

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 475

In the Matter of a Proposed Rulemaking to)	
Revise Division 038 Definitions and Rules)	ORDER
Regarding Code of Conduct.)	

DISPOSITION: AMENDMENTS TO RULES ADOPTED

On August 3, 2004, the Public Utility Commission of Oregon (Commission) initiated a rulemaking proceeding to update certain direct access rule definitions and amend the code of conduct rules (OAR 860-038-0005 and OAR 860-038-0500 through 860-038-0640). On September 7, 2004, the Commission filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. Notice was subsequently provided to all interested persons on the service lists maintained pursuant to OAR 860-011-0001, and to certain legislators specified in ORS 183.335(15). Notice of the public comment hearing was published in the *Oregon Bulletin* on October 1, 2004.

Comments were filed by Commission staff (Staff) and Portland General Electric Company (PGE) on September 21, October 12, and November 5, 2004. PacifiCorp also filed comments on the latter two dates. A public comment hearing was held on October 26, 2004. After extending the time for making comments, the Administrative Law Judge held a rulemaking workshop on January 24, 2006, which was attended by Staff, PacifiCorp and PGE.

On March 17, 2006, PGE, PacifiCorp and Staff filed revisions to the rules which were agreed to by all participants. Comments about those rules were filed by Staff on March 28, 2006.

In reviewing the docket filings, the Administrative Law Judge (ALJ) made changes to the March 17, 2006, set of rules. On March 29, 2006, the ALJ issued a revised set of rules and a notice extending the comment period to April 12, 2006, which was sent to all persons on applicable service lists. Staff, PGE and PacifiCorp filed joint final comments on April 12, 2006.

Definitions

Many of the definitional changes are minor, such as clarifying the definition of one average megawatt. There are two definitions, however, for which substantial changes are proposed.

OAR 860-038-0005(8) - Competitive Operations

One of the purposes of the amended rules is to clarify the business activities that fall under ORS 757.646. The participants struggled with this issue. The final result reached by the participants was to redefine “competitive operations” by specifying that business activities involving the sale or marketing of electricity services and directly related products are covered by code of conduct rules. As further explanation, the participants cited examples of what are, and are not, competitive operations under the rule.

We accept the proposed amendments to the definition. We have, however, made minor revisions to make the rule clearer, and to conform to administrative rule requirements. The amended rule reads as follows:

“Competitive operations” means 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, installation, 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 services, including those services related to electricity metering and 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.

OAR 860-038-0005(19) – Electric Company Operational Information

In concert with amendments to the business activities covered by the code of conduct rules, the participants also propose amendments to the definition of “electric company operational information.” This definitional change clarifies how information is obtained, as well as the type of information. We agree with these amendments. The amended rule reads as follows:

“Electric company operational information” means information obtained by an electric company as part of its provision of services or products, as long as such products or services are not defined as “competitive operations.” Such information includes, but is not limited to, data relating to the interconnection of customers to an electric company’s transmission or distribution systems; trade secrets; competitive information relating to internal processes; market analysis reports; market forecasts; and information about an electric company’s transmission or distribution system, processes, operations, or plans or strategies for expansion.

Other Amendments to Definitions

We have reviewed the other proposed amendments to the definitions, and approve them. We also approve the new definition of ‘Oregon affiliate,’ which was necessitated by the refinement of which affiliates are affected. Further, we have made a couple of grammatical changes to definitional rules. All of these amendments are part of the amended rules, attached as Appendix A, which we adopt.

Code of Conduct Rules

These proposed amendments were an attempt by the participants to better match the code of conduct rules with the statutory language in ORS 757.646. We address each proposed rule amendment in turn.

OAR 860-038-0500 – Code of Conduct Purpose

We agree that the amendments more accurately reflect the statute. We adopt the proposed amendments. The amended rule reads as follows:

The Code of Conduct rules (OAR 860-038-0500 through 860-038-0640) govern the interactions and transactions among the electric company, its Oregon affiliates, and its competitive operations. The Code of Conduct is designed to protect against market abuses and anti-competitive practices by electric companies in the Oregon retail electricity markets.

OAR 860-038-0520 – Electric Company Name and Logo

Most of the proposed amendments to this section make this rule clearer, and are acceptable to this Commission. While the participants added a disclaimer for a competitive operation, which is similar to the disclaimer for an Oregon affiliate, we disagree with the proposed disclaimer language.

The current disclaimer language is as follows:

{Name of affiliate engaged in competitive operations} is not the same company as {name of electric company} and is not regulated by the Public Utility Commission of Oregon, and you do not have to buy {name of affiliate}’s products to continue to receive quality regulated services from {name of electric company}.”

In their March 17, 2006, comments, the participants proposed to change the phrase “quality regulated services” to “safe and reliable electricity services.” The ALJ draft recommended using the phrase “current electricity services” rather than “safe and reliable.” The April 12, 2006 comments indicate a desire to keep the “safe and reliable” language for three reasons: 1) PGE is already using that phrase in disclaimers, which have previously

received Commission approval in several tariff filings; 2) customers will be reassured that their service will not be degraded if they chose not to purchase goods or services from the electric company's Oregon affiliate or competitive operation; and 3) use of that phrase indicates that the statutory standards for an electric company's service will continue to apply.

We adopt the language proposed by the ALJ. While electric companies are required to provide adequate and safe service under ORS 757.020, repeating the language in the context of the rule is simply gratuitous. The point of the disclaimer is to inform customers that if they choose not to buy products or services from an electric company's Oregon affiliate or competitive operations, customers will not see a change in the service currently provided to them. Safe and reliable service is not the point of the disclaimer; maintaining the customer's current service is. Our rules should not presume that an electric company *is* providing such service, because situations arise where the service may not be safe and reliable. Notwithstanding that we have previously approved the participants' proposed language in tariffs, we find that the better language was proposed by the ALJ.

The amended rule reads as follows:

- (1) An electric company may allow its Oregon affiliates and its competitive operations the use of its corporate name, trademark, brand, or logo in advertisements of specific electricity services to existing or potential consumers located within the electric company's service area, as long as the Oregon affiliate or its competitive operation includes a disclaimer in its communications. The disclaimer must be written in a bold and conspicuous manner or be clearly audible, as appropriate for the communication medium. The disclaimer must be included in all print, auditory and electronic advertisements.
 - (a) The disclaimer for an Oregon affiliate must state the following: '{Name of Oregon affiliate} is not the same company as {name of electric company} and is not regulated by the Public Utility Commission of Oregon. You do not have to buy {name of Oregon affiliate}'s products or services to continue to receive your current electricity service from {name of electric company}.'
 - (b) The disclaimer for a competitive operation must state the following: 'You do not have to buy {product/service name} to continue to receive your current electricity service from {name of electric company}.'

OAR 860-038-0560 – Treatment of Competitors

The final joint comments of the participants, filed April 12, 2006, stated the following rationale for Section 1 of the amended rules:

. . . [T]he version of subsection (1) in the Amended Revised Rules should be adopted because it reflects two important concepts: a) that the electric company must provide its regulated and monopoly services in a non-discriminatory manner, and b) that it must do so with regard to the competitors of its Oregon affiliates or its competitive operations. To accomplish this, the rule must be clear about (i) which services we are talking about, and (ii) to whom the obligation runs. (Emphasis in original).

The final version of the amended proposed rule, agreed to by all participants, fulfills that purpose. We adopt the final proposed rule, which reads as follows:

- (1) An electric company shall treat the competitors of its Oregon affiliates and its competitive operations fairly in all respects and in a manner consistent with the treatment it affords any of its Oregon affiliates or competitive operations in the electric company's:
- (a) provision of supply;
 - (b) provision of capacity;
 - (c) provision of electricity services;
 - (d) provision of information obtained as a result of providing either electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to direct access customers;
 - (e) offering of discounts;
 - (f) tariff discretion; and
 - (g) processing requests for electricity related services.

This section shall not apply to the provision or joint purchasing of corporate services such as accounting, auditing, financial, legal or information technology services.

- (2) An electric company shall not condition or otherwise tie the provision of any regulated services provided by the electric company, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any regulated services provided by the electric company, to the taking of any electricity services or directly related products from its Oregon affiliates or competitive operations.

- (3) An electric company shall not assign a consumer to whom it currently provides electricity services to any of its Oregon affiliates or competitive operations, whether by default, direct assignment, option, or by any other means, unless that means is equally available to all competitors.

OAR 860-038-0580 – Prevention of Cross-subsidization between Competitive Operations and Regulated Operations

These proposed amendments add “marketing information” to the information which cannot be provided to an electric company’s competitive operations unless it is also available to others. Further, the proposed changes direct electric companies to identify, and separately account for, revenues and costs of its competitive operations. We adopt the proposed amendments. The amended rule reads as follows:

- (1) Other than information that is routinely made public by an electric company, or for which a tariff has been approved subject to OAR 860-038-0540(1), an electric company must not provide electric company operational or marketing information to its competitive operations unless it makes such information available to ESSs and other entities that provide electricity services or directly related products on identical terms and conditions.
- (2) The electric company must identify and separately account for revenues and costs of its competitive operations.

OAR 860-038-0600 – Joint Marketing and Referral Arrangements

While at first glance it appears that the proposed amendments eliminate all references to “competitive operations” and replace them with the term “Oregon affiliates,” in fact the change is not that broad. The original rule’s definition for “competitive operations” included affiliates. The amendments proposed by the participants continue to cover Oregon affiliates, as that term is defined in OAR 860-038-0005(44). The requirements and restrictions covering “competitive operations” are now contained in other sections of the rules and need not be repeated in this rule.

The proposed amendments also provide an opportunity for current customers of the electric company to request information about the electric company’s Oregon affiliates. Once the customer requests information, the electric company must inform the customer that other providers may exist, and that the customer need not purchase from electric company’s Oregon affiliates prior to providing the requested information.

The ALJ initially suggested that this customer information should be provided in writing, as disputes could easily arise about whether the customer actually requested the information, and whether the electric company provided the information in the manner required by the rule. The final joint comments, filed on April 12, 2006, point out the practical limitations of this suggestion, particularly if the discussion between the customer and electric company occurs on the telephone. We agree with the participants that it is not practical to incorporate the ALJ’s suggestion. However, we expect thorough documentation of oral conversations and strongly urge the electric companies to send a written document to the customer confirming the contents of the conversation. In any matters of dispute under this section, the utility has the burden to show that it complied with our rules.

Finally, consistent with our discussion regarding OAR 860-038-0520, we use the term “current” electric service rather than “safe and reliable” electric service. We adopt the following as the amended rule:

- (1) For joint marketing, advertising, and promotional activities an electric company shall not:
 - (a) Provide or acquire leads on behalf of its Oregon affiliates;
 - (b) Solicit business or acquire information on behalf of its Oregon affiliates;
 - (c) Give the appearance of speaking or acting on behalf of its Oregon affiliates except that an electric company, pursuant to a customer request, may provide information about electricity services or directly related products offered by the electric company’s Oregon affiliates. Prior to providing the information, the electric company must inform the customer that:
 - A) Other providers may exist, and
 - B) The customer does not have to purchase these electricity services or directly related products from the electric company’s Oregon affiliate in order for the customer to continue to receive the customer’s current electricity service from the electric company;
 - (d) Represent to consumers or potential consumers that it can offer electricity services or directly related products from the electric company’s Oregon affiliates bundled or packaged with its tariffed services; or
 - (e) Request authorization from its consumers to pass on proprietary consumer information exclusively to its Oregon affiliates.
- (2) An electric company shall not engage in joint marketing, advertising, or promotion of its electricity services or directly related products with those of its Oregon affiliates in a manner that favors the electricity services or directly related products of the Oregon affiliate. Such joint marketing, advertising, or promotion includes, but is not limited to, the following:
 - (a) Acting or appearing to act on behalf of its Oregon affiliates in any communications and contacts with any existing or potential consumers, subject to the exception in (1)(c) above;
 - (b) Joint sales calls;
 - (c) Joint proposals, either as requests for proposals or responses to requests for proposals;
 - (d) Joint promotional communications or correspondence, except that an electric company may allow its Oregon affiliates access to consumer bill advertising inserts according to the terms of a Commission approved tariff, so long as access to such inserts is made available on the same terms and conditions to unaffiliated entities offering similar services as the Oregon affiliates that use bill inserts; or

(e) Joint presentations at trade shows, conferences, or other marketing events within the state of Oregon.

(3) An electric company may participate in meetings with its Oregon affiliates to discuss technical or operational subjects regarding the electric company's provision of transmission or distribution services to the consumer; but only in the same manner and to the same extent the electric company participates in such meetings with unaffiliated entities and their consumers.

OAR 860-038-0610 – Waiver of Code of Conduct

The participants proposed a new rule providing for waiving the code of conduct rules. This issue has already been addressed in OAR 860-038-0001(4), which provides that upon good cause shown, any entity subject to Division 038 rules may apply to be relieved from any obligations under these rules. As this issue is already addressed by the rules, we decline to adopt the participants' proposed rule.

OAR 860-038-0620 – Access to Books and Records

In the past, some issues have arisen about Commission access to an electric company's and its affiliates' books and records. These proposed amendments place a duty on the electric company to provide full access to both its and its affiliates' books and records. This duty includes providing copies to the Commission if the records are kept out of state. These amendments more concisely describe the access requirement. We adopt the proposed amendments. The amended rule reads as follows:

(1) An electric company must provide the Commission with full access to all of the electric company's and affiliates' books and records in order to review all transactions between an electric company and its Oregon affiliates.

(2) An electric company and its affiliates shall maintain separate books and records, and, whenever possible, prepare unconsolidated financial statements.

(3) An electric company and its competitive operations shall maintain sufficient records to allow for an audit of the transactions between an electric company and its competitive operations. At its discretion, the Commission may require an electric company to initiate, at the electric company's expense, an audit of the transactions between an electric company and its competitive operations performed by an independent third party.

OAR 860-038-0640 – Compliance Filings

These proposed amendments update the compliance filing timelines, and substitute a biennial third-party verified report for an independent audit. This change will make the reports more usable for Staff, and result in a cost savings to the electric companies. We adopt the proposed amendments. The amended rule reads as follows:

By June 1 of each odd numbered year, an electric company must 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.

Conclusion

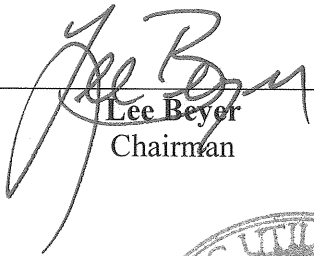
While we have not adopted all of the recommendations made by the participants, we substantially agree with the concepts behind most of the changes. We will adopt the rule amendments, as modified in this order, shown in attached Appendix A.

ORDER

IT IS ORDERED that:

1. The amendments to the rules, attached as Appendix A, are adopted.
2. The rules are effective upon filing with the Secretary of State.


Made, entered, and effective MAY 08 2006 .



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A person may petition the Commission for 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.

860-038-0005**Definitions for Direct Access Regulation**

As used in this Division:

- (1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.
- (2) "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:
 - (a) Local governments;
 - (b) Electric companies;
 - (c) Residential consumers;
 - (d) Public or regional interest groups; and
 - (e) Small nonresidential consumers.
- (3) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.
- (4) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services. "Aggregator" means an entity that aggregates.
- (5) "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.
- (6) "Commission" means the Public Utility Commission of Oregon.
- (7) "Common costs" means costs that cannot be directly assigned to a particular function.
- (8) "Competitive operations" means any electric company's activities related to the provision of electricity services conducted by the electric company's nonregulated operation or the electric company's affiliate 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, installation, 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 services, including those services related to electricity metering and 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.
- (9) "Consumer-owned utility" means a municipal electric utility, a people's utility district, or an electric cooperative.
- (10) "Cost-of-service consumer" means a retail electricity consumer who is eligible for a cost-of-service rate under ORS 757.603.

- (11) “Default supplier” means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.
- (12) “Direct access” means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.
- (13) “Direct service industrial consumer” means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.
- (14) “Distribution” means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.
- (15) “Distribution utility” means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.
- (16) “Divestiture” means the sale of all or a portion of an electric company’s ownership share of a generation asset to a third party.
- (17) “Economic utility investment” means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. “Economic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.
- (18) “Electric company” means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.
- (19) “Electric company operational information” means information **obtained by an electric company as part of its provision of services or products, as long as such products or services are not defined as “competitive operations.”** **Such information includes, but is not limited to, data** relating to the interconnection of customers to an electric company’s transmission or distribution systems; trade secrets; competitive information relating to internal processes; market analysis reports; market forecasts; and information about an electric company’s transmission or distribution system, **processes**, operations, or plans or strategies for expansion.
- (20) “Electric cooperative” means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.
- (21) “Electric utility” means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.
- (22) “Electricity” means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.
- (23) “Electricity services” means electricity distribution, transmission, generation, or generation-related services.
- (24) “Electricity service supplier” or “ESS” means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity

consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(25) "Emergency default service" means a service option provided by an electric company to a nonresidential consumer that requires less than five business days' notice by the consumer or its electricity service supplier.

(26) "Fully distributed cost" means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.

(27) "Functional separation" means separating the costs of the electric company's business functions and recording the results within its accounting records, including allocation of common costs.

(28) "Joint marketing" means the offering (including marketing, promotion, ~~and~~/or advertising) of retail electric services by an electric company in conjunction with its competitive operation to consumers either through contact initiated by the electric company, its Oregon affiliate, or through contact initiated by the consumer.

(29) "Large nonresidential consumer" means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.

(30) "Load" means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(31) "Local energy conservation" means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.

(32) "Low-income weatherization" means repairs, weatherization, and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(33) "Market transformation" means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(34) "Multi-state electric company" means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.

(35) "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.

(36) "Net system power mix" means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Oregon Department of Energy.

(37) "New" as it refers to energy conservation, market transformation, and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company.

(38) "New renewable energy resource" means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation on or before July 23, 1999. "New renewable energy resource" does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

(39) "Non-energy attributes" means the environmental, economic, and social benefits of generation from renewable energy facilities. These attributes are normally transacted in the form of Tradable Renewable Certificates.

(40) “Nonresidential consumer” means a retail electricity consumer who is not a residential consumer.

~~(41) “Department of Energy” means the Oregon Department of Energy created under ORS 469.030.~~

(421) “Ongoing valuation” means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.

(432) “One-time administrative valuation” means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

(443) “One average megawatt” means 8,760,000 kilowatt-hours **(8,784,000 in a leap year)** of electricity per **year-twelve consecutive month period.**

(44) “Oregon affiliate” means an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market.

(45) “Oregon share” means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.

(46) “People’s utility district” has the meaning given that term in ORS 261.010.

(47) “Portfolio” means a set of product and pricing options for electricity.

(48) “Proprietary consumer information” means any information compiled by an electric company on a consumer in the normal course of providing electric service that makes possible the identification of any individual consumer by matching such information with the consumer’s name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the consumer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the consumer to whom the information relates does not constitute proprietary consumer information.

(49) “Qualifying expenditures” means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the **Oregon** Department of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(50) “Registered dispute” means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission’s Consumer Services ~~Division Section~~ but is not the subject of a formal complaint.

(51) “Regulated charges” means charges for services subject to the jurisdiction of the Commission.

(52) “Regulatory assets” means assets that result from rate actions of regulatory agencies.

(53) “Renewable energy resources” means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power, or by low-emission nontoxic biomass based on solid organic fuels from wood, forest, and field residues;

- (b) Dedicated energy crops available on a renewable basis;
- (c) Landfill gas and digester gas; and
- (d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(54) "Residential consumer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential consumer" does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, "dwelling" includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.

(55) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after March 1, 2002, at the site.

(56) "Self-directing consumer" means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Oregon Department of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.

(57) "Serious injury to person" has the meaning given in OAR 860-024-0050.

(58) "Serious injury to property" has the meaning given in OAR 860-024-0050.

(59) "Site" means:

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;

(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings and structures; and

(C) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.

(60) "Small nonresidential consumer" means a nonresidential consumer that is not a large nonresidential consumer.

- (61) “Special contract” means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.
- (62) “Structural separation” means separating the electric company’s assets by transferring assets to an affiliated interest of the electric company.
- (63) “Total transition amount” means the sum of an electric company’s transition costs and transition benefits.
- (64) “Traditional allocation methods” means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company’s last Oregon rate proceeding completed prior to December 31, 2000.
- (65) “Transition benefits” means the value of the below-market costs of an economic utility investment.
- (66) “Transition charge” means a charge or fee that recovers all or a portion of an uneconomic utility investment.
- (67) “Transition costs” means the value of the above-market costs of an uneconomic utility investment.
- (68) “Transition credit” means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.
- (69) “Transmission grid” means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries.
- (70) “Unbundling” means the process of assigning and allocating a utility’s costs into functional categories.
- (71) “Uneconomic utility investment” means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. “Uneconomic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.

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

Stat. Implemented: ORS 756.040 & 757.600 to 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00 (Order No. 00-596); PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073); PUC 21-2001 (Temp), f. & cert. ef. 9-11-01 (Order No. 01-788); PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839); PUC 23-2001, f. & ef. 12-13-01 (Errata Order No. 01-1047); PUC 5-2002, f. & cert. ef. 2-8-02 (Order No. 02-053); PUC 11-2002, f. & ef. 3-8-02 (Order No. 02-135); PUC 18-2002, f. & cert. ef. 10-17-02 (Order No. 02-702); PUC 18-2002, f. & ef. 10-17-02 (Order No. 02-702); PUC 13-2004, f. & ef. 8-31-04 (Order No. 04-483); PUC 7-2005, f. & ef. 11-30-05 (Order No. 05-1229)

860-038-0500**Code of Conduct Purpose**

The ~~provisions of Code of Conduct rules (OAR 860-038-0500 through 860-038-0640) this section, addressing code of conduct, establish the safeguards to~~ govern the interactions ~~and~~ transactions ~~between among the~~ electric company, ~~ies and their its Oregon affiliates, and its engaged in~~ competitive operations, ~~both during the transition to and after the introduction of competition, to avoid potential market power abuses and cross-subsidization between regulated and unregulated activities. All transactions between utilities and their affiliates shall be at arm's length. These rules also address activities conducted within the electric company that are subject to competition and other electric company practices in the competitive market. The Code of Conduct is designed to protect against market abuses and anti-competitive practices by electric companies in the Oregon retail electricity markets.~~

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

Stat. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073)

860-038-0520**Electric Company Name and Logo**

~~Unless the affiliate engaged in competitive operations includes a disclaimer with its use of the electric company's corporate name, trademark, brand, or logo:~~

~~(a) An electric company shall not allow the use of its corporate name, trademark, brand, or logo by an affiliate engaged in competitive operations, on the affiliate's employee business cards, or in any written or auditory advertisements of specific services to existing or potential consumers located within the electric company's service area. This would apply whether use is through radio, television, the Internet, or other publicly accessible electronic format.~~

~~(b) An electric company may allow its Oregon affiliates and its competitive operations the use of its corporate name, trademark, brand, or logo in advertisements of specific electricity services to existing or potential consumers located within the electric company's service area, as long as the Oregon affiliate or its competitive provider includes a disclaimer in its communications. Such ~~The~~ disclaimer ~~of the corporate name, trademark, brand, or logo in the material distributed~~ must be written in a bold and conspicuous manner or be clearly audible, as appropriate for the communication medium. The disclaimer must be included in all print, auditory and electronic advertisements.~~

~~(a) The disclaimer for an Oregon affiliate must shall state the following: ' {Name of Oregon affiliate engaged in competitive operations} is not the same company as {name of electric company} and is not regulated by the Public Utility Commission of Oregon, and yYou do not have to buy {name of Oregon affiliate}'s products or services to continue to receive your current quality regulated electricity services from {name of electric company}.'~~

(b) The disclaimer for a competitive operation must state the following: 'You do not have to buy {product/service name} to continue to receive your current electricity service from {name of electric company}.'

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073)

860-038-0560

Treatment of Competitors

(1) An electric company, ~~in its provision of supply, capacity, services, or information; offering of discounts; tariff discretion; and processing requests for services~~ shall treat ~~it's~~ the competitors of its Oregon affiliates and its competitive operations fairly in all respects and in a manner consistent with the treatment it affords any of its Oregon affiliates or competitive operations in the electric company's:

(a) provision of supply;

(b) provision of capacity;

(c) provision of electricity services;

(d) provision of information obtained as a result of providing either electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to direct access customers;

(e) offering of discounts;

(f) tariff discretion; and

(g) processing requests for electricity related services.

This section shall not apply to the provision or joint purchasing of corporate services such as accounting, auditing, financial, legal, or information technology services.

(2) An electric company shall not condition or otherwise tie the provision of any regulated services provided by the electric company, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any regulated services provided by the electric company, to the taking of any ~~goods or~~ electricity services or directly related products from its Oregon affiliates or competitive operations.

(3) An electric company shall not assign a consumers to ~~which~~whom it currently provides electricity services to any of its Oregon affiliates or competitive operations, whether by default, direct assignment, option, or by any other means, unless that means is equally available to all competitors.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073)

860-038-0580**Prevention of Cross-subsidization Between Competitive Operations and Regulated Operations**

(1) Other than information that is routinely made public by an electric company, or for which a tariff has been approved subject to OAR 860-038-0540(1), an electric company must not provide electric company operational or marketing information to its competitive operations unless it makes such information available to ESSs and other entities that provide electricity services or directly related products on identical terms and conditions.

(2) ~~The electric company must identify and separately account for revenues and costs of its competitive operations. Any goods or services provided by an electric company's utility operation to its competitive operations or provided by an electric company's competitive operations to its utility operation must be provided in accordance with OAR 860-027-0048.~~

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073); PUC 25-2003, f. & ef. 12-11-03 (Order No. 03-691)

860-038-0600**Joint Marketing and Referral Arrangements**

(1) For joint marketing, advertising, and promotional activities an electric company shall not:

(a) Provide or acquire leads on behalf of its Oregon affiliates competitive operations;

(b) Solicit business or acquire information on behalf of its Oregon affiliates competitive operations;

(c) Give the appearance of speaking or acting on behalf of its Oregon affiliates competitive operations except that an electric company, pursuant to a customer request, may provide information about electricity services or directly related products offered by the electric company's Oregon affiliates. Prior to providing the information, the electric company must inform the customer that:

A) Other providers may exist, and

B) The customer does not have to purchase these electricity services or directly related products from the electric company's Oregon affiliate in order for the customer to continue to receive the customer's current electricity service from the electric company;

(d) Represent to consumers or potential consumers that it can offer goods or electricity services or directly related products from the electric company's of its Oregon affiliates competitive operations bundled or packaged with its tariffed services; or

(e) Request authorization from its consumers to pass on proprietary consumer information exclusively to its Oregon affiliates competitive operations.

(2) An electric company shall not engage in joint marketing, advertising, or promotional ~~activities~~ of its electricity products or services or directly related products with those of its Oregon affiliates competitive operations in a manner that favors the ~~competitive operations~~ electricity services or directly related products of the Oregon affiliate. Such

joint marketing, advertising, or promotional ~~activities~~ includes, but ~~are~~is not limited to, the following ~~activities~~:

(a) Acting or appearing to act on behalf of its Oregon affiliates competitive operations in any communications and contacts with any existing or potential consumers, subject to the exception in (1)(c) above;

(b) Joint sales calls;

(c) Joint proposals, either as requests for proposals or responses to requests for proposals;

(d) Joint promotional communications or correspondence, except that an electric company may allow its Oregon affiliates competitive operations access to consumer bill advertising inserts according to the terms of a Commission approved tariff, so long as access to such inserts is made available on the same terms and conditions to unaffiliated entities nonaffiliates offering similar services as the Oregon affiliates competitive operations that use bill inserts; or

(e) Joint presentations at trade shows, conferences, or other marketing events within the state of Oregon; and,

~~(f) Providing links from an electric company's internet web site to a competitive operations' internet web site.~~

(3) ~~At a consumer's unsolicited request, a~~ An electric company may participate in meetings with its Oregon affiliates competitive operations to discuss technical or operational subjects regarding the electric company's provision of transmission or distribution services to the consumer; but only in the same manner and to the same extent the electric company participates in such meetings with unaffiliated entities electric or energy services suppliers and their consumers. ~~The electric company shall not listen to, view, or otherwise participate in any way in a sales discussion between a consumer and its competitive operations or an unaffiliated electric or energy services supplier.~~

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073)

860-038-0620

Access to Books and Records

(1) ~~The~~ An electric company must provide the ~~Public Utility Commission of Oregon with~~ shall have full access to all of the electric company's and affiliates' books and records ~~of an electric company and its affiliates~~ in order to review all transactions ~~related to the provision of electricity services~~ between an electric company and its Oregon affiliates.

(2) An electric company and its affiliates shall maintain separate books and records, and, whenever possible, prepare unconsolidated financial statements.

(3) An electric company and its competitive operations shall maintain sufficient records to allow for an audit of the transactions between an electric company and its competitive operations. At its discretion, the Commission may require an electric company to initiate, at the electric company's expense, an audit of the transactions between an electric company and its competitive operations performed by an independent third party.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667
Hist.: PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073)

860-038-0640

Compliance Filings

~~No later than one year after an electric company has unbundled pursuant to ORS 757.603, and at a minimum of every second year thereafter~~By June 1 of each odd numbered year, an electric company ~~shall have~~must file an audit a verified report prepared by an independent ~~auditor third-party that verifies that regarding~~ the electric company's ~~is in~~ compliance with OAR 860-038-0500 through 860-038-0620 for the prior two calendar years. ~~The electric company shall file the results of each audit with the Commission within one month of the audit's completion.~~

Stat. Auth.: ORS Ch. 183, 756 & 757
Stats. Implemented: ORS 756.040 & 757.600 through 757.667
Hist.: PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073)