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June 1, 2020

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

**RE: UM\_\_\_\_\_—PacifiCorp's 2018-2019 Direct Access Code of Conduct Audit**

In accordance with OAR 860-038-0640, PacifiCorp d/b/a Pacific Power submits for filing with the Public Utility Commission of Oregon (Commission) the third-party audit performed by KPMG of PacifiCorp's compliance with OAR 860-038-0500 through 860-038-0620 for the audit period of January 1, 2018 through December 31, 2019.

PacifiCorp respectfully requests that all communications related to this filing be addressed to:

Oregon Dockets  
PacifiCorp  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
[oregondockets@pacificorp.com](mailto:oregondockets@pacificorp.com)

Matthew McVee  
Chief Regulatory Counsel  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
[matthew.mcvee@pacificorp.com](mailto:matthew.mcvee@pacificorp.com)

Additionally, PacifiCorp requests that all formal information requests regarding this matter be addressed to:

By email (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com).

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, OR 97232

Informal inquiries may be directed to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,

Michael Wilding  
Director, Net Power Costs & Regulatory Policy

Enclosures



**An Audit of PacifiCorp's  
Affiliate Rules Compliance  
per OAR 860-038-0640**

For  
PacifiCorp

June 1, 2020



## 1.0 Introduction

PacifiCorp (“Utility”), doing business as Pacific Power, retained KPMG LLP (“KPMG”) to perform an audit of its compliance with the Oregon Administrative Rules 860-038-0500 through 860-038-0620 (“Code of Conduct”) as required under OAR 860-038-0640.<sup>1</sup> Our engagement scope and this report cover the period of January 1, 2018 through December 31, 2019 (the “Audit Period”).<sup>2</sup>

This report is not intended for general circulation or publication, nor is it to be reproduced or used for any purpose other than that outlined in our engagement letter signed March 2, 2020 without prior written permission from KPMG in each specific instance. We disclaim any responsibility or liability for losses, damages or costs incurred by anyone as a result of the unauthorized circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph. Furthermore, should additional documentation or other information become available which impacts upon the findings reached in this report, we reserve the right to amend our findings accordingly.

## 2.0 Procedures Performed

We reviewed the Utility’s activity during the Audit Period in the context of the Code of Conduct. In general, our efforts sought to do the following:

- Identify areas of compliance risk (referred to in OAR 860-038-0500 as “market abuses and anti-competitive practices by electric companies in the Oregon retail electricity markets”);
- Assess current compliance programs elements;
- Evaluate select employee knowledge, perceptions, and behavior; and
- Test transactional data based upon identified areas of compliance risk.

During our engagement, we collected and analyzed information gathered from various sources. Among other things, we:

- Conducted interviews with selected individuals;
- Requested and reviewed documents and information from the Utility;
- Analyzed documentation or underlying support for both financial and non-financial transactions;
- Compared documentation and information gathered from various sources to check for consistency, and requested additional information as needed;
- Performed research and analysis of publicly available information;
- Reported interim findings to our client; and
- Prepared a report containing our observations, a discussion of our analyses, and our findings.

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<sup>1</sup>Three observations apply. First, Utility management acknowledges that compliance is its responsibility. Second, compliance or non-compliance often involves a legal determination. KPMG does not practice law and is not offering a legal opinion. Third, both KPMG and the Utility agree that the Commission requests an “audit” in the common language usage of the word. KPMG’s services are not intended to be an audit, review, examination, attestation, or agreed-upon procedures engagement as those services are defined in the American Institute of Certified Public Accountants literature applicable to such engagements.

<sup>2</sup> The Utility was granted a waiver of this audit requirement for the 2011, 2013, 2015 and 2017 compliance years. However the Commission denied the Utility’s request for a waiver of the audit requirement for the 2019 compliance year “due to changes in developing industry trends related to direct access and changes in Commission policy”, finding it important that a third party examination of the Utility’s current processes take place to “establish a good base line as the likelihood of customers participating in direct access options increases.”

Although our testing was comprehensive, it was not exhaustive. Therefore, this testing may not have captured every event that constitutes a potential breach of the Code of Conduct rules. Additionally, certain rules within the scope of our report cover outcomes and transactions that are not testable given the actual experience of direct access and the Utility in Oregon during the Audit Period. For instance, as discussed below, the Utility represented that it does not have any Oregon affiliates or competitive operations during the Audit Period. Our testing plan recognized that the absence of Oregon affiliates and competitive operations inherently limits the applicability of the testing.

The Utility, as an investor-owned electric utility, falls under the jurisdiction of several regulatory agencies, including the Federal Energy Regulatory Commission (“FERC”), the Public Utility Commission of Oregon (“Commission”), and other regulatory agencies in the five other states where the Utility conducts retail electric operations. Several of the Commission’s Code of Conduct rules cover areas that also fall under the jurisdiction of these other regulatory agencies. In such instances, we were given guidance by legal counsel from the Utility as to the scope of our report insofar as compliance with regulatory requirements of other agencies may supersede those required by the Code of Conduct.

Our analysis and test work for transmission services was limited insofar as FERC has similar provisions in the Code of Federal Regulations related to prohibitions on abuse of market power and cross-subsidization with respect to transmission services. We relied on the existence of FERC regulatory oversight when developing the scope of our testing. Similarly, certain transactions between the Utility and its affiliates are restricted or prohibited by federal regulation (e.g., sharing of market information, separation of functions, etc.)

### **3.0 Testing and Results**

Our analysis of the Code of Conduct is presented below. For ease of readability, the Code of Conduct is reproduced in Appendix A of this report.

#### **3.1 OAR 860-038-0500 - Code of Conduct Purpose**

##### **Summary**

The purpose of the Code of Conduct is “to protect against market abuses and anti-competitive practices by electric companies in the Oregon retail electricity markets.” The Code of Conduct governs the interactions and transactions among the Utility, its Oregon affiliates, and its competitive operations. Oregon affiliate is defined as “an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market.”<sup>3</sup> Competitive operations is defined as “any electric company’s activities involving the sale or marketing of electricity services or directly related products in an Oregon retail market.”<sup>4</sup>

Based upon representations made by the Utility, our understanding of the term “Oregon affiliate,” and our inspection of the corporate ownership structure of the Utility and its parent company, we are unaware of any Oregon affiliates during the Audit Period. Thus, our testing did not include any Oregon affiliates. Additionally, as the Utility does not believe it has any competitive operations during the Audit Period as contemplated by this rule, our scope did not include this compliance element.

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<sup>3</sup> OAR 860-038-0005(44).

<sup>4</sup> OAR 860-038-0005(8).

## **Compliance Program Design**

The Utility does not have a program in place specifically designed for compliance with the Code of Conduct.<sup>5</sup> However, the Utility falls under the jurisdiction of several regulatory agencies (such as FERC, the Commission, and other state regulatory agencies where the Utility conducts retail electric operations). The Utility's various compliance programs designed to meet the requirements of these other regulations also provide the Utility coverage with respect to the Code of Conduct. We discuss these policies and programs under the individual Code of Conduct rules, where applicable.

As part of its overarching regulatory compliance efforts, the Utility maintains a monthly updated list of affiliates on its intranet. Additionally, the Utility has procurement procedures in place for affiliate transactions that require Utility employees to complete an Affiliate Transaction Review Form whenever transacting with affiliates. Utility employees are required to complete this form and submit it for review and approval by the Utility's regulatory and legal teams whenever the Utility wants to transact with an affiliate.

The Utility's parent company, Berkshire Hathaway Energy Company ("BHE"), maintains an internal code of conduct for its employees and the employees of all its subsidiaries and affiliates. This code of conduct requires that employees only engage in fair and open competition. Employees should also treat competitors and customers ethically and comply with all antitrust laws and regulations (including the prohibition of price fixing, bid rigging, customer allocation and tying arrangements). Violation of BHE's internal code of conduct may result in disciplinary action against the employee, including termination.

## **Assessment of Compliance Program**

We requested and reviewed copies of the Utility's affiliate lists, BHE's internal code of conduct, and the Utility's procurement policy for affiliate transactions to confirm our understanding of the Utility's compliance program. Additionally, we spoke with members of the Utility's regulatory and legal groups to gain a better understanding of how the Utility's compliance program operates. We observed that the Utility communicates with its employees via semi-annual emails about the Affiliate Transaction Policy and the annual FERC Code of Conduct Training.

Based on these discussions, we understand that the Utility relies upon the Electric Service Suppliers ("ESS") certification process to identify Oregon affiliates. For example, when an ESS applies for certification with the Utility, the Utility's team will receive notification of the application and will review for affiliate relationships. Additionally, during the certification process, the ESS self-identifies any existing relationships it has with the Utility. The Utility also periodically reviews its affiliate list for the names of any Oregon approved ESSs. The ESS is required to annually renew its certification with the Commission and self-identify any affiliate relationships with a utility. We understand that during the Audit Period, the Utility had agreements with five ESSs and none of these ESSs appeared to be affiliated with the Utility.

## **Compliance Transaction Testing Results**

The Utility represents that it does not have any Oregon affiliates during the Audit Period. To test the Utility's assertion about the existence of Oregon affiliates, we inspected the corporate ownership

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<sup>5</sup> The Utility's legal team acknowledges that the lack of a compliance program specifically designed for the Code of Conduct is a process improvement opportunity, and notes that it had identified this opportunity prior to the start of our engagement.

structures of the Utility and Berkshire Hathaway Inc. and did not identify any Oregon affiliates. Additionally, we conferred with the Utility’s legal department to understand the activities of various entities within the corporate ownership structure. Our procedures did not identify any affiliate that appeared to be engaged in the sale or marketing of electricity or directly related products in an Oregon retail market.<sup>6</sup>

The Utility represents that it does not have any competitive operations during the Audit Period. To test the Utility’s assertion about the existence of competitive operations, we conferred with the Utility’s legal group with regard to the Utility’s offerings to its customers. The Utility noted that its services are strictly offered under tariffs approved by the Commission or by FERC.

We inquired about its Blue Sky Program, the Utility’s voluntary renewable energy certificate program (Schedule 270). The Utility represented that this program is a Commission approved tariff. Further, in Commission Order No. 03-392, the Staff initially argued that Schedule 270 was a competitive operation, subject to the Code of Conduct. However, the Staff compromised and approved the tariff subject to a number of conditions that affords consumers the same protections as the Code of Conduct. The Order noted that “[t]hese conditions reflect a compromise ... without agreeing that the offering is subject to the Code of Conduct.”

### **3.2 OAR 860-038-0520 - Electric Company Name and Logo**

This section of the Code of Conduct requires the Utility’s Oregon affiliates and its competitive operations to include disclaimers in its communications. As previously discussed, the Utility represented that it did not have any Oregon affiliates or competitive operations during the Audit Period. As such, we have not performed any testing with regard to this section. However, we did request, receive, and review a copy of the Utility’s direct access brochure for the 2019 opt out period. While we did not observe any disclaimers, we also did not observe any reference to affiliates, competitive operations, or suggestions that customers should select the Utility as opposed to pursuing direct access.

### **3.3 OAR 860-038-0560 - Treatment of Competitors**

#### **Summary**

In general, this section of the Code of Conduct requires the Utility to treat the competitors of the Oregon affiliates and the Utility’s competitive operations fairly in all respects, specifically with regard to provision of supply, capacity, electricity services, information, discounts, tariff discretion, and processing requests for electricity related services. Additionally, the Utility cannot condition the provision of any regulated services, availability of discounts of rates, waivers of terms and conditions, to the taking of any electricity services or directly related products from its Oregon affiliates or competitive operations. Finally, the Utility cannot assign a customer to any of its Oregon affiliates or competitive operations.

We observed that the Utility has compliance programs designed to meet the requirements of other regulatory agencies whose regulations also overlap with the requirements of this section of the Code of Conduct. However, since the Utility represents it did not have any Oregon affiliates or competitive operations during the Audit Period, we did not perform any transaction testing for this provision.

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<sup>6</sup> Note that (a) the Commission performed a “thorough review and analysis” of the Utility’s rate case filed in March 2013, and (b) the Commission conducted an “extensive operational audit” of the Utility covering the latter half of 2015 (see Audit Number 2016-01). In both instances, the Commission found no issues with affiliate relationships or cost allocations (see CPUC Order No. 19-101).

## Compliance Program Design

The Utility does not have a program in place specifically designed for compliance with the Code of Conduct. However, the Utility falls under the jurisdiction of several regulatory agencies (such as the FERC and state regulatory agencies where the Utility conducts retail electric operations) with requirements that capture the spirit of this section. Specifically, FERC requires public utilities to offer electric transmission services on a non-discriminatory basis to all eligible customer through the utilities Open Access Transmission Tariff (“OATT”). Additionally, the Utility maintains internal policies that also touch upon this section:

- BHE’s internal code of conduct requires employees to only engage in fair and open competition by treating competitors and customers ethically and to comply with all antitrust laws and regulations (including the prohibition of price fixing, bid rigging, customer allocation and tying arrangements).
- The Utility’s procurement procedures for affiliate transactions require Utility employees complete an Affiliate Transaction Review Form whenever transacting with affiliates. This form is reviewed and approved by the Utility’s regulatory and legal teams.

We observed that these internal codes / policies neither (1) specifically refer to the treatment of competitors of any particular competitive operation or Oregon affiliate, nor (2) refer to the types of treatments listed in parts (a) through (g) of this rule.

## Assessment of Compliance Program

We requested and reviewed copies of BHE’s internal code of conduct and the Utility’s procurement procedures for affiliate transactions to confirm our understanding of the Utility’s compliance program. Additionally, we spoke with members of the Utility’s regulatory and legal groups to gain a better understanding of how the Utility’s compliance program operates.

With regard to access to customer information, the Utility indicated that if an ESS requests customer information, the ESS is required to provide a release form signed by the customer. The Utility indicated that they receive release forms 10 – 20 times a year. The customer information is provided electronically via email which is encrypted and password protected.

## Compliance Transaction Testing Results

Given that the Utility did not have any Oregon affiliates and did not recognize any competitive operations during the Audit Period, as contemplated by this section, we did not perform any transaction testing of this element.<sup>7</sup>

Notwithstanding the above, we spoke with Ms. Melissa Nottingham (Manager Regulation & Customer Advocacy), who noted that the Utility did not receive any complaints regarding ESSs or direct access during the Audit Period. We obtained an internal listing of complaints submitted during the Audit Period and confirmed Ms. Nottingham’s assertion. In addition, we spoke with three call center representatives who field calls for the Utility’s direct access program; each representative noted that they did not receive

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<sup>7</sup> Based on our testing, we hereinafter use the expression ‘Given that the Utility did not have any Oregon affiliates and competitive operations during the audit period, as contemplated by this provision,’ for the sake of simplicity. Our sample testing was not designed to yield conclusions with 100% certainty. Hence the statement should not be read to be an affirmation of the Utility’s representation.



any customer complaints during the Audit Period and that if they had received a customer complaint, they would have forwarded it to Mr. Sui Kee Wong, the Utility’s Direct Access Program Manager, for review. Finally, we searched within FERC’s eLibrary and the Commission’s docket for any penalties or complaints issued to the Utility for unfair treatment of competitors and did not observe any such filings.

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

This section of the Code of Conduct states that, other than information that is routinely made public by an electric company or for which a tariff has been approved by the Commission, the Utility cannot provide its 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. Additionally, the Utility is required to identify and separately account for revenues and costs of its competitive operations.

During the course of our work, we observed sensitivity to sharing of nonpublic information between transmission and the merchant function as required by FERC regulation. In addition, we observed that call center representatives are trained on how to protect customer information (e.g., being vigilant against phishing scams).

As previously discussed, the Utility represents it does not have any competitive operations during the Audit Period. As such, we did not perform any transaction testing with regard to this section. We considered the existing inter-company accounting policies for BHE’s affiliates but note that it is not designed to cover transactions of competitive operations. Additionally, the Utility stated that the Blue Sky Program is accounted for separately in its books and records.

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

This section of the Code of Conduct regulates the Utility’s provision of transmission, distribution, and ancillary services to its customers by itself, its affiliates, or ESSs. During the Audit Period, there were five ESSs that have an ESS Service Agreement<sup>8</sup> in place with the Utility (see table below). Additionally, the ESSs have been certified by the Commission.

| ESS Name   | Yr Certified by Commission |
|--|----------------------------|
| Avangrid Renewables, LLC<br>(f/k/a Iberdrola Renewables, LLC)                | 2012                       |
| Calpine Energy Solutions, LLC<br>(f/k/a Noble Americas Energy Solutions LLC) | 2002                       |
| Constellation NewEnergy, Inc.  | 2001                       |
| EDF Energy Services, LLC   | 2016                       |
| 3 Phases Renewables Inc.   | 2015                       |

Since this section covers a wide range of activities, we reviewed the Utility’s conduct with each specific paragraph below.

<sup>8</sup> We observed that the Commission approved the ESS Service Agreement as a form in Order 01-846.

### **3.5.1 OAR 860-038-0590(1) – Placement of transmission facilities under control of RTO**

Based upon representation we have received from the Utility, we understand that the Utility was not relieved of the requirements of OAR 860-038-0590 by placing its transmission facilities under the control of a regional transmission organization during the Audit Period.

### **3.5.2 OAR 860-038-0590(2) – Transmission, distribution or ancillary services under standard Commission tariffs and FERC approved tariffs**

#### **Summary**

This paragraph of the Code of Conduct states that an ESS “may request transmission service, distribution service or ancillary services under standard Commission tariffs and FERC-approved tariffs.” Additionally, this paragraph indicates that the Utility should coordinate the filings of these tariffs to ensure that all retail and direct access consumers are offered comparable services at comparable prices.

We observed that an ESS may request transmission, distribution, and ancillary services under standard Commission tariffs and / or FERC approved tariffs. Based upon our sample review of the Commission / FERC approved tariffs schedules, we observed that these services appear to be provided to direct access and retail consumers under comparable conditions and prices.

In addition, we observed that Constellation NewEnergy (an ESS) does not have a Network Integration Transmission Service Agreement (“NITS Agreement”) with the Utility; instead, the NITS Agreement is held by Exelon Generation Company, LLC which we understand to be a related company. It is unclear why Constellation NewEnergy does not have a NITS Agreement with the Utility.

#### **Compliance Program Design**

An ESS’s transmission, distribution, and ancillary services are governed by various Utility documents. Transmission services for ESSs are governed by the Utility’s OATT and the Commission approved ESS Service Agreement. Distribution services for ESSs are governed by Oregon Rule 21 and 22 and several Oregon tariffs. Finally, ancillary services for ESSs are governed by Oregon Rule 21 and the Utility’s OATT. Each service and related documents are covered in further detail below:

#### Transmission Services

The Utility is a transmission provider regulated by FERC and it offers transmission services for both retail and direct access consumers under its FERC approved OATT. An ESS can request transmission services under Attachment M of the OATT.

Attachment M requires that participants in the Oregon direct access program acquire network integration transmission services from the Utility pursuant to Part III, Network Integration Transmission Service, of the OATT. Attachment M also states that only an ESS or a Scheduling ESS may acquire such transmission service, and that only a Scheduling ESS may schedule such service with the Utility as the transmission provider. Rates for transmission services can be found in Attachment H-1 of the OATT. Attachment M was updated during the Audit Period (effective February 2019).

The Standard ESS Service Agreement states that “[a]n ESS is responsible for ensuring the arrangement of all transmission services required to supply Electricity to the ESS’s Consumers.” A consumer may not receive direct access electricity supply from the ESS until the ESS has certified to the Utility the

commencement of all related transmission services. The agreement also states that a Scheduling ESS is responsible for arranging network transmission service across the Utility's transmission facilities and point-to-point transmission services on third-party transmission systems.

### Distribution Services

The Utility offers distribution service for both retail and direct access consumers under its Commission approved Oregon tariffs. The following schedules outline direct access distribution services and charges: 723, 728, 730, 741, 745, 747, 748, 751, 752, 753, 754, 776R and 848. We observed that these schedules are patterned after the schedules for distribution services and charges for general retail consumers under basic electricity service outlined in schedules 23, 28, 30, 41, 45, 47, 48, 51, 52, 53, 54, and 76R.

Additionally, transmission adjustment mechanism (TAM) charges are levied against customers under schedule 294, 295 and 296 for when a customer leaves cost-based supply service for direct access versus the Utility's regulated price.

### Ancillary Services

An ESS can request ancillary services under the Utility's OATT. The tariff states that as a transmission provider, the Utility must provide, and that transmission consumers receiving network integration transmission service must purchase, the following two groups of services: 1) scheduling, system control, and dispatch services, and 2) reactive supply and voltage control from generation sources services. As a transmission provider, the Utility must offer the following four ancillary services to the transmission customer serving load within the Utility's control area: 1) regulation and frequency response; 2) energy imbalance; 3) operating reserve–spinning; and 4) operating reserve–supplemental. The rates related to the ancillary charges can be found in Schedules 1 – 6 of the OATT.

In addition, Oregon Rule 21 offers the following ancillary services by the Utility: regulation and frequency response service, emergency imbalance service, operating reserve–spinning reserve service, and operating reserve–supplemental reserve service. The rule states that a direct access consumer must purchase the above ancillary services from the Utility under the Utility's OATT unless the consumer or its Scheduling ESS makes alternative comparable arrangements to satisfy its ancillary service obligations. Thus, the Utility is generally the default provider of ancillary services for ESSs.

The Standard ESS Service Agreement states that an ESS that is also a Scheduling ESS is responsible for arranging appropriate ancillary services in accordance with the Utility's Oregon tariff and OATT.

### **Assessment of Compliance Program**

Each of the documents discussed above are readily available for download by the public from the Utility's websites. We downloaded copies of these documents and reviewed them to understand how an ESS can request services from the Utility. Based on this review, we observed that an ESS may request transmission, distribution, and ancillary services through the Utility's Commission and FERC approved tariffs.

### **Compliance Transaction Testing Results**

The Utility submits proposed tariffs for direct access and cost of service customers to the Commission for approval. The Utility currently utilizes Commission approved tariffs. While our testing did not include consumer bill review, the Utility does monitor tariff compliance as discussed below (see Section 3.5.5).

We compared the rates for transmission services for direct access customers and retail customers, and observed that the rates appear comparable. The rates for retail customers are captured in the Utility's Oregon tariffs. As part of our procedures, we selected one of the Utility's tariffs (Schedule 23) and compared it to the transmission and ancillary rates presented in the Utility's OATT (Attachment H-1). We observed that the rates offered to direct access customers for transmission services were comparable. We did not test the rates for ancillary services since the cost of ancillary services appeared relatively small compared to the cost of transmission services.

As noted above, the Code of Conduct states that an ESS "may request transmission service, distribution service or ancillary services under standard Commission tariffs and FERC-approved tariffs." We requested and received copies of the latest NITS Agreements between the Utility and ESSs. We observed that Constellation NewEnergy (the ESS) does not have a NITS Agreement with the Utility; instead, the NITS Agreement is held by Exelon Generation Company, LLC which we understand to be a related company.

The NITS Agreements provide for services in accordance with Attachment M of the Utility's OATT as it relates to Oregon direct access pursuant to the rules and regulations of the Commission's Order AR 380. We understand that non-ESS entities are not allowed to buy transmission services under Attachment M of the OATT. We also understand that network transmission services purchased under the OATT are not intended for resale. As a result, it is unclear why Constellation NewEnergy does not have a NITS Agreement with the Utility.<sup>9</sup>

### **3.5.3 OAR 860-038-0590(3) – Nondiscriminatory access to transmission, distribution or ancillary services**

#### **Summary**

This paragraph of the Code of Conduct requires the Utility to provide nondiscriminatory access to transmission, distribution, and ancillary services. It states that the Utility shall not give priority or preference to itself or its affiliates in transmission and distribution pricing, transmission and distribution access, or access to, pricing of, or provision of ancillary services and local generation resources.

We observed that the Utility has policies and procedures in place that focus on providing open and non-discriminatory transmission and ancillary services. In addition, our testing procedures did not identify any instance where the Utility did not provide open and non-discriminatory transmission and ancillary services during the Audit Period. With respect to distribution services, we were unable to perform thorough testing procedures, such as evaluating whether system outages involving direct access customers are addressed as quickly as system outages not involving direct access customers, as the Utility lacked readily available metrics in this regard. However, the utility represented that all customers taking service under any tariff are included in its SADI and SAFI metrics.

As previously discussed, the Utility provides FERC regulated transmission services to retail and direct access consumers under its FERC approved OATT. Transmission services for direct access consumers are provided pursuant to Attachment M of the OATT. More generally, pricing for both direct access and retail consumers is outlined in the OATT.

The Utility is required by FERC to maintain an Open Access Same-Time Information System ("OASIS") that provides potential consumers with information needed to obtain open access non-discriminatory service. All discount offers, requests, and terms for transmission and ancillary services must be

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<sup>9</sup> The Utility understands that Exelon operates under the Constellation name as an ESS in Oregon.

announced to all eligible consumers solely by posting on its OASIS. Additionally, the Utility is required to implement the FERC Standards of Conduct for Transmission Providers (“Standards of Conduct”) to functionally separate the transmission and wholesale power merchant functions. In other words, the Utility’s wholesale power merchant functions must obtain information about transmission the same way its competitors do (i.e., through OASIS). During the course of our work, we observed sensitivity to sharing of nonpublic information between transmission and the merchant function as required by FERC regulation.

### **Compliance Program Design**

Through Order No. 2004, FERC requires transmission providers (such as the Utility) to comply with its Standards of Conduct.<sup>10</sup> The Standards of Conduct promote open and non-discriminatory transmission access, especially with respect to preventing preferential treatment of Marketing and Energy affiliates. To drive compliance with FERC regulations, the Utility maintains a *Standards of Conduct Compliance Procedures*, which emphasizes the following fundamental principles:

1. A transmission provider must treat all transmission customers, affiliated and non-affiliated, on a not unduly discriminatory basis, and must not make or grant any undue preference or advantage to any person or subject any person to undue prejudice or disadvantage with respect to any transmission of electric energy in interstate commerce, or with respect to the wholesale sale of electric energy in interstate commerce.
2. A transmission provider’s transmission function employees must function independently from its marketing function employees, except as permitted in the rules or otherwise permitted by FERC Order No. 717 Standards of Conduct for Transmission Providers.
3. A transmission provider and its employees, contractors, consultants and agents are prohibited from disclosing, or using a “conduit” to disclose, non-public transmission function information to the transmission provider’s marketing function employees.
4. A transmission provider must provide equal access to non-public transmission function information to all its transmission customers, affiliated and non-affiliated, except in the case of confidential customer information or critical energy infrastructure information.

Additionally, the compliance procedures state: “The transmission provider must apply all open access transmission tariff (OATT) provisions related to the purchase or sale of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services or balancing) in a fair, impartial, and non-discriminatory manner. The transmission provider must process all similar transmission service requests in the same manner and within the same time frame.”

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<sup>10</sup> In April 1996, FERC issued Order No. 888 which required public utilities to provide open access transmission service on a comparable basis to the transmission services they provide themselves. The goal of Order No. 888 was to ensure that potential suppliers of electricity have equal access to the market. To further foster the functioning of a free market, FERC issued Order No. 889, which required the posting of available capacity on an electronic bulletin board, OASIS. Subsequently, FERC issued Order No. 890 and 890-A to eliminate undue discrimination in transmission service and address deficiencies in the OATT that have become apparent since the issuance of Order No. 888.

## Assessment of Compliance Program

The *Standards of Conduct Compliance Procedures* are publicly available through the Utility's OASIS website. The Utility also posts on OASIS relevant organizational information related to Marketing and Energy affiliates, shared facilities, employee transfers, business organizational charts, and potential mergers.

FERC mandates that the Utility establish and maintain an OASIS according to uniform standards so that consumers and competing utilities can obtain timely access to complete information concerning the availability of transmission capacity. This access permits ESSs and all other eligible parties to engage in efficient trades and enable the transmission system to operate in a fair and non-preferential manner. The Utility announces all transmission capacity, requests, terms of service, discount offers and ancillary services to all eligible consumers solely by posting on OASIS. Through OASIS, all transactions are transparent and available for viewing by anyone who registers with the system.

We reviewed the Utility's OASIS and observed that the Utility self-reported to FERC a violation of the Standards of Conduct that arose during the Audit Period. The Utility inadvertently disclosed information concerning third-party transmission customers to a Utility marketing function employee. The violation was discovered on December 12, 2019 by a Utility compliance officer through a detective internal control and disclosed to FERC several days later. We did not identify any other self-reported violations for activity that occurred during the Audit Period.

In addition, FERC conducts periodic audits of the Utility's compliance with its regulations. For example, we observed that an audit focusing on the Utility's rate calculation was conducted in 2017. As OASIS is under FERC jurisdiction, we did not pursue further inquiries with respect to processes and systems for compliance with this rule.

Based on review of materials provided and discussion with the Utility, we did not identify a compliance program with a focus on distribution services.

## Compliance Transaction Testing Results

As discussed above, the Utility self-reported to FERC violations of the Standards of Conduct resulting from a specific inadvertent sharing of customer information between the Utility's merchant and transmission functions. We also performed additional procedures related to OASIS requests, employee training, and ESS complaints as discussed below.

### OASIS

We requested and received from the Utility an internally maintained spreadsheet of the transmission service request ("TSR") queue; we note that a similar, less detailed version of the TSR queue is available to the public of the Utility's OASIS. During the Audit Period, transmission services were requested by only three of the five ESSs with whom the Utility had an ESS Service Agreement: 3 Phases Renewables, Constellation NewEnergy, and Calpine Energy. Based on a discussion with a member of the Utility's transmission group, we understand that, as a result of the opt-out period occurring in November, the Utility processes the transmission requests for direct access customers quickly to meet the January 1<sup>st</sup> deadlines. We reviewed the TSR queue provided by the Utility and observed only one transmission request was completed later than the requested service start date; the completion was one day late.

We inquired about the point-to-point transmission services utilized by the Utility’s ESSs during the Audit Period and were advised that these ESSs only utilize network integrated transmission services under Attachment M of the OATT.

#### Employee Training

The Utility provides a copy of the *Standards of Conduct Compliance Procedures* and the regulatory text of the Standards of Conduct for Transmission to its employees. The Utility also provides annual training on the Standards of Conduct rules to all employees and contractors with employee numbers.

#### ESS Complaints

Our research did not identify any ESS complaints related to the Utility’s provision of transmission, distribution, or ancillary services during the Audit Period. We reviewed online filings on the FERC and the Commission’s websites. Additionally, we also reviewed the enforcement reports and civil penalties issued during the Audit Period by FERC and did not observe any enforcement action or penalties issued to the Utility. Additionally, we requested that the Utility provide information on any direct access-related complaints filed directly with the Utility, the Commission, or FERC. The Utility represented that it was not aware of any such complaint.

#### Direct Access Service Request (“DASR”)

As outlined in Oregon Rule 21, when electing direct access service, the Utility is required to notify the ESS whether the DASR rejected and provide the reason for the rejections. We requested copies of the DASR rejection notifications sent to ESSs during the Audit Period. The Utility indicated that the requested information is only retained for 90 days in the normal course of business. Therefore, this information was no longer available for the Audit Period.

### **3.5.4 OAR 860-038-0590(3)(a) – Transmission and distribution services**

#### **Summary**

In summary, this paragraph requires the Utility to make available (on at least a pro rata basis) its transmission or distribution capacity to itself and ESSs. If certain prescribed conditions prevent or limit the Utility’s ability to do so, the Utility must describe in its tariff filings how it proposes to provide substantively comparable services to all customers at the same or similar rates.

The Utility makes its transmission capacity available to ESSs on a pro rata basis under its OATT. Furthermore, Commission Order 01-846 states that the Utility has met the requirements of this rule with its proposal to assign “a pro rata share of each transmission path used in each eligible service to each load and acquiring additional or replacement service when existing contracts prevent the use of [the Utility’s] rights by an ESS.”

#### **Compliance Program Design**

As outlined in this rule, there is transmission capacity (to which the Utility has entitlements) that is restricted by contract or by regulatory obligations in other jurisdictions. Specifically, the Utility purchases transmission services from the Bonneville Power Administration (“BPA”). The transmission service agreements with BPA are restricted to the Utility’s generation only. Furthermore, paragraph 8 to Schedule M of the Utility’s OATT obligates the Utility to acquire similar transmission service on behalf of

participants in Oregon direct access. The Utility's expenses in acquiring this transmission service shall be shared among all participants in Oregon direct access.

### **Assessment of Compliance Program**

In Commission Docket UE116 (summarized in Commission Order 01-846), the Utility proposed to the Commission that it would make a detailed evaluation of how the eligible loads in Oregon were currently served under its OATT for network integration transmission service. Based on its evaluation, the Utility proposed to assign a pro rata share of each transmission path used to serve each eligible load. The Commission previously commented that this design satisfies the requirements of this rule. Specifically, in Order 01-846 the Commission stated that the Utility's proposed transmission plan met its requirements under this rule:

PacifiCorp is required, under OAR 860-038-0590(3)(a), to show how it proposes to provide substantively comparable transmission and distribution service to all retail consumers at the same or similar rates if access to its transmission or distribution facilities is restricted by contract or regulatory obligations in other jurisdictions. PacifiCorp has met this requirement by proposing its plan of assigning a pro rata share of each transmission path used in each eligible service to each load and acquiring additional or replacement service when existing contracts prevent the use of PacifiCorp's rights by an ESS.

Furthermore, since we understand that 1) administration of pro rata access is covered by Attachment M to the Utility's FERC approved OATT; and 2) FERC compliance was outside the scope of this report, we did not pursue further inquiries.

### **Compliance Transaction Testing Results**

Given that the Commission has previously commented that the Utility has satisfied the requirements of OAR 860-038-0590(3)(a), coupled with the Utility's representation that no generation capacity has been stranded, we did not pursue further testing with respect to compliance with this rule.

#### **3.5.5 OAR 860-038-0590(3)(b) – Ancillary Services**

##### **Summary**

This paragraph of the Code of Conduct states than an ESS may acquire all ancillary services (except those required by FERC to be purchased through the Utility) from itself, a third party or the Utility's OATT. We reviewed the Utility's OATT and observed that an ESS may acquire certain ancillary services from the Utility, from a third party, or by self-supply.

##### **Compliance Program Design**

The Utility's compliance department has instituted a series of OATT compliance controls. The compliance department also conducts targeted control reviews annually. We requested and reviewed a list of controls testing performed by the Utility for its OATT and noted that testing is completed on an interval basis (e.g., annually, monthly, etc.).

As described above, FERC mandates that the Utility establish and maintain an OASIS according to uniform standards so that consumers and competing utilities can obtain timely access to complete information concerning the availability of transmission capacity. This access permits ESSs and all other eligible parties to engage in efficient trades and enables the transmission system to operate in a fair and

non-preferential manner. The Utility announces all transmission capacity, requests, terms of service, discount offers, and ancillary services to all eligible consumers solely by posting on OASIS. Through OASIS, all transactions are transparent and available for viewing by anyone who registers with the system.

The Utility maintains its *Standards of Conduct Compliance Procedures* to preserve compliance with the FERC's Standards of Conduct for Transmission. We observed that the *Standards of Conduct Compliance Procedures* is publicly available through the Utility's OASIS website. The Utility also posts relevant organizational information related to Marketing and Energy affiliates, shared facilities, employee transfers, business organizational charts, and potential mergers on its OASIS.

The Utility provides a copy of the *Standards of Conduct Compliance Procedures* and the regulatory text of the Standards of Conduct for Transmission to its employees. The Utility also provides annual training on the Standards of Conduct rules to all employees and contractors with employee numbers. We requested and received list of employees who have completed the annual training for 2018 and 2019. In addition, FERC conducts periodic audits of the Utility's compliance with its regulations.

### **Assessment of Compliance Program**

The Utility's FERC approved OATT states that the Utility as the transmission provider must provide, and that transmission consumers, such as ESSs receiving or network integration service, are required to purchase, the following two groups of services: 1) scheduling, system control and dispatch services; and 2) reactive supply and voltage control services.

The OATT also states that the Utility, as the transmission provider, is required to offer four other ancillary services to the transmission customer serving load within the Utility's control area: 1) regulation and frequency response; 2) energy imbalance; 3) operating reserve–spinning; and 4) operating reserve–supplemental. The OATT states that the transmission customer is required to acquire these ancillary services, whether from the transmission provider, from a third party, or by self-supply. The OATT also states that the transmission customer may not decline the Utility's offer of ancillary services unless the customer demonstrates that it has acquired these services from another source.

Oregon Rule 21 also includes provisions for the following four ancillary services: regulation and frequency response service, emergency imbalance service, operating reserve – spinning reserve service, and operating reserve – supplemental reserve service (See Section IX). For each service, the rule states that the terms and conditions for the service are established by the Utility's applicable tariffs approved by FERC (i.e., OATT). Additionally, the rule states that an ESS must purchase the four services from the Utility, unless it can make alternative arrangements from a third party that are comparable to the service provided under the OATT. Thus, Rule 21 is consistent with the OATT.

In summary, we observe that the Utility's FERC approved OATT appears to be consistent with the requirements of OAR 860-038-0590(3)(b).

### **Compliance Transactions Testing Results**

Our testing included the identification of a 2011 tariff with the same language as the current tariff. In the absence of change and in the absence of complaints, the risk of non-compliance appears nominal. In addition, our research did not identify any ESS complaints related to the Utility's provision of transmission, distribution, or ancillary services during the Audit Period.

### 3.5.6 OAR 860-038-0590(3)(c) – Energy Imbalances

#### Summary

This paragraph of the Code of Conduct requires the Utility to minimize energy imbalance obligations within the direct access market. In summary, the Utility is required to address energy obligations within its FERC approved tariff to impose substantively comparable burdens upon ESSs and consumers purchasing services from the Utility.

We observed that energy imbalance obligations are addressed by the Utility’s OATT and the NITS Agreement. The Utility’s FERC approved OATT applies to all the Utility transmission consumers. Each of the NITS Agreements reviewed include energy imbalance ancillary services from the Utility. As such, energy imbalance obligations impose the same burdens upon an ESS as it does other non-direct access consumers.

#### Compliance Program Design

##### Utility’s Open Access Transmission Tariff (OATT)

The Utility addresses the energy imbalance ancillary service in its OATT. In general, energy imbalance service is provided when a difference occurs between the scheduled and the actual delivery of energy over a single hour. Charges are based on FERC accepted methods aimed at minimizing the provisions of energy imbalance service to the Utility. The rates and methodologies associated with energy imbalances are described in Schedule 4 of the OATT, as described below. All Utility transmission consumers are subject to the requirements of Schedule 4.

##### ESS Service Agreement

The Commission approved ESS Service Agreement describes obligations related to energy imbalance settlement assumed by an ESS that enters into a contract with the Utility. The Service Agreement states:

An ESS that is also a Scheduling ESS shall be primarily responsible for energy imbalance settlements with Utility under the Energy Imbalance Service schedule of the OATT. Scheduling ESS agrees to pay Utility for all charges incurred for settlement under the OATT. For these purposes, the Energy Imbalance shall be calculated for the aggregate of an ESS’s loads and resources under ESS operating as a Scheduling ESS, treating that aggregate of the Scheduling ESS’s direct access loads and losses as a single load obligation and all the resources as a single resource.

##### NITS Agreement

We requested and received copies of the latest NITS Agreements between the Utility and ESSs. We observed that EDF Energy Services did not have a NITS Agreement. The four NITS Agreements received and reviewed each provide for services in accordance with Attachment M of the Utility’s OATT as it relates to Oregon direct access pursuant to the rules and regulations of the Commission’s Order AR 380. Each of the four NITS Agreement also cover energy imbalance ancillary services from the Utility. Finally, each of the NITS Agreement describes the ESS’s obligations to minimize imbalances:

Transmission Customer shall use its best efforts to minimize energy imbalance through scheduling a sufficient amount of energy to be delivered each hour to Transmission Provider’s transmission system to cover the sum of its Retail End User forecasted loads....

## Assessment of Compliance Program

The Utility's OATT addresses energy imbalance obligations, including the pricing of imbalances and penalties for imbalances. As described in Schedule 4 of the Utility's OATT, energy imbalance occurs during any hour that the amount of energy received by the Utility from the ESS is different from the amount of energy delivered to the ESS by the Utility. There are three types of energy imbalances: load energy imbalance service, generation energy imbalance service, and transmission energy imbalance service.

The Utility is required to maintain records of the amounts of energy imbalance provided on an hourly basis and to produce a monthly report showing the amounts. We observed that the Utility maintains four pricing schedules related to EIM on its OASIS website: EIM PACW LAP Pricing, EIM Schedule 10 Average Pricing, Hourly Pricing Proxy and EIM PACE LAP Pricing. The Hourly Pricing Proxy schedule indicates that it was updated May 21, 2020, and included hourly pricing through May 1, 2020.

## Compliance Transactions Testing Results

We read the Utility's FERC approved OATT and note that it addresses energy imbalance obligations in Schedule 4. The service is required to encourage transmission consumers to minimize the occurrences of energy imbalances within any given hour. Schedule 4 details the financial obligations of energy imbalance settlements. We note that the obligation to settle for energy imbalances on a financial basis acts as a deterrent to the ESS from burdening electric system operation or gaining economic advantage by under-scheduling, over-scheduling, under-generating or over-generating.

We are unaware of complaints with regards to the way the Utility provides the energy imbalance ancillary service. We requested from the Utility any direct access-related complaints against the Utility filed with the Commission and FERC. As of the date of this report, we have not received direct access-related complaints against the Utility filed with the Commission or FERC. As ancillary services fall under the jurisdiction of FERC, we performed no further testing.

### 3.5.7 OAR 860-038-0590(3)(d) – Local Generation

Based upon representation from the Utility, we understand that the two conditions considered under this paragraph do not exist within the Utility's service territory in Oregon during the Audit Period. Local generation is not required to operate for electric system security, and there is sufficient transmission import capability to serve retail loads without the use of local generation. As a result, we did not perform any testing with regard to the Utility's compliance with this paragraph for the Audit Period.

### 3.5.8 OAR 860-038-0590(3)(e) – Scheduling, Billing and Settlement

## Summary

This paragraph requires the Utility's tariffs to specify prices, terms, and conditions for scheduling, billing, and settlement. We observed that the prices, terms, and conditions for scheduling, billing, and settlement are maintained in the Utility's FERC approved OATT, Commission approved Oregon Rule and Tariff (Oregon Rule 21 and Schedule 600), and the Utility's standard ESS Service Agreement.

## Compliance Program Design

### Utility's Open Access Transmission Tariff (OATT)

Schedule 1 of the Utility's OATT provides the guidelines for Scheduling, System Control, and Dispatch Service. An ESS must purchase this service from the Utility. We observed that the OATT specifies the charges related to this service in Schedule 1.

Billing and payment for transmission services is outlined in Section 7 of the Utility's OATT. The outlined procedure states that within a reasonable time after the first day of each month, the Utility shall submit an invoice to the transmission customer for the charges corresponding to all services furnished under the OATT during the preceding month. The OATT also states that invoices are to be paid by the transmission customer within 20 days of receipt. All payments are to be made in immediately available funds payable to the Utility, or by wire transfer to a bank named by the Utility. Section 7 also includes procedures for interest on unpaid balances and customer default.

### Oregon Rule 21 and Schedule 600

Section XII of Oregon Rule 21 discusses scheduling procedures. Under direct access, only a certified Scheduling ESS can schedule resources, transmission usage, and distribution usage with the Utility. The rule also notes that each Scheduling ESS must provide schedules to the Utility pursuant to the terms of the Utility's applicable FERC approved tariff (i.e., OATT). Lastly, all scheduling must be performed in accordance with the Scheduling ESS Service Operating Agreement and the Utility's scheduling protocols.

Schedule 600 lists the services provided to ESSs as well as the associated charges. Specific charges outlined in the schedule include late payment charges and billing charges.

### ESS Service Agreement

Section 6 of the Utility's ESS Service Agreement describes procedures related to billing and payment. Specifically, the section states that the Utility will bill the ESS for all the services and products provided to it by the Utility in accordance with the terms and conditions set forth in the Utility's Commission approved tariffs and OATT. Services provided by the ESS to the Utility are not covered by the ESS Service Agreement and will be governed by a separate agreement between the parties.

The ESS must pay bills from the Utility within 15 days of presentation; overdue bills are subject to a late payment charge as set forth in the Schedule 600. If the ESS disputes any portion of the charges assessed by the Utility, the ESS shall provide written explanation of the dispute to the Utility within five business days after receipt of the invoice; however, the ESS is still required to pay disputed charges within 15 days of presentation. Dispute resolution is governed by Section 18 of the ESS Service Agreement. Additionally, bills for FERC jurisdictional charges are subject to the relevant provisions of the Utility's OATT.

Section 8 of the Utility's ESS Service Agreement allows the parties to net mutual debts that accrue during the billing period. In general, the amounts netted should not take into account any collateral deposits which may be in effect to secure a party's performance under the ESS Service Agreement or the Oregon tariff.

## **Assessment of Compliance Program**

As outlined above, we observed the prices, terms, and conditions for scheduling, billing, and settlement maintained in the Utility's FERC approved OATT, Commission approved Oregon Rule and Tariff (Oregon Rule 21 and Schedule 600), and the Utility's standard ESS Service Agreement.

## **Compliance Transactions Testing Results**

As the requirements of this rule are limited to the content of the Utility's tariff filings, we did not perform any further testing.

### **3.5.9 OAR 860-038-0590(3)(f) – Dispute Resolution Process**

#### **Summary**

This paragraph of the Code of Conduct requires the Utility to include a dispute resolution process in its tariffs to resolve issues in a timely manner between itself and the ESSs, and that unresolved disputes may be appealed to the Commission. We observed that the Utility's FERC approved OATT and the Commission approved Oregon Rule 21 both include provisions for dispute resolution between the Utility and ESS. Additionally, the documents provide that unresolved disputes concerning retail access matters may be appealed to FERC or the Commission.

#### **Compliance Program Design**

##### Utility's Open Access Transmission Tariff (OATT)

The Utility's OATT, Section 12 outlines the dispute resolution process between the Utility (as transmission provider) and any transmission customer, including ESSs. Any disputes between the Utility and an ESS involving transmission service under the OATT shall be referred to a designated representative from each party for resolution on an informal basis as promptly as practicable. If the representatives are unable to reach a resolution within 30 days (or other period as mutually agreed upon by the parties), the dispute may be submitted to a mutually agreed upon arbitration process conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any applicable FERC regulations or Regional Transmission Group rules. Unless otherwise agreed, the arbitrator shall render a decision in 90 days. The arbitrator's decision may be appealed based on violations of the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator must be filed with the FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

The OATT states that the above described process does not restrict the rights of any party to file a complaint with FERC under the relevant provisions of the Federal Power Act.

##### Oregon Rule 21

The Utility's Oregon Rule 21 Section XIV.b. addresses the dispute resolution process between the Utility and ESSs concerning charges or services provided in conjunction with the ESS Service Agreement. The rule indicates that the Utility will attempt to informally resolve the dispute. However, either the Utility or the ESS may also initiate the dispute resolution process described below in the ESS Service Agreement.

## ESS Service Agreement

The Utility's standard ESS Service Agreement, Section 18 addresses four types of disputes between the Utility and an ESS: 1) disputes under informal resolution; 2) disputes under FERC jurisdiction; 3) disputes under Commission jurisdiction with no monetary damages; and 4) disputes under Commission jurisdiction with monetary damages.

With respect to informal resolution of disputes, the ESS Service Agreement states:

“Except as provided below, any dispute arising between the Parties relating to interpretation of the Agreement or to the performance of the Parties' obligations hereunder, shall be reduced to writing and referring to the Parties' representatives as identified on Attachment A for resolution. Utility and ESS shall meet and confer in an effort to resolve their dispute and will use good faith and commercially reasonable efforts to informally resolve all disputes so referred. ESSs point of contact for all information, operations, questions, and problems regarding the Tariff and this Agreement shall be the Company's ESS Office. Pending resolution, the Parties shall proceed diligently with the performance of their respective obligations under this Agreement, except if this Agreement has been terminated under Section 5.”

With respect to FERC related disputes, the ESS Service Agreement states:

“Notwithstanding Sections 18.2, 18.4 and 18.5, all disputes related to FERC-jurisdictional services as defined by the Federal Power Act, and all relevant FERC orders, rules, directives and decisions, shall be resolved pursuant to the dispute resolution procedures of the applicable OATT.”

With respect to disputes under Commission jurisdiction with no monetary damages, the ESS Service Agreement states:

“If the Parties fail to resolve a dispute over which the Commission has primary jurisdiction and in which a party is not seeking monetary damages, except for disputes under Sections 18.2 and 18.3, within thirty (30) Calendar Days (or such other period as the parties may agree upon) after written notice of the dispute is referred to the Parties' representatives, the matter shall, upon demand of either Party, be submitted to resolution before the Commission, in accordance with applicable Oregon statutes, the Utility Tariff and the Commission's applicable rules, regulations and procedures for resolving complaints. The Parties agree to be bound by the final resolution of the dispute by the Commission. Except as provided in Section 18.5, each Party expressly waives any right to file an action in any court relating to any dispute subject to the provisions of this Section 18.4.”

With respect to disputes under Commission jurisdiction with monetary damages, the ESS Service Agreement states:

“If the parties fail to resolve a dispute in which a party is seeking monetary damages, including but not limited to billing disputes, within thirty (30) Calendar Days (or such other period as the parties may agree upon) after written notice of the dispute is referred to the Parties' representatives, or in the event the Commission declines to assert or accept jurisdiction over any dispute submitted to it pursuant to Sections 18.4 or 18.6, or for all other disputes not subject to Sections 18.2, 18.3, or 18.4, the dispute shall be submitted to binding arbitration in the City of Portland, Oregon under the Commercial Arbitration Rules of the American Arbitration Association.”

Unresolved disputes under Commission jurisdiction with no monetary damages can be appealed to the Commission. Additionally, during the Cure Period resulting from a default in payment, an ESS may appeal directly to the Commission if it believes that special circumstances exist that would require more expeditious resolution of a dispute involving wrongful termination of service.

### **Assessment of Compliance Program**

As discussed above, we observed dispute resolution processes described in the OATT filed with FERC and the Utility's Oregon Rule 21 filed with the Commission. We observed in the ESS Service Agreement that under certain circumstances unresolved disputes may be elevated to FERC or the Commission.

### **Compliance Transactions Testing Results**

We requested and reviewed the ESS Service Agreements for the five ESSs. We observed that dispute resolution procedures were outlined in each agreement. Based on discussions with the Utility's legal team as well as a review of FERC and Commission online filings, we are unaware of any use of the dispute resolution process under either the FERC approved or Commission approved tariffs during the Audit Period.

#### **3.5.10 OAR 860-038-0590(4) – Timely FERC Approval**

This paragraph of the Code of Conduct requires the Utility to timely petition FERC for approval of tariff or contracts provisions required to adhere to OAR 860-038-0590. We understand that during the Audit Period the Utility made various updates to its OATT which were approved by FERC. We have seen no evidence to indicate that the filings were untimely.

#### **3.6 OAR 860-038-0600 – Joint Marketing and Referral Arrangements**

This section of the Code of Conduct regulates joint marketing, advertising and promotional activities between the Utility and its Oregon affiliates. The Utility represents that it did not have any Oregon affiliates during the Audit Period; thus, we were unable to perform any transaction testing for this section. Nevertheless, we inquired and the Utility also confirmed that it does not participate in joint marketing activities. In addition, we requested and received a copy of the Utility's direct access brochure sent to customers during the last quarter of 2019. We observed that the brochure did not include any reference to the Utility's affiliates.

#### **3.7 OAR 860-038-0620 - Access to Books and Records**

##### **Summary**

This section of the Code of Conduct requires the Utility and its affiliates to maintain separate books and records and (whenever possible) prepare unconsolidated financial statements. The section also requires the Utility to provide the Commission with full access to its and its affiliates' books and records. Finally, this section requires the Utility and its competitive operations to maintain sufficient records to allow for an audit and preserves the right of the Commission to initiate an audit at its discretion.

We observed that the Utility keeps separate books and records for itself and its affiliates. We also observed policies supporting this process. However, we did not note any internal policy in place that would require the Utility to maintain separate books and records for competitive operations. As the Utility represented that it did not have any Oregon affiliates or competitive operations during the Audit Period, we did not perform transaction testing for this section.

## Compliance Program Design

The Utility's policies and procedures for compliance with this rule are addressed within its intercompany accounting policies which incorporated requirements for separate books and records. We understand that these policies were developed in response to multiple regulatory requirements from various state and federal regulatory agencies, including the Code of Conduct. Additionally, the Utility's *Standards of Conduct Compliance Procedures* requires the Utility to maintain its books of account and records separately from those of its affiliates.

Presented below is a list of intercompany accounting policies that indicate separate books and records for the Utility and its affiliates:

- Cost Allocation Manual
- Intercompany Administrative Services Agreement ("IASA")
- Affiliate Transaction Policy

Additionally, the Utility is generally required under OAR 860-027-0120 to preserve records in a manner consistent with requirements of the Code of Federal Regulations, Title 18, Chapter 1, Part 125 on the Preservation of Records of Public Utilities and Licensees. The regulation requires the keeping of accounting records such as general and subsidiary ledgers, journals, journal entries and supporting detail, cash books, voucher registers, and vouchers for various lengths of time varying from 5 to 25 years. The Utility is subject to other regulatory requirements from state and federal regulatory agencies which require it to make its books and records available to its various regulators.

## Assessment of Compliance Program

We reviewed the Utility's current intercompany accounting policies and its Affiliated Interest Report ("AIR") which were filed with multiple state regulatory agencies, as well as financial filings with the U.S. Securities and Exchange Commission ("SEC"). Through these procedures, we observed evidence of separate books and records maintained by the Utility and its affiliates. We did note that the Utility's affiliates do not prepare separate financial statements for public reporting purposes; rather their financial reports were reported to BHE during the Audit Period.

We obtained and reviewed the Utility's Affiliate Transaction Policy and observed it outlines policies surrounding the accounting for shared corporate services among affiliated interests to "ensure customers of a regulated public utility do not bear the cost of non-regulated or affiliate companies...." Similarly, we also obtained and reviewed the Utility's Cost Allocation Manual and observed that costs were allocated amongst the Utility and its affiliates using different allocation percentages.

## Compliance Transactions Testing Results

We obtained and reviewed a list of general ledger accounts and cost center codes for the Utility's accounting system and observed the presence of intercompany accounts and cost centers. We confirmed their purpose and use through inquiry to the Utility's accounting department. We did not perform completeness testing on the general ledger accounts and cost center codes.

We reviewed the Utility's 2018 AIR and its draft 2019 AIR and observed that the reports summarize, on an annual basis, transactions the Utility has with its affiliates. The annual AIRs are filed with various regulatory agencies, including the Commission. We also reviewed copies of Berkshire Hathaway Inc.'s



2019 annual financial statement filed with the SEC and observed that the Utility prepared financial statements that were unconsolidated from MidAmerican Energy Holdings Company.

Lastly, we received a representation from the Utility that it did not receive any complaints or comments from its state or federal regulatory bodies that it did not maintain separate books and records with respect to its affiliates. The Utility also confirmed that FERC did not make a request to access the Utility's books and records during the Audit Period. The Commission did conducted an operational review in 2019. We requested and reviewed a draft copy of the report and did not note any findings specific to the Code of Conduct.

Given that the Utility did not recognize any competitive operations during the Audit Period, as contemplated by this rule, we did not report any results of detailed transaction testing with respect to the sufficiency of recordkeeping for transactions between the Utility and its competitive operations.

#### **4.0 Summary of Observations**

While the Utility does not believe that it has any Oregon affiliates or competitive operations, we still observed a number of policies, procedures, and actions that support compliance with the Code of Conduct. At the most basic level, we observed standards of conduct that are shared and reinforced through annual training and are readily available to employees. Interviews of employees who received additional direct access training demonstrated their sensitivity and commitment to offering objective answers to customer questions.

We also observed awareness of and sensitivity to the importance of separation, such as the need for separation between the Utility's transmission function and merchant function. The commitment to this principle was demonstrated when (during the Audit Period) the Utility self-reported an apparent violation to FERC that the Utility identified through its detective controls. We also observed continuous improvement within the compliance function as it self-evaluated the effectiveness of a control, resulting in an improved process for addressing affiliate transaction requests.

In addition to attributes that demonstrate and support compliance, we identified several potential opportunities for improvement. For example, while the Utility has a variety of long-established compliance program components, it does not have a compliance program specifically addressing the Code of Conduct, thereby creating risk that compliance requirements may be missed if the Utility were to have Oregon affiliates or competitive operations. In addition, the Utility's approach for identifying Oregon affiliates and competitive operations may create risk, with the former focused solely on registered ESSs and the latter lacking a clear framework for identification. We also observed that one ESS does not have a transmission service agreement with the Utility; instead, the transmission agreement is held by an entity related to the ESS. With respect to distribution services, we were unable to perform testing procedures, as the Utility lacked readily available metrics specific to direct access in this regard.

## Appendix A: Oregon Code of Conduct

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

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.

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

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. 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.

(1) 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}.

(2) 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}.

### 860-038-0560 - Treatment of Competitors

(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.

## **Appendix A: Oregon Code of Conduct (continued)**

### **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 860-086-0020, 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.

### **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;

## Appendix A: Oregon Code of Conduct (continued)

### 860-038-0590 - Transmission and Distribution Access (continued)

(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.

## Appendix A: Oregon Code of Conduct (continued)

### 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;
  - (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 affiliates 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 affiliates. 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.

## **Appendix A: Oregon Code of Conduct (continued)**

### **860-038-0620 - Access to Books and Records**

- (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.

### **860-038-0640 - Compliance Filings**

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.