



PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: February 7, 2017

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE \_\_\_\_\_ N/A

DATE: January 19, 2017

TO: Public Utility Commission

FROM: Scott Gibbens 

THROUGH: Jason Eisdorfer and Marc Hellman  

SUBJECT: PACIFIC POWER: (Docket No. UM 1800) Requests waiver of the compliance requirement contained in OAR 860-038-0640 for June 1, 2017.

**STAFF RECOMMENDATION:**

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (PacifiCorp or Company) request for waiver of the compliance requirement contained in OAR 860-038-0640 for June 1, 2017.

**DISCUSSION:**

Issue

Whether the Commission should approve PacifiCorp's request for a waiver of the Direct Access Code of Conduct (Code of Conduct) compliance requirement required under Oregon Administrative Rule (OAR) 860-038-0640.

Applicable Rule or Law

PacifiCorp filed this application on October 25, 2016, pursuant to OAR 860-038-0001(4), which states that the Commission may waive any of the Division 038 rules for good cause shown. The Company is requesting that the Commission waive the compliance requirement contained in OAR 860-038-0640 for June 1, 2017. OAR 860-038-0640 requires that electric companies file a verified report prepared by an independent third party regarding the electric company's compliance with OAR 860-038-0500 through 860-038-0620 for the prior two calendar years.

OAR 860-038-0500 through 860-038-0620 contains the Commission's rules for Direct Access Code of Conduct (Code of Conduct), which was designed to protect against abuses and anticompetitive practices by electric companies in the Oregon retail electric markets. The Code of Conduct rules govern the sharing of customer information, the cross-subsidization between competitive operations and regulated operations, access to transmission and distribution facilities, joint marketing practices, and other issues.

### Analysis

In its application, the Company provides the following reasons why a waiver of OAR 860-038-0640 should be approved:

1. The Company sought a similar waiver for the 2011, 2013 and 2015 compliance years. The Commission granted the waiver in Order No. 11-134 (Docket No. UM 1527), Order No. 12-423 (Docket No. UM 1624), and Order No. 14-354 (Docket No. UM 1705). Circumstances remain unchanged from the previous request for waiver of compliance with OAR 860-038-0640.
2. Prior to 2011, for each odd-numbered year, PacifiCorp enlisted an independent third party to review compliance with the Code of Conduct, and filed a report detailing such compliance with the Commission. The third-party reviewer typically interviewed key personnel, reviewed documentation, reviewed critical processes and then prepared a report based on these assessments. The Company filed these reports by June 1 in 2003, 2005, 2007, and 2009. Each of these reports found the Company to be in compliance with the Code of Conduct.
3. The Company employs key business practices to ensure that compliance with the Code of Conduct is maintained. Customer service representatives and customer area managers receive targeted training that pertains to customer-related issues and the Code of Conduct. Other key personnel receive training regarding non-discriminatory access to transmission and distribution facilities, and marketing materials through Federal Energy Regulatory Commission (FERC) Standards of Conduct training, which is conducted within 30 days of commencing employment. All employees must also take the FERC Standards of Conduct training each year. Subject matter experts are available to assist with direct access and Code of Conduct issues. Subject matter experts include representatives from the Company's regulation, legal, and customer service departments.

4. PacifiCorp did not have any Oregon affiliates<sup>1</sup> during the time period that would be covered by the report to be filed June 1, 2017, lowering the risk that PacifiCorp would be found inconsistent with the Code of Conduct. In Docket No. UM 1527, the Commission Staff report, dated April 5, 2011, recommending approval of the 2011 compliance audit waiver agreed " ... that the risk of non-compliance with the rules is significantly mitigated ... " with the lack of Oregon affiliates. Staff made a similar finding in its report to the Commission in Docket UM 1705.
5. In the Staff Audit Report of PacifiCorp (Audit Number: 2016-01), dated August 16, 2016, Staff conducted an extensive operational audit over the third and fourth quarters of 2015, including the submission of 173 data requests and a PacifiCorp presentation by finance and operations teams during a Staff site visit. Among the items reviewed were affiliate transactions and cost allocations with reliance on PacifiCorp's Annual Affiliate Interest report. There were no issues noted regarding affiliate relationships or cost allocations. Further, in the Company's most recent rate case, Docket UE 263, and in previous rate case Docket UE 246, Commission Staff members performed a thorough review and analysis of all elements in PacifiCorp's filing, noting no issues with affiliate relationships or cost allocations.
6. The Commission maintains the opportunity to review the Company's relationships and transactions with affiliates through various mechanisms. PacifiCorp annually files an affiliated interest report, which provides details of transactions with all affiliates. Granting a waiver of the Code of Conduct third-party review and report requirement will not impede the Commission's ability to request information or investigate potential issues.

Staff reviewed Commission Order Nos. 11-134, 12-423, and 14-354 granting PacifiCorp a waiver of OAR 860-036-0640 for 2011, 2013, and 2015 filing years. As stated in Staff's memo to the Commission, attached as Appendix A to Order No. 11-134, "Staff previously reviewed the Company's Code of Conduct compliance reports submitted in 2003, 2005, 2007, and 2009, and agrees that the Company was in compliance with the Code of Conduct rules." Staff also notes that, in addition to the waivers granted PacifiCorp for 2011, 2013, and 2015, the Commission also granted Portland General Electric a waiver of the same rule for 2009, 2013, and 2015.<sup>2</sup>

---

<sup>1</sup> An Oregon affiliate is an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market. See OAR 860-038-0005(45).

<sup>2</sup> See Commission Order No. 09-104, 13-060, and 15-088 in Docket No. UM 1422.

As part of this docket, Staff reviewed and verified the Company's training concerning customer-related issues, the Code of Conduct, non-discriminatory access to transmission and distribution facilities, and marketing materials. Staff also reviewed the Company's list of subject matter experts. Staff noted no issues with PacifiCorp's training concerning the Code of Conduct.

According to OAR 860-038-500, the purpose of the Code of Conduct rules is to govern the interactions and transactions among the electric company, its Oregon affiliates, and its competitive operations. OAR 860-038-005(8) defines competitive operations as:

*...any electric company's activities involving the sale or marketing of electricity services or directly related products in an Oregon retail market. Competitive operations include, but are not limited to, the following:*

- (a) Energy efficiency audits and programs;*
- (b) Sales, installations, management, and maintenance of electrical equipment that is used to provide generation, transmission, and distribution related services or enhances the reliability of such services; and*
- (c) Energy management service, including those services related to electricity metering or billing.*

*Services or products provided by the electric company as part of its electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to its direct access customers are not competitive operations.*

The last paragraph of this definition indicates that the Company's OATT, which governs its transmission service for third parties, is not a competitive operation, and is therefore not governed by the Code of Conduct rules. Staff also agrees that the risk of noncompliance with the rules is significantly mitigated. Staff also notes that no complaints have been filed with the Commission regarding the Company's compliance with the Code of Conduct rules.

The Company's annual Affiliated Interest Report, which includes the Company's Cost Allocation Manual, is submitted to the Commission on an annual basis and reviewed by Staff. In its reviews, Staff has not noted any unusual affiliated relationships or cost allocations. Staff also examined affiliate costs and relationships during both the most recent operational audit of the Company and the Company's most recent general rate cases, UE 246 and UE 263, and noted no issues relating to these areas.

Conclusion

Based upon Staff's review as set forth above, Staff supports the Company's request for a waiver of the compliance requirements contained in OAR 860-038-0640 for June 1, 2017, and recommends the Commission approve this waiver.

The Company was provided a draft copy of this memo and has no concerns.

**PROPOSED COMMISSION MOTION:**

Approve PacifiCorp's request for waiver of the compliance requirement contained in OAR 860-038-0640 for June 1, 2017.