

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
 A Statement of Need and Fiscal Impact accompanies this form.

Public Utility Commission	860
Agency and Division	Administrative Rules Chapter Number
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Rules Coordinator	Address
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**RULE CAPTION**

In the Matter of Rule Changes Related to Utility Tax Information (SB 967) and Confidential Information  
**Not more than 15 words that reasonably identify the subject matter of the agency's intended action.**

February 8, 2012	9:30 a.m.	550 Capitol St NE – 1st Floor, Salem, OR 97301	Lisa Hardie
Hearing Date	Time	Location	Hearings Officer

Hearing Date	Time	Location	Hearings Officer
<i>Auxiliary aids for persons with disabilities are available upon advance request.</i>			

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:** 860-001-0080, 860-001-0500, 860-022-0019 and 860-027-0200

**REPEAL:** 860-022-0041

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS Ch. 183, 756, 757, 759 and 756.040 & 756.060

Other Auth.: Senate Bill 967, 2011 legislative session, codified as Oregon Laws 2011, Chapter 137

Stats. Implemented: ORCP(36), ORS 183.425, 183.450, 756.040, 756.055, 756.060, 756.105, 756.500 – 756.575, 756.990; 757.205, 757.511 & 759.175

**RULE SUMMARY**

The rulemaking is needed to implement Senate Bill 967 (2011 legislative session) and to clarify procedures for handling confidential information. SB 967 relates to rates of public utilities; created new provisions; amended ORS 757.210 and 757.511; and repealed ORS 757.267 and 757.268.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 553 on comments and file them by e-mail to the Commission's Filing Center at [PUC.FilingCenter@state.or.us](mailto:PUC.FilingCenter@state.or.us) and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418. For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>. Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16875>.

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business February 3, 2012, to request a dial -in number. To present oral comment at the hearing, participants must attend in person.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

February 22, 2012, 5:00 PM

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

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<i>Diane Davis</i>	Diane Davis	<a href="mailto:diane.davis@state.or.us">diane.davis@state.or.us</a>	December 14, 2011
Signature	Printed name	email address	Date

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Public Utility Commission

860

Agency and Division

Administrative Rules Chapter Number

In the Matter of Rule Changes Related to Utility Tax Information (SB 967) and Confidential Information

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Rule Changes Related to Utility Tax Information (SB 967) and Confidential Information

Statutory Authority: ORS Ch. 183, 756, 757, 759 and 756.040 & 756.060

Other Authority: Senate Bill 967, 2011 legislative session, codified as Oregon Laws 2011, Chapter 137

Stats. Implemented: ORCP(36), ORS 183.425, 183.450, 756.040, 756.055, 756.060, 756.105, 756.500 – 756.575, 756.990; 757.205, 757.511 & 759.175

Need for the Rule(s):

The rulemaking is needed to implement Senate Bill 967 (2011 legislative session) and to clarify procedures for handling confidential information. SB 967 relates to rates of public utilities; created new provisions; amended ORS 757.210 and 757.511; and repealed ORS 757.267 and 757.268.

Documents Relied Upon, and where they are available:

2011 Senate Bill 967 found online at <http://www.leg.state.or.us/11reg/measpdf/sb0900.dir/sb0967.en.pdf>

OAR 860-001-0080 and 860-001-0500 found online at [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_860/860\\_001.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_001.html)

OAR 860-022-0019 and 860-022-0041 found online at [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_860/860\\_022.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_022.html)

OAR 860-027-0200 found online at [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_860/860\\_027.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_027.html)

Fiscal and Economic Impact:

Fiscal and economic impacts result from the repeal or modification of legislative requirements, and not from the rulemaking implementing the changes required by the legislature. The Public Utility Commission staff, the affected utilities, and consumer group intervenors such as the Citizens' Utility Board, Industrial Customers of Northwest Utilities, and Northwest Industrial Gas Users concur that adoption of the proposed rules will not have a material fiscal impact on their individual operational costs.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

As noted above, there is no material fiscal impact.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Certain regulated energy utilities are subject to the rules and they are not small businesses.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

As noted above, compliance to the rule changes will not substantially impact the reporting, recordkeeping or other administrative activities required.

c. Equipment, supplies, labor and increased administration required for compliance:

As noted above, compliance to the rule changes will not substantially increase equipment, supplies, labor, or administration.

How were small businesses involved in the development of this rule?

Small businesses were not involved as they are not subject to the requirements.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

The Commission Staff conducted workshops and facilitated rounds of comments concerning the proposed changes and requirements of the changes to the law.

*Diane Davis*

Diane Davis

12/14/11

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

**860-001-0080**

**Protective Orders**

(1) Upon request by a party and for good cause shown, an ALJ may issue protective orders to limit disclosure of confidential information in specific Commission proceedings. Decisions by the ALJ regarding protective orders may be appealed to the Commission under OAR 860-001-0720.

(2) **General Protective Order.** The Commission's general protective order adopts a process for parties to resolve discovery disputes that include confidential information. The order allows the broadest possible discovery consistent with the need to protect confidential information; it does not determine whether a particular document is exempt from disclosure.

(3a) Under the terms of a general protective order, a party may designate information that it reasonably believes falls within the scope of ORCP 36(C)(7) or is exempt from public disclosure under the Public Records Law. Information designated as confidential may be disclosed only to a "qualified person" as defined in the general protective order.

(ab) A confidential designation must be made in good faith and be limited to the portions of the document that qualify as a protected trade secret or other confidential research, development, or commercial information.

(bc) Except for Commission Staff, a party must sign the "consent to be bound" section of the protective order to receive confidential information. By signing the "consent to be bound," the party certifies that it has an interest in the proceedings that is not adequately represented by other parties to the proceedings, that the party will not use or disclose the information for any purpose other than to participate in the proceedings unless the designating party gives written consent, and that the party will take all reasonable precautions to keep the confidential information secure.

(ed) A party may challenge the designation of information as confidential by notifying the designating party. Once notified, the designating party must show that the challenged information is covered by ORCP 36(C)(7) or exempt from disclosure under the Public Records Law.

(de) If the parties are unable to resolve a dispute about a confidential designation informally, then any party may request that the ALJ conduct a conference to facilitate the resolution of discovery disputes. A challenging party may also file an objection to the confidential designation. The objection must identify the information in dispute and include a certification that the parties have made reasonable efforts to achieve a resolution, but have been unable to resolve the controversy without the ALJ's assistance. Within 7 days of the objection, the designating party must either remove the confidential designation or file a written response identifying the legal basis for the claim of confidentiality. The challenging party may file a written reply to the response within 7 days.

(43) **Motion for Additional Protection.** A party may request that the ALJ issue a **modified** protective order that provides additional protection ~~under ORCP 36(C)~~ **beyond that provided by the general protective order.**

(a) A motion for additional protection must include:

(A) The parties involved;

(B) ~~The exact nature~~ **A detailed description** of the information ~~involved to be~~ **protected;**

(C) ~~The legal basis~~Legal authority for the claim that the information is protected under the ORCP 36(C)(7) or the Public Records Law;

~~(D) The exact nature of the relief requested;~~

~~(E) The specific reasons the requested relief is necessary~~general protective order is inadequate to protect the information at issue; and

~~(F) A detailed description of the intermediate measures, including selected redaction, explored by the parties and why these measures are insufficient.; and~~

(F) A description of the measures of additional protection sought, why they are necessary, and how they are narrowly tailored to address the circumstances presented in the docket.

(b) In determining whether to issue a modified protective order to provide additional protection of designated information, the ALJ will, at minimum, consider the following as applicable:

(A) The extent to which the information is known outside of the moving party's business;

(B) The extent to which the information is known by employees and others involved in the moving party's business;

(C) The extent of measures taken by the moving party to guard the secrecy of the information;

(D) The value of the information to the moving party and its competitors;

(E) The amount of effort or money expended by the moving party in developing the information;

(F) The ease or difficulty with which the information could be properly acquired or duplicated by others;

(G) The extent, kind, and likelihood of harm that may occur should the information be disclosed;

(H) Whether the additional protection sought would unreasonably restrict the intervenors from fully participating in the proceeding, recognizing that the tax information of an unregulated nonutility business in a regulated utility's affiliated group is sensitive;

(I) Whether the additional protection sought would unreasonably restrict the ability of the Commission to develop a full and complete record of all facts relevant to the proceeding; and

(J) Other considerations the Commission deems relevant.

~~(b) To receive access to confidential information that has been given additional protection beyond that of the general protective order, a party may be required to certify that they it intends to fully participate in the proceedings. Fully participating means being actively involved in the docket, as appropriate, by filing testimony; participating in settlement negotiations, participating in workshops, participating in conferences, and participating in hearings; and filing other pleadings as required. If a certifying party fails to fully participate in the proceedings, the party may decertify itself or, upon the request of a party of the ALJ's own motion, be decertified as eligible to receive information under a modified protective order.~~

(d) Challenges to the designation of information as warranting additional protection under a modified protective order are to be handled as described in section (2) above, unless the modified protective order provides otherwise.

**(e) If, during the course of the subject proceedings, a dispute arises regarding the application of a modified protective order, any of the affected parties may ask the ALJ to conduct a conference to facilitate resolution of the dispute. The ALJ will schedule a conference to take place within three business days, or as soon as practicable, to expedite the resolution of the dispute. The ALJ may require in camera inspection of the documents for which a party seeks additional protection.**

(54) The Commission may expel from the subject proceedings any person who fails to comply with the terms of ~~the~~ protective order, prohibit the person from appearing in future proceedings, and impose penalties under ORS 756.990(2)(c). If an attorney violates a protective order, the Commission will report the violation to the bar associations in all states where the attorney is admitted to practice law.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORCP(36), ORS 756.040, 756.055 & 756.990

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10 (Order No. 10-400)

## **860-001-0500**

### **Discovery in Contested Case Proceedings**

(1) Discovery must be commensurate with the needs of the case, the resources available to the parties, and the importance of the issues to which the discovery relates.

(2) Discovery that is unreasonably cumulative, duplicative, burdensome, or overly broad is not allowed. Instructions and definitions included in discovery requests must be consistent with these rules and ORS Chapters 756, 757, and 759.

(3) Privileged material is not discoverable except as provided under the Oregon Rules of Evidence.

(4) A party will not be required to develop information or prepare a study for another party, unless the capability to prepare the study is possessed uniquely by the party from whom discovery is sought, the discovery request is not unduly burdensome, and the information sought has a high degree of relevance to the issues in the proceedings.

(5) Parties must make every effort to engage in cooperative informal discovery and to resolve disputes themselves. If a party receives a data request that is likely to lead to a discovery dispute, then that party must inform the requesting party of the dispute as soon as practicable and attempt to resolve it informally.

(6) If parties are unable to resolve a dispute informally, then any of the parties involved in the dispute may request that the ALJ conduct a conference to facilitate the resolution of discovery disputes. A requesting party must identify the specific discovery sought and describe the efforts of the parties to resolve the dispute informally.

(7) A party may file a motion to compel discovery. The motion must contain a certification that the parties have conferred and been unable to resolve the dispute. A party filing a motion to compel will be allowed the opportunity to file a reply to the response to the motion.

**(8) A party's assertion that information responsive to a discovery request is confidential may not be used to delay the discovery process; provided, however, a party shall not be required to produce information that it claims is inadequately protected until such time as its claim for the need for a general protective order or a modified protective order is resolved. If an answering party believes that a response**

**to a discovery request involves confidential information that is inadequately protected by the safeguards existing in the docket, the answering party must notify the requesting party of this belief as soon as practicable and, if appropriate, promptly move for an appropriate protective order.**

(89) A party may by motion, or the ALJ may on the ALJ's own motion, propose that sanctions be imposed if a party fails or refuses to comply with an oral or written ~~order~~**ruling** resolving a discovery dispute. The ALJ may impose sanctions including: default; dismissal; or striking of testimony, evidence, or cross-examination.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 183.425, 183.450, 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10 (Order No. 10-400)

### **860-022-0019**

#### **General Rate Revisions**

(1) Any utility filing new or revised tariff schedules that constitute a general rate revision must include supporting testimony and exhibits, work papers, and an executive summary. A general rate revision is a filing by a utility that affects all or most of the utility's rate schedules. The term "general rate revision" does not include the exclusions in OAR 860-022-0017(1). The executive summary must contain an exhibit showing in summary form the following information:

- (a) The dollar amount of total revenues that would be collected under the proposed rates;
  - (b) The dollar amount of revenue change requested, total revenues, and revenues net of any credits from federal agencies;
  - (c) The percentage change in revenues requested, total revenues, and revenues net of any credits from federal agencies;
  - (d) The test period;
  - (e) The requested return on capital and return on equity;
  - (f) The rate base proposed in the filing;
  - (g) The results of operations before and after the proposed rate change; **and**
  - (h) The proposed effect of the rate change on each class of customers; ~~and~~
- (i2) The initial filing of a general rate revision must contain the following:**

**(a) All information required by the most recent version of the Utility Staff General Rate Case Data Request Form A, available at <http://www.puc.state.or.us> including tax-related information as specified by Commission order; and**

**(b) A motion for a general protective order or modified protective order under OAR 860-001-0080, if necessary for the release of information under sections (1)(a) through (g), and (2)(a) of this rule.**

(23) Telecommunications utilities partially exempt from regulation under ORS 759.040 must file tariffs as specified in OAR 860-034-0300.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 756.040, 757.205 and 759.175

Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97 (Order No. 97-443); PUC

12-1999, f. & cert. ef. 11-18-99 (Order No. 99-709); PUC 3-2002, f. & cert. ef. 2-5-02 (Order No. 02-010); PUC 18-2004, f. & cert. ef. 12-30-04 (Order No. 04-753); Renumbered from 860-013-0075, PUC 5-2010, f. & cert. ef. 10-22-10 (Order No. 10-400)

**860-022-0041**

**~~Annual Tax Reports and Automatic Adjustment Clauses Relating to Utility Taxes~~**

~~(1) This rule applies to regulated investor-owned utilities that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003, or to any successors in interest of those utilities that continue to be regulated investor-owned utilities.~~

~~(2) As used in this rule:~~

~~(a) "Affiliated group" has the meaning given to "affiliated group" in ORS 757.268(13)(a).~~

~~(b) "Deferred taxes" for purposes of the utility means the total deferred tax expense of regulated operations that relate to the year being reported in the utility's results of operations report or tax returns, excluding deferred taxes related to the establishment of a regulatory receivable or payable account for any rate adjustment imposed under ORS 757.268, in the year the deferred tax is established but not thereafter, to eliminate the iterative tax effect of the rate adjustment.~~

~~(c) "Income" means taxable income as determined by the applicable taxing authority, except that income means regulatory taxable income when reporting or computing the stand-alone tax liability resulting from a utility's regulated operations.~~

~~(d) "Income tax losses" means the negative taxable income of an entity in the federal taxpayer or unity group, excluding the current deduction of tax depreciation on public utility property and federal investment tax credits related to public utility property.~~

~~(e) "IRC" means Internal Revenue Code.~~

~~(f) "Investment" means capital outlays for utility property necessary or useful in providing regulated service to customers.~~

~~(g) "Iterative tax effect" means the tax effect of a rate adjustment for taxes related to ORS 757.267 or 757.268 in the tax reporting period that includes the rate adjustment.~~

~~(h) "Local taxes collected" means the total amount collected by the utility from customers under the local tax line item of customers' bills calculated on a separate city or county basis.~~

~~(i) "Pre tax income" means the utility's net revenues before income taxes and interest expense, as determined by the Commission in a general rate proceeding.~~

~~(j) "Properly attributed" means the share of taxes paid that is apportioned to the regulated operations of the utility as calculated in section (3), subject to subsections (4)(a), (4)(b), (4)(g), and (4)(h) of this rule.~~

~~(k) "Public utility property" means property as defined by the Code of Federal Regulations, Title 26, Section 168(i)(10).~~

~~(l) "Regulated operations of the utility" has the meaning given to "regulated operations of the utility" in ORS 757.268(13)(c).~~

~~(m) "Results of operations report" means the utility's annual results of operations report filed with the Commission.~~

(n) "Revenue" means utility retail revenues received from ratepayers in Oregon, excluding supplemental schedules or other revenues not included in the utility's revenue requirement and adjusted for any rate adjustment imposed under this rule.

(o) "Revenue requirement" means the total revenue the Commission authorizes a utility an opportunity to recover in rates pursuant to a general rate proceeding or other general rate revision, including an annual automatic adjustment clause under ORS 757.210.

(p) "Stand-alone tax liability" means the amount of income tax liability calculated using a pro forma tax return and revenues and expenses in the utility's results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effects from investment tax credits, and calculating interest expense using actual annual average weighted cost of debt derived from the actual annual average capital structure for the tax period multiplied by the annual average rate base for the tax period.

(q) "System regulated operations" means those activities of the utility, in Oregon and other jurisdictions that are subject to rate regulation by any state commission.

(r) "Tax" has the meaning given to "tax" in ORS 757.268(13)(d).

(s) "Taxes authorized to be collected in rates" means:

(A) The following for federal and state income taxes calculated by multiplying the following three values:

(i) The revenue the utility collects, as reported in the utility's results of operations report;

(ii) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, calculated using the pre-tax income and revenue the Commission authorized in establishing rates and revenue requirement; and

(iii) The effective tax rate used by the Commission in establishing rates for the time period covered by the tax report as set forth in the most recent general rate order or other order that establishes an effective tax rate, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income.

(B) For purposes of paragraph (2)(s)(A) of this rule, when the Commission has authorized a change during the tax year for gross revenues, net revenues, or effective tax rate, then the amount of taxes authorized to be collected in rates will be calculated by weighting the amount of energy sold during the period that rates were in effect as a percentage of the total energy sold during the tax year.

(t) "Taxes paid" has the meaning given to "taxes paid" in ORS 757.268(13)(f).

(u) "Taxpayer" means the utility, the affiliated group or the unitary group that files income tax returns with units of government.

(v) "Tax report" means the tax filing each utility must file with the Commission annually, on or before October 15 following the year for which the filing is being made, pursuant to ORS 757.268.

(w) "Unitary group" means the utility or the group of corporations of which the utility is a member that files a consolidated state income tax return.

(x) "Units of government" means federal, state, and local taxing authorities.

(3) The amount of income taxes paid that is properly attributed to regulated operations of the utility is calculated as follows:

~~(a) The amount of federal income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(a)(A) and (B), subject to subsection (3)(b) of this rule:~~

~~(A) The total amount of federal income taxes paid by the federal taxpayer, to which is added:~~

~~(i) The current tax benefit, at the statutory federal income tax rate, of tax depreciation on public utility property;~~

~~(ii) The tax benefits associated with federal investment tax credits related to public utility property; and~~

~~(iii) Imputed tax benefits on charitable contributions and IRC section 45 renewable electricity production tax credits of the affiliated group, except those tax benefits or credits associated with regulated operations of the utility; and~~

~~(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales, using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the federal taxpayer in the denominator.~~

~~(b) The amount of federal income taxes paid that is properly attributed to the regulated operations of the utility under subsection (3)(a) of this rule shall not be less than the amount of the federal stand-alone tax liability calculated for the regulated operations of the utility, reduced by the product of:~~

~~(A) The imputed negative tax associated with all federal income tax losses of entities in the utility's federal taxpayer group; and~~

~~(B) The average of the ratios for the utility's gross plant, wages and salaries and sales, using amounts allocated to the regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the system regulated operations in the denominator.~~

~~(c) The total amount of state income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(c)(A) and (B), subject to paragraphs (3)(c)(C) and (D) and subsection (3)(d) of this rule:~~

~~(A) The total amount of Oregon income taxes paid by the Oregon unitary group taxpayer, to which is added:~~

~~(i) The current tax benefit, at the state statutory rate, of tax depreciation on public utility property; and~~

~~(ii) Imputed Oregon tax benefits on charitable contributions of the unitary group, except those tax benefits associated with regulated operations of the utility; and~~

~~(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the unitary group taxpayer in Oregon, adjusted to reflect amounts allocated to regulated operations of the utility, in the denominator.~~

~~(C) If a utility's taxes collected in rates reflect non-Oregon state income taxes, the utility must make a one-time permanent election in its October 15, 2006, tax report filing, or in the case of a change of the majority ownership of the utility's voting shares pursuant to ORS 757.511, in the first tax report filing that includes a tax reporting period reflecting the new ownership, to either:~~

(i) Multiply the total amount of Oregon income taxes paid in paragraph (3)(c)(A) of this rule before adjustments by the ratio calculated as the state income tax rate used by the Commission in establishing rates divided by the Oregon statutory tax rate set forth in ORS 317.061; or

(ii) Calculate the total state taxes paid using the formula set forth in paragraphs (3)(c)(A) and (B) of this rule on a state-by-state basis, apportioned to Oregon by multiplying the total state taxes paid by the average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator.

(D) When Oregon income tax attributable to system regulated operations is 100 percent allocated to Oregon in setting rates, 100 percent of the Oregon income tax of system regulated operations must be attributed to the regulated operations of the utility.

(d) The amount of state income taxes paid that is properly attributed to the regulated utility operations of the utility under subsection (3)(c) of this rule must not be less than:

(A) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the amount of the Oregon state stand-alone tax liability calculated for the regulated operations of the utility, minus the imputed negative tax associated with all Oregon state income tax losses of entities in the utility's unitary group; or

(B) For a utility for which non-Oregon state income taxes are included in rates, the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group, minus the sum of the imputed negative tax associated with all state income tax losses of entities in the utility's unitary group in each state; and

(ii) The average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator.

(e) The amount of local income taxes paid to units of government that is properly attributed to the regulated operations of a utility is the product of the values in paragraphs (3)(c)(A) and (B) of this rule for each local taxing authority in Oregon:

(A) The total amount of income taxes paid by the taxpayer to the local taxing authority, as adjusted to include the imputed effect on local income taxes of:

(i) The current tax benefit of tax depreciation on public utility property; and

(ii) Imputed tax benefits on charitable contributions of the taxpayer except those associated with regulated operations of the utility; and

(B) The ratio calculated using the method for apportioning taxable income used by the local taxing authority, with the amount for the regulated operations of the utility in the local taxing authority in the numerator and the amount for the taxpayer in the local taxing authority in the denominator.

(4) On or before October 15 of each year, each utility must file a tax report with the Commission. The tax report must contain the following applicable information for each of the three preceding fiscal years:

(a) The amount of federal and state income taxes paid to units of government by the taxpayer, as adjusted pursuant to subparagraphs (3)(a)(A)(i), (ii) and (iii) of this rule;

~~(b) The amount of the utility's federal and state income taxes paid that is incurred as a result of income generated by the regulated operations of the utility, where:~~

~~(A) The amount of federal income taxes paid is equal to the federal stand-alone tax liability calculated for the regulated operations of the utility;~~

~~(B) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the utility's state income taxes paid is the Oregon state stand-alone tax liability calculated for the regulated operations of the utility; and~~

~~(C) For a utility for which non-Oregon state income taxes are included in rates, the amount of state income taxes paid is the product of:~~

~~(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group; and~~

~~(ii) The ratio calculated as the income of the regulated operations of the utility divided by the income of the system regulated operations;~~

~~(e) The amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule;~~

~~(d) The lowest of the amounts in subsections (4)(a), (4)(b) and (4)(c) of this rule, after making adjustments in paragraphs (4)(d)(A), (4)(d)(B), (4)(d)(C), (4)(d)(D), and (4)(d)(E), but no less than the deferred taxes related to depreciation of public utility property for regulated operations of the utility, except the deferred tax amount must be reduced by any tax refunds recognized in the reporting period and allocated to the regulated operations of the utility:~~

~~(A) The items defined in subsection (2)(t) of this rule;~~

~~(B) A reduction equal to the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility;~~

~~(C) A reduction equal to the tax benefit related to federal investment tax credits recognized by the Commission in establishing rates;~~

~~(D) An increase equal to the tax benefit of Oregon business energy tax credits, including those credits transferred pursuant to ORS 469.206 and 469.208, of the unitary group, excluding those credits covered by 757.268(13)(f)(B); and~~

~~(E) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(d)(A) of this rule;~~

~~(e) The amount of federal and state income taxes authorized to be collected in rates;~~

~~(f) The amount of the difference between the amounts in subsections (4)(d) and (4)(e) of this rule;~~

~~(g) The amount of local income taxes paid to units of government by the taxpayer, calculated for each local taxing authority, and to which is added the imputed effect on local income taxes of the amount in subparagraph (3)(e)(A)(i) of this rule;~~

~~(h) The amount of local income taxes paid to units of government by the taxpayer that is incurred as a result of income generated by the regulated operations of the utility, calculated as the stand-alone tax liability in each local taxing authority;~~

~~(i) The amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule for each local taxing authority;~~

~~(j) The lowest of the amounts in subsections (4)(g), (4)(h) and (4)(i) of this rule, calculated for each local taxing authority, after making adjustments for:~~

- ~~(A) The items defined in subsection (2)(t) of this rule; and~~
- ~~(B) A reduction equal to the local tax effect of the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility; and~~
- ~~(C) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(j)(A) of this rule;~~
- ~~(k) The amount of local income taxes collected from Oregon customers, calculated for each local taxing authority;~~
- ~~(l) The amount of the difference between the amounts in subsection (4)(j) and (4)(k) of this rule, calculated for each local taxing authority;~~
- ~~(m) The proposed surcharge or sureredit rate adjustments for each customer rate schedule to charge or refund customers the amount of the differences in subsections (4)(f) and (4)(l) of this rule;~~
- ~~(n) If the utility claims the minimum taxes paid amount set by subsections (3)(b) and (3)(d) of this rule, the total federal and state income tax losses in the utility's affiliated and unitary groups associated with the imputed negative tax claimed; and~~
- ~~(o) Any adjustments, in addition to the adjustments required in section (3) and subsections (4)(a) through (4)(n) of this rule, that the utility proposes to avoid probable violations of federal tax normalization requirements.~~
- ~~(5) In calculating the amount of taxes paid under sections (3) and (4) of this rule:
  - ~~(a) "Taxes paid" must be allocated to each tax year employed by the utility for reporting its tax liability in the following manner:
    - ~~(A) For any tax return prepared for the preceding tax year and filed on or before the date the tax report is due for such tax year, the utility must allocate each reported tax liability to the tax year for which such return is filed;~~
    - ~~(B) For each adjustment made to an originally filed federal, state, or local tax return, including adjustments resulting from an audit, the utility must include the related tax liability or tax refund in the first tax report filed after the tax liability or tax refund has been paid or received and the taxing authority has made a final determination regarding the adjustment;~~
    - ~~(C) Taxes paid must include any interest paid to or interest received from units of government with respect to tax liabilities.~~~~
  - ~~(b) When a utility's fiscal year or parent changes, and a partial year consolidated federal income tax return is filed during the year, taxes paid must be calculated in the manner defined by ORS 314.355 and OAR 150-314.355. For purposes of this rule, the amount of taxes paid must reflect a weighted average of the months in effect related to each tax return filing.~~~~
- ~~(6) The utility must explain the method used for calculating the amounts in this rule and provide copies of all work papers and documents supporting the calculations.~~
- ~~(7) The Commission will establish an ongoing docket for each of the October 15 tax report filings. Upon signing a protective order prepared by the Commission, any intervenor may have access to all such tax report filings, subject to the terms of the protective order.
  - ~~(a) Within 20 days following the tax report filings, an Administrative Law Judge will conduct a conference and adopt a schedule.~~
  - ~~(b) Within 180 days of the tax report filings, the Commission will issue an order that contains the following findings:~~~~

~~(A) Whether the taxes authorized to be collected in rates for any of the three preceding fiscal years differs by \$100,000 or more from the amount of taxes paid to units of government that is properly attributed to the regulated operations of the utility;~~

~~(B) For the preceding fiscal year, the difference between the amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of taxes authorized to be collected in rates;~~

~~(C) For the preceding fiscal year, the difference between the amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of local taxes collected in rates; and~~

~~(e) Any other finding or determination necessary to implement the automatic adjustment clause.~~

~~(8) Upon entry of an order finding a difference of \$100,000 or more in section (7) of this rule, the utility must file an amended tariff, to be effective each June 1 unless otherwise authorized by the Commission, to implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each fiscal year beginning on or after January 1, 2006.~~

~~(a) The utility must establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in paragraph (7)(b)(B) of this rule through a surcharge or surcredit rate adjustment.~~

~~(b) A utility that is assessed a local income tax must establish a separate balancing account and automatic adjustment clause tariff for each local taxing authority assessing such tax. The utility must apply a surcharge or surcredit on the bills of customers within the local taxing authority assessing the tax. The amount of the surcharge or surcredit must be calculated to recover or refund the difference determined by the Commission in paragraph (7)(b)(C) of this rule.~~

~~(c) Any rate adjustment must be calculated to amortize the difference determined by the Commission in paragraphs (7)(b)(B) and (7)(b)(C) of this rule over a period authorized by the Commission.~~

~~(d) Any rate adjustment must be allocated by customer rate schedule according to equal percentage of margin for natural gas utilities and equal cents per kilowatt hour for electric utilities, unless otherwise authorized by the Commission.~~

~~(e) Each balancing account must accrue interest at the Commission authorized rate for deferred accounts. For purposes of calculating interest, the amount of the difference calculated in this section of the rule will be deemed to be added to the balancing account on July 1 of the tax year.~~

~~(f) The automatic adjustment clause must not operate in a manner that allocates to customers any portion of the benefits of deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment or regulated affiliate investment required to ensure compliance with the normalization method of accounting or any other requirements of federal tax law.~~

~~(g) On or before December 31, 2006, each utility must seek a Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with ORS 757.268 or this rule would cause the utility to fail to comply with any provision of federal tax law, including normalization requirements. Each utility must file a draft of its Private Letter Ruling Request with the Commission on or before November 15, 2006. While a utility's~~

~~request for a Private Letter Ruling is pending, or a related Revenue Ruling is pending, no rate adjustment will be implemented, but interest will accrue according to subsection (8)(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to paragraphs (7)(b)(B) and (7)(b)(C) of this rule.~~

~~(9) No later than 30 days following the Commission's findings in section (7) of this rule, any person may petition to terminate the automatic adjustment clause on the basis that it would result in a material adverse effect on customers. In the event of a filing under this section, the applicable rate adjustment will not be implemented until the Commission makes its determination. If the Commission denies the request to terminate the rate adjustment, interest will accrue according to subsection (8)(e) of this rule on the final amount of the rate adjustment.~~

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

~~Stats. Implemented: ORS 756.040, 756.060, 757.267 & 757.268~~

~~Hist.: PUC 8-2006, f. & cert. ef. 9-18-06 (Order No. 06-532); PUC 11-2007, f. & cert. ef. 9-18-07 (Order No. 07-401); PUC 4-2009(Temp), f. & cert. ef. 4-15-09 thru 10-9-09 (Order No. 09-135); PUC 11-2009, f. & cert. ef. 10-2-09 (Order No. 09-383); PUC 3-2010, f. & cert. ef. 6-28-10 (Order No. 10-249); PUC 1-2011 (Temp), f. & cert. ef. 2-23-11 through 8-27-11 (Order No. 11-064); Administrative correction 9-23-11; Repealed~~

## **860-027-0200**

### **Energy Utility Acquisition**

In addition to the information required by ORS 757.511, any person filing an application pursuant to that statute, shall also provide:

- (1) The information required by OAR 860-027-0030(1)(a) through (d), inclusive;
- (2) A schedule detailing the existing capital structure of the energy utility to be acquired, as well as a pro forma utility capital structure as of 12 months after the acquisition is to be completed;
- (3) An explanation of how the bond ratings and capital costs of the acquired utility will be affected by the acquisition;
- (4) A description of existing and planned nonutility businesses which are or will become affiliated interests of the acquired utility under ORS 757.015, and a description of the organizational structure under which the applicant intends to operate its businesses;
- (5) A description of the method by which management, personnel, property, income, losses, costs, and expenses **(including tax-related expense)** will be allocated by the applicant between its utility and nonutility operations (if applicable);
- (6) A description of any planned changes that may have a significant impact upon the policy, management, operations, or rates of the energy utility;
- (7) A description of any plans to cause the energy utility to sell, exchange, pledge, or otherwise transfer its assets; ~~and~~
- (8) A copy of any existing or proposed agreement between the energy utility and any businesses which will become affiliated interests of the acquired utility under ORS 757.015; ~~and~~

**(9) A motion for a general protective order or modified protective order under OAR 860-001-0080, if necessary for the release of information under sections (1) through (8) of this rule.**

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

Stats. Implemented: ORS 756.105 & 757.511

Hist.: PUC 6-1986, f. & ef. 7-22-86 (Order No. 86-731); PUC 12-1997, f. & cert. ef. 10-30-97 (Order No. 97-413); PUC 16-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)

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