



Oregon

Theodore R. Kulongoski, Governor

Public Utility Commission

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April 8, 2009

Notice of Rulemaking Workshop – AR 535

The Public Utility Commission of Oregon (Commission) is beginning the process of revising its administrative rules governing procedures. These rules include Division 011 – General; Division 012 – Practice before the Commission; Division 013 – Pleadings and Tariff Filings; and Division 014 – Hearings and Proceedings.

The Commission hopes to accomplish three primary goals with this rulemaking. First, the Commission intends to improve the organization and clarity of the procedural rules. Second, the Commission plans to include rules governing agency activities that are not reflected in the current rules, such as rulemaking or declaratory order proceedings. Third, the Commission intends to update and clarify numerous other provisions, including rules governing discovery, e-filing, and pleading requirements.

I attached a draft copy of the reorganized and updated procedural rules for your consideration. This document reflects the Commission's initial internal efforts to revise its procedural rules. Due to the number of changes, I did not use tracked-changes to highlight the differences between existing rules and the proposed revisions. I did create a two page *Index*, which provides an overview of the how the rules are organized and indicates the source of the provision. Existing provisions indicate the current cite; new provisions identify if the language came from an alternative source, such as the Attorney General Model Rules.

The attached document is meant to simply begin discussion on the proposed rulemaking. I plan to conduct numerous workshops to address the changes informally and to receive your input and suggestions. To officially begin this process, I invite you to attend the first workshop scheduled as follows:

DATE: April 24, 2009

TIME: 1:30 p.m.

PLACE: ODOT Region I Building
Public Meeting Room A/B – 1st Floor
123 NW Flanders
Portland, Oregon 97209

April 8, 2009
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Please let me know if you have any questions, or are unable to attend the workshop but would like to be placed on the service list for future events.

/s/ Michael Grant

Michael Grant
Chief Administrative Law Judge
Public Utility Commission of Oregon
503-378-6102

Attachment

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DRAFT REVISION OF PROCEDURAL RULES

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GENERAL

860-001-0000 (Current 860-011-0000)

Applicability, Construction, and Waiver of Rules

(1) These general rules of practice and procedure apply to all proceedings before the Commission and shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.

(2) The Oregon Rules of Civil Procedure shall govern in all cases except as modified by these rules, by order of the Commission, or by ruling of an Administrative Law Judge. Any special rules which may be adopted for a particular proceeding by the Commission or ALJ shall govern, if inconsistent with the general rules of practice and procedure.

(3) For good cause shown, the Commission or ALJ may deviate from or waive any of the rules contained in this division. To request an exemption or modification from any of these rules, a person must file a written motion identifying the rule for which an exemption or modification is sought, and provide a full explanation of the reason for requesting the exemption or modification.

860-001-0010 (Current 860-011-0035)

Definitions

For purposes of these rules, the words below shall have the following meanings:

(1) “Adjudicative proceeding” means all contested case and declaratory ruling proceedings conducted by the Commission. The term does not include rulemaking proceedings.

(2) “Applicant” means any person requesting or applying for any right, privilege, power, or other authority or seeking permission to exercise any right or privilege under a statute requiring the filing of an application.

(3) “Authorized representative” means a member of a partnership; an authorized officer or regular employee of a corporation, association, or organized group; or an authorized officer or employee of a governmental authority other than a state agency.

(4) “Commission” means the Public Utility Commission of Oregon.

(5) “Complainant” means any person, including the Commission, who files a complaint under any statute providing for the filing of complaints before the Commission.

(6) “Contested case” means a proceeding before the Commission in which a person is provided the opportunity for a hearing which is substantially of the character described in ORS 183.310(2).

(7) “Copy” means paper copy, unless otherwise specified.

(8) “Defendant” means a person against whom a complaint is filed under ORS 756.500.

(9) “Interested person,” except as provided in ORS 756.450, means any person who is not a party or staff and who asks to be listed as an interested person in any docketed Commission proceeding. Interested persons must be served with copies of any orders, rulings, notices, or other documents issued by the Commission or Administrative Law Judge (ALJ) in the Commission proceeding for which they are listed. Unless permitted by the Commission or ALJ, interested persons are not entitled to service of documents

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from staff or parties; to present evidence for the record; to conduct cross-examination of witnesses; to file pleadings, testimony, exhibits, or briefs; or otherwise exercise the rights of a party.

(10) “Intervenor” means a person named by the Commission to be a party to a proceeding.

(11) “Legal argument” includes argument on the jurisdiction of the agency to hear the contested case; the constitutionality of a statute or rule or the application of a constitutional requirement to an agency; or the application of court precedent to the facts of the particular contested case proceeding. “Legal argument” does not include presentation of evidence, examination, and cross-examination of witnesses, presentation of factual arguments, or argument on the application of the facts to the statutes or rules directly applicable to the issues in the contested case; comparison of prior actions of the agency conducting the proceeding; the literal meaning of the statutes or rules directly applicable to the issues in the contested case; or the admissibility of evidence or the correctness of procedures being followed.

(12) “Party” means any person entitled as a matter of right to a hearing before the Commission, or named as a party.

(13) “Person” means individuals; joint ventures; partnerships; limited liability companies; corporations and associations; governmental entities; or their officers, employees, agents, lessees, assignees, trustees, or receivers.

(14) “Petitioner” means any person applying for permission to exercise any right or privilege or power under a statute requiring the filing of a petition, any person requesting a declaratory ruling under ORS 756.450, or any person applying for other relief for which no specific pleading is designated by statute.

(15) “Protestant” means any person opposing an application under ORS 759.020.

(16) “Respondent” means any person designated as such in any matter over which the Commission has jurisdiction.

(17) “Staff” means any employee of the Commission except a Commissioner or an ALJ.

860-001-0020 (Current 860-011-0010; OPUC website)

Location, Contact Information, Hours of Operation

(1) Information about the Commission’s location and contact information is as follows:

(a) Physical Location:

Public Utility Commission of Oregon
550 Capitol St N.E. Suite 215
Salem OR 97301-2567

(b) Telephone/Fax:

Salem: (503) 378-6600
Oregon outside Salem: (800) 522-2404
Consumer Services Section / Complaints: (800) 522-2404
Administrative Hearings Division: (503) 378-6607
TTY Users: (800) 735-2900 / (800) 648-3458 (Complaints)
Fax: (503) 378-5743

(c) Website:

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General: <http://www.puc.state.or.us/PUC/index.shtml>

Complaint Procedure: <http://www.puc.state.or.us/PUC/consumer/compro.shtml>

(d) Filing Center:

Email: PUC.FilingCenter@state.or.us

Phone: (503) 373-0886

FAX: (503) 378-5505

Mailing Address for Letters:

Public Utility Commission of Oregon

Attn: Filing Center

PO Box 2148

Salem OR 97308-2148

Delivery/Mailing Address for Packages:

Public Utility Commission of Oregon

Attn: Filing Center

550 Capitol St NE #215

Salem OR 97301-2567

(2)Office Hours: Commission offices are open to the public between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on legal holidays, as defined in ORS 187.010, or when the Commission's office is closed pursuant to a Department of Administrative Services directive.

860-001-0030 (Current 860-011-0001)

Notice of Commission Proceedings

(1) The Commission maintains mailing lists of persons interested in receiving notices of:

(a) Commission public meetings;

(b) Permanent rulemaking proceedings that involve electric, natural gas, telecommunications, water, wastewater or procedural matters; and

(c) Contested case proceedings that concern particular regulated industries.

(2) The Commission will send advance notice of these events by electronic mail to persons on these lists. Any person may request in writing to be included on the relevant list(s) for the person's particular area of interest. Any person without access to electronic mail may request the Commission to provide such notice via mail. The Commission may establish a fee for paper service.

(3) The Commission will not delete the names of persons from a notice list without prior notification.

860-001-0040 (Current OAR 860-011-0090)

Public Records and Requests for Documents

(1)(a) With prior notice, the Commission will make public records, not otherwise exempt from disclosure by law, available for inspection during regular business hours. The Commission may condition the time and manner of inspection of public records as

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necessary, under the circumstances, to protect the records and to prevent interference with the regular discharge of the duties of the Commission and its employees.

(b) The request must be sufficiently specific to allow the Commission to readily identify the document or other material that contains the requested information. The Commission may require that any request for public records be made in writing.

(c) The request must indicate the format in which any copies are desired and the date, if any, by which the records are needed. The Commission reserves the right to provide the information in a different format than requested, or to provide the information after the desired date, if the burden of meeting the requested format or date is impractical.

(2) The Commission will charge the following fees reasonably calculated to recover the costs of providing access to and copying of public records.

(a) Employee time: The Commission will charge for employee time in excess of 15 minutes spent locating, compiling, sorting, and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents. Employee time will be charged in 15-minute increments at the following rates:

(A) Assistant Attorney General: \$111 per hour, excluding time spent in determining the application of the provisions of ORS 192.410 to 192.505;

(B) Administrative Law Judge: \$52 per hour;

(C) Manager: \$32 per hour

(D) Utility Analyst: \$25 per hour

(E) Information Services: \$43 per hour;

(F) Law Clerk: \$22 per hour;

(G) General Clerical: \$15 per hour;

(b) Photocopies: If the request seeks copies of any documents identified in response to a request, the Commission will charge \$0.15 per page to recover the costs of photocopying. "Page" refers to the number of copies produced. A double-sided copy consists of two pages. The Commission may waive fees for photocopies provided in response to routine requests for a single copy of a Commission order or other public document.

(c) If the request seeks certification of true copies of public documents, the Commission will charge \$10 per document certification.

(d) Facsimile: When faxing records, the Commission will charge \$0.75 per page. The Commission limits the number of pages it will fax to 30 pages.

(e) Electronic Media: If the request seeks electronic reproduction of public records, the Commission will provide reproduction media at the following rates:

(A) Diskette, CD, or DVD: \$1.50 each

(B) Video Cassettes, 2 hours: \$2.00 each

(C) Audio Cassettes: \$2.50 each.

(f) Mailing: When sending voluminous records, the Commission will charge the actual costs for sending the public records.

(3) Upon request, the Commission will provide notice of the estimated costs of making records available for inspection or providing copies of records. If the estimated costs exceed \$25, the Commission will provide written notice and not act further to respond to the request unless and until it receives written authorization to proceed with making the public records available. The Commission may require that all estimated fees

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and charges be paid before public records are made available for inspection or copies provided.

(4)(a) If a public records request seeks the disclosure of information that has been designated as confidential, the Commission will provide, prior to the release of any such information, written notice to the person asserting confidentiality and allow an opportunity for the person to provide a written response to the request. The person asserting confidentiality bears the burden to show that part or all of a document is to be exempt from disclosure.

(b) In the event the Commission concludes that the information designated as confidential is not protected from disclosure, the Commission will provide notice of the decision and delay the release of the information to permit the person asserting confidentiality the ability to obtain a court order to protect the records from disclosure.

(c) If the person asserting confidentiality consents in writing to the release of the information, or does not commence proceedings to restrain disclosure by way of court order within ten days following notice of the decision, the Commission will remove the confidential designation from its files, and release the information to the requester.

(5) Any person denied the right to inspect or to receive a copy of any public record may appeal the Commission's decision to the Attorney General pursuant to ORS 192.450.

860-001-0050 (Current OAR 860-011-0100)

Commission Publications

The Commission will charge the fees reasonably calculated to reimburse the agency for costs of annual subscriptions, agency publications, and materials related to agency proceedings. These fees, which include actual mailing costs, are as follows:

- (1) Subscriptions to Commission Orders: \$100 (annually);
- (2) Subscription to Notices of Hearings: \$50 (annually);
- (3) Administrative Rules update service: \$75 (annually);
- (4) Bound Volume of Oregon Laws Relating to the Commission: \$15;
- (5) Maps of specific area boundaries: \$20;
- (6) Statistical reports: \$15;
- (7) Hearing transcripts: At cost. A copy of a public hearing transcript must be

supplied to a party without cost upon the filing with the Commission of a satisfactory affidavit of indigency, pursuant to ORS 756.521.

(8) Notice by mail of Commission proceedings under OAR 860-001-0030 (current 860-011-0001): \$25 annually.

860-001-0060 (Current 860-011-0080)

Confidential Information

(1) Information filed or submitted in confidence with the Commission is exempt from public disclosure to the extent provided under the Public Records Law, ORS 192.41 to 192.505. This rule applies to any information filed or submitted under a claim of confidentiality, but does not apply to information designated and protected as confidential pursuant to a protective order in a contested case proceeding.

(2) At the time of filing or submission, a person may designate a document as containing confidential information. Any such designation must be made in good faith and be limited to only those portions of the document that qualify for protection. The

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person asserting confidentiality must state the legal basis upon which the information is claimed to be confidential.

(3) Settlement offers submitted pursuant to a settlement conference convened under OAR 860-001-1100 (current 860-014-0085) are exempt from disclosure to the extent provided in ORS 192.502(4). If a party to a settlement conference submits settlement material on the condition of confidentiality, the Commission obligates itself to protect this information from public disclosure.

(4) Unless otherwise provided by Commission order, any confidential information filed or submitted pursuant to this rule must be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. To the extent practicable, the provider must place only those portions of the document containing the confidential information in the envelope/container. The envelope/container shall bear the legend: "CONFIDENTIAL."

(5) Any failure to comply with the requirements specified in this rule may result in the filing or submission not being treated as one including confidential information or its return to the provider for correction and resubmission.

FUNDING

Intervenor Funding

860-001-0100 (Current 860-012-0100)

Grant Eligibility (Precertification and Case-Certification)

(1) Pursuant to ORS 757.072, a utility providing electricity or natural gas may enter into a written agreement to provide financial assistance to an organization that represents broad customer interests in Commission regulatory proceedings.

(2) Upon Commission approval of an agreement, the Commission shall apply the qualifications set forth in this rule to determine whether an organization is eligible for a grant of financial assistance. Only parties that are precertified, or parties that become case-certified for a particular proceeding, will be eligible to receive grants under an agreement. The terms of an agreement will be binding on all organizations seeking a grant under that agreement and will be followed by the Commission in administering the agreement.

(3) The Commission will precertify organizations meeting the criteria of subsection (3)(a) or (3)(b) as eligible to receive grants. Once precertified, an organization will remain precertified unless the Commission decertifies the organization under OAR 860-001-0110 (current 860-012-0190).

(a) The Citizens' Utility Board of Oregon (CUB), as a representative of residential customers; or

(b) Not-for-profit organizations that meet all of the following criteria:

(A) A primary purpose of the organization is to represent utility customers' interests on an ongoing basis;

(B) The organization represents the interests of a broad group or class of customers and those interests are primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the representation of the interests of customers as consumers of

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utility services;

(C) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(D) The organization's members, who are customers of one or more of the utilities that are parties to the agreement, contribute a significant portion of the overall support and funding of the organization's activities in the state; and

(E) The organization has demonstrated in past Commission matters the ability to substantively contribute to the record on behalf of customer interests.

(4) Organizations meeting the following criteria may be case-certified by the Commission to be eligible to receive a grant:

(a) The organization represents the interests of a broad group or class of customers and its participation in the proceeding will be primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the impact of the rates and terms and conditions of service to the customer group;

(b) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(c) The organization's members who are customers of one or more of the utilities affected by the proceeding that are parties to the agreement contribute a significant percentage of the overall support and funding of the organization;

(d) The organization demonstrates, or has demonstrated in past Commission proceedings, the ability to substantively contribute to the record on behalf of customer interests related to rates and the terms and conditions of service, including in any proceeding in which the organization was case-certified and received a grant;

(e) The organization demonstrates that:

(A) No precertified intervenor participating in the proceeding adequately represents the specific interests of the class of customers represented by the organization related to rates and terms and conditions of service; or

(B) The specific interests of a class of customers will benefit from the organization's participation; and

(f) The organization demonstrates that its request for case-certification will not unduly delay the schedule of the proceeding.

860-001-0110 (Current 860-012-0190)

Termination of Eligibility – Decertification

(1) Upon the filing of a complaint pursuant to ORS 756.500 or upon a Commission investigation or motion pursuant to ORS 756.515, the Commission may terminate the precertification or case-certification of an intervenor if it finds that:

(a) The organization has committed fraud, misrepresentation, or misappropriation related to any grant made available under the terms of a Commission-approved agreement;

(b) In a proceeding before the Commission for which grants were awarded to the organization, the organization has failed to represent the interests of the broad class of customers that the organization purported to represent in its application for precertification;

(c) The organization has failed to comply with Commission orders or rules in a

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material way;

(d) The intervenor who is signatory to an agreement has violated terms and conditions of the agreement pertaining to the use and disclosure of information required to be provided by utilities under the agreement;

(e) For the Citizens' Utility Board of Oregon (CUB), there has been a substantial change in or repeal of ORS 774.101 through 774.990; or

(f) A precertified organization other than CUB no longer meets the criteria of OAR 860-001-0100(3)(current 860-012-0100(3)).

(2) An intervenor that is decertified under paragraph (1)(d) will be ineligible for future precertification or case-certification under the agreement.

(3) Termination of the precertification or case-certification of an intervenor shall be prospective only.

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RULEMAKING PROCEEDINGS

860-001-0200

Public Participation

The Commission may seek public input and conduct informal workshops with interested persons before giving notice of intent to adopt, amend, or repeal a rule. Persons may request to be notified of such opportunities for comment by requesting to be placed on a mailing list described in OAR 860-001-0030 (current 860-011-0001). Persons who have asked the Commission to send notices of proposed rulemaking may choose to receive notice by mail, or electronically.

860-001-0210

Permanent Rulemaking Notice

(1) The Commission will give notice of proposed permanent rulemaking by:

(a) Publishing notice of the rulemaking in the Oregon Bulletin published by the Secretary of State. The notice will include, among other things, a statement summarizing the subject matter, purpose and need for the intended action, the last date for comment on the proposed action, the date of or ability to request a hearing, and a statement of fiscal impact quantifying the economic effect of the proposed action; and

(b) Mailing, electronic mailing, or personally delivering a copy of the rule or rules as proposed and a copy of the Secretary of State notice to:

(A) Persons on the Commission's applicable rulemaking mailing lists; and

(B) Legislators specified in ORS 183.335(15).

In lieu of providing a copy of the rule or rules as proposed, the Commission may provide a summary of the rule or rules and state how and where a copy may be obtained on paper, via electronic mail, or from a specified web site.

(2) Any objection to a fiscal impact statement must be filed in writing and must:

(a) Identify the fiscal impact statement to which objection is made;

(b) Identify the persons likely to be affected by the proposed rule on whose behalf the objection is filed or, if filed by an association, assert the number of members of the association who are likely to be affected by the proposed rule;

(c) Explain how the persons identified are likely to be affected by the proposed rule;

(d) Explain the objection or objections to the fiscal impact statement; and

(e) Be sent to the mailing address or electronic mail address identified in the notice of proposed rulemaking for the submission of written comments.

(3) If the Commission determines that the original fiscal impact statement does not adequately reflect the proposed rule's fiscal impact, the Commission will file an amended fiscal impact statement, extend the comment period as required by ORS 183.333(5), and give notice of the extended comment period to persons identified in subsection (1)(b) of this rule.

860-001-0220

Conduct of Rulemaking Hearings

(1) Any hearing to consider a rule is conducted by and is under the control of an Administrative Law Judge (ALJ) assigned by the Commission.

(2) At the beginning of the hearing, all persons wishing to be heard must provide their

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name, address, and affiliation to the ALJ. The ALJ may also require that any person wishing to be heard complete a form showing any other information the ALJ deems appropriate. Additional persons may be heard at the discretion of the ALJ.

(3) Subject to the discretion of the ALJ, the order of the presentation is as follows:

(a) Statements of proponents;

(b) Statements of opponents; and

(c) Statements of other persons present and wishing to be heard.

(4) The ALJ may question any person making a statement at the hearing. The ALJ may permit other persons to question the person making a statement.

(5) Each person offering comments at the hearing may only present comments once during the hearing, unless otherwise requested or permitted by the ALJ.

(6) The hearing may be continued with recesses as determined by the ALJ until all persons have had an opportunity to offer comments.

(7) The ALJ must, when practicable, receive all physical and documentary information presented by persons offering comments.

(8) The ALJ may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(9) The ALJ must make a record of the proceeding, by audio or video tape recording, stenographic reporting or minutes.

860-001-0230

Rulemaking Record

(1) The agency must maintain a record of any data or views it receives in response to a notice of intent to adopt, amend, or repeal a rule.

(2) The rulemaking record is maintained by the rules coordinator. The agency must make the rulemaking record available to members of the public upon request.

(3) The rulemaking record includes:

(a) Any written and oral comments received in response to the notice of rulemaking;

(b) The notice of the agency's intended action, required by ORS 183.335(1) and (2);
and

(c) A copy of the filing with the Secretary of State, required by ORS 183.355(1) or (3).

860-001-0240

Rulemaking Action

(1) At the conclusion of the hearing, or after the last date for comments, the Commission may adopt, amend, or repeal rules covered by the notice of intended action. The Commission must fully consider all written and oral comments.

(2) The Commission must file in the office of the Secretary of State a certified copy of each adopted or amended rule and each order repealing an agency rule.

(3) The rule or order is effective upon filing with the Secretary of State unless a different effective date is required by statute or specified in the rule or order.

860-001-0250

Petition to Promulgate, Amend, or Repeal Rule

An interested person may petition the Commission to promulgate, amend, or repeal a

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rule. Any petition to promulgate, amend, or repeal a rule must be filed in accordance with OAR 137-001-0070.

860-001-0260

Temporary Rulemaking

(1) The Commission may temporarily adopt, amend, or suspend a rule without prior notice of hearing, or on abbreviated notice or hearing, pursuant to ORS 183.335(5). If no notice is provided before adoption of a temporary rule, the Commission must give notice of its temporary rulemaking to persons and entities specified under ORS 183.335(1) by mailing, electronic mailing, or personally delivering to each of them a copy of the rule or rules as adopted and a copy of the statements required under ORS 183.335(5). The Commission may provide a summary of the temporary rulemaking action and state how and where a copy of the rule or rules may be obtained on paper, via electronic mail or from a specified web site where the rule or rules are posted.

(2) Persons who have asked the agency to mail notices of proposed rulemaking to them pursuant to ORS 183.335(8) may choose to receive notice by mail, or electronically.

(3) The agency must file with the Secretary of State a certified copy of the temporary rule and a copy of the statement required by ORS 183.335(5).

(4) A temporary rule is effective for 180 days, unless a shorter period is specified in the temporary rule or the certificate of filing for the temporary rule.

ADJUDICATORY PROCEEDINGS

860-001-0300

Commencement of an Adjudicative Proceeding

(1) The Commission may commence an adjudicative proceeding at any time with respect to any matter within its jurisdiction and within the scope of its authority. An adjudicative proceeding begins when the Commission or Administrative Law Judge announces that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

(2) Any person involved in a controversy subject to the Commission's jurisdiction may request the Commission to initiate an adjudicative proceeding by filing the appropriate pleading.

(3) The following pleadings, when properly and timely filed, constitute applications for adjudicative proceedings:

(a) Any filing that initiates a "major proceeding" as defined in OAR 860-001-0860(current 860-014-0023);

(b) Complaints filed pursuant to ORS 756.500;

(c) General rate filings initiated by a utility pursuant to ORS 757.210 or 759.180;

(d) Complaints on any rate or schedule filed by a utility pursuant to ORS 757.210 or 759.180;

(e) Petitions, when the action sought requires adjudication;

(f) Petitions for declaratory ruling under ORS 756.450, when the Commission determines that an adjudicative process is required to provide the parties an opportunity to resolve contested issues;

(g) Applications for authority that are not protested, if the Commission determines at

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its discretion that the matter should be set for hearing; and

(h) Protests to applications for authority.

(4) Within 30 days after receiving a filing seeking an adjudicative proceeding, the Commission may notify the filer of any obvious errors or omissions, request any additional information it requires regarding the request for an adjudicative proceeding.

860-001-0310 (Current 860-012-0035) (Oregon Judicial Code)

Administrative Law Judges

(1) The Commission delegates to the Administrative Law Judge (ALJ) authority to:

(a) Regulate the course of adjudicative proceedings, including scheduling, recessing, reconvening, and adjourning hearings;

(b) Administer oaths and affirmations;

(c) Issue subpoenas;

(d) Make evidentiary rulings, with or without objection;

(e) Limit, supervise, and control discovery;

(f) Hold appropriate conferences before, during, or after hearings;

(g) Decide procedural matters, but not to grant motions to dismiss or other motions that involve final determination of the proceedings;

(h) Limit or extend filing periods and grant waivers;

(i) Certify a question to the Commission for consideration and disposition;

(j) Take any other action consistent with the duties of an ALJ;

(k) Upon request by a party, and for good cause shown, issue a protective order to limit disclosure of confidential information. Decisions by the ALJ regarding the protective order may be appealed to the Commission pursuant to OAR 860-001-0730 (current 860-014-0091).

(2) The ALJ must conduct the adjudicative proceeding in a fair and impartial manner and maintain order. If a person engages in conduct that interferes with this duty, the ALJ may suspend the proceeding or exclude the person from the hearing.

(3) The ALJ must disqualify himself or herself in a proceeding in which the ALJ's impartiality could reasonably be questioned, including but not limited to instances when the ALJ:

(a) has a bias or prejudice concerning a party;

(b) has personal knowledge of disputed evidentiary facts concerning the proceeding;

(c) served as a lawyer or material witness in the matter;

(d) formerly represented a party in the proceeding and the proceeding involves issues that relate to information obtained during the ALJ's former representation of the party; or

(e) was associated with a lawyer appearing in the proceeding within the past two years;

(4) An ALJ who is disqualified under subsection (3)(d) or (e) of this rule may nevertheless participate in the proceeding if the ALJ discloses on the record the basis of the disqualification and all parties agree in writing or on the record that the ALJ's relationship is immaterial.

860-001-0320 (Current 860-012-0015)

Ex Parte Communications

(1) Ex parte communications are discouraged and, if made, must be disclosed to

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ensure an open and impartial decision-making process.

(2) Except as provided in this rule, an ex parte communication is any oral or written communication that:

(a) Is made by any person directly to a Commissioner or presiding Administrative Law Judge (ALJ) outside the presence of any or all parties of record in an adjudicative proceeding, without notice to, or opportunity for rebuttal by, all such parties; and

(b) Relates to the merits of an issue in the pending adjudicative proceeding.

(3) For purposes of this rule, an adjudicative proceeding is pending when the Commission or Administrative Law Judge announces that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted. *See* OAR 860-001-0300.

(4) A person who has an ex parte communication with a Commissioner must promptly notify the presiding ALJ that such communication has occurred.

(5) Upon notice of or receipt of an ex parte communication, the presiding ALJ shall promptly notify the parties of record of the communication and place in the record:

(a) The name of each person who made the communication and that person's relationship, if any, to a party in the case;

(b) The date and time of the communication;

(c) The circumstances under which the communication was made;

(d) A summary of the matters discussed;

(e) A copy of any written communication; and

(f) Any other relevant information concerning the communication.

(6) The presiding ALJ may require the person responsible for the ex parte communication to provide the disclosure and notice of the communication required by this rule.

(7) Within 10 days of receiving notice, a party may file a written rebuttal of any facts or contentions contained in the ex parte communication, with service on the parties of record in the proceeding.

(8) The provisions of this rule do not apply to communications that:

(a) Address procedural issues, such as scheduling or status inquiries, or requests for information having no bearing on the merits of the case;

(b) Are made to a Commissioner or presiding ALJ by a member of the Commission staff who is not a witness in the proceeding;

(c) Are made to a Commissioner or presiding ALJ by an Assistant Attorney General who is not representing the Commission staff in the proceeding;

(d) Are made in a rulemaking proceeding conducted pursuant to ORS 183.325 through 183.410; or

(e) The presiding ALJ determines should not be subject to this rule, including but not limited to communications from members of the public that are made part of the administrative file or communications that are the subject of *in camera* proceedings.

(9) To avoid ex parte communications, persons wishing to meet individually with a Commissioner must file a statement with the Commission indicating the party the person represents, if any; the matter the person wishes to discuss; and whether the matter to be addressed relates to the merits of an issue pending in an adjudicative proceeding.

860-001-0330 (OPUC website)

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Protective Orders

(1) Pursuant to OAR 860-001-0310(1)(k) (current 860-012-0035(1)(k)), upon request by a party, and for good cause shown, an ALJ may issue a protective order which may include language agreed upon by all parties to a proceeding and the ALJ, to limit disclosure of confidential information. Decisions by the ALJ regarding the protective order may be appealed to the Commission pursuant to OAR 860-001-0730 (current 860-014-0091).

(2) A 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 shield specific documents or make judgments as to whether any particular document is a trade secret or contains commercially sensitive information.

(3) Under the terms of a general protective order, any party may designate as confidential any information that it reasonably believes falls within the scope of Oregon Rule of Civil Procedure 36(c)(7).

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

(b) Any other party may challenge the designation of any information as confidential. At that point, the designating party bears the burden of showing that the challenged information falls within ORCP 36(c)(7).

(4) Any party may request an ALJ to issue a protective order that provides additional protection pursuant to ORCP 36(C). A motion for additional protection must include:

(a) The parties involved;

(b) The exact nature of the information involved;

(c) The legal basis upon which the information is claimed to be confidential under the Public Records Law, ORS 192.410 to 192.505

(d) The exact nature of the relief requested;

(e) The specific reasons the requested relief is necessary; and

(f) A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

(5) Confidential information may be disclosed only to a “qualified person” as defined in the protective order.

(6) All persons who are given access to confidential information have the good faith obligation to monitor their own conduct to ensure their compliance with the protective order. Such persons must not use or disclose the information for any purpose other than the preparation for and conduct of the subject proceeding, and must take all reasonable precautions to keep the confidential information secure.

DECLARATORY RULING PROCEEDINGS

860-001-0400 (Modified from AG Model Rules)

Petition for Declaratory Ruling

(1) A petition for a declaratory ruling pursuant to ORS 756.450 must contain:

(a) The rule or statute that may apply to the person, property, or state of facts;

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- (b) A detailed statement of the relevant or assumed facts; including sufficient facts to show petitioner's interest;
 - (c) All propositions of law or contentions asserted by petitioner;
 - (d) The questions presented;
 - (e) The specific relief requested; and
 - (f) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.
- (2) The petition is deemed filed when received by the Commission.
- (3) Within 60 days after the petition is filed, the Commission must determine whether it will entertain the request. The Commission will make the decision at a public meeting and allow other persons to comment on whether a proceeding should be initiated.
- (4) If the Commission decides to entertain the request for a declaratory ruling, it will refer the matter to the Administrative Hearings Division to initiate proceedings.
- (5) Notwithstanding section (3) of this rule, the Commission may decide at any time that it will not issue a declaratory ruling in any specific instance. The Commission will notify the petitioner in writing if it decides not to issue a declaratory ruling.
- (6) Any person may petition to intervene as a party to the proceeding pursuant to OAR 860-001-0500 (current 860-012-0001). In addition to the requirements set forth in that rule, a petition to intervene must also include a statement whether the intervenor accepts:
- (a) The petitioner's statement of facts for purposes of the declaratory ruling; and
 - (b) The petitioner's statement of the questions presented.
- (7) The proceeding is conducted by and is under the control of the Administrative Law Judge assigned by the Commission.
- (8) No testimony or other evidence may be submitted. The petition will be decided on the facts stated in the petition, except that the presiding ALJ may agree to accept, for consideration by the Commission, a statement of alternative facts or alternative questions.

APPEARANCE AND PRACTICE BEFORE THE COMMISSION

860-001-0500 (Current 860-012-0001)

Parties to Adjudicatory Proceedings

- (1) Pursuant to ORS 774.180, the Citizens' Utility Board may intervene in any Commission proceeding as of right by filing a notice of intervention that includes the names and addresses of those persons to be included on the service list.
- (2) Any other person may apply to intervene in any adjudicative proceeding before the Commission. The petition to intervene must contain the following information:
- (a) The name and address of the petitioner;
 - (b) The name and address of the attorney or authorized representative of the petitioner;
 - (c) If the petitioner is an organization, the number of members in and the purposes of the organization;
 - (d) The nature and extent of the petitioner's interest in the proceeding;
 - (e) The issues petitioner intends to raise at the proceeding;
 - (f) Any special knowledge or expertise of the petitioner that would assist the

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Commission in resolving the issues in the proceeding; and

(g) A statement of whether the petitioner intends to fully and actively participate in the proceeding, such as attending settlement conferences and workshops, seeking discovery, and filing testimony.

(3) The Commission Staff and parties named in the initiating pleading of Commission action are original parties and need not apply to intervene. All original parties must provide the Commission with the names and addresses of those persons to be included on the service list.

(4) Parties may object to any petition to intervene. Objections must be filed within 10 days of service, unless otherwise directed by an Administrative Law Judge (ALJ). The petitioner may file a reply to any objection within 5 days of service.

(5) If the Commission or ALJ finds the petitioner has sufficient interest in the proceeding and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding, the Commission or ALJ must grant the petition. The Commission or ALJ may impose appropriate conditions upon any intervenor's participation in the proceeding, such as restricted access to confidential information.

860-001-0510 (Current 860-012-0005)

Representation and Ethical Conduct

(1) All persons appearing in proceedings in a representative capacity must conform to the standards of ethical conduct required of attorneys before the courts of Oregon.

(2) If any person does not conform to such standards, the Commission may decline to permit such person to appear in a representative capacity in any proceeding.

860-001-0520 (Current 860-012-0007, AG Model Rules, 137-003-0002(1), G-25)

Representation by Authorized Representative or Agency Officer or Employee

(1) Except for the Commission's Staff, a party or interested person participating in a contested case hearing before the Commission may be represented by an authorized representative, following a determination that the appearance by an authorized representative will not unreasonably broaden the issues, delay the proceeding, or otherwise hinder the orderly and timely development of the record:

(a) On or before the first appearance by an authorized representative, the Administrative Law Judge (ALJ) must be provided with a letter authorizing the named representative to appear on behalf of a party or interested person; and

(b) The ALJ has authority to limit an authorized representative's presentation of evidence, examination, and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record. The ALJ may not allow an authorized representative to present legal argument as defined in OAR 860-001-0010(11).

(2) A party's initial pleading filed in the proceeding must designate the party's representative, and one person as its representative to accept service for the party itself.

(3) Later changes to the designation of authorized representative must be made by written notice to the Commission, and a copy must be served on each other party in the proceeding.

(4) Commission Staff may represent the agency in a contested case hearing in the

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following proceedings:

(a) Actions initiated by the Commission to recover telecommunications assistive devices, or the value of devices which the recipients fail to return, or the cost of repairing the equipment which the recipient returned in a damaged condition; and

(b) Denial or termination of Oregon Telephone Assistance Program benefits.

(5) Agencies, corporations and unincorporated associations must be represented by an attorney licensed in Oregon, unless otherwise permitted by law.

860-001-0530

Appearance of Attorneys - Pro Hac Vice

(1) To make legal arguments or sign legal documents in Commission proceedings, an attorney must be in good standing with the Oregon State Bar, or affiliate with such an attorney and appear pro hac vice.

(2) A motion to appear pro hac vice before the Commission must contain the following:

(a) Certificate of compliance for pro hac vice admission, available on the Bar website, which covers most of the Uniform Trial Court Rule (UTCRC) 3.170(1) requirements;

(b) Certificate of good standing from the jurisdiction in which the attorney is a member of the Bar; and

(c) Certificate of insurance covering the attorney's activities in this state and providing professional liability insurance substantially equivalent to the Oregon State Bar Professional Liability Fund Plan, which provides insurance for each individual attorney with no deductible.

(3) The applying attorney must associate with a member of the Bar ("local attorney") who must participate meaningfully in the matter. Applications must be made on a case by case basis. Each application is good for one attorney for a single case that occurs within a year after the application is granted.

(4) No fee need be submitted. Additional guidance is provided by UTCRC 3.170, also found on the Oregon state bar website, or by contacting the Commission.

860-001-0540 (Current 860-012-0010)

Former Employees

(1) A former Commission employee may not appear on behalf of other parties in an adjudicatory proceeding in which the former employee took an active part on the Commission's behalf.

(2) Except with the Commission's written permission, a former Commission employee may not appear as a witness on behalf of other parties in an adjudicatory proceeding in which the former employee took an active part on the Commission's behalf.

(3) Except with the Commission's written permission, a person now working for the Commission, who was formerly employed by a company subject to the jurisdiction of the Commission, or a company appearing before the Commission in a proceeding, or an affiliate of such company, may not appear as a witness on behalf of the Commission in an adjudicatory proceeding in which the person took an active part on the company's behalf as an employee of the company. Prior to giving its written permission to the person, the Commission must notify the affected company and the other parties to the proceeding.

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The Commission must allow the affected company an opportunity to object to the Commission granting permission to the person. The Commission must also allow the other parties to the proceeding an opportunity to respond to the affected company's objection, if any.

FILING AND SERVICE

860-001-0600 (Current 860-013-0036)

Filings Requirements

(1) All documents filed with the Commission in connection with a docketed case must be filed with the Commission's Filing Center, in electronic form. See OAR 860-001-0020 (current 860-011-0010(1)). Parties may request paper service. In the absence of such a request, all filings must be submitted electronically.

(2) Persons must file one original, signed pleading or other document and any copies required by OAR 860-001-0610 (current 860-013-0060), in electronic form.

(3) Except as otherwise provided by rule, persons must supplement any filing by submitting an exact copy of the document in electronic form, as specified in OAR 860-001-0630 (current 860-011-0012). This requirement does not apply to:

(a) Any person excused from the obligation by the Commission or Administrative Law Judge (ALJ); or

(b) Any filing containing information designated as confidential.

(4) Filings that are incomplete or not in substantial compliance with these rules, Commission orders, ALJ rulings or memoranda, or statutes may not be accepted for official filing.

(5) Documents required to be filed within a specified time but which fail to substantially comply with these rules may be accepted as conditionally received to satisfy the filing date.

(6) The Commission or ALJ may require the filing of additional information to clarify or explain a filing at any stage of a proceeding, or in ex parte matters. If such information broadens or changes the scope or intent of the filing, the Commission or ALJ will require notice be given to persons affected.

(7) Persons are encouraged, but not required, to provide an electronic copy of all filings in dockets containing the following case designation:

ADR - Alternative Dispute Resolution

AP - Oregon Telephone Assistance Program (OTAP) Denial of Benefits

TT - Telecommunication Devices Assistance Program (TDAP) Equipment Abuse

UNC - Utility Notification Rulemaking

UCR - Customer Complaint - Residential

860-001-0610 (Current 860-013-0060)

Copies of Filings Required

(1) In addition to the original copy and supplemental electronic copy required by rule, the following documents must be filed with the specified number of paper copies:

(a) Pleadings: 5 copies;

(b) General rate revisions filed pursuant to OAR 860-001-0720 (current 860-013-0075):

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- (A) Utility initial filing: 20 copies;
- (B) Work papers: 3 copies;
- (c) Motions and Replies: 5 copies;
- (d) Testimony filed pursuant to OAR 860-001-1090 (current 860-014-0060): 5 copies;
- (e) Briefs filed pursuant to OAR 860-001-0900 (current 860-014-0090): 5 copies;
- (f) Applications for Allocation of Territory filed pursuant to OAR 860-025-0000 to 860-025-0050, OAR 860-034-0440 to 860-034-0495, or OAR 860-036-0900 to 860-036-0925: 3 copies;
- (g) Financing applications filed pursuant to OAR 860-027-0020 to 860-027-0035, OAR 860-036-0715 to 860-036-0725, or OAR 860-037-0515 to 860-037-0525: 3 copies; and
- (h) Affiliated interest applications filed pursuant to OAR 860-027-0040 to 860-027-0044, OAR 860-036-0730 to 860-036-0738, or OAR 860-037-0530 to 860-037-0545: 3 copies.

860-001-0620 (Current 860-011-0011; OPUC website)

Format and Content Requirements

- (1) All text documents related to Commission proceedings must be prepared using a readable font that, when printed, will fit on an 8-1/2 by 11 inch page. Footnotes or quotations may be single spaced and indented.
- (2) All documents must be identified by caption and the docket number of the proceeding in which the document is filed, unless no docket number has been assigned.
- (3) All documents must be signed by the person making the filing or an authorized representative. By signing the pleading, the signatory makes the certification set forth in Oregon Rule of Civil Procedure 17C. For electronic filings, a person may use any identifier that is executed or adopted by the person using it with the intent to authenticate a writing.
- (4) A person who communicates with the Commission must provide a name, physical and electronic mail addresses, and telephone number to assist the Commission in responding. A person who files on behalf of a business, organization, or other entity must also provide the name of the entity on whose behalf the communication is sent.
- (5) The original document and all copies required by the Commission rules must be filed in the same envelope or container to the extent practicable. A party making simultaneous filings in more than one docket must enclose the documents for each docket in a separate envelope or container.
- (6) With the exception of tariff sheets, the Commission prefers to receive copies of text documents printed on both sides. The Commission encourages the use of recyclable paper.
- (7) Parties must mark the upper right hand corner of each page of every exhibit in the following manner:
 - Party Name/Exhibit Number
 - Witness Last Name/Page Number
- (8) To ensure uniformity between dockets, and to simplify case references, all Commission docket captions should prominently state the utility name, followed by a brief description of the docket subject. Generally, docket captions should take the form indicated on the Commission's website at

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http://www.puc.state.or.us/PUC/admin_hearings/guidelines_captions.shtml.

860-001-0630 (Current 860-011-0012)

Electronic File Format Requirements

(1) Electronic filings required by rule may be provided as an electronic mail file attachment addressed to the Commission's electronic mail address provided in OAR 860-001-0020 (current 860-011-0010(1)), submitted on a 3-1/2 inch formatted high-density disk, compact disk (CD) or DVD, or uploaded via the Commission's website. The filing must be labeled with any applicable docket number of the proceeding, the name of the party submitting the document, a description of the contents, and the date filed. Any filing submitted as an electronic mail attachment must be less than 20 megabytes in size and include the docket number and name of the file in the subject line of the electronic mail message.

(2) Electronic copies of text documents must be in text-searchable Portable Document Format (i.e., pdf). Filers that cannot create text-searchable .pdf files must provide a copy of the document converted to .pdf via scanning or other technology, and supplement the filing with a copy in Microsoft Word file format.

(3) Electronic files must be named in a way that accurately describes the file contents. Filers must use a format that identifies the docket type or, if assigned, docket number, the nature of the document, and the person submitting it.

(4) Electronic filings containing numerous documents must be separated into multiple attachments. For example, a filing containing testimony from multiple witnesses should be divided into individual files, one file for each exhibit.

860-001-0640 (Current 860-013-0037)

Filing Dates

(1) Pleadings or other documents must be filed by mail, personal delivery, or any other reasonable means of delivery at the address listed in OAR 860-001-0020 (current 860-011-0010(1)). Except as modified by statute or by these rules, a document is filed on the date received by the Commission at Salem, Oregon, between the hours of 8 a.m. and 5 p.m., Pacific Time.

(2) The period of time for doing an act governed by these rules is determined by excluding the first day and including the last day. If the prescribed filing date falls on a Saturday, Sunday, legal holiday, as defined in ORS 187.010, or when the Commission's office is closed pursuant to a Department of Administrative Services directive, the next business day following is the date of filing.

(3) A telephonic facsimile or electronic copy of a document will be accepted for filing if the original signed document is deposited in the mail and addressed to the Commission, with proof of service as required by OAR 860-001-0650(current 860-013-0070) on the date the facsimile or electronic copy is received. The complete facsimile or electronic copy must be received by the Commission by 5 p.m. Pacific Time on the filing deadline.

(4) Conditionally received filings may not be officially filed until approved as being in substantial compliance with these rules, the Commission's orders, and statutes. Conditionally received filings may be rejected unless brought into compliance within the time granted by the Commission.

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(5) The Commission must provide the filer the reason for rejecting or conditionally accepting a filing.

860-001-0650 (Current 860-013-0070)

Service Requirements on Other Parties

(1) Parties must serve copies of all filed documents in adjudicatory proceedings, including correspondence with the Commission or Administrative Law Judge (ALJ), pleadings, testimony, exhibits, memoranda of law, and briefs on all parties designated on the official service list. The official service list for each proceeding is posted on the Commission's website or is available by calling the Commission. Unless a party waives other forms of service under section (4) of this rule, a party is limited to two persons on the service list. Every party must notify the Commission in writing of any change in address.

(2) Unless waived pursuant to section (4) of this rule, parties must serve those documents in person, by mail, or by any other reasonable means of delivery. Service is complete when the documents are delivered in person, deposited in the mail, or as otherwise allowed by the Commission or ALJ. Unless otherwise specified by the Commission or ALJ, required filing dates are in-hand dates. A telephonic facsimile or electronic copy of a document will satisfy an in-hand filing date if paper copies are deposited in the mail and addressed to the other parties on the date the facsimile or electronic copy is sent.

(3) When a party has appeared by attorney or other duly authorized representative, service upon the attorney or representative is valid service on the party.

(4) A party may serve documents by electronic mail on parties that have waived other forms of service. The filing of a written waiver excuses the other parties and the Commission from the obligation to use methods of service specified in section (1) of this rule or in statute. Service by electronic mail is complete when the electronic message leaves the sender's electronic mail server. Parties effecting service by electronic mail are encouraged to secure electronic return receipts or otherwise confirm successful delivery.

(5) The original of all filed documents, including those listed in section (1) of this rule, must include an acknowledgement of service or a certificate that the document was served upon all parties of record in the proceeding. The acknowledgement or certificate of service must contain:

(a) A statement that the document was served by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-001-0650 (current 860-013-0070), to the parties of record or attorneys of parties;

(b) A service list showing the names and addresses of the parties or attorneys of parties served;

(c) A statement of the date the parties or attorneys of parties were served; and

(d) A certifying signature of the person effecting service.

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MOTION PRACTICE

860-001-0700 (Current 860-013-0010)

Pleadings Enumerated; Requirements.

(1) Applications, petitions, complaints, and other traditional initiatory pleadings may be filed with the Commission. All initiatory pleadings must include:

- (a) The filer's name and address;
- (b) The name and address of any other party named in the filing;
- (c) A clear and concise statement as to the authorization, action, or relief sought;
- (d) Appropriate references to the statutory provision or other authority under which the filing is made; and
- (e) Other information as is required by the Commission's rules.

(2) Answers, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses. Any person who desires to respond to an initiatory pleading must file a written response that includes:

- (a) The filer's name and address;
- (b) The identification of the initiatory pleading to which the response is made, including the docket number, if one had been assigned; and
- (c) A specific response to the pleading, including, if necessary, an answer to any material allegations and affirmative defenses. The failure to file a response to a complaint is deemed a general denial.

(d) Unless otherwise specified or directed by the Commission or Administrative Law Judge, responses must be filed as follows:

- (A) An answer to a complaint, application, or petition must be filed within 20 days after service.
- (B) An answer to a consumer complaint under OAR 860-021-0015 must be filed within 15 days after service.
- (C) An answer to a petition to intervene must be filed within 10 days after service.

860-001-0710 (Current 860-013-0031)

Motions and Replies

(1) A motion is a request to the Commission or Administrative Law Judge (ALJ) for a ruling or other action that affects the rights of a party to an adjudicatory proceeding.

(2) A reply is a response to a motion made in an adjudicatory proceeding.

(3) A motion or reply must be in writing unless made orally at a hearing or prehearing conference if all parties are present, or when otherwise permitted by the Commission or ALJ.

(4) A motion must contain the following:

(a) A certification that reasonable efforts to achieve settlement have been attempted by the parties, and that they have been unable to resolve the controversy without the ALJ's assistance, and

(b) A statement indicating the position of each party to the proceedings (i.e., whether that party objects to or joins in the motion).

(5) A motion against a complaint, application, petition, answer, or reply shall be filed within 15 days of service.

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(6) A reply to a motion must be filed within 15 days of service of motion. Failure to file a reply within that time is deemed a general denial.

(7) Unless otherwise specified by these rules or the ALJ, a response to a reply is not permitted.

(8) Objections to the Commission's jurisdiction or that a pleading does not state facts sufficient to state a claim are never waived.

860-001-0720 (Current 860-013-0075)

General Rate Revisions

(1) Unless waived by the Commission or Administrative Law Judge (ALJ) for good cause, any utility filing new or revised tariff schedules that constitute a general rate revision must include supporting testimony and exhibits, work papers, and trial briefs. 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 rate changes set forth in OAR 860-022-0017(1).

(a) As used in this rule, work papers consist of those documents that show the source, calculations, and details supporting the testimony and other exhibits submitted. When, subsequent to the initial filing made by the utility, a party files testimony and exhibits, it must at the same time provide a copy of its work papers to any other party that has requested a copy. Both the utility and any party must provide electronic copies of workpapers, if available.

(b) The trial brief must contain an exhibit showing in summary form all information required by the most recent version of Utility Staff General Rate Case Data Request Form A, available at [\[website address\]](#).

(2) The Commission or ALJ may require participants appearing in any proceeding to file testimony or other documents by a specific time.

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

860-001-0730 (Current 860-014-0091)

Appeals to the Commission from Rulings of Administrative Law Judges

(1) A ruling of the Administrative Law Judge (ALJ) may not be appealed during the proceeding except where the ALJ certifies the question to the Commission pursuant to OAR 860-001-0890(current 860-012-0035(1)(i)), upon a finding that the ruling:

(a) May result in substantial detriment to the public interest or undue prejudice to any party; or

(b) Denies or terminates any person's participation.

(2) A request for certification of a ruling of the ALJ must be filed within fifteen days of the date of service of the ruling, or the date of the oral ruling.

HEARINGS, MEETINGS, CONFERENCES

860-001-0800 (Current 860-012-0020)

Joint Hearings with Federal Regulatory Agencies

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In any proceeding in which the Commission participates jointly with any federal regulatory agency, the rules of practice and procedure of the federal agency govern.

860-001-0810 (Current 860-012-0025)

Joint Hearings with Another State

In any proceeding in which the Commission participates jointly with an administrative body of another state, the rules of procedure of the state where the hearing is held govern the proceeding. Any person entitled to appear in a representative capacity before any of the agencies involved in the joint hearing may do so in the joint hearing.

860-001-0820 (Current 860-012-0040)

Public Meetings

Except in cases of emergency, for all votes of the Public Utility Commission of Oregon at a public meeting that approve a major rate change for an electric company or natural gas utility under ORS 757.205, a quorum is the full commission. For purposes of this rule, a major rate change is an increase of two percent or more for any customer class.

860-001-0830 (Current 860-014-0005)

Notice of Adjudicatory Hearing

The Commission or Administrative Law Judge must set the time and place for adjudicatory hearings. Notice of a hearing must be served on all parties at least ten days before the hearing date. For good cause, the Commission may require a hearing to be held on less than ten days' notice.

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860-001-0840 (Current 860-014-0010)

Postponements and Continuances of Hearings

(1) Any party may request a postponement of a hearing. The party must provide the reasons why the postponement is necessary. The Commission or Administrative Law Judge (ALJ) may require oral requests for postponement of a hearing to be confirmed in writing.

(2) The Commission or ALJ may grant a postponement of a hearing and may, at any time, order a postponement on the Commission's or the ALJ's own motion.

(3) The Commission or ALJ may continue a hearing or conference to receive additional evidence or argument. Additional notice of a continued hearing involving the same issue need only be provided to parties attending the initial hearing and other parties who have requested continuing notice.

860-001-0850 (Current 860-014-0020)

Conferences

(1) The Commission or Administrative Law Judge may schedule conferences to facilitate the resolution of the adjudicatory proceeding.

(2) The purpose of the conference may include, but is not limited to:

(a) Establishing a procedural schedule, including dates for discovery, testimony, and exhibits;

(b) Identify, simplify, and clarify issues;

(c) Eliminate irrelevant or immaterial issues;

(d) Facilitate discovery and to resolve disagreements about discovery;

(e) Obtain stipulations, authenticate documents, admit documents into evidence, adopt witness schedules, cross-examination schedules, and decide the order of presentation and other procedural matters pertaining to the conduct of the hearing;

(f) Consider other matters which may expedite the orderly conduct and disposition of the proceeding; and

(g) To discuss settlement or other resolution or partial resolution of the case.

(3) All discovery procedures provided in these rules may be applied to aid in the conference.

(4) The record must reflect the results of any conferences, and the results are binding on all parties.

(5) Unaccepted proposals at conference are privileged and are not admissible in evidence in the proceeding.

860-001-0860 (Current 860-014-0023)

Major Proceeding

(1) For purposes of ORS 756.518(2), a "major proceeding" is a proceeding that has, or is expected to have, a full procedural schedule with written testimony or written comments and that:

(a) Has a substantial impact on utility rates or service quality for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines; or

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(b) Has a significant impact on utility customers or the operations of a regulated utility for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines.

(2) A party in a proceeding that does not meet the criteria in section (1) of this rule may petition the Administrative Law Judge (ALJ) for major case status if the case:

- (a) Is likely to result in a significant change in regulatory policy; or
- (b) Raises novel questions of fact or law.

(3) When a docket is opened, any party may file a motion with the ALJ requesting that the case be classified as a major proceeding.

(a) The motion must:

(A) Set out with specificity how the case qualifies as a major proceeding under the criteria listed in section (1) of this rule; or

(B) Argue how the case qualifies as a major proceeding under section (2) of this rule.

(b) Answers to the motion are due within 15 days of filing.

(c) The ALJ must rule on the motion within 15 days of filing.

(4) If a case is classified as a major proceeding, parties must schedule a date for oral argument before the Commission at the prehearing conference or as soon thereafter as possible.

(5) Any party to a case may present argument before the Commission if the case is defined as a major proceeding.

(6) The ALJ must determine the length of each party's presentation to the Commission, the right of any party to rebuttal of any other party's presentation, and the order of presentation.

860-001-0870 (Current 860-014-0025)

Consolidation of Proceedings

Proceedings may be consolidated for hearing at the discretion of the Commission or Administrative Law Judge.

860-001-0880 (Current 860-014-0032)

Failure to Appear

If a party fails to appear at a conference or hearing, the party waives its right to participate in the proceeding. Upon motion by any party, or upon the Commission's own motion, the Commission may enter an order dismissing the party from the proceeding. Such order must be served on the party dismissed. Unless allowed by the Commission or Administrative Law Judge (ALJ), the party may not reopen any matter determined at the conference or hearing or recall for further examination witnesses then available and excused. If the Commission or ALJ finds there was good cause for the party's failure to appear, or the interests of other parties or the public would be prejudiced, the Commission or ALJ may reinstate the party or permit the matter to be reopened, heard, and considered.

860-001-0890 (Current 860-014-0035)

Order of Procedure

(1) Unless modified by the Commission or Administrative Law Judge (ALJ), parties present evidence in the following order:

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(a) Complaints: Complainant; defendant; Commission's staff in proceedings in which the Commission is not the complainant; participants; and rebuttal by complainant;

(b) Investigation and suspension proceedings: Respondent; Commission's Staff; protestants against suspended schedules; other participants; and rebuttal by respondent;

(c) Applications and petitions: Applicant or petitioner; protestants; participants; Commission's Staff; and rebuttal by applicant or petitioner;

(2) In hearings where several proceedings are heard on a consolidated record, the Commission or ALJ designates the order of procedure.

860-001-0900 (Current 860-014-0090)

Briefs and Oral Arguments

(1) Parties may request the opportunity to file briefs in any proceeding. The Commission or Administrative Law Judge (ALJ) may require a party to file a brief.

(2) The Commission or ALJ may require the parties to present their arguments and authority orally at the close of the hearing instead of by written brief.

DISCOVERY, ADMISSION OF EVIDENCE

860-001-1000 Discovery in Adjudicatory Proceedings

(1) Discovery may be permitted in appropriate adjudicatory proceedings at the discretion of the ALJ. Any party may petition the ALJ for an order allowing discovery. Before requesting a discovery order, a party must seek the discovery through an informal exchange of information.

(2) 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.

(3) Discovery that is unreasonably cumulative, duplicative, or overly broad is not allowed.

(4) The work product of an attorney and other privileged material is not discoverable except as provided under the Oregon Rules of Evidence. *See Oregon Rule of Civil Procedure 36.*

(5) 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 proceeding.

(6) Any 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 resolving a dispute under this section. The ALJ may impose sanctions including but not limited to default, dismissal, or striking of testimony, evidence or cross examination.

860-001-1010 (Current 860-014-0040)

Subpoenas

(1) A subpoena may be issued by an attorney of record of a party and subscribed by the signature of the attorney.

(2) Parties not represented by an attorney may submit, in writing to the Commission or Administrative Law Judge (ALJ), requests for the issuance of subpoenas. The request

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must set forth the general relevance and reasonable scope of the testimonial, documentary, or physical evidence sought.

(3) Requests for subpoenas duces tecum must specify the particular document or part of a document to be produced.

(4) Parties must serve subpoenas as provided in the circuit courts of the State of Oregon under the Oregon Rules of Civil Procedure. Parties must return the originals to the Commission or ALJ.

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

860-001-1020 (Current 860-014-0065)

Depositions

(1) The testimony of any witness may be taken by deposition at any time before the hearing is closed.

(2) A party proposing to take a deposition must notify in writing every other party. Unless notice is waived, a party must provide ten days' notice to the parties of a deposition to be taken within the state and 15 days' notice for a deposition to be taken elsewhere. The notice must state the witness's name and address, the subject matter on which the witness is expected to testify, the time and place of taking the deposition, the name and address of the officer before whom the deposition is to be taken, and the reason why the deposition is to be taken. Other parties in the proceeding may make any appropriate response to the notice of deposition.

(3) A party may take a deposition before a person designated in the notice or agreed upon by the parties. The Commission or Administrative Law Judge (ALJ) may impose such conditions on the taking of the deposition as may be necessary to ensure fairness in the proceeding.

(4) Every person whose testimony is taken by deposition must swear or affirm concerning the matter about which he or she will testify. The testimony must be transcribed. The person before whom the deposition was taken must certify, under oath on the transcript, that the witness was sworn in the reporter's or transcriber's presence, and the transcript is a true record of the testimony or a correct transcription of the recording.

(5) A party may examine a deponent on any matter not privileged which appears reasonably calculated to lead to the discovery of evidence relevant to the issues involved in the pending proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts.

(6) Unless received in evidence by the Commission or ALJ, no portion of a deposition may constitute a part of the record in the proceeding. A party may object at the hearing in the proceeding to receiving in evidence any portion of the deposition. Upon request, the party examining the deponent must provide the Commission or ALJ a transcribed copy of any deposition taken in the proceeding.

(7) The party requesting the deposition must pay the deponents and the person taking the deposition the same fees as are paid for like services in the courts of record of the state in which the deposition is taken.

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860-001-1030 (OPUC website)

Admissions

- (1) Any party may request that another party admit the genuineness or correctness of a document.
- (2) Responses to each request must be served within 5 days of receipt.
- (3) Requests not denied within 15 days are deemed admitted.

860-001-1040 (Current 860-014-0070)

Data Requests

(1) Subject to limitations imposed by the Commission or Administrative Law Judge (ALJ), the Commission, ALJ, or any party may submit data requests to any party. Data requests are written interrogatories or requests for production of documents. The data requests must be answered within ten Commission business days from the date of service. Each data request must be answered fully and separately in writing or by production of documents, unless objected to, in which event the objection must be written in lieu of answer.

(2) A party submitting a data request must serve the request on all parties to the proceeding. Electronic service of data requests is sufficient to parties who have waived paper service under OAR 860-001-0650(4). The party answering the data request need only provide a response to the submitting party, unless another party files a written request for a copy of a specific response. A party may not submit a blanket request to receive copies of responses to all data requests.

(3) If the party to whom the data requests are directed refuses to answer or objects to any data request, a party may file a motion seeking to compel an answer or impose sanctions for refusal to answer. Any motion regarding disputed data requests submitted to the Commission or ALJ, whether by motion or otherwise, must contain a certification that the parties have conferred and been unable to resolve the dispute. The certification may be included in the body of the motion. Any motion that does not contain this certification will be denied.

(4) Any party may offer into evidence data requests and the answers to the data requests. Any objection to substance or form of any data requests or answers must be attached to the submitted data requests with specific reference and grounds. The Commission or ALJ must rule on objections before receiving the submitted data requests in evidence. Every remedy available to a party using deposition procedures must be available to a party using data requests.

(5) Except when requested by the Commission or ALJ or when seeking resolution of a discovery dispute under these rules, data requests may not be filed with the Commission or ALJ.

860-001-1050 (Current 860-014-0080)

Records in Other Proceedings

If a portion of the record of any other proceeding before the Commission is offered in evidence, a copy of the portion must be presented for the record and a copy furnished to each party to the proceeding.

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860-001-1060 (Current 860-014-0045)

Evidence

(1) Relevant evidence:

(a) Means evidence tending to make the existence of any fact at issue in the proceeding more or less probable than it would be without the evidence;

(b) Is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and

(c) May be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by undue delay.

(2) Parties objecting to the introduction of evidence must state the grounds for objection at the time the evidence is offered.

(3) When objection is made to the admissibility of evidence, the Commission or Administrative Law Judge (ALJ) may have the evidence recorded and reserve ruling until a later time.

(4) When a party takes exception to a ruling excluding certain evidence, the Commission or ALJ may require the party to make an offer of proof by stating what the evidence would indicate if received. Alternatively, the Commission or ALJ may permit the excluded evidence to be received in like manner as other evidence, but it must be marked and designated as evidence offered, excluded, and to which exception has been taken.

(5) An admission or offer of settlement made during compromise negotiations, including a settlement conference under these rules, is not admissible in evidence against the party making the admission or offer in any formal hearing before the Commission. Independently ascertainable facts disclosed during compromise negotiations may be proved in any subsequent hearing.

860-001-1070 (Current 860-014-0050)

Official Notice

(1) The Commission or Administrative Law Judge (ALJ) may take official notice of the following matters:

(a) All matters of which the courts of the State of Oregon take judicial notice;

(b) Rules, regulations, administrative rulings and reports of the Commission and other governmental agencies;

(c) Orders of the Commission;

(d) Permits, certificates, and licenses issued by the Commission;

(e) Documents and records in the files of the Commission which have been made a part of the file in the regular course of performing the Commission's duties;

(f) General, technical or scientific facts within the specialized knowledge of the agency;

(g) The results of the Commission's or ALJ's own inspection of the physical conditions involved after notice to the parties.

(2) The Commission or the ALJ must notify the parties when official notice is taken. The notice may be given on the record during the hearing or in findings of fact in a proposed or final order. A party may object to the fact noticed within 15 days of that notification. The objecting party may explain or rebut the noticed fact.

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860-001-1080 (Current 860-014-0055)

Resolutions

(1) Properly authenticated resolutions of governing bodies of government, business, agricultural or civic organizations may be received in evidence if offered at the hearing by the president, secretary, or other person authorized to offer the resolution.

(2) Parties may rebut the authenticity of the resolution or the circumstances surrounding its procurement.

(3) Recitals of fact contained in resolutions are not proof of the facts. The Commission or Administrative Law Judge may receive a resolution for the limited purpose of showing the expression of the official action of the resolving body with respect to the matter under consideration in the proceeding.

860-001-1090 (Current 860-014-0060; OPUC website)

Testimony and Exhibits

(1) Prior to the hearing, each party is assigned a name or acronym for purposes of marking and identifying testimony and exhibits.

(2) Each party must number its exhibits consecutively beginning with one. Each attachment must be marked as a separate exhibit.

(3) The last name of the witness must appear on the exhibit. No abbreviations may be used.

(4) Each page of a multipage exhibit must be marked with a page number. Pages must be marked consecutively. If an exhibit is a photocopied document, the page numbers used in the original document are adequate even if they do not appear in the upper right hand corner.

(5) The ALJ may waive the requirement of marking each page of large photocopied documents.

(6) At the outset of the case, the parties must file a list of exhibits in numerical order, specifying the document, witness, and number of pages. At the ALJ's request, parties must submit updated lists of their exhibits, also indicating the status of each exhibit.

(7) When testimony or exhibits are offered in evidence, copies must be furnished to each party, the Commission and Administrative Law Judge (ALJ). When practicable, the parties must distribute copies of exhibits before or at the commencement of the hearing.

(8) When relevant evidence offered by a party is included in a book, paper, or document containing irrelevant material, the party offering the exhibit must plainly designate the matter offered:

(a) If irrelevant material is included in the exhibit that would encumber the record, the exhibit may not be received in evidence. The exhibit may be marked for identification, and, if properly authenticated, the relevant matter may be read into the record;

(b) If the Commission or ALJ directs, a copy of the relevant portions of the exhibit may be received as evidence. The offering party must offer copies of the document to all other parties appearing at the hearing. The parties must be afforded an opportunity to examine the exhibit and to offer in evidence other portions of the exhibit found to be relevant.

(9) Papers and documents on file with the Commission may be introduced by reference to number, date, or by any other method of identification satisfactory to the Commission or ALJ.

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(10) The Commission or ALJ may direct that the testimony of any witness, including supporting exhibits, be submitted in writing prior to hearing. Unless otherwise directed by the Commission or ALJ, such testimony, when sworn to orally or in writing by the witness under oath to be true, will be received in the same manner as an exhibit. The written testimony must be double spaced, prepared in question and answer or narrative form, and contain a statement of the qualifications of the witness. The written testimony is subject to rules of admissibility and cross-examination. Unless otherwise directed by the ALJ, all written testimony and exhibits must be paginated in the top right corner as follows:

Party Name/ Exhibit Number:

Witness Last Name / Page Number:

(11) The Commission or ALJ may direct that demonstrative evidence be reduced to a diagram, map, photograph, or similar representation.

860-001-1100 (Current 860-014-0085)

Voluntary Settlements; Stipulation to Facts

(1) In all Commission adjudicatory proceedings, some or all of the parties may enter into a voluntary settlement of issues, or enter into a stipulation upon any matter in controversy, at any time during the proceeding. Any such agreement is subject to sections (2) through (6) of this rule.

(2) Any party may attend any settlement conference in which the Commission Staff participates. A settlement conference is any meeting called for the purpose of discussing resolution of issues in a proceeding. Examples of communications not constituting settlement conferences for purposes of this rule include, but are not limited to, communications primarily for the purpose of discovery, and communications occurring prior to initiation of docketed proceedings.

(3) All parties to a proceeding must be provided reasonable prior notice by Commission staff of any settlement conference in which staff intends to participate. The notice must include the time and place of the settlement conference, the party or parties involved, and the issue(s) to be discussed. Once notice has been given by staff of a settlement conference involving a particular issue, additional notice of continuing settlement conferences involving the same issue need only be provided to parties attending the initial conference, or who have requested continuing notice.

(4) A stipulation or settlement is not binding on the Commission. Settlements and stipulations must be reduced to writing, served on the parties to the case, and filed for review by the Commission. Unless waived by the Commission or ALJ, settlements and stipulations filed for review must be supported by an explanatory brief or written testimony filed and served concurrently therewith. Parties may present oral or written stipulations on the record at the hearing or other appropriate time with leave of the Commission or ALJ.

(5) Within 20 days of the filing of the settlement or stipulation, any party may file written objections to the settlement or stipulation or request a hearing. Upon request or its own motion, the Commission or ALJ may set another time period for objections and request for hearing. Objections may be on the merits or based upon failure of staff or a party to comply with this rule. The Commission or ALJ may hold a hearing to receive testimony and evidence regarding the settlement or stipulation. The Commission or ALJ

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may require evidence of any facts stipulated, notwithstanding the stipulation of the parties. The parties must be afforded notice and an opportunity to submit proof, if such evidence is requested.

(6) If a stipulation is rejected, the Commission or ALJ must provide the parties sufficient opportunity on the record to present evidence and argument on the matters contained in the settlement or stipulation. No further hearing need be held where a review hearing has already been held under section (5) of this rule and the Commission or ALJ determines that the issues were fully addressed in the prior hearing.

COMPLIANCE WITH AND RECONSIDERATION OF ORDERS

860-001-1200 (Current 860-014-0093)

Extension or Postponement of Date to Comply with Rules and Orders

(1) Within 60 days of the date of service of an order or an adoption of a rule, parties may file petitions for extension or postponement of an effective date or of time to comply with a rule or an order of the Commission.

(2) Petitions must set forth specifically the reasons for the requested extensions or postponements.

860-001-1210 (Current 860-013-0055)

Default Upon Failure to Answer Complaint

(1) If a party fails to answer a complaint or otherwise appear within the time periods specified in OAR 860-001-0710, the party is deemed in default. All material allegations of the complaint are deemed admitted and hearing is waived. The proceeding may be disposed of without further notice to the defaulting party.

(2) A defaulted party may file an application for reconsideration of a final order of default pursuant to OAR 860-001-1230 (current 860-014-0095). The Commission may grant the application for reconsideration of a final order of default if the moving party shows the default resulted from mistake, inadvertence, surprise, excusable neglect, or other good cause.

(3) An application made under this rule must be accompanied by a pleading or motion which contains an assertion of a claim or a defense.

(4) The filing of an application under this rule does not excuse the defaulted party from complying with the order nor is the enforcement of the order stayed or postponed, except upon Commission order.

860-001-1220 (Current 860-014-0094)

Notice of Acceptance of Terms of Orders

The Commission may require any utility affected by any order to notify the Commission within a specified time whether the terms of the order are accepted and the time within which the order will be obeyed.

860-001-1230 (Current 860-014-0095)

Rehearing or Reconsideration

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(1) Within 60 days from the date of service of an order entered by the Commission, a party may file an application for rehearing or reconsideration of such order as provided by ORS 756.561. The application must set forth all grounds for rehearing or reconsideration.

(2) The application must specify:

(a) The portion of the challenged order which the applicant contends is erroneous or incomplete;

(b) The portion of the record, laws, rules, or policy of the Commission relied upon to support the application;

(c) The change in the order which the Commission is requested to make;

(d) How the applicant's requested changes in the order will alter the outcome; and

(e) One or more of the grounds for rehearing or reconsideration set forth under section (3) of this rule.

(3) The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:

(a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;

(b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;

(c) An error of law or fact in the order which is essential to the decision; or

(d) Good cause for further examination of a matter essential to the decision.

(4) Within 15 days from the date the application is filed, any party may file a reply setting forth its position on the application.

(5) Unless ordered by the Commission under OAR 860-001-1200 (current 860-014-0093), compliance with the original order is not stayed or postponed by an order granting an application for rehearing or reconsideration.

(6) The application is deemed denied if, by the 60th day after filing, the Commission has not issued an order granting the application. If the application is granted, the Commission may adhere to, modify, or rescind its prior order or take such other action as it may deem appropriate.

PRIOR RULES

860-001-1300 (Current 860-014-0096)

Prior Rules

Any prior rules conflicting with these rules are superseded.