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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 352

In the Matter of a Rulemaking to Amend OAR) ORDER
Chapter 860, Divisions 021 and 034 Relating)
to Consumer Issues. Opened as a result of)
PUC's Triennial Review (AR 347).)

DISPOSITION: RULES ADOPTED AS MODIFIED

On July 24, 1998, the Commission opened a rulemaking to amend Oregon Administrative Rules (OAR) Chapter 860, Divisions 021 and 034 relating to consumer issues. This was part of the Commission's triennial rule review (AR 347). The purpose of the rulemaking was to address rules providing definitions and information for consumers, billing related issues, and disconnection of utility service. Notice of the proposed rulemaking was filed with the Secretary of State on August 25, 1999 and published in the *Oregon Bulletin* on September 1, 1998.

On December 15, 1998, a new notice of proposed rulemaking was filed with the Secretary of State, with comments due on January 19, 1999. Notice of the revised rules was published in the *Oregon Bulletin* on January 1, 1999.

Participants met in a workshop on the rules on February 2, 1999. The workshop resulted in some changes in the proposed rules. After the workshop, notice of the proposed rulemaking was filed with the Secretary of State on April 14, 1999. Comments were due on May 17, 1999, and a hearing was set for May 25, 1999. Notice was published in the *Oregon Bulletin* on May 1, 1999.

The Commission received comments on the proposed rule, in its various forms, from:

- Oregon-Idaho Utilities, Inc.
- United Telephone Company of the Northwest dba Sprint
- GTE Northwest Incorporated (GTE)
- Midvale Telephone Exchange, Inc.
- PacifiCorp
- Portland General Electric
- Oregon Telecommunications Association
- U S WEST Communications, Inc. (USWC) and Malheur Home Telephone Company (Malheur)
- Cascade Natural Gas Company (Cascade Natural Gas)

USWC and Malheur, Cascade Natural Gas Corporation, and Idaho Power Company filed comments on the post-workshop version of the rules.

At the hearing, held before Administrative Law Judge Ruth Crowley in Salem, Oregon, the following entered appearances:

Jay Nusbaum, Attorney at Law, for USWC

Renee Willer, authorized representative, for GTE

Glenn Harris, authorized representative, for Sprint

Mike Weirich, Assistant Attorney General, for Staff

Most of the comments made before the workshop were addressed and differences resolved at the workshop. Issues that remain disputed are addressed below. The discussion does not mention rules for which Staff had initially recommended a change and then agreed with participants at the workshop not to recommend changes. Certain minor linguistic and housekeeping changes have not been discussed but were not opposed. The version of the rules reflecting language and housekeeping changes, the consensus of workshop recommendations, and our disposition of contested issues, is attached to this order as Appendix A and incorporated herein by reference.

SUMMARY OF WORKSHOP RECOMMENDATIONS

Listed below are the rule changes about which workshop participants reached consensus. The rule numbers reflect the numbers given in Staff's summary of the AR 352 workshop, as revised April 5, 1999. These changes are adopted with the exception of the change proposed to OAR 860-021-0405(11), discussed immediately below.

OAR 860-021-0405(11)

Defines effective life and supersedure procedures for the energy disconnection notice: "Written notice of pending disconnection shall be valid for a period of no longer than 60 calendar days. If the notice is superceded by the transmittal of a subsequent disconnect warning notice from the utility identifying a later date for disconnection, the disconnection date identified on the latest notice shall become the earliest possible date for disconnection."

The mirror provision for telecommunications utilities is not adopted, because the utilities object that the proposed rule gives them a disincentive to enter into time payment plans with customers. For that reason, we do not adopt the provision as to electric and gas utilities.

OAR 860-021-0008(3)/OAR 860-034-0020(2)

Eliminates the term "Consumer" from definitions.

OAR 860-021-0008(9)[now(8)]/OAR 860-034-0020(8)[now (6)]

Adds new definition of "Regulated Charges": "Regulated charges" means charges for services delivered in Oregon and subject to the jurisdiction and approval of the Commission.

OAR 860-021-0010/OAR 860-034-0040

This change was made to reduce consumer confusion about available lists. The rule had read:

(f) Listings of consumer intervenor organizations . . .

It now reads:

(f) Listings of consumer organizations that participate in Commission proceedings . . .

OAR 860-021-0126(2)(c)

Changes "monthly due dates" to "months."

OAR 860-021-0135(1)/OAR 860-034-0130(1)

Staff's original proposal adds the language, "The utility may waive rebilling for underbillings at its discretion." The language allows utilities the option of not collecting a bill that would cost more to collect than the bill itself, but is somewhat broad. At the workshop, the participants and Staff agreed on the revision set out below. Instead of adding the sentence to the end of (1), the sentence as revised now stands alone as (2): The utility may waive rebilling for underbillings when the costs to the utility of doing so make it uneconomical.

On reading the workshop revision, we find the language still somewhat unclear, and have revised it to clarify the sense of the workshop. It now reads as follows:

The utility may waive rebilling for underbillings when the costs to the utility of rebilling make it uneconomical.

OAR 860-021-0405(5)

Defines "service" of the 15-day energy notice of disconnection to include the following: "or, if the notice is delivered by mail, service is complete on the day after the date of the postmark." We have changed this definition to be consistent with the definitions in the telecommunications sections of the rules as follows:

"or, if the notice is delivered by U S Mail, service is complete on the day after the date of the U S Postal Service postmark or on the day after the date of postage metering."

OAR 860-021-0405(6)

Adds the following sentence to define "service" of the 5-day disconnection notice: "Service is complete on the date of personal delivery or, if the notice is delivered by mail, service is complete on the day after the date of the postmark." This provision has been changed as follows, for the sake of consistency:

"or, if notice is delivered by U S Mail, service is complete on the day after the date of the U S Postal Service postmark or on the day after the date of postage metering."

OAR 860-021-0505

Throughout the rule, changes have been made to remove limitation of the procedures to telecommunications utility customers.

OAR 860-021-0505(3)(c)/OAR 860-034-0260(3)(c)

Requires utility to identify the amount that must be paid to avoid disconnection by adding new language: "The utility shall prominently identify the amount necessary to be paid to avoid disconnection of regulated services."

CONTESTED ISSUES

OAR 860-021-0125(2)/OAR 860-034-0110(2)

Defines "service" of utility bills to customers. Staff proposed the following Section (2):

Due and Payable Period

(1) Each utility shall establish procedures to ensure the period from billing transmittal to due date is not less than 15 days for all customers.

(2) If the bill is delivered by mail, the transmittal date is the day after the date of the postmark.

In its initial comments on this rule, submitted in a memorandum for the public meeting of July 21, 1998, Staff noted that its proposal was intended to clarify the actual date that bills are mailed, to confirm the due and payable period. Some utilities currently mail bills without a postmarked date. The consumer then questions whether the requisite due and payable period is being met. Without a postmark, compliance cannot be verified. Moreover, the concept of billing transmittal is undefined in the present rule.

Participants at the workshop noted that while the utility can control the date the bill is placed in the mail, the utility cannot control the date of the postmark. Participants also noted that metered mail does not receive a postmark. Participants suggested this alternative language, altering both sections (1) and (2). In Section (1), "the due and payable period" replaces "the period from billing transmittal to due date."

Each utility shall establish procedures to ensure that the due and payable period is not less than 15 days for all customers.

If the bill is delivered by U S Mail, the due and payable period begins the day after the U S Postal Service postmark or the day after the date of postage metering.

USWC and Malheur commented that since the transmittal date is the day after metering, the new proposal would create a 16-day period for the due and payable period. USWC argued that such a consequence would require changes in its billing system and retraining of its employees. USWC and Malheur argue that if Staff wants certainty as to the starting date of the due and payable period, the rule should make the period start on the date of the postmark or metering.

Resolution. We adopt the alternative language suggested by workshop participants. The term "due and payable period" is clearer than the language "the period from billing transmittal to due date," especially since a bill is due on receipt and becomes overdue at the end of the period. "Transmittal" is not defined in the rules; omitting that term clarifies the rule. The alternative language also takes the practice of metering mail into account.

USWC's and Malheur's objection to the new proposed language is unclear to the Commission. The commentors do not make explicit how they would have to change their billing and collection procedures, or what such a change would entail. Staff's goal in this proposal seems to be to give the customer the benefit of 15 days before a bill becomes overdue. The date after metering or postmarking are proxies for the time a bill is in transit. The workshop proposal redounds to the benefit of customers.

OAR 860-021-0334/OAR 860-034-0240

Staff's draft requires transfer of an old bill to a customer's active utility account in order for the utility to pursue disconnection of service for nonpayment of the old bill. Staff believes that if the regulated service is placed in jeopardy, the previous balance should be transferred onto the customer's active utility account. This allows the customer the opportunity to dispute the previous charges in the regulated dispute resolution process and ensures that the customer will receive required notification prior to disconnection of the regulated utility service. Staff notes that its intention is not to preclude any utility's option of pursuing collection of old bills outside the regulated process, but to require transfer of the bill onto the active account when disconnection of regulated services is to be used as a collection tool for the old balance.

The proposed language reads: "A utility may pursue disconnection for nonpayment of a customer's current utility service only in compliance with [relevant rules] and only after the amount has been transferred to the customer's current utility account and bill."

USWC and Malheur, GTE, Cascade Natural Gas, and Idaho Power Company all oppose adoption of this proposal.

USWC and Malheur comment that this proposal will benefit neither utilities nor customers. They believe that most customers want to keep old accounts separate from current accounts. Having separate bills eliminates confusion about what is owed on the old bill and what is due on the current account. USWC and Malheur note that Staff has not suggested changing section (2) of the Division 21 rule, which encourages customers to establish payment plans for past accounts. The proposal would make it more difficult to establish a payment plan for past accounts by requiring utilities to add the old balance to the current one. Bills would become more complex and require more explanation, adding to customer inquiries and possibly to complaints. The proposal, USWC and Malheur conclude, is contrary to responsive and efficient customer service.

Staff has expressed concern that a customer is not receiving due process without implementation of its proposal, but the commentors note that the customer has already received information about the old account through the bills and notices required by the normal regulatory procedures. This, they argue, is sufficient for purposes of due process.

Idaho Power notes that where an uncollectable amount has been turned over to a collection agency, retrieving the account to add it to the current account will trigger payment of a fee to the collection agency. The requirement that the old amount be transferred to the current account regardless of ability to collect places an unnecessary restriction on the utility's ability to collect past due amounts. Reduced revenues due to higher than necessary uncollectable accounts receivable will eventually increase costs to Idaho Power's Oregon retail customers.

Cascade Natural Gas also notes that some of its customers prefer to keep the accounts separate. Cascade also thinks current regulations give sufficient notice to customers of any pending disconnection, the cause, and the dollar amount involved.

GTE comments that it also complies with all notification requirements before it terminates a customer. GTE also notes that once an account has been turned over to a collection agency, it cannot transfer the balance to the current account without increasing collection costs.

Resolution. The Commission concludes that current regulations require adequate customer notification about overdue bills. The rules governing disconnection provide for notice and specific information to customers. We agree with the participants who oppose this proposal: the requirement to transfer an old balance to the customer's current account could be costly, cumbersome, and confusing, as well as contrary to customer wishes. We elect to adopt only the first part of Staff's proposed addition to the rule: "A utility may pursue disconnection for nonpayment of a customer's current utility service only in compliance with OAR 860-021-0405 or OAR 860-021-0505" for Division 21, and "A utility may pursue disconnection for nonpayment of a customer's current utility service only in compliance with OAR 860-034-0260" for Division 34. The rules cited govern disconnection notices and proceedings.

OAR 860-021-0505/OAR 860-034-0260

Section (2): Mailing Disconnection Notices. The revised proposal extends the required notice period for a disconnection from five calendar days to five business days. USWC and Malheur oppose the change as unnecessary. USWC and Malheur argue that rules already prevent disconnection on Fridays and holidays, so that it usually takes a utility longer than five calendar days to effectuate a disconnection. Staff's revision, they point out, would require utilities to change their disconnection procedures and policies, causing them to incur unnecessary expense. Staff did not mount an argument in favor of its proposed change.

Resolution. We conclude that the rules as currently written give customers adequate protection from unreasonable termination. We will not adopt this proposed change.

Section (4): Pre-established Credit Limit. The current rule reads: "The utility may not send the[disconnection] notice before the due date for payment for the services billed." The proposal would add the following language to the rule: "except when a telecommunications customer exceeds a preestablished account credit limit for local service and all toll usage."

According to Staff, the basic premise of this proposed rule is to allow a customer to establish service with a predetermined credit limitation in lieu of a deposit or for a reduced deposit. Staff expresses the concern that the rule deprives the customer of the 15-day due and payable period required under OAR 860-021-0125. Staff is also concerned

that the proposal's current format seems to allow disconnection of regulated local exchange service for unregulated toll charges. Staff expresses concern that this proposal could memorialize denial of a customer's access to one carrier because of a debt owed to another carrier. Staff notes that this concern becomes more pressing as the telecommunications industry moves toward competition.

GTE comments that this proposal could be useful for dealing with established credit risks, but only if they exceed the credit limit on toll calls. GTE suggests eliminating the language "for local service and all" to clarify that the rule applies only to toll usage. USWC and Malheur comment that a rulemaking is not the appropriate forum for dealing with this issue.

Resolution. We appreciate the participants' concerns about customers who are credit risks. However, the problems that the proposed language raises outweigh the good this provision might do. We share Staff's concerns about the due and payable period. We do not adopt this proposal.

Section (5): Completion of Service. This proposal adds language defining completion of service as the day after the date of postage metering or postmark, just as OAR 860-021-0125(2) and 860-034-0110(2) do. Staff supports this change and recommends adoption. USWC and Malheur oppose adoption of this proposal. USWC and Malheur point out that completion of service has no importance in the context of a disconnection notice. No deadlines in Section 0505 are triggered on completion of service. Instead, the rule requires a telecommunications utility to "provide the customer a written notice of the disconnection" at least five days before disconnection, and it states that a telecommunications utility "may not send the notice before the due date for payment for the services billed." OAR 860-021-0505(2) and (4); 860-034-0110(2) and (4). The revised proposal, USWC and Malheur contend, is unnecessary and confusing.

Resolution. We find USWC and Malheur's arguments unpersuasive. It is more confusing to have two separate "clocks" running in the rules for completion of service. See OAR 860-021-0125(2); 860-021-0405(5) and (6); 860-032-0110(2). We adopt this proposal.

Section (7): Temporary Curtailment. This proposal would change the conditions for temporary curtailment of service. The proposed rule adds the following condition under which temporary curtailment of service is permitted: "Upon written notice when a telecommunications customer exceeds a preestablished account credit limit for local service and all toll usage."

Participants make the same comments with respect to this provision as they did regarding Section (4) above. For the reasons given there, we do not adopt the proposed language.

Section (13): Expiration of Disconnection Notice. This proposal would add the following provision: "Written notice of pending disconnection under this rule shall be valid for a period of no longer than 60 calendar days. If the notice is superseded by the utility's transmittal of a subsequent disconnect warning notice identifying a later date for disconnection, the disconnection date identified on the latest notice shall become the earliest possible date for disconnection."

Staff notes that this issue is a source of continuing problems and recommends adoption of the proposal. USWC and Malheur argue that the proposal should be rejected as unnecessary and disadvantageous to Oregon customers. They note that this proposal destroys any incentive for utilities to enter into long-term payment plans if, after 60 days, they forfeit any rights under a disconnect notice and must start the disconnection process anew. The only way to proceed with time payment plans under the proposed rule, USWC and Malheur contend, would be to automatically send a new notice every 60 days, regardless of whether the customer has actually missed any payments. This would confuse customers and unnecessarily delay the disconnection process.

Resolution. We share USWC and Malheur's concern that the proposed rule could provide a disincentive to utilities' offering long-term payment plans if the plans must be updated or the disconnection notice renewed every 60 days. Therefore, we do not adopt this proposal.

ORDER

IT IS ORDERED that the rules attached as Appendix A and incorporated herein by reference are 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.

