ISSUED: September 11, 2025

# BEFORE THE PUBLIC UTILITY COMMISSION

# OF OREGON

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| In the Matter of<br><br>Rulemaking to Revise OAR 860-002-0000 Regarding Alternative Dispute Resolution. | MEMORANDUM REGARDING INFORMAL WORKSHOP |

Docket AR 629 rulemaking participants and other interested persons:

You are invited to participate in an informal workshop to discuss whether the rules governing alternative dispute resolution in OAR Chapter 860 Division 002 should be amended. The workshop will be held as follows:

**DATE:** September 29, 2025

**TIME:** 1:30 p.m.

**ADMINISTRATIVE LAW JUDGE:** Michael Grant

**VIA ZOOM:** CLINK ON THE LINK BELOW

LINK TO WORKSHOP

Call-in Option: (669) 254-5252
Meeting ID: 161 902 0733
Passcode: 5217121587

**Background**

The rules on alternative dispute resolution (ADR) were developed in docket AR 629, a rulemaking docket that was opened out of UM 2000, the PUC's comprehensive investigation into Oregon's implementation of the Public Utility Regulatory Policies Act (PURPA). The goal of the rulemaking was to promote voluntary settlement of disputes and reduce litigation before the PUC. Although originally aimed at addressing disputes between utilities and qualifying facilities, the rules were expanded to apply to all complaints filed under ORS 756.500 as well as petitions for declaratory rulings filed under ORS 756.450.

**Need for Rulemaking**

Since the rules were adopted, the PUC and stakeholders noted difficulty with the rules' application to consumer complaints and declaratory rulings. First, the current rules with strict timelines and requirements for ADR do not lend themselves to consumer

complaints, which are generally filed by individual customers without legal representation. Second, declaratory rulings—in which a person can request the PUC to address how it would apply a rule or statute to a set of facts—is not a suitable action for informal dispute resolution. The parties cannot reach voluntary settlement on how the PUC would decide a specified issue.

The rules also do not accurately reflect that participation in ADR is voluntary for all parties involved. Due to that fact, they contain provisions that require petitioning of parties and sequential filings that can be streamlined or eliminated by requiring a joint request for alternative dispute resolution. The rules also impose strict deadlines that are difficult to meet under the varying circumstances that generally accompany these disputes.

**Draft Proposed Rule Changes**

To help focus the discussion at the workshop, I have attached a set of draft proposed rule amendments for your review and consideration. The key draft proposed changes are:

- Adopt an informal mediation option for consumer complaints and a formal alternative dispute resolution process for PURPA-related complaints
- Eliminate the option for informal resolution of petitions for declaratory rulings
- Require parties to a PURPA-related complaint to jointly request formal ADR
- Require parties to file supporting information concurrently to assist the facilitator in the ADR process
- Adopt an expedited but flexible streamlined process for formal ADR

The workshop will be used to answer questions about the draft proposed changes, address other possible amendments, and generally address how the PUC can improve its rules to better promote informal resolution of disputes. Information gained at the workshop will help inform whether the PUC will undertake formal rulemaking.

Dated: September 11, 2025

Michael Grant
Administrative Law Judge

Attachment: Draft Proposed Rule Changes

**DRAFT PROPOSED RULES**

CHAPTER 860
PUBLIC UTILITY COMMISSION

FILING CAPTION: Informal Mediation and Formal Alternative Dispute Resolution for Complaint Filings - AR 679

EFFECTIVE DATE:

AGENCY APPROVED DATE:

CONTACT:
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Salem, OR 97308

DRAFT RULES PROPOSED:
860-002-0000, 860-002-0010, 860-002-0020, 860-002-0030, 860-002-0040, 860-002-0050, 860-002-0060, 860-002-0070, 860-002-0080, 860-002-0090

AMEND: 860-002-0000

RULE TITLE: Applicability and Purpose of Division 002

RULE SUMMARY: To explain how parties may request informal mediation or formal alternative dispute resolution (ADR) to resolve complaint proceedings.

RULE TEXT:

(1) The rules in this division apply to a ~~a complaint subject to ORS 756.500~~consumer complaint filed against a utility, a complaint over a proposed negotiated purchased power agreement filed under ~~or~~ OAR 860-029-0100, or a complaint to enforce a small generator interconnection agreement filed under OAR 860-082-0085 ~~or a petition for declaratory ruling subject to ORS 756.450~~. These provisions supplement the generally applicable filing and contested case procedures contained in OAR chapter 860, division 001, division 029, and division 082.

(2) These rules are intended to facilitate informal resolution of complaints and to provide for fair, timely, and dispute resolution that will aid parties in reducing the issues presented to the Commission.

(3) Upon request or its own motion, the Commission may waive any of the division 002 rules for good cause shown.

~~(3) Upon the filing of a petition for alternative dispute resolution consistent with these rules, all procedural deadlines associated with a related complaint or petition for declaratory ruling are stayed. A complaint or petition for declaratory ruling is related to the alternative dispute resolution if it raises the same dispute or concerns the same underlying circumstances, or both, and concerns the same parties. The stay is lifted upon the conclusion of the alternative dispute resolution process.~~

STATUTORY/OTHER AUTHORITY: ORS 756.040, ORS 756.060

STATUTES/OTHER IMPLEMENTED: ORS 183.502

**Commented [MG1]:** Revised to clarify use of rules and to streamline by incorporating purpose of rules previously set out in OAR 860-002-0010

AMEND: 860-002-0010

RULE TITLE: ~~Purpose of~~Definitions for Division 002

RULE SUMMARY: This rule defines the key terms used in division 002 rules.

RULE TEXT:

(1) “Consumer complaint” means a complaint filed by a residential or business customer against an energy or large telecommunications utility under OAR 860-021-0015, a small telecommunications utility under OAR 860-034-0060, a water utility under OAR 860-036-1150, or a wastewater utility under OAR 860-037-0025.

(2) "Facilitator" refers to the person appointed by the Commission to facilitate the formal alternative dispute resolution process.

(3) “Mediator” refers to the person appointed by the Commission to conduct informal mediation of a consumer complaint.

(4) "Party" refers to either the complainant or defendant in a complaint filed under ORS 756.500.

~~(1) OAR chapter 860, division 002 is intended to facilitate informal resolution of disputes, prevent litigation, and save time and resources for electric companies, qualifying facilities, and the Commission.~~

~~(2) These rules are intended to provide for fair, timely, and confidential dispute resolution that will aid parties in reducing the issues presented to the Commission.~~

STATUTORY/OTHER AUTHORITY: ORS 756.040, ORS 756.060

STATUTES/OTHER IMPLEMENTED: ORS 183.502

**Commented [MG2]:** Purpose of rules now included in OAR 860-002-0000, so this section now covers definitions which have been expanded to define consumer complaints

AMEND: 860-002-0020

RULE TITLE: Informal Mediation

RULE SUMMARY: This rule provides that a consumer filing a complaint against a utility may ask for informal mediation.

RULE TEXT:

(1) At the time of the filing of a consumer complaint, the complainant may indicate on the consumer complaint form that the complainant is interested in using mediation to explore informal resolution of the dispute.

~~(1)~~(2) Upon receipt of a complainant's interest in informal mediation, the Commission will direct the defendant utility to include, in its answer to the complaint, whether it is willing to participate in informal mediation.

~~(2)~~(3) If the utility agrees to informal mediation, the Commission will appoint an Administrative Law Judge to serve as mediator and schedule a mediation session. Following review of the information contained in the complaint and answer, the mediator may request the parties to provide additional information to help facilitate the mediation.

(4) If the parties do not agree to mediation, or the parties are unable to reach informal resolution through mediation, the Commission will appoint an Administrative Law Judge who did not serve as mediator to schedule the matter for hearing.

~~(1) "Mediator" refers to the person or persons appointed by the Chief Administrative Law Judge to serve as the Commission's representative to facilitate the alternative dispute resolution process.~~

~~(2) "Party" refers to either the petitioner or respondent identified in the petition for alternative dispute resolution.~~

~~(3) "Petitioner" refers to the party that files a petition for alternative dispute resolution under these rules.~~

~~(4) "Respondent" refers to the adverse party named in a petition for alternative dispute resolution under these rules, a complaint under ORS 756.500 or OAR 860-029-0100 or OAR 860-082-0085, or a petition for declaratory ruling filed pursuant to ORS 756.450.~~

STATUTORY/OTHER AUTHORITY: ORS 756.040, ORS 756.060

STATUTES/OTHER IMPLEMENTED: ORS 183.502

**Commented [MG3]:** New section to describe use of and process for informal mediation to resolve consumer complaints.

AMEND: 860-002-0030

RULE TITLE: Request and process for formal ADR

RULE SUMMARY: This rule sets forth the process and timeline of the formal alternative dispute resolution process contemplated in the division 002 rules.

RULE TEXT:

(1) At any time or concurrent with the filing of a complaint under OAR 860-029-0100 or OAR 860-082-0085~~or a petition for declaratory ruling in a dispute, either party~~, the parties may jointly request, on a form provided by the Commission, formal ~~may petition for~~ alternative dispute resolution (ADR) with the Commission. ~~Before filing such a petition, the petitioner must first provide a written request to the non-petitioning party to participate in the alternative dispute resolution process before the Commission and the non-petitioning party must confirm in writing its agreement to participate in the alternative dispute resolution process. Once both parties confirm in writing their agreement to participate in the alternative dispute resolution process, the Commission will provide mediation services under these rules.~~

(2) A request for formal ADR will be filed with the Commission and must:
(a) State the names of the parties;
(b) Include a statement that both parties have agreed to participate in formal ADR; and
~~(a)~~(c) Provide a brief description of the dispute or the issues to be resolved.

(3) Upon receipt of a request for formal ADR, the Commission will stay all procedural deadlines associated with the related complaint and expeditiously appoint a facilitator. The Commission may appoint an Administrative Law Judge, a expert contracted to provide services to the Commission, or a facilitator that has been suggested by both parties. If an Administrative Law Judge serves as facilitator, that same Administrative Law Judge may not preside over the complaint if informal resolution is not reached.

(4) Within five business days of written notification that a facilitator has been appointed, each party must file directly with the facilitator and other party the supporting materials. Supporting materials must not exceed five in length, unless otherwise agreed to by both parties, and
(a) Must explain the core issues in the dispute and provide a summary of background information, and
(b) May be accompanied by reference material intended to aid the facilitator's understanding of the issues. For disputes related to a power purchase agreement, draft or partially-executed power purchase agreements should be included as reference but will not count towards the five-page limit.

(5) The facilitator will schedule a formal ADR session to be held within 10 business days after receiving the supporting materials. Subsequent formal ADR sessions may be scheduled, if both parties agree.

(6) If the parties are unable to reach informal resolution, then the facilitator will promptly file a statement with the Commission concluding the formal ADR.

(7) Upon written notification in the docket that no agreement was reached, the Commission will lift the stay and will assign an Administrative Law Judge who did not participate as facilitator to preside over

**Commented [MG4]:** Revised process by which parties to a PURPA-related complaint may jointly ask the PUC for formal ADR. New timelines to provide flexibility but to ensure an expedited process.

the complaint.

(8) Parties may jointly file a motion to stay further complaint proceedings to facilitate further settlement discussions.

~~In the event a party files a complaint or petition for declaratory ruling but does not petition for alternative dispute resolution, the respondent named in the complaint or petition for declaratory ruling may file a petition for alternative dispute resolution under these rules. Before filing such a petition, the respondent must first provide written consent to the petitioner to participate in the alternative dispute resolution process before the Commission and petitioner must confirm in writing its agreement to participate in the alternative dispute resolution process. Once both parties confirm their agreement to participate in the alternative dispute resolution process, the Commission will provide mediation services under these rules.~~

~~(3) A party receiving a written request to participate in the alternative dispute resolution process under section (1) or (2) above must promptly advise in writing whether or not it agrees to participate in the alternative dispute resolution process under these rules. After the party consents to alternative dispute resolution, the petitioning party will promptly file its petition for alternative dispute resolution as provided in these rules.~~

STATUTORY/OTHER AUTHORITY: ORS 756.040, ORS 756.060
STATUTES/OTHER IMPLEMENTED: ORS 183.502

~~AMEND~~DELETE: 860-002-0040

RULE TITLE: Process and Timeline for Alternative Dispute Resolution

RULE SUMMARY: ~~To come~~

RULE TEXT:

~~(1) A petition for alternative dispute resolution under these rules will be filed with the Commission and will state the names of the parties and an affirmation that the non-petitioning party has agreed to participate in an alternative dispute resolution process.~~

~~(2) Within one business day of the filing of a petition for alternative dispute resolution, the Commission will contact the parties to inform them that a mediator has been appointed and to schedule the first mediation session.~~

~~(3) Within one business day of the appointment of a mediator, the petitioner will serve upon the non-petitioning party and the mediator the supporting materials described in OAR 860-002-0050.~~

~~(4) Within seven business days of receiving supporting materials, the non-petitioning party will serve a response on the petitioner and the mediator.~~

~~(5) A mediation session will be held within 14 business days after the initial petition is filed. Subsequent mediation sessions may be scheduled, if both parties agree.~~

~~(6) If no agreement is reached in the mediation session and the parties do not request additional mediation sessions, then, no later than three business days following the mediation session, the mediator will file a statement with the Commission indicating that no agreement was reached.~~

~~(7) Upon being informed that no agreement was reached, the Commission's Administrative Hearings Division will provide notice in any associated complaint or declaratory ruling docket that the stay on procedural deadlines is lifted.~~

~~(8) After the notice is provided, if the parties would like to continue discussions outside of the mediation process, the parties may jointly file a motion to stay further complaint proceedings to facilitate further settlement discussion. Thereafter, either party may provide notice that will end the stay.~~

~~(9) Any deadline in this rule may be modified by the agreement of the parties.~~

STATUTORY/OTHER AUTHORITY: ORS 756.040, ORS 756.060

STATUTES/OTHER IMPLEMENTED: ORS 183.502

**Commented [MG5]:** Process and timelines incorporated in OAR 860-002-0030

~~AMEND~~DELETE: 860-002-0050

RULE TITLE: Supporting Materials for Formal Alternative Dispute Resolution

RULE SUMMARY: This rule sets forth the process for filing and required contents of supporting materials for formal alternative dispute resolution.

RULE TEXT:

~~(1) A petition for alternative dispute resolution under these rules will be filed using a form made available by the Commission. The petition will include the names of the parties, the docket number of the related complaint or petition for declaratory ruling (if applicable), and an affirmation that the non-petitioning party has agreed to participate in alternative dispute resolution.~~

~~(2) Supporting materials for a petition for alternative dispute resolution will not be filed with the Commission but instead will be exchanged by the parties in accordance with OAR 860-002-0040. Supporting materials must not exceed five in length, unless otherwise agreed to by both parties, and~~

~~(a) Must explain the core issues in the dispute and provide a summary of background information, and~~

~~(b) May be accompanied by reference material intended to aid the mediator's understanding of the issues. Petitioners are particularly encouraged to attach draft or partially executed power purchase agreements to disputes related to a power purchase agreement. Reference material will not count towards the five-page limitation but should be limited in nature.~~

~~(3) The non-petitioning party's statement should not exceed five pages in length, unless otherwise agreed to by both parties, and~~

~~(a) The response must address the core issues in the dispute and provide a summary of background information.~~

~~(b) May be accompanied by reference material intended to aid the mediator's understanding of the issues. Non-petitioning parties are particularly encouraged to attach draft or partially executed power purchase agreements to complaints related to a power purchase agreement. Reference material will not count towards the five-page limitation but should be limited in nature.~~

STATUTORY/OTHER AUTHORITY: ORS 756.040, ORS 756.060

STATUTES/OTHER IMPLEMENTED: ORS 183.502

**Commented [MG6]:** Provisions governing supporting materials included in OAR 860-002-0030

DELETE~~AMEND~~: 860-002-0060
RULE TITLE: Assignment of a Mediator
RULE SUMMARY: To come
RULE TEXT:

~~(1) For each request for alternative dispute resolution, the Chief Administrative Law Judge must appoint a mediator to facilitate the process.~~

~~(2) The Chief Administrative Law Judge may appoint an Administrative Law Judge trained in mediation, a mediation expert contracted to provide services to the Commission, or a mediator that has been suggested by both parties.~~

~~(a) If the Chief Administrative Law Judge appoints an Administrative Law Judge as mediator, that same Administrative Law Judge will not be appointed to preside over any related complaint or petition for declaratory ruling.~~

~~(b) An Administrative Law Judge that acts as mediator for a dispute is not permitted to disclose any aspect of the parties' positions, statements, or proposals with anyone (other than the parties), including but not limited to the Administrative Law Judge assigned to the related complaint or petition for declaratory ruling, Commissioners, Commission Staff, or Commission Advisors.~~

~~(c) The mediator must maintain confidentiality with respect to the mediation proceedings, and may disclose only whether an agreement was reached and if so, may disclose terms of the agreement if authorized by both parties.~~

~~STATUTORY/OTHER AUTHORITY: ORS 756.040, ORS 756.060~~
~~STATUTES/OTHER IMPLEMENTED: ORS 183.502~~

**Commented [MG7]:** Provisions governing appointment of ADR facilitator covered in OAR 860-002-0030

AMEND: 860-002-0070

Commented [MG8]: Revised to clarify applicability

RULE TITLE: Confidentiality and Use of Statements, Proposals, or Materials in Alternative Dispute Resolution

RULE SUMMARY: This rule explains the confidentiality confines of alternative dispute resolution process and materials

RULE TEXT:

(1) Unless otherwise agreed to by the parties in writing, all written or oral communications made by the parties in preparation for or during the formal alternative dispute resolution (ADR) process~~mediation session(s)~~ including but not limited to offers of settlement must be kept confidential by the parties and the facilitator~~mediator~~, may not be used by the non-disclosing party for any purpose other than participation in the formal ADR~~mediation~~ process, and may not be released to any third party or be offered into evidence in any legal proceeding unless agreed to in writing by both parties. Confidentiality obligations in this section apply to each party's employees and representatives~~.~~ ~~(~~ including each party's counsel~~)~~.

(2) For purposes of ORS 192.502(4), the Commission obligates itself to protect from disclosure any document submitted in confidence during the formal ADR process~~settlement discussions~~.

STATUTORY/OTHER AUTHORITY: ORS 756.040, ORS 756.060

STATUTES/OTHER IMPLEMENTED: ORS 183.502

AMEND: 860-002-0080

Commented [MG9]: Revised to clarify applicability

RULE TITLE: Alternative Dispute Resolution Mediation Session
RULE SUMMARY: This rule describes the actions within an alternative dispute resolution session
RULE TEXT:

(1) Unless otherwise agreed to by the parties, no more than four persons for each party may attend a formal alternative dispute resolution (ADR)~~the mediation~~ session. Only the parties and the ~~mediator~~ facilitator may attend the ~~mediation~~ session, except as provided in section 2 of this rule.

(2) If agreed, parties may request that Commission Staff participate in a ~~mediation.~~ formal ADR session. Any participating Staff may not participate in any related complaint and is bound by the confidentiality requirements provided in OAR 860-002-0070.
~~The Administrative Hearings Division will assess whether or not it is possible for Commission Staff to participate in an individual mediation. Any appointed Staff is not permitted to participate in any related complaint or petition for declaratory ruling proceedings, and is not permitted to disclose any aspect of the parties' positions, statements, or proposals with anyone (other than the parties), including but not limited to the Administrative Law Judge or Commission Staff assigned to the related complaint or petition for declaratory ruling, Commissioners, or Commission Advisors.~~

(3) The ~~mediation~~ formal ADR session is led by the ~~mediator~~facilitator, who~~. The mediator~~ will begin the session by introducing parties, reviewing the protocol for the session, and stating the goals for the session. At the outset of the formal ADR session~~mediation~~, each party will be given time to present their view of the dispute without interruption.

(4) Where appropriate, the session may result in a negotiation. The ~~assigned~~ facilitator~~mediator~~ will be available to the assist the parties in~~to~~ support ~~the development~~ of settlement proposals.

(a) ~~At the request of parties, the mediator~~The facilitator may lead a settlement discussion, engage in shuttle diplomacy between parties, or develop proposed settlement concepts after the ~~mediation~~ formal ADR session for presentation at a subsequent mediation session.

(b) If an agreement is reached in principle, the facilitator~~, at the request of the parties, the mediator~~ may continue to work with the parties under this rule in resolving any disputes that may arise in drafting a final written settlement agreement.

STATUTORY/OTHER AUTHORITY: ORS 756.040, ORS 756.060
STATUTES/OTHER IMPLEMENTED: ORS 183.502

AMEND: 860-002-0090
RULE TITLE: ~~Mediator~~ Facilitator Evaluation of Dispute
RULE SUMMARY: To come
RULE TEXT:

(1) The ~~mediator~~ facilitator may provide parties with an independent assessment of the issues and potential outcome of the case.

(2) The ~~mediator~~ facilitator may provide the confidential assessment orally at the conclusion of the formal alternative dispute resolution (ADR) ~~a mediation~~ session or, if requested by the parties, in writing to the parties following the session.

(3) The confidential independent assessment will be provided only to the parties and will not be provided to any other person. ~~including any other party at the Commission, including, but not limited to, the Administrative Law Judge presiding over any related complaint or petition for declaratory ruling, the Commissioners, Commission Staff, or Commission Advisors.~~ The assessment may not be admitted into in any legal proceeding unless agreed to in writing by both parties.

STATUTORY/OTHER AUTHORITY: ORS 756.040, ORS 756.060
STATUTES/OTHER IMPLEMENTED: ORS 183.502

**Commented [MG10]:** Revised to clarify applicability. NOTE: Would like to discuss purpose and need for this rule