute an ongoing 12-month rolling average trouble report rate for each wire center or central office for reports of trouble on the utility side of the network interface.

(b) Each ~~telecommunications~~ utility shall maintain a record of reported trouble. The record of reported trouble shall contain as a minimum:

(A) Telephone number;

(B) Date and time received;

(C) Time cleared;

(D) Type of trouble reported;

(E) Location of trouble; and

(F) Whether or not the present trouble is within 30 days of a previous trouble report.

(c) Records shall be kept in such condition that they can be forwarded to the Commission immediately upon request. All records shall be kept by wire center for a period of one year.

(d) Service shall be maintained by the ~~telecommunications~~ utility so that the rolling 12-month average trouble report rate does not exceed 2 per 100 access lines per wire center.

(6) Dial Tone Speed. Ninety-eight percent of originating average busy hour call attempts shall receive dial tone within 3 seconds.

(7) Toll Operator Answer Time. Ninety percent of toll operator calls shall be answered within 10 seconds (equivalent measuring methods may be used).

(8) Subscriber Lines.

(a) All subscriber lines shall be designed, installed, and maintained with the objective of no more than 8.5 dB (decibel) loss at 1004 HZ (Hertz) from the serving central office to the customer premises network interface.

(b) All subscriber lines shall be designed, installed, and maintained so that metallic noise shall not exceed 20 dBRNC (Decibels Above Reference Noise level – C message weighting).

(c) All subscriber lines shall provide a minimum of 20 to 23 milliamperes of loop current from the central office to the customer network interface when terminated with 400 ohms.

(d) All combinations of subscriber lines and central office switching equipment shall be capable of accepting and correctly processing at least the following network control signals from customer premises equipment:

(A) Dial Pulse – 8 to 12 pulses per second and 58 to 64 percent break.

(B) Tone Pulsing – 50 milliseconds DTMF (Dual Tone Multi Frequency) on; 50 milliseconds DTMF off.

(e) Special Service Lines. All special service lines shall meet performance requirements specified in applicable ~~telecommunications~~ utility tariffs.

(9) Intraoffice, Interoffice, and Access Trunking.

(a) All intraoffice, interoffice, and access trunking and associated switching components shall be engineered and maintained to allow 99 percent completion of properly dialed calls during the average busy season without encountering blockages or equipment irregularities.

(b) All interoffice and access trunk groups shall be maintained so that the AML (actual measured loss) in no more than 30 percent of the trunks shall deviate from EML (expected measured loss) by more than .7 dB and no more than 4.5 percent of the trunks shall deviate from EML by more than 1.7 dB.

(10) Interexchange and Competitive Carriers. All interexchange or competitive carrier facilities interconnected to the facilities of a ~~telecommunications~~ utility shall be operated in a manner which will not impede the ~~telecommunications~~ utility's ability to meet required standards of service. All ~~telecommunications~~ utilities shall report situations contrary to the above promptly to the Commission.

(11) Reporting Requirements. ~~Telecommunications u~~ Utilities shall report to the Commission when any of the above standards are not met on a monthly basis.

(a) The Commission may require after its own investigation that a ~~telecommunications~~ utility provide monthly reports on any or all items covered by this rule.

(b) Where a ~~telecommunications~~ utility ~~does did~~ not measure items covered by these standards on June 30, 1996, it need not begin doing so unless ordered to by the Commission.

(12) Alternatives to these Telecommunications Standards. ~~Telecommunications u~~ Utilities whose normal methods of operation do not provide for exact compliance with these rules may:

(a) File for a variance from, or waiver of, one or more of these rules specifically indicating the alternative standards to be applied or indicating which standards are desired to be waived.

(b) File a service standards tariff indicating the levels of service that the utility is committed to provide.

(c) Any variance or tariff must be in substantial compliance with these rules.

(13) Installation Agreement.

(a) In lieu of adhering to the service standards set forth in this rule and upon request of a business customer with an order for service, the exchange carrier shall provide a written Installation Agreement which shall include, at a minimum, the following terms:

(A) An identification and description of the services to be installed;

(B) The location of the customer's facility;

(C) The facilities required to service the customer;

(D) The date upon which the requested services shall be installed and operable in accordance with industry specifications and standards ("Installation Date"); and;

(E) If agreed to by the business customer and exchange carrier, the amount of liquidated damages to be paid to the customer by the exchange carrier in the event the exchange carrier fails to meet the Installation Date in lieu of any other

remedies provided herein.

(b) An exchange carrier's failure to provide service in accordance with the provisions of a written Installation Agreement shall be deemed to be an omission under the exchange carrier's duty to provide adequate service.

(c) The customer and exchange carrier may negotiate an Installation Agreement that provides for payment of specific liquidated damages by the exchange carrier in lieu of consequential damages to be paid to the customer in the event the exchange carrier fails to provide service in accordance with the terms of the written agreement.

(14) Remedies for Violation of this Rule. If the Commission believes a company subject to this rule has violated one or more of its service standards, it shall give the company notice and an opportunity to explain the alleged violation(s). If, after hearing the company's explanation, ~~but the~~ Commission believes that a violation has occurred, the Commission may require the company to provide the following relief to the affected customers:

(a) A requirement that the company provide an alternative means of telecommunications service for violations of **section 2(d) of this rule**.

(b) Customer billing credits equal to the associated nonrecurring and recurring charges of the company for the affected service(s) for the period of the violation(s).

(c) Other relief authorized by Oregon law.

(15) Exemption from these Rules.

(a) A ~~telecommunications~~ utility may petition the Commission for an exemption from these rules with respect to one or more telecommunications services offered by the utility.

(b) If the Commission determines that effective facilities-based competition exists for a service in one or more exchanges, it may exempt the utility from this service quality rule for that service in those exchanges.

(c) In making this determination, the Commission shall consider:

(A) The extent to which the service is available from alternative providers in the relevant market;

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Number of suppliers;

(F) Price to cost ratios;

(G) Demand side substitutability (e.g., customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

Stat. Auth.: ORS Ch. 183, 756, ~~&~~ 759

Stats. Implemented: ORS 756.040, 759.045 & 759.240

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 2-1997, f. & ef. 1-7-97 (Order No. 96-332)

Budgets, Finance, Accounting, and Annual Reports for Utilities

860-034-0500392

Accounting for Director's Fees by Utilities

Director's fees paid by a utility to members of its board of directors, who are also paid as officers of the utility, shall not be recognized as a charge to operating expenses in Oregon.

Stat. Auth.: ORS Ch. 183, 756, & 759

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185)

860-034-05100393

Uniform System of Accounts for Utilities

(1) The Uniform System of Accounts for Class A and Class B Telecommunications Entities, Part 32, adopted by the Federal Communications Commission with revisions to December 23, 1986, effective January 1, 1988, is hereby adopted and prescribed for all utilities except the portion of Part 32 relating to allocations between regulated and nonregulated activities (shown in Appendix C to FCC Order No. 86-564) and as modified in sections (2) through (4) of this rule.

(2) Effective January 1, 1998, CFR Part 32.2000(a)(4) is revised to read: The cost of individual items of equipment, classifiable to Accounts 2112, Motor Vehicles; 2113, Aircraft; 2114, Special Purpose Vehicles; 2115, Garage Work Equipment; 2116, Other Work Equipment; 2122, Furniture; 2123, Office Equipment; and 2124, General Purpose Computers, costing \$2,000 or less or having a life less than one year shall be charged to the applicable Plant Specific Operations Expense accounts, except for personal computers falling within Account 2124. Personal computers classifiable to Account 2124, with a total cost for all components, including initial operating software, of \$500 or less shall be charged to the applicable Plant Specific Operations Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amount shall be maintained in the applicable materials and supplies account until the items are used.

(3) Effective January 1, 1998, the rules related to construction work in progress, adopted by the Federal Communications Commission with revisions to October 1, 1996, are prescribed as follows: CFR Parts 32.1220; 32.2000(a)(2); 32.2000(c)(2)(x); 32.2003; 32.2111, Land; 32.5999(f)(5); and 32.7340. CFR Part 32.2004 is removed.

(4) Effective January 1, 1998, the rules related to income taxes accounting, adopted by the Federal Communications Commission with revisions to October 1, 1996, are adopted as follows: CFR Parts 32.22, 32.1437, 32.4100, 32.4110, 32.4340, 32.4341, 32.4350, and 32.4361.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Public Utility Commission.]

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 6-1998, f. & cert. ef. 3-13-98 (Order No. 98-090)

860-034-05200394

Allocation of Costs by Utilities

(1) As used in this rule:

(a) "Affiliate ~~F~~transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a utility and accounts for nonregulated activities of a separate entity which is either an affiliated interest or another company in which the 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 utility;

(b) "Asset" means any tangible or intangible property of a utility or other right, entitlement, business opportunity, or other thing of value to which a utility holds claim;

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

(d) "Fair ~~M~~market ~~V~~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;

(e) "Market ~~R~~rate" means the lowest price which is available from nonaffiliated suppliers for comparable services or supplies;

(f) "Net ~~B~~book ~~V~~value" means original cost less accumulated depreciation; and

(g) "Nonregulated ~~S~~service" means a service which is not a telecommunications service as defined by ORS 759.005(2) (g), or a service which the Commission has determined to be exempt from regulation.

(2) A utility that provides both regulated and nonregulated intrastate service shall allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule.

(3) A utility's regulated and nonregulated intrastate activities shall be accounted for in accordance with FCC Part 32 – Uniform Systems of Accounts, but with the following exception: For intrastate purposes, Part 32 rules governing affiliate transactions (Sections 32.27(a), (b), (c), (d), and (f)) are replaced as follows:

(a) When an asset is transferred to regulated accounts from nonregulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value;

(b) When an asset is transferred from regulated accounts to nonregulated accounts, the transfer shall be recorded in regulated 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 regulated accounts at the higher of net book value or fair market value;

(c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The utility shall record the gain in a manner which will enable the Commission to determine the proper disposition of the gain in a subsequent rate proceeding;

(d) When services or supplies are sold by a regulated activity to a nonregulated activity, sales shall be recorded in regulated revenue 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 regulated revenue accounts at the utility's cost; and

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

(4) If a utility is subject to ORS 759.120 through 759.130 and provides both regulated and nonregulated intrastate service, the utility shall maintain a current intrastate cost allocation manual on file with the Commission. If the FCC requires the utility to file an interstate cost allocation manual, the utility shall also maintain a current copy of its

interstate manual with the Commission.

(5) An intrastate cost allocation manual shall contain the following:

(a) A description of each of the utility's nonregulated intrastate activities;

(b) A list of all intrastate activities to which the utility now accords incidental accounting treatment, and the justification for treating each as incidental;

(c) A chart showing the utility's affiliates;

(d) A statement identifying affiliates that engage in or will engage in transactions with the utility for the purpose of providing nonregulated intrastate service and describing the nature, terms, and frequency of such transactions; and

(e) A detailed specification of the cost categories to which amounts in each account and subaccount of Part 32 will be assigned, and a detailed specification of the basis on which each cost category will be apportioned between regulated and nonregulated activities.

(6) A cost allocation manual cannot be used to satisfy any other reporting requirement established by the Commission.

(7) The initial cost allocation manual filed by a utility pursuant to this rule must be filed with the Commission no less than 90 days before the manual's effective date. The manual shall go into effect unless rejected by the Commission before the manual's effective date.

(8) When a utility proposes any change to a cost allocation manual previously filed with the Commission, the utility shall file the proposed change with the Commission no less than 60 days before the effective date of the change. The changes shall go into effect unless rejected by the Commission before the effective date of the change.

(9) After the Commission has issued an order to exempt from regulation a telecommunications service provided by a utility which is subject to ORS 759.120 through 759.130, the affected utility shall file with the Commission either an initial cost allocation manual or a change to its previously filed manual.

(10) A utility that is required to file annual independent cost allocation audits with the FCC shall at the same time file copies of the annual audits with the Commission.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS **756.040** & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

~~860-034-05300395~~

Annual Report Requirements for Utilities

Utilities shall submit annual reports. The report Form O for the previous calendar year shall be submitted on or before April 1, using the most current forms approved by the Commission. The intrastate report Form I for the previous calendar year shall be submitted on or before October 31, using the most current form approved by the Commission.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS **756.040** & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 4-1995, f. & ef. 6-19-95 (Order No. 95-516); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

Reporting of Affiliated Transactions by Utilities

(1) By April 1, on forms approved and provided by the Commission, all utilities shall file with the Commission a report of all affiliated interest, intercompany, and intracompany transactions which occurred during the period from January 1 through December 31 of the immediately preceding year.

(2) As used in this rule:

(a) "Intracompany transactions" means transactions between regulated and unregulated operating divisions within a utility;

(b) "Intercompany transactions" means transactions between a utility and another company when the utility owns a majority of or controls directly or indirectly the voting stock of the other contracting company; **and**

(c) "Affiliated interest transactions" means transactions between affiliated interests as defined by ORS 759.010.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS **756.040** & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

Use of Deferred Accounting by Utilities

(1) Definitions: As used in this rule:

(a) "Amortization" means the inclusion in rates of an amount which has been deferred under ORS 759.200 and is designed to eliminate, over time, the balance in an authorized deferred account. Amortization excludes the normal positive and negative fluctuations in a balancing account; **and**

(b) "Deferred ~~A~~accounting" means recording an amount, as allowed by ORS 759.200, in a balance sheet account for later reflection in rates.

(2) Expiration: Any authorization to use a deferred account shall expire 12 months from the date the deferral is authorized to begin. If a deferral under ORS 759.200 is reauthorized, the reauthorization shall expire 12 months from the date the reauthorization becomes effective.

(3) Contents of Application: Application for deferred accounting, by a utility or a customer, shall include:

(a) A description of the utility expense or revenue for which deferred accounting is requested;

(b) The reason(s) deferred accounting is being requested and a reference to the section(s) of ORS 759.200 under which deferral may be authorized;

(c) The account proposed for recording of the amounts to be deferred and the account which would be used for recording the amounts in the absence of approval of deferred accounting;

(d) An estimate of the amounts to be recorded in the deferred account for the 12-month period after the application; and

(e) A copy of the notice of application for deferred accounting and list of persons served with the notice.

(4) Reauthorization: Application for reauthorization to use a deferred account shall be made not more than 60 days before the expiration of the previous authorization for the deferral. Application for reauthorization shall include the requirements in subsections (3)(a) through (3)(e) of this rule and the following information:

(a) A description and explanation of the entries in the deferred account to the date of the application for reauthorization; and

(b) The reason(s) for continuation of deferred accounting.

(5) Exceptions: Authorization under ORS 759.200 to use a deferred account is necessary only to add amounts to an account, not to retain an existing account balance and not to amortize amounts which have been entered in an account under an authorization by the Commission. Interest, once authorized to accrue on unamortized balances in an account, may be added to the account without further authorization by the Commission, even though authorization to add other amounts to an account has expired.

(6) Notice of Application: The applicant shall serve a notice of application upon all persons who were parties in the utility's last general rate case. If the applicant is other than a utility, the applicant shall serve a copy of the application upon the affected utility. A notice of application shall include:

(a) A statement that the applicant has applied to the Commission for authorization to use deferred accounting, or for an order requiring that deferred accounting be used by a utility;

(b) A description of the utility expense or revenue for which deferred accounting is requested;

(c) The way an interested person can obtain a copy of the application;

(d) A statement that any person may submit to the Commission written comment on the application by the date in the notice, which may be no sooner than 25 days from the date of the application; and

(e) A statement that the granting of the application will not authorize a change in rates, but will permit the Commission to consider allowing such deferred amounts in rates in a subsequent proceeding.

(7) Public Meetings: Unless otherwise ordered by the Commission, applications for use of deferred accounting will be considered at the Commission's ~~p~~Public ~~m~~Meetings.

(8) Reply Comments: Within ten days after the due date for comments on the application from interested persons, the applicant, and the utility if the utility is not the applicant, reply comments may be filed with the Commission and served on persons who filed the initial comments on the application.

(9) Amortization: Amortization in rates of a deferred amount shall only be allowed in a rate proceeding, whether initiated by the utility or another party. The Commission may authorize amortization of such amounts only for utility expenses or revenues for which the Commission previously has authorized deferred accounting. Upon request for amortization of a deferred account, the utility shall provide the Commission with its financial results for a 12-month period or for multiple 12-month periods to allow the Commission to perform an earnings review. The period selected for the earnings review will encompass all or part of the period when the deferral took place or must be reasonably representative of the deferral period. Unless authorized by the Commission to do otherwise:

(a) A utility shall request that amortizations of deferred accounts commence no later than one year from the date that deferrals cease for that particular account; and

(b) In the case of ongoing balancing accounts, the utility shall request amortization at least annually, unless amortization of the balancing account is then in effect.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.045

Construction and Safety Standards for Utilities and Telecommunications Cooperatives, General

860-034-0400

Maps and Records

(1) Each utility **and telecommunications cooperative** shall keep on file current maps and records of the entire plant showing size, location, character, and date of installation of major plant items.

(2) Upon request, each utility **and telecommunications cooperative** shall file with the Commission an adequate description or maps to define the territory served. All maps and records which the Commission may require the utility **or telecommunications cooperative** to file shall be in a form satisfactory to the Commission.

Stat. Auth.: ORS Ch. 183, 756, **758 &** 759

Stats. Implemented: ORS 756.040, 758.215 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185)

Regulations to Prevent Duplication of Facilities for Utilities and Telecommunications Cooperatives

860-034-0450

Applications for Approval of Contracts to Avoid or Eliminate Duplicate Utility Service

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500

(3). Applications under ORS 759.500 through ORS 759.595 for an order of the Commission approving a contract authorized thereunder shall contain in addition to the contract, if not contained therein, the following information:

(1) A map or maps, to appropriate scale, showing the general location and boundaries of the respective applicant's service areas.

(2) A map or maps, to appropriate scale, showing the location of customers who are being served by either or both of the parties, or who could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto, who are covered by the contract.

(3) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, designating the boundaries of the territory to be served by each party to the contract. Such legal description of boundary lines may be drawn and described:

(a) To eliminate minor irregularities in the boundary of each party when to do so will include within each party's territory, only that unserved area which may be economically served by the then existing facilities of the respective parties or by reasonable and economic extensions thereto; and

(b) In the case of persons providing utility service who have entered into exchange boundary agreements before May 31, 1961, to define mutually exclusive exchange service areas, the area affected by such agreement may be described by reference to the exchange area map in that agreement. However, the applicant shall not be relieved by such reference from showing that it can economically serve the unserved areas within the exchange area map with its existing facilities or by a reasonable and economic extension thereto.

(4) A description of the equipment and facilities of each party which are the subject of sale, exchange, transfer, or lease pursuant to the contract and the consideration to be paid therefor.

(5) Facts showing that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the

efficient and economic use and development and the safety of operation of the utility systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.500 through 759.595

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0460

Applications for Approval of Amendments to Contracts to Avoid or Eliminate Duplicate Utility Service

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500

(3). Applications under ORS 759.530 for a Commission order approving an amendment to a contract approved pursuant to ORS 759.510 to ORS 759.520, inclusive, shall contain the amendatory contract and such information required by OAR 860-034-0450 as is pertinent to the Commission in making a decision thereon.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.530

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0470

Applications for Allocation of Exclusively Served Territory

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500

(3). Applications under ORS 759.535 for an order of the Commission to allocate territory to a person providing exclusive utility service in a territory shall contain the following information:

- (1) A map, to appropriate scale, showing the general location and boundaries of the applicant's service area.
- (2) A map, to appropriate scale, showing the location of applicant's customers and facilities in the vicinity of the boundaries of the territory applied for in sufficient detail to enable the Commission to determine the boundaries of that territory served exclusively by applicant.
- (3) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, of the boundaries of applicant's exclusive service area. Such map and legal description of boundary lines may be drawn and described so as to eliminate minor irregularities in the boundary.
- (4) Facts showing that applicant is lawfully and in good faith providing exclusive utility service within the area described in the application and that no other person is providing a similar utility service within such territory.
- (5) Such additional information as needed for a full understanding of the situation.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.535

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0480

Applications for Allocation of Exclusively Served Territory and Adjacent Unserved Territory

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500

(3). Applications under ORS 759.535, for an order of the Commission to allocate territory to a person providing exclusive utility service in a territory and adjacent unserved territory shall contain the following information:

- (1) ~~The~~ Information required under OAR 860-034-0470.
- (2) Map similar to that required by OAR 860-034-0470(2) and description comparable to that required by OAR 860-034-0470(3), showing and describing the boundary of the adjacent unserved territory covered by the application.
- (3) ~~The~~ Names and addresses of all persons providing similar utility service in proximity to the unserved area applied for who may have an interest in or be affected by an approval or disapproval of the application.
- (4) Facts showing that it is more economical and feasible to serve the adjacent unserved territory by an extension of the applicant's existing facilities than by an extension of the facilities of another person, including but not limited to the following:
 - (a) Map, to appropriate scale, showing location and capability of equipment, plant, or facilities including the capability, location, and route of proposed facilities, if any, which relate to the applicant's ability to extend utility service into the adjacent unserved area.
 - (b) Copies of such franchises or permits as the appropriate public authorities may require for extending service into the adjacent unserved area, or a statement that they will be filed at the hearing or a statement that no such authority is required by said public authorities.
 - (c) The kind or nature and extent of the need or demand, or reasonable anticipated need or demand, for utility service within the unserved area.
 - (d) The estimated construction, operating, and related costs of and revenues from providing the proposed utility service within the unserved area.
- (5) Such additional information as needed to enable a full understanding of the situation.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS **756.040**, 759.045 & 759.535

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0490

Applications to Transfer Rights to Allocated Territory

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500

(3). Applications under ORS 759.560 for an order of the Commission to approve the transfer of rights acquired by an allocation of territory shall comply with OAR 860-034-0440(2) and (3) and shall contain the following information:

- (1) A statement of the purposes for the transfer, the supporting reasons therefor and a detailed explanation thereof justifying why the transfer will not be contrary to the public interest.
- (2) A copy of all written evidence and a statement of all oral understanding compromising the agreement between the transferor and transferee covering the transfer of the territory described in the application and sought to be transferred.
- (3) A map or maps, to appropriate scale, showing the general location and boundaries of the allocated territory sought to be transferred and the transferor's and transferee's adjacent service areas.

(4) A map or maps, to appropriate scale, showing:

(a) The number and, as practicable, the location of customers and equipment or facilities of the transferor with a detailed description of such equipment or facilities within the territory sought to be transferred; and

(b) The location of equipment or facilities of the transferor and transferee, with a detailed description of the same, which are in the territory immediately adjacent to that sought to be transferred and which are or will be interconnected therewith.

(5) A legal description comparable to that required in OAR 860-034-0470(3) of the boundaries of the territory sought to be transferred.

(6) A legal description comparable to that required in OAR 860-034-0470(3) of the resulting boundaries of the remaining allocated portion of the parcel of the transferor's territory where the territory sought to be transferred is only part of a parcel of transferor's allocated territory and a similar description of the resulting boundaries of the transferee's allocated territory where the territory sought to be transferred will be contiguous to a parcel of transferee's allocated territory.

(7) Copies of such franchises or permits as the appropriate public authorities may require authorizing the transferee to serve in the territory sought to be transferred, or evidence of the approval of the appropriate public authorities of the transfer to the transferee of the transferor's franchise or permit to serve the territory sought to be transferred.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.560

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

~~Budgets, Finance, Accounting and Annual Reports~~

860-034-0500

Renumbered as 860-034-0392

860-034-0510

Renumbered as 860-034-0393

860-034-0520

Renumbered as 860-034-0394

860-034-0530

Renumbered as 860-034-0395

860-034-0550

Renumbered as 860-034-0396

860-034-0560

Renumbered as 860-034-0397

Reports and Records for Utilities and Telecommunications Cooperatives

860-034-0570

Reports

(1) As used in this rule:

(a) "Serious injury to person" means, in the case of an employee, an injury which results in hospitalization. In the case of a nonemployee, "serious injury" means any accident which results in hospitalization. Treatment in an emergency room is not hospitalization; **and**

(b) "Serious injury to property" means:

(A) Damage to ~~utility or nonutility~~ property exceeding \$25,000; or

(B) Damage to property which causes a loss of service to over 500 utility **or telecommunications cooperative** customers for over two hours; however "serious injury to property" excludes damage which is restricted to a single feeder or distribution line and results in an outage of less than four hours.

(2) Every utility **and telecommunications cooperative** shall give immediate notice by telephone, telegraph, or personally to the Commission, of accidents attended by loss of life or limb, or serious injury to person or property, occurring in Oregon upon the premises of or directly or indirectly arising from or connected with the maintenance or operation of a utility **or telecommunications cooperative**.

(3) Accidents attended by loss of life or limb, or serious injury to person or property, occurring in Oregon upon the premises of or directly or indirectly arising from or connected with the maintenance or operation of a utility **or telecommunications cooperative** shall, in addition to the immediate notice given by telegraph, telephone, or personally to the Commission, be reported in writing to the Commission within 20 days of the occurrence. In the case of injuries to employees, a copy of the accident report form that is submitted to Department of Business and Consumer Services, Oregon Occupational Safety and Health Division (OR-OSHA), for reporting accident injuries, will normally suffice for a written report.

(4) An accident report filed by a utility **or telecommunications cooperative** in accordance with ORS 654.715 cannot be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.

Stat. Auth.: ORS Ch. 183, 756, **758** & 759

Stats. Implemented: ORS **756.040** & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0580

Preservation and Destruction of Records

The Regulations to Govern the Preservation of Records of Communication Common Carriers, Part 42, 47 Code of Federal Regulations Chapter 1 (October 1, 1985, Edition) is hereby adopted and prescribed by the Commission for all utilities **and Type 2 telecommunications cooperatives**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Public Utility Commission.]

Stat. Auth.: ORS Ch. 183, 756; **&** 759

Stats. Implemented: ORS 756.040 & 759.045

Rules Relating to Establishment of and Exceptions to Depreciation Guidelines for Utilities and Type 2 Cooperatives

860-034-0600

Definitions for Depreciation Guidelines

As used in OARs 860-034-0600 through 860-034-0670:

- (1) "Exception" means a rate for the depreciation of an investment made by a utility or Type 2 cooperative that exceeds the guideline rate. "Exception" also includes a rate for amortization of retired investment if the rate of amortization exceeds the otherwise applicable guideline rate for depreciation of that investment.
- (2) "File" means compliance with Commission rules OARs 860-011-0025 and 860-011-0030.
- (3) "Guidelines" means the standards used by this Commission to determine rates for the depreciation of investment made by a utility or Type 2 cooperative to provide joint telecommunications a through service.
- ~~(4) "Utility" means any telecommunications utility partially exempt from regulation under ORS 759.040, unincorporated association, or cooperative corporation subject to ORS 759.220.~~

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.135, 759.220 & 759.225

Hist.: PUC 12-1994, f. & ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0620

Filing Deadlines for a Request for an Exception

- (1) A utility or Type 2 cooperative requesting an exception from the depreciation guidelines for one or more calendar years shall file a request for an exception on or before June 1 of the year preceding the first calendar year for which it seeks an exception.
- (2) A utility or Type 2 cooperative may file a request for an exception after June 1 only if the Commission grants a motion to file out of time. The Commission may grant such a motion if the utility or Type 2 cooperative shows good cause for its failure to file timely and if the Commission concludes it has sufficient time to rule on the request on or before December 31 of the year preceding the first calendar year for which the utility or Type 2 cooperative seeks an exception.
- (3) If the Commission grants a motion to file out of time, the time line set forth in OARs 860-034-0640 through 860-0340-0660 shall begin on the date of the order granting the motion.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 12-1994, f. & ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0630

Information to be Included With a Request for an Exception

Information included with filing a request for an exception, at a minimum, shall:

- (1) State the account(s) for which the utility or Type 2 cooperative seeks the exception;
- (2) State the number of calendar years for which the utility or Type 2 cooperative seeks the exception; and
- (3) Include an engineering analysis, economic analysis, or both, or other support for the exception.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 12-1994, f. & ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0640

Review by Staff of a Request for an Exception

On or before the 30th day following the filing of a request for an exception, staff shall issue a written response to the utility or Type 2 cooperative stating whether staff recommends approval or denial of the request.

(1) If staff recommends approval, it shall, within 15 days of notifying the utility or Type 2 cooperative of the recommendation, place on a ~~p~~**Public** ~~m~~**Meeting** agenda a recommendation that the Commission approve the request.

(2) If staff recommends denial, it shall provide written notice to the utility or Type 2 cooperative of such recommendation, specify the reason(s) therefor, and provide to the utility or Type 2 cooperative all documents, including, but not limited to, workpapers, studies, calculations, and internal memoranda which support its recommendation.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 12-1994, f. & ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0650

Petition to Open Docket

If staff recommends denial of a request for an exception, a utility or Type 2 cooperative may file a petition with the Commission, requesting that the Commission open a docket to determine whether to grant the exception. The utility or Type 2 cooperative shall file its petition with both the Administrative Hearings Division and staff on or before the 20th day following the utility's or Type 2 cooperative's receipt of staff's notification of recommended denial.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 12-1994, f. & ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0660

Review Procedure and Schedule for a Request for an Exception

(1) A utility or Type 2 cooperative filing a petition pursuant to OAR 860-034-0650 shall include as exhibits to the

petition:

- (a) Its request for exception and any material submitted in support of that request;
 - (b) Staff's notification of recommended denial of the request for exception and all material provided by staff to the utility **or Type 2 cooperative** in support of staff's recommended denial; and
 - (c) Any other arguments or evidence the utility **or Type 2 cooperative** chooses to submit.
- (2) The petition and exhibits shall constitute the entire record unless, within 20 days following the utility's **or Type 2 cooperative's** filing, the staff files objections to the petition or exhibits or files supplemental evidence.
 - (3) If staff files an objection to the petition or exhibits or files supplemental evidence, the utility **or Type 2 cooperative** may file its response within 20 days from the date of the staff's filing.
 - (4) Within ten days after the date when the utility **or Type 2 cooperative** is to respond, either staff or the utility **or Type 2 cooperative** may request a hearing. If neither staff nor the utility **or Type 2 cooperative** requests a hearing, then the record shall be closed.
 - (5) The Hearings Officer shall establish a schedule for the filing of briefs, upon request of either the utility **or Type 2 cooperative** or staff.
 - (6) The Hearings Officer shall have discretion, for cause, to modify the schedule, but in no event may modify the schedule so as to prevent the Commission from issuing an order on or before December 31.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, **759.220 & 759.225**

Hist.: PUC 12-1994, f. & ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

860-034-0670

Extension of Time for a Request for an Exception

The Commission or a Hearings Officer may grant, upon a showing of good cause, a request to modify the filing dates set forth in OARs 860-034-0640 through 860-034-0660.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, **759.220 & 759.225**

Hist.: PUC 12-1994, f. & ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188)

(2) A Type 2 cooperative that provides both regulated and nonregulated intrastate service shall allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: NEW

860-034-0750

Annual Report Requirements for Type 2 Cooperatives

Annual reports will be submitted by Type 2 cooperatives. The total company Form O report for the previous calendar year shall be submitted on or before April 1, using the most current forms approved by the Commission. The intrastate Form I report for the previous calendar year shall be submitted on or before October 31, using the most current forms approved by the Commission.

Stat. Auth.: ORS Ch. 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: NEW

860-035-0050

Allocation of Costs

If a telecommunications utility, unincorporated association, or cooperative corporation offers an enhanced service, costs and revenues of the enhanced service shall be allocated to the utility's enhanced service operation in accordance with rules contained in OARs 860-027-0052, **860-034-0520, and 860-034-0740.**

Stat. Auth.: ORS ~~Ch. 183.335, 756.060, & Ch.~~ 759

Stat. Implemented: ORS 756.040

Hist.: PUC 13-1993, f. & ef. 6-23-93 (Order No. 93-852)

860-035-0080

Availability of ONA Services

- (1) A LEC which offers enhanced services on either a deregulated or regulated basis shall charge or impute to its own enhanced services operation the same tariffed or price listed rates for ONA services that the LEC offers to its customers.
- (2) LECs which offer ONA services shall not give any advantage to their own enhanced services operation or otherwise discriminate regarding service availability, ordering, provisioning, and repair or access to technical standards.
- (3) LECs shall not impose use and user restrictions for ONA services except as authorized by the Commission.
- (4) A LEC which offers enhanced services on either a deregulated or regulated basis shall make billing and collection available as an ANS to ESPs which provide enhanced services in direct competition with comparable enhanced services provided by the LEC at rates, terms, and conditions which are equivalent to rates, terms and conditions available to the LEC's enhanced service operations. LECs shall also offer to ESPs information which the LEC can capture in the LEC's network which ESPs could use to bill for enhanced services.
- (5) A LEC which offers enhanced services on either a deregulated or regulated basis shall make any OSS service defined as an ONA service under federal law available as an ANS to customers, pursuant to OAR 860-035-0070(1), (2), (3), (6), (7), and (8). All customer requests for OSS services not defined as ONA services under federal law must be approved by the Commission unless there is a mutual agreement between the LEC and the requesting customer.
- (6) All facilities connected to, or interacting with, the facilities of a LEC shall be operated in a manner which will not impede the LEC's ability to meet standards of service required in OARs 860-023-0055 **and 860-034-0360.** All LECs

shall report situations contrary to this requirement promptly to the Commission.

Stat. Auth.: ORS ~~Ch. 183.335~~, ~~756.060~~, & ~~Ch. 759~~

Stat. Implemented: ORS 756.040

Hist.: PUC 13-1993, f. & ef. 6-23-93 (Order No. 93-852)

860-035-0120

Safeguards

(1) LECs which offer enhanced services shall be permitted to provide enhanced services on an integrated basis using non-structural safeguards and nondiscrimination requirements provided in these rules. Accordingly, LECs shall be allowed to use common personnel and facilities to provide basic and enhanced services, including deregulated enhanced services. If an enhanced service of a LEC is exempt from regulation, costs and revenues of the enhanced service shall be allocated to the LEC's enhanced service operation pursuant to rules for regulated and nonregulated accounting set forth in OARs 860-027-0052, 860-034-0394, and 860-034-0740.

(2) If a complaint filed pursuant to ORS 756.500 alleges that a LEC has discriminated against competitors or has misallocated costs and revenues between enhanced and basic services, the Commission will investigate the complaint. If the Commission determines that the allegations in the complaint are substantiated, the Commission shall impose appropriate remedies, including but not limited to structural safeguards, ratemaking adjustments, termination of or restrictions on the LEC's enhanced service offerings.

Stat. Auth.: ORS ~~Ch. 183.335~~, ~~756.060~~, & ~~Ch. 759~~

Stat. Implemented: ORS 756.040

Hist.: PUC 13-1993, f. & ef. 6-23-93 (Order No. 93-852)

DIVISION 036

WATER UTILITIES AND ASSOCIATIONS

860-036-0010

Definitions

As used in this ~~d~~Division:

(1) "Applicant" means a person that:

(a) Applies for service with a utility; or

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

(2) "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 actually contacts the co-customer or mails a written request for an application to the remaining co-customer within one business day of the discontinuance.

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

(4) "Cooperative or association" means a cooperative corporation, unincorporated association, or homeowner association, as defined in ORS 757.005(1)(a)(A), that provides water service solely to its membership.

(5) "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.

~~**(5)**~~**(6)** "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

~~**(6)**~~**(7)** "Fully regulated" means a water utility that is not exempt under ORS 757.061.

~~**(7)**~~**(8)** "Public utility" has the meaning given the term in ORS 757.005. The term does not include people's utility districts, municipalities, or cooperatives and homeowner associations that provide service solely to their membership.

~~**(8)**~~**(9)** "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 Division, but is not the subject of a formal complaint.

~~**(9)**~~**(10)** "Utility" means all water utilities, except when a more limited scope is explicitly stated.

~~**(10)**~~**(11)** "Water utility" means all water utilities that meet the definition of a public utility found in ORS 757.005.

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)

860-036-0345

Location of Underground Facilities

(1) A water utility, **cooperative, or association** and its customers shall comply with requirements of OAR 952-001-0010 through and including OAR 952-001-0090 regarding identification and notification of underground facilities.

(2) Colors for marking location of underground facilities shall be as listed as indicated:

(a) Red - Electric power lines, cables or conduit, and lighting cables;

(b) Yellow - Gas, oil, stream, petroleum, or other hazardous liquid or gaseous materials;

(c) Orange - Communications, cable televisions, alarm or signal lines, cables, or conduits;

(d) Blue - Water, irrigation, and slurry lines;

(e) Green - Sewer and drain lines; and

(f) White - For voluntary premarking of the outer limits of the proposed excavation of marking the centerline of proposed lineal installations of pipe, cables, conduits, or other items where the trench will not exceed 24 inches in width.

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

Stats. Implemented: ORS 756.040 & 757.561

860-036-0720

Application by a Water Utility for Authority to Issue Stocks, Bonds, Notes, or Other Securities

(1) ~~Fully~~ This rule applies to fully regulated water utilities seeking authority under ORS 757.495, 757.405 to 757.435 inclusive, 757.445, and 757.450 ~~shall comply with OAR 860-0027-0030~~. Every applicant shall set forth in this application to the Commission, in the manner and form and in the order indicated, the following information:

(a) The applicant's exact name and the address of its principal business office;

(b) The state in which incorporated, the date of incorporation, and the other states in which authorized to transact water utility business;

(c) The name and address of the person authorized, on behalf of applicant, to receive notices and communications in respect to the application;

(d) The names, titles, and addresses of the principal officers of the applicant;

(e) A description of the general character of the business done and to be done, and a designation of the territories served. A map showing the territories served is desirable;

(f) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of capital stock: brief description; amount authorized (face value and number of shares); amount outstanding (exclusive of any amount held in the treasury), held amount as reacquired securities; amount pledged by applicant; amount owned by affiliated interests, and amount held in any fund;

(g) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of long-term debt or notes: brief description (amount, interest rate and maturity); amount authorized; amount outstanding (exclusive of any amount held in the treasury); amount held as reacquired securities; amount pledged by applicant; amount held by affiliated interests; and amount in sinking and other funds;

(h) A full description of the securities proposed to be issued, showing: kind and nature of securities or liabilities; amount (face value and number of shares); interest or dividend rate, if any; date of issue and date of maturity; and voting privileges, if any;

(i) A reasonably detailed and precise description of the proposed transaction, including a statement of the reasons why it is desired to consummate the transaction and the anticipated effect thereof. If the transaction is part of a general program, describe the program and its relation to the proposed transaction. Such description shall include, but is not limited to, the following:

(A) A description of the proposed method of issuing and selling the securities;

(B) A statement of whether such securities are to be issued pro rata to existing holders of the applicant's securities or issued pursuant to any preemptive right or in connection with any liquidation or reorganization;

(C) A statement showing why it is in applicant's interest to issue securities in the manner proposed and the reason(s) why it selected the proposed method of sale; and

(D) A statement that exemption from the competitive bidding requirements of any federal or other state regulatory body has or has not been requested or obtained, and a copy of the action taken thereon when available.

(j) The name and address of any person receiving or entitled to a fee for service (other than attorneys, accountants, and similar technical services) in connection with the negotiation or consummation of the issuance

or sale of securities, or for services in securing underwriters, sellers, or purchasers of securities, other than fees included in any competitive bid; the amount of each such fee, and facts showing the necessity for the services and that the fee does not exceed the customary fee for such services in arm's-length transactions and is reasonable in the light of the cost of rendering the service and any other relevant factors;

(k) A statement showing both in total amount and per unit the price to the public, underwriting commissions and net proceeds to the applicant. Supply also the information (estimated if necessary) required in section (4) of this rule. If the securities are to be issued directly for property, then a full description of the property to be acquired, its location, its original cost (if known) by accounts, with the identification of the person from whom the property is to be acquired, must be furnished. If original cost is not known, an estimate of original cost based, to the extent possible, upon records or data of the seller and applicant or their predecessors must be furnished, with a full explanation of how such estimate has been made, and a description and statement of the present custody of all existing pertinent data and records. A statement showing the cost of all additions and betterments and retirements, from the date of the original cost, should also be furnished;

(l) The purposes for which the securities are to be issued. Specific information will be submitted with each filing for the issuance of bonds, stocks, or securities:

(A) Construction, completion, extension, or improvement of facilities. A description of such facilities and the cost thereof;

(B) Reimbursement of the applicant's treasury for expenditures against which securities have not been issued. A statement giving a general description of such expenditures, the amounts and accounts to which charged, the associated credits, if any, and the periods during which the expenditures were made;

(C) Refunding or discharging of obligations. A description of the obligations to be refunded or discharged, including the character, principal amounts discount or premium applicable thereto, date of issue and date of maturity, purposes to which the proceeds were applied and all other material facts concerning such obligations; and

(D) Improvement or maintenance of service. A description of the type of expenditure and the estimated cost in reasonable detail;

(m) A statement as to whether or not any application, registration statement, etc., with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body;

(n) The facts relied upon by the applicant to show that the issue:

(A) Is for some lawful object within the corporate purposes of the applicant;

(B) Is compatible with the public interest;

(C) Is necessary or appropriate for or consistent with the proper performance by the applicant of service as a water utility;

(D) Will not impair its ability to perform that service;

(E) Is reasonably necessary or appropriate for such purposes; and

(F) If filed under ORS 757.495, is fair and reasonable and not contrary to the public interest;

(o) A brief statement of all rights to be a corporation, franchises, permits, and contracts for consolidation, merger, or lease included as assets of the applicant or any predecessor thereof; the amounts actually paid as consideration therefor, respectively; and the facts relied upon to show the issuance of the securities for which approval is requested will not result in the capitalization of the right to be a corporation or of any franchise, permit, or contract for consolidation, merger, or lease in excess of the amount (exclusive of any tax or annual

charge) actually paid as the consideration for such right, franchise, permit, or contract; and

(p) If filed under ORS 757.490 or ORS 757.495:

(A) Provide a statement describing the relationship between the water utility and the affiliated interest as defined in ORS 757.015 or ORS 757.490:

(i) Set forth the amount, kind, and ratio to total voting securities held, if applicable;

(ii) List all officers and directors of the affiliated interest who are also officers and/or directors of the applicant; and

(iii) State the pecuniary interest of any officer or director in compliance with ORS 757.490(1).

(B) State the reasons, in detail, relied upon by the water utility for entering into the proposed transaction and the benefits, if any, the customers of the water utility and the general public will derive from the transaction.

(2) Required Exhibits. There shall be filed with the application as part thereof the following exhibits:

(a) EXHIBIT A. A copy of the applicant's charter or articles of incorporation with amendments to date;

(b) EXHIBIT B. A copy of the bylaws with amendments to date;

(c) EXHIBIT C. A copy of each resolution of directors authorizing the issue in respect to which the application is made and, if approval of stockholders has been obtained, copies of the stockholder resolutions should also be furnished;

(d) EXHIBIT D. A copy of the mortgage, indenture, or other agreement under which it is proposed to issue the securities, and a copy of any mortgage, indenture, or other agreement securing other funded obligations of the applicant;

(e) EXHIBIT E. Copies of balance sheets showing booked amounts, adjustments to record the proposed transaction and pro forma, with supporting fixed capital or plant schedules in conformity with the form in the annual report which applicant is required to file with the Commission;

(f) EXHIBIT F. A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts, as of the date of the application;

(g) EXHIBIT G. Copies of comparative income statements showing recorded results of operations, adjustments to record the proposed transaction and pro forma in conformity with the form in the annual report which applicant is required to file with the Commission;

(h) EXHIBIT H. A copy of an analysis of surplus for the period covered by the income statements referred to in Exhibit G;

(i) EXHIBIT I. A copy of the registration statement proper, if any, and financial exhibits made a part thereof, filed with the Securities and Exchange Commission;

(j) EXHIBIT J. A copy of the proposed and of the published invitation of proposals for the purchase of underwriting of the securities to be issued; of each proposal received; and of each contract, underwriting, and other arrangement entered into for the sale or marketing of the securities. When a contract or underwriting is not in final form so as to permit filing, a preliminary draft or a summary identifying parties thereto and setting forth the principal terms thereof, may be filed pending filing of the conformed copy in the form executed by final amendment to the application;

(k) EXHIBIT K. Copies of the stock certificates, notes, or other evidences of indebtedness proposed to be issued;

(l) An application for a water utility to loan its funds to an affiliated interest, in addition to Exhibits A through K, shall also include the following:

(A) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction;

(B) EXHIBIT M. The amount of money which the applicant desires to loan to the affiliated interest, terms of said loan, rate of interest, method of repayment, security given, if any, and if said loan is to be an open account or evidenced by a promissory note; and

(C) EXHIBIT N. The use to which funds derived from this loan are to be put by the affiliated interest; and

(m) An application for a water utility to give credit on its books or otherwise by:

(A) Advancing cash through an open or loan account, in addition to EXHIBITS A through K, shall also include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction;

(ii) EXHIBIT M. The amount of cash which the applicant proposes to receive, the rate of interest it will pay, and the date and method of repayment; and

(iii) EXHIBIT N. A definite statement of purpose for which the advance will be used.

(B) Payments by the affiliated interest of amounts owed, in addition to EXHIBITS A through K, shall include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction; and

(ii) EXHIBIT M. The amount which the affiliated interest proposes to pay on the water utility's behalf, with a description of the obligation, how the funds will be used, and how incurred.

(C) Credits or open accounts a water utility proposes to give to an affiliated interest, in addition to EXHIBITS A through K, shall include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction; and

(ii) EXHIBIT M. The amount and a description of each item for which the water utility proposes to give credit through its loan or open account.

(3) The following form of application may be filed by all water utilities with annual revenues of less than \$100,000 seeking authority to issue promissory notes maturing more than one year after date of issue or renewal and unsecured notes on motor vehicles in the principal amount of less than \$10,000. In the instances when this provision is proper, the requirements of sections (1) and (2) of this rule do not apply. The Commission may require compliance with sections (1) and (2) of this rule if the Commission deems it necessary in a particular case.

In the Matter of the Application of (Enter Exact Name of Applicant) for an Order Authorizing the Issuance of a Note.

The above-named applicant desires to issue its (enter type of note) note to (enter to whom issued) in the principal amount of \$ _____ to be dated (date of note) and to mature (date due). The note will bear interest at _____ percent per annum and is payable in (number of payments) payments of \$ _____ with a final payment of \$ _____.

A copy of the note proposed to be issued is attached to this application and contains the exact terms of the note that will be issued. The Commission will be advised in writing of the note's date and that the terms of the note are the same as set forth herein, if this application is approved.

The proceeds of the note are required for the purposes set forth in the following and are necessary to properly serve the public. The proceeds will be expended as follows (explain in detail the proposed use of the funds from the note):

No fees or payment will be or have been made to any person, association, or corporation for assistance in connection with this borrowing other than fees required by regulatory authorities.

Wherefore applicant respectfully requests that the Commission enter an appropriate order authorizing the note as herein set forth.

(Name of Water Utility)

Dated: _____

(Signature of Officer or Owner)

State of _____

County of _____,

(Name of Party signing above)

being first duly sworn, deposes and says he/she is _____ (Title) of _____ (Name of Water Utility), the applicant in the foregoing application, that he/she has read said application, including all exhibits thereto, knows the contents thereof, and the same are true to the best of his/her knowledge and belief.

(Signature)

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this _____ day of _____, _____.

(Signature)

(Notarial Seal)

My Commission expires _____, _____.

REPORT OF SECURITIES ISSUED

Items Amount

- (1) Face value or principal amount _____
- (2) Plus premium or less discount _____
- (3) Gross proceed _____
- (4) Underwriter's spread or commission _____
- (5) Securities and Exchange Commission registration fee _____
- (6) State mortgage registration tax _____
- (7) State Commission fee _____
- (8) Fee for recording indenture _____
- (9) United States document tax _____
- (10) Printing and engraving expenses _____
- (11) Trustee's charges _____
- (12) Counsel's fees _____
- (13) Accountant's fees _____
- (14) Cost of listing _____
- (15) Miscellaneous expense of issue (describe large items) _____
- (16) Total deductions _____
- (17) Net amount realized _____

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

Stats. Implemented: ORS 756.040, 756.105, 757.405 through 757.450 & 757.495

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434)

860-036-0725

Applications for Authority to Guarantee Indebtedness

(1) The requirements of this rule will apply to fully ~~Fully~~ regulated water utilities seeking authority under ORS 757.440 ~~shall comply with the requirements of OAR 860-027-0035~~. Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information which should, to the extent possible, be furnished for each person, firm, or corporation involved:

(a) The information required by OAR 860-036-0720(1)(a) to (g) inclusive;

- (b) A full description of the securities for which applicant proposes to assume obligation or liability as guarantor, endorser, surety, or otherwise;**
- (c) The amount of other securities of said person, firm, or corporation now held, owned, or controlled by the applicant;**
- (d) A statement as to whether or not any application, with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body;**
- (e) The reasons, in detail, why it is in applicant's interest to guarantee such securities;**
- (f) The reasons, in detail, why it is necessary for applicant to guarantee such securities; and**
- (g) The facts relied upon by the applicant to show the assumption is:**
- (A) For some lawful object within the applicant's corporate purposes and compatible with the public interest;**
- (B) Necessary or appropriate for or consistent with the applicant's proper performance of service as a water utility;**
- (C) Will not impair its ability to perform that service; and**
- (D) Reasonably necessary or required for such purposes.**
- (2) Required Exhibits. There shall be filed with the application as part thereof the following exhibits:**
- (a) EXHIBIT A. A copy of the applicant's charter or articles of incorporation with amendments to date;**
- (b) EXHIBIT B. A copy of the bylaws with amendments to date;**
- (c) EXHIBIT C. Copies of all resolutions of directors authorizing the assumption in respect to which the application is made and, if stockholders' approval has been obtained, a copy of the stockholders' resolution should also be furnished;**
- (d) EXHIBIT D. A copy of any mortgage, indenture, or other agreement securing any security which it proposes to guarantee; also, a copy of any mortgage, indenture, or other agreement securing applicant's funded obligations;**
- (e) EXHIBIT E. Balance sheets with supporting fixed capital or plant schedules in conformity with the form set forth in the annual report which applicant is required to file with the Commission;**
- (f) EXHIBIT F. A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts at the date of the application;**
- (g) EXHIBIT G. Comparative income statements in conformity with the form set forth in the annual report which applicant is required to file with the Commission;**
- (h) EXHIBIT H. An analysis of surplus for the period covered by the income statements referred to in Exhibit G; and**
- (i) EXHIBIT I. A statement showing the present market value or other basis of determining the value of the securities to be guaranteed.**

Stats. Implemented: ORS 756.040 & 757.440

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434)

860-036-0730

Applications for Approval of Transactions ~~b~~Between Affiliated Interests

~~Fully regulated water utilities seeking authority under ORS 757.490 and 757.495 shall comply with the requirements of OAR 860-027-0040.~~

(1) Except as provided in section (3) of this rule, the requirements of this rule will apply to all fully regulated water utilities seeking authority under ORS 757.490 and ORS 757.495. An application for financing to an affiliated interest shall be made under OAR 860-036-0720.

(2) Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information:

(a) The applicant's exact name and the address of its principal business office;

(b) The name and address of the person authorized, on the fully regulated water utility's behalf, to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the fully regulated water utility and the contracting entity as defined by ORS 757.015 and ORS 757.490;

(d) The amount, kind, and ratio to total voting securities held, if applicable;

(e) A list of all officers and directors of the affiliated interest who are also officers or directors of the applicant;

(f) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(g) A description of the goods or services to be provided, the cost incurred in providing each of the goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(h) An estimate of the amount the fully regulated water utility will pay annually for the goods or services and the accounts in which it will record the charges;

(i) The reasons, in detail, relied upon by the fully regulated water utility for procuring the proposed goods or services from the affiliate and benefits, if any, utility customers and the general public will derive from the provision of goods or services;

(j) A description of the procurement process and the reasons, in pertinent detail appropriate to the complexity of the procurement, relied upon by the fully regulated water utility for procuring the proposed goods or services without a competitive procurement process, if such a process is not used;

(k) Transfer prices in contracts or agreements for the procurement of goods or services under competitive procurement shall be presumed to be the market value, subject to evaluation of the procurement process;

(l) A copy of the proposed contract or agreement between the fully regulated water utility and the contracting entity; and

(m) Copies of all resolutions of directors authorizing the proposed transactions and, if stockholders' approval has been obtained, copies of the resolutions approved by the stockholders.

(3) This rule shall not apply to fully regulated water utilities seeking to purchase or contracting to purchase, directly or indirectly, from any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in ORS 757.490(1):

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210; or

(b) Any service provided under a rate or schedule of rates which:

(A) Has been filed with an agency charged with the regulation of utilities;

(B) Has been approved as just and reasonable or in compliance with another comparable standard; and

(C) Is available to a broad class of customers.

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

Stats. Implemented: ORS 756.040 & 757.005 through 757.495

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434)

860-036-0735

Information Required for Water Utility Goods or Services Provided to Affiliated Interests

(1) Except as provided in section (4) of this rule, this rule applies to fully ~~Fully~~ regulated water utilities seeking to provide, or contracting to provide, directly or indirectly, to any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in ORS 757.490(1), service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal, or other services, or entering revenues or credits therefore on its books ~~shall comply with the requirements of OAR 860-027-0041~~. This rule does not apply to transactions subject to ORS 757.490 or 757.495 and OAR ~~860-027-0040~~ 860-036-0030.

(2) A fully regulated water utility's failure to submit this required information shall not limit the Commission's authority to recognize or impute revenues to the fully regulated water utility pursuant to such contract in any rate valuation or other hearing or proceeding.

(3) For transactions provided in section (1) of this rule, every fully regulated water utility shall submit to the Commission, in the manner and form indicated, the following information:

(a) Its exact name and the address of its principal business office;

(b) The name of the person authorized on the fully regulated water utility's behalf to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the fully regulated water utility and the other contracting entity as defined by ORS 757.015 or ORS 757.490;

(d) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(e) A description of the goods or services to be provided, the costs incurred in providing those goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(f) An estimate of the amount the fully regulated water utility will receive annually for the goods or services and the accounts in which it will record the payments;

(g) The reasons relied upon by the fully regulated water utility for providing the proposed goods or services and the benefits, if any, water utility customers and the general public will derive from the provision of goods or services;

(h) A copy of the contract or agreement between the fully regulated water utility and the contracting entity that is the subject of this filing; and

(i) Copies of all resolutions of directors of the fully regulated water utility authorizing the proposed transactions and, if approval of the fully regulated water utility's stockholders was obtained, copies of the resolutions approved by the stockholders.

(4) This rule shall not apply to fully regulated water utilities seeking to provide or contracting to provide, directly or indirectly, to any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in ORS 757.490(1):

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210; or

(b) Any service provided under a rate or schedule of rates which:

(A) Has been filed with an agency charged with the regulation of water utilities;

(B) Has been approved as just and reasonable or in compliance with another comparable standard; and

(C) Is available to a broad class of customers.

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

Stats. Implemented: ORS 756.040 & 757.005 through 757.490

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434)

860-036-0737

Timeliness of Applications Made Under OAR 860-036-0730 and Filings Made Under OAR 860-036-0735

An application made under OAR 860-036-0730 and a filing made under OAR 860-036-0735 shall occur no later than 90 days after the execution of the contract giving rise to the application or filing. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

Stat. Auth.: ORS Ch. 183 & 756

Stat. Implemented: ORS 756.040

Hist.: NEW

860-036-0738

Applications for Waiver of Requirements Under OARs 860-036-0730 and 860-036-0735

Upon petition by a fully regulated water utility and approval by the Commission for good cause, the requirements of OARs 860-036-0730 and 860-036-0735 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of circumstances demonstrating in advance that the transaction or transactions will be fair and reasonable and not contrary to the public interest, transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for

waiver.

Stat. Auth.: ORS Ch. 183 & 756

Stat. Implemented: ORS 756.040

Hist: NEW

860-036-0745

Relating to City Fees, Taxes, and Other Assessments

~~Water utilities shall conform to the requirements of OAR 860-022-0040 as applicable.~~

(1) The aggregate amount of all business or occupation taxes, licenses, franchise or operating permit fees, or other similar exactions imposed upon water utilities by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, which does not exceed 3.5 percent, applied to gross revenues as defined herein, shall be allowed as operating expenses of such water utilities for rate-making purposes and shall not be itemized or billed separately.

(2) Except as otherwise provided herein, "gross revenues" means revenues received from utility operations within the city less related net uncollectibles. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the water utility purchasing the service is not the ultimate customer.

(3) Permit fees or similar charges for street opening, installations, construction, and the like to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in exercising its police powers, and the value of any water utility services or use of facilities provided on November 6, 1967, to a city without charge, shall not be considered in computing the percentage levels herein set forth. Any such services may be continued within the same category or type of use. The value of any additional category of water utility service or use of facilities provided after November 6, 1967, to a city without charge shall be considered in computing the percentage levels herein set forth.

(4) This rule shall not affect franchises existing on November 6, 1967, granted by a city. Payments made or value of service rendered by a water utility under such franchises shall not be itemized or billed separately. When compensation different from the percentage levels in section (1) of this rule is specified in a franchise existing on November 6, 1967, such compensation shall continue to be treated by the affected water utility as an operating expense during the balance of the term of such franchise. Any tax, fee, or other exaction set forth in section (1) of this rule, unilaterally imposed or increased by any city during the unexpired term of a franchise existing on November 6, 1967, and containing a provision for compensation for use and occupancy of streets and public ways, shall be charged pro rata to local users as herein provided.

(5) Except as provided in section (4) of this rule, to the extent any city tax, fee, or other exaction referred to in section (1) of this rule exceeds the percentage levels allowable as operating expenses in section (1) of this rule, such excess amount shall be charged pro rata to water utility customers within said city and shall be separately stated on the regular billings to such customers.

(6) The percentage levels in section (1) of this rule may be changed if the Commission determines after such notice and hearing, as required by law, that fair and reasonable compensation to a city or all cities should be fixed at a different level or that by law or the particular circumstances involved a different level should be established.

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)

860-036-0750

Relating to Local Government Fees, Taxes, and Other Assessments

~~Water utilities shall conform to the requirements of OAR 860-022-0045 as applicable.~~

(1) If any county in Oregon, other than a city-county, imposes upon a water utility any new taxes or license, franchise, or operating permit fees, or increases any such taxes or fees, the water utility required to pay such taxes or fees shall collect from its customers within the county imposing such taxes or fees the amount of the taxes or fees, or the amount of increase in such taxes or fees. However, if the taxes or fees cover the operations of a water utility in only a portion of a county, then the affected water utility shall recover the amount of the taxes or fees or increase in the amount thereof from customers in the portion of the county which is subject to the taxes or fees. "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) The amount collected from each water utility customer pursuant to section (1) of this rule shall be separately stated and identified in all customer billings.

(3) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date.

(4) If any county, water utility, or customer affected by this rule deems the rule's application in any instance to be unjust or unreasonable, it may apply for a waiver of this rule by petition to the Commission, setting forth the reasons why the rule should not apply.

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

Stats. Implemented: ORS 756.040 & 757.110

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434)