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BEFORE THE PUBLIC UTILITY COMMISSION**

OF OREGON

AR 390

In the Matter of a Proposed Rulemaking to)
Implement the Code of Conduct, Aggregation,) ORDER
and Allocation of Funds to Education Service)
District Provisions of SB 1149.)

DISPOSITION: RULE ADOPTED

Background

On July 23, 1999, the Governor signed SB 1149, the electric industry restructuring bill passed by the 1999 Oregon Legislative Assembly. On February 14, 2000, the Public Utility Commission opened a rulemaking proceeding, docket AR 380, to develop rules to implement a substantial portion of the provisions of SB 1149. An order was issued in that docket on September 28, 2000. See Order No. 00-596.

The Commission decided to address the rules regarding code of conduct, aggregation, and allocation of funds to education service districts in a separate docket. On August 8, 2000, this rulemaking proceeding, docket AR 390, was opened to develop rules to implement those provisions. Notice of the rulemaking and a statement of the fiscal impact were filed with the Oregon Secretary of State in August 2000. Notice of the rulemaking was published in the Oregon Bulletin on September 1, 2000.

A special public meeting was held on December 18, 2000, in Salem, Oregon, to adopt the rules in docket AR 390. During the course of this meeting, Legislative Advocates, Inc. appeared and asked the Commission to delay its consideration of OAR 860-038-0590 (Transmission and Distribution Access) so that participants and Staff could develop a mutually acceptable rule. The Commission deferred consideration of this rule until the first public meeting in February 2001. Order No. 01-073, dated January 3, 2001.

The participants met on December 11, 2000, and January 3, 11, and 18, 2001. During these meetings, the participants discussed the purpose of the rule, and reached consensus as to the language of the rule.

On February 1, 2001, Staff asked the Commission to defer its consideration of this rule to allow for further public comment on the draft rule. This request was granted. Order No. 01-154, dated February 5, 2001.

A public comment hearing was held on February 14, 2001, in Salem, Oregon. Portland General Electric (PGE) and PG&E National Energy Group submitted written comments. PacifiCorp, Bonneville Power Administration (BPA), and Staff made oral comments.

The Commission deliberated on this matter during a regular public meeting on March 6, 2001, in Salem, Oregon, and entered the decision set out in this order.

Discussion

The purpose of OAR 860-038-0590 is to provide a bridge between the October 1, 2001, implementation of retail access in Oregon and the formation of a regional transmission organization (RTO) under rules adopted by FERC. Once an RTO is in place, this rule may need to be amended.

During their meetings, the participants tried to balance the legislative requirements of providing access to all facilities with the realities of physically implementing retail access. Several issues had to be addressed: (1) determining how to implement pro rata use by all energy service suppliers (ESSs) when preexisting contract limitations affect the electric companies' ability to assign existing entitlements; (2) defining which transmission facilities of the multi-state electric company should be made available for pro rata use by ESSs; and (3) designing reasonable retail access protocols. The participants realized that they needed to move from a standard of *identical treatment* to a standard of *substantive comparability*.

Position of the Participants

Initially, BPA was concerned about conflicts between its preexisting contracts and the draft rule. These conflicts were addressed and BPA supports the current draft of the rule.

PGE commented that this rule allows a tariff “that would price imbalance energy at cost within a sufficient deadband before imposing incentives and/or penalties.” PGE Comments dated February 14, 2001. PGE also stated that the rule would allow it to provide its standard offer from its regulated operations without having to separately calculate energy imbalances related to its standard offer. PGE also supports adoption of the draft rule.

All participants support the January 29, 2001, rule draft.

Conclusion

We are making one substantive change to the draft rule. Section 4 initially read as follows:

To implement open access on October 1, 2001, each electric company shall convene, within 60 days of the effective date of this rule, a workshop with the affected parties to develop the pro forma pricing methodologies and the terms and conditions of the FERC tariffs needed to implement the rules and protocols for interconnection and retail transmission access.

We delete this section from the adopted rule. The function of an administrative rule is to establish ongoing process and procedure. The workshops discussed in this section will not be ongoing, but will focus on completing a task with a relatively short time frame. Rather than place this language in the administrative rule, we will order PGE and PacifiCorp to comply with the language of section four. We understand that neither company objects to this requirement.

Finally, minor language changes were made to the draft rule to make the language conform to previously adopted rules in dockets AR 380 and AR 390 and to make it easier to read. These changes do not affect the substantive language of the rule.

ORDER

IT IS ORDERED THAT:

1. OAR 860-038-0590, attached as Appendix A and made part of this order, is adopted.
2. The rule shall become effective upon filing with the Secretary of State.

3. Within 60 days of the date of this order, each electric company shall convene a workshop with affected parties to develop pro forma pricing methodologies and terms and conditions of FERC tariffs needed to implement rules and protocols for interconnection and retail transmission access.

Made, entered and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

860-038-0590**Transmission and Distribution Access**

(1) An electric company may be relieved of some or all of the requirements of this rule by placing its transmission facilities under the control of a regional transmission organization consistent with FERC Order No. 2000 and obtaining Commission approval of an exemption.

(2) An ESS may request transmission service, distribution service or ancillary services under standard Commission tariffs and FERC-approved tariffs. The electric company shall coordinate the filings of these tariffs to ensure that all retail and direct access consumers are offered comparable services at comparable prices.

(3) Each electric company shall provide nondiscriminatory access to transmission, distribution and ancillary services, including transmission into import-limited areas and local generation resources within import-limited areas, to serve all retail consumers. An electric company shall not give preference or priority in transmission and distribution pricing, transmission and distribution access, or access to, pricing of, or provision of ancillary services and local generation resources, to itself or its affiliate relative to persons or entities requesting transmission or distribution access to serve direct access consumers. No preference or priority may be given to, nor any different obligation assigned to, any consumer based solely on whether the consumer is purchasing service from an electric company or an ESS.

(a) Any transmission or distribution capacity to which an electric company has entitlements, by ownership or by contract, for the purpose of serving its Oregon load shall be made available to an electric company and ESSs that are serving such load on at least a pro rata basis. An electric company shall describe in its tariff filings how it proposes to provide substantively comparable transmission and distribution service to all retail consumers at the same or similar rates if:

(A) Access to the electric company's transmission or distribution facilities or entitlements is restricted by contract or by regulatory obligations in other jurisdictions; or

(B) If providing transmission or distribution service on a pro rata basis would result in stranding generating capacity owned or provided through contract by the electric company;

(b) Except for those ancillary services required by FERC to be purchased from an electric company, an ESS may acquire, on behalf of the retail loads for which it is responsible, all ancillary services required relative to the transmission of electricity by any combination of:

(A) Purchases under the electric company's Open Access Transmission Tariff;

(B) Self-provision; or

(C) Purchases from a third party;

(c) Energy imbalance obligations, including the pricing of imbalances and penalties for imbalances, shall be developed to reasonably minimize imbalances and to meet the needs of the direct access market environment. The electric company shall address such energy imbalance obligations in its proposed FERC tariffs. Energy imbalance obligations imposed upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, shall comply with the following:

(A) The obligations shall impose substantively comparable burdens upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, and shall not unreasonably differentiate between consumers that are entitled to direct access on the basis of customer class, provider of the service, or type of access;

(B) The obligations shall recognize the practical scheduling and operational limitations associated with serving retail consumer loads in the direct access environment, but shall require ESSs, including the entity serving the standard offer load, to make reasonable efforts to minimize their energy imbalances on an hourly basis;

(C) The obligations shall be designed with the objective of deterring ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company from burdening electric system operation or gaining economic advantage by under-scheduling, over-scheduling, under-generating or over-generating. The obligations shall not be punitive in nature; and

(D) The obligations shall enable an electric company and ESSs, including the entity serving the standard offer load, to settle for energy imbalance obligations on a financial basis, unless otherwise mutually agreed to by the parties.

(d) Where local generation is required to operate for electric system security or where there is insufficient transmission import capability to serve retail loads without the use of local generation, the electric company shall make services available from such local generation under its ownership or control to ESSs consistent with the electric company's provision of services to standard offer consumers, residential consumers, and other retail consumers. The electric company shall also specify such obligations in appropriate sales contracts prior to any divestiture of such resources;

(e) The electric company's tariffs shall specify prices, terms, and conditions for scheduling, billing, and settlement. Other functions may be specified as needed;

(f) An electric company's tariffs shall include a dispute resolution process to resolve issues between the electric company and the ESSs that serve the retail load of an electric company in a timely manner. Such processes shall provide that unresolved disputes related to such retail access matters may be appealed to the Commission.

(4) If adherence to OAR 860-038-0590 requires FERC approval of tariff or contract provisions, the electric company must petition FERC for the approval of the tariff or contract provisions within 90 days of the effective date of this rule. Subsequent tariffs or contracts requiring FERC approval will be made in a timely manner.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW