**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1460**

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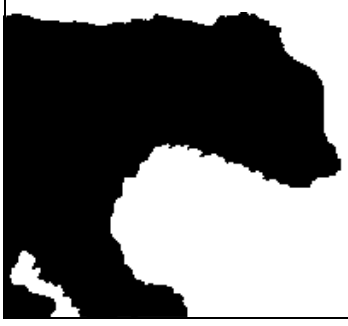
|---|---|
| In the Matter of | ) |
| PUBLIC UTILITY COMMISSION OF | ) |
| OREGON Staff recommendation to open a | ) |
| docket and use Oregon Electricity | ) |
| Regulators Assistance Project funds from | ) |
| the American Recovery and Reinvestment | ) |
| Act of 2009 to develop Commission smart | ) |
| grid objectives and action items for the | ) |
| 2010-2014 time period. | ) |
| | ) |

OPENING COMMENTS

OF THE

CITIZENS' UTILITY BOARD OF OREGON



November 16, 2010

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

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| In the Matter of<br>PUBLIC UTILITY COMMISSION OF OREGON Staff recommendation to open a docket and use Oregon Electricity Regulators Assistance Project funds from the American Recovery and Reinvestment Act of 2009 to develop Commission smart grid objectives and action items for the 2010-2014 time period. | ) | OPENING COMMENTS OF THE CITIZENS' UTILITY BOARD OF OREGON |

## I. Introduction.

CUB is very supportive of requiring utilities to conduct smart grid planning in a transparent manner that involves stakeholders. CUB has argued in the past that investing in smart grid technology before first deciding how it will be utilized increases the risk of obsolescence and stranded costs. A Smart Grid Planning Requirement is a good solution to this problem.

That said, CUB is extremely concerned about Staff's Straw Proposal for Utility Smart Grid Planning. The Staff Proposal goes well beyond proposing guidelines for Smart Grid planning, and has embedded within it a series of premature policy decisions. Regardless of their merits, such policy decisions should not be made without careful consideration of their impacts. In this case careful consideration has yet to happen.

In these comments, CUB will first discuss the policy decisions embedded in the Straw Proposal that CUB believes should be removed. CUB will then discuss the planning process upon which CUB believes the Straw Proposal should focus.

## II. Policy Decisions.

CUB has identified the following policy decisions as potentially disruptive to the development of demand response programs:

1. Disallowance of recovery of demand response costs from customers if the utility participates in demand response programs.[1]

2. Application of the Direct Access rules to demand response programs.[2]

3. The requirement for assurance that "any devices or software" allow for interoperability with third-party software.

4. Prohibition of customer-associated information being released.[3]

5. Equity concerns will not affect the acknowledgment of a specific program by the Commission.[4]

Three of these policy decisions grow out of a desire to protect the competitive market from the utility; one stems from protecting customers privacy; and we do not understand the basis of the final one. The combined effect of these policies will create a circumstance where the utility can make Smart Grid investments from the source of generation to the meter, but will be prohibited from activities on the customer side of the meter. All innovation and interaction on the customer side of the meter is left to the competitive market. Of course to make this approach work will require an incentive for customers to purchase demand response hardware and software from the competitive market, so it will be necessary to combine it with mandatory dynamic pricing. There is no doubt that some people believe that this competitive market model should be used to achieve demand response objectives. In the 1990s, CUB knew people who strongly believed that a competitive retail electric market was the best approach to renewable development. Oregon, however, made the wise decision to avoid putting all its eggs in the competitive model basket, and CUB recommends the same cautious approach here.

Prohibiting demand response programs that are not consistent with the competitive market model could limit Oregon's ability to implement some programs. Attachment A is a description of a demand response pilot program being offered by Emerald PUD. In this program the utility installs a programmable thermostat and/or water heater control in homes and adjusts the temperature by a "couple of degrees for a few hours" during critical peak periods. This is an interesting pilot and could offer an alternative to critical peak pricing programs –one that does not have the equity concerns over how it impacts low income customers. CUB does not know if this program will prove to be cost effective, but this is the sort of experiment and pilot that the PUC should encourage. CUB reads the Staff Draft Straw Proposal as prohibiting such a program.

[1] UM 1460, Staff Straw Proposal, page 3
[2] *Ibid*
[3] *Ibid*, page 2.
[4] *Ibid*, page 9.

**A. Disallowance of recovery of demand response costs from customers if the utility participates in demand response programs.**

In a Subsection titled Utility Energy Management in Customer's Home or Business, the Staff proposes the following:

> If the utility proposes to participate in the market for customer energy use management hardware or software, Staff recommends that the Commission not allow any of the costs to be recovered from ratepayers.[5]

At first, CUB believed we must be misreading this, as it would seem to say that if a utility is participating in a program aimed at energy management in a customer's home that involves hardware or software, the utility could not recover the cost of that program from ratepayers. If a utility wanted to run a water heater program to firm its variable wind resources, such a program would require hardware and software aimed at energy management in a customer's home, and under this policy the utility could not recover costs from ratepayers. Even if this was the least cost approach to firming wind resources, the utility would not be able to include it in rates. Thus, Staff's Proposal can be read to prohibit recovery of nearly all the cost of demand response programs from customers with the exception of pricing programs.

After the November 3rd workshop, CUB understands that the Staff did not intend for this policy to be so broad. Instead, Staff was trying to advance a policy whereby the utility would generally be prohibited from participating in the market for home and business energy management. What Staff apparently intended to propose was that those services would be provided by third-party "aggregators." For example, under the Staff's Proposal, the utility could contract with an aggregator for a water heater program and then recover the cost of the program from ratepayers. CUB is not reassured by this "more narrow" application of Staff's proposed policy. Nor does CUB think the language, which is a prohibition on cost recovery, is consistent with the narrower reading.

CUB recognizes that there is a hope that Smart Grid infrastructure will work like Apple's iPhone and will spur an industry of innovative demand response "apps." At the same time, CUB believes that if it can be demonstrated that there are benefits from a particular Smart Grid enabled program, these benefits should not be forsaken out of hand simply because the utility participates in the program.

In the 1990s there was much talk about aggregators during the push to deregulate the retail electric industry. Aggregators would "aggregate" retail customer loads, allowing customers to purchase power in the competitive market, thereby reliving utilities from the need to invest in generation. If only, the power of the competitive market were unleashed, power supply would become a cheap and innovative service.

There are several problems with this notion. First, customers are already aggregated though their utility. There is also a cost of aggregation. For example, if the goal was to run a program designed to put demand response controls on 100,000 water heaters, the utility – which already

[5] *Ibid*., page 3

has usage information – can identify the customers who likely have electric water heaters. The utility already knows the names and addresses of all customers, has a communication system in place to communicate with customers (monthly bills and a call center), and a relationship with customers. For a third party that does not have customer usage information, customer names and addresses, a communication system, or a relationship with customers, it costs money to aggregate customers. This cost could make demand response programs more expensive. Second, aggregators may not target all groups of customers. An aggregator may decide that low income customers are too risky or difficult to work with. An aggregator may concentrate on the large urban areas and ignore customers in small towns and rural communities, or focus on larger commercial customers and ignore residential customers. Prohibiting demand response programs from being offered by the utility assumes that a competitive market will serve all the subgroups within the utility's service territory. Third, this policy assumes that that Oregon is moving towards demand response as a competitive marketplace rather than demand response as a responsibility of a monopoly utility. CUB is not willing to make this assumption, nor alleviate the utilities' responsibility for the development of demand response programs.

**B. Application of the Direct Access rules to demand response programs.**

Staff's goal for this policy is similar to the one above about cost recovery. Staff wants to ensure that a competitive market for demand response programs develops, so Staff is proposing that the Direct Access Code of Conduct rules (OAR 860-038-0500 through 860-038-0640) apply to Smart Grid. CUB again feels that this is overreaching. The Code of Conduct rules (which CUB has attached to these comments as Attachment B) apply to competitive activities, such as prohibiting cross-subsidy of competitive services. If a utility was conducting a Critical Peak Pricing Pilot and including enabling devices such as communicating thermostats[6], this could arguably be seen as a utility service that is competing with the competitive market (as thermostats are not typically provided by the utility). But since few consumers know enough about the utility's smart meter communication system to feel confident purchasing a thermostat that can communicate with the meter, and cost would be a barrier to many customers, such thermostats would not be installed without the utility's involvement. If such a program were cost effective as a utility program, but unlikely to be successful and provide any benefits as a competitive program, then, under the Straw Proposal, Oregon would not be able to see those benefits.

Oregon took a hard look at the benefits of Direct Access and decided a decade ago that Direct Access only makes sense for large customers. The Direct Access Code of Conduct was written for the specific purpose of governing the utility's role in the world of competitive generation services for large industrial customers. The Code of Conduct was not written to govern the utility's role in providing Demand Response programs to residential customers. It is unclear today, which (if any) Demand Response programs for residential customers will be competitively offered by non-utilities. Until we know more about the role of the competitive market, it is premature to apply the Direct Access Code of Conduct to Smart Grid activities.

[6] In UE 189, Staff Witness Lisa Schwartz was supportive of such a program.

## C. Assurance that devices or software allow for interoperability with third-party software

The Straw Proposal requires:

> the utility should work to assure that any devices of software it is involved in installing allow for interoperability with third-party hardware and software. [7]

CUB is sympathetic to Staff's concern here but thinks the Staff overstates the policy by saying "assure" and "any devices or software." Generally, parts of the Smart Grid such as its communication protocol should allow for interoperability. The Smart Grid should be able to communicate not just with meters, but with air conditioners, hot water heaters, thermostats and electric vehicles. To say that the utility should work to ***assure*** this ***for any device or software*** goes too far as a policy. We have no doubt that there may be some devices and software where interoperability is not required and that there are some devices and software where interoperability may be preferred but cannot be assured. CUB would be comfortable with this provision, if it simply had some qualifying language such as "when appropriate" to recognize that this may not be appropriate for every device and every bit of software related to Smart Grid.

## D. Prohibition on customer-associated information being released.

In a footnote to the Subsection on Access, Control and Use of Customer Information, Staff proposes the following policy for meter data, usage data, billing data and customer data:

> Data may be aggregated and released without customer prior approval, only if there is no way to associate Data to a particular customer.[8]

While CUB is highly supportive of protecting customer privacy, this policy seems to go beyond Oregon's current policies. This policy would seem to prohibit some of what is currently done through the Energy Trust, where data associated with particular customers can be shared (in some cases an opt out is required to protect data, but an opt out is not the same as prior approval). The OPower program that the Energy Trust is developing would seem to be prohibited under this policy.

As Oregon moves forward with Smart Grid and demand response programs, protecting customer privacy is an important element. However, it is one that should be considered thoughtfully and carefully and include input from the Energy Trust which has experience dealing with customer information privacy issues. CUB believes there will likely be regular conversations in the future about various programs and their implications for privacy. In the meantime, the Commission should avoid creating barriers to demand response and avoid upsetting the relationship between the Energy Trust and the utility.

[7] UM 1460, Staff Straw Proposal page 3.
[8] *Ibid*, page 2.

### E. Equity concerns will not affect the acknowledgment of the program by the PUC.

The draft Straw Proposal seems to say that concerns about the impacts on vulnerable populations are worth discussing but that no program will be denied because it harms vulnerable Oregonians:

> The SGP should address the possible (estimated) distribution of benefits and costs to customer groups from actions proposed in the SGP. Part of this discussion should identify potential impacts on vulnerable populations…The Commission's acknowledgment of an SGP will not be dependent on the content of this section.[9]

CUB reads this passage to say that utilities should discuss whether a program harms poor and struggling families, but that such discussion will not affect the Commission's decisions on Smart Grid implementation. As a party that has raised such concerns, CUB views this passage as saying that, while our concerns are legitimate, they should not be allowed to influence the actions that Oregon takes. CUB strongly disagrees with this notion.

Consider peak period demand response as an example of a demand response program that might be considered in a SGP. The SGP might discuss a pilot consisting entirely of load control like EPUD's pilot[10], a critical peak pricing program with no load control technology, or a critical peak pricing program with load control enabling technology. The two pricing options could be mandatory or voluntary. CUB believes that the evaluation of these programs requires consideration of how each one affects low income households and therefore the Commission acknowledgement may be dependent on this evaluation.

In addition, CUB notes that telling a utility that the Commission's acknowledgement will not be dependent on a particular section of the Plan is like telling the utility that it does not have to make any real effort in that section.

## III. Smart Grid Planning.

If the above policy decisions that are embedded in the Straw Proposal are removed, the remaining proposal is limited to Smart Grid Planning. CUB is very supportive of requiring utilities to file Smart Grid plans. CUB believes that good planning involving the utility and its stakeholders can improve our decision making and allow us to avoid mistakes. In a nutshell CUB's view is:

> *If we know what we plan to use the investment for, we are more likely to make the optimal investment.*

This is particularly true when it comes to the expensive backbone of the Smart Grid, the meters and the communication system. Many of the Smart Grid expectations are built on these investments. Knowing how utilities are expected to build on this backbone is helpful while it is being built and it should be helpful in avoiding obsolescence and stranded costs. Oregon has

[9] *Ibid*, page 9.
[10] Attachment A

already made this mistake once, investing in "sub-optimal" meters in 2001 and 2002, only to rip those out with customers left holding the bag for the stranded costs.[11]

While CUB is strongly supportive of the Planning Process, CUB recommends that the Commission make two changes in the Straw Proposal as it relates to the timing of the process.

**A. Staggering the schedule.**

Staff suggests that all utilities operate on the exact same schedule: File in 6 months with a 180 day process. A second filing should occur on June 30, 2014. Staff allows for the parties to "agree to a staggered schedule" instead of simultaneous filings. But simultaneous plans will be the rule unless "utilities, Staff and other stakeholders reach agreement on a staggered schedule."

CUB supports a staggered schedule. CUB has seen in the SB 408 tax dockets, the Purchased Gas Adjustments, and the Power Cost Updates, the effect of having all Oregon utilities do things on the same schedule. It places a significant burden on customer groups and Staff. CUB believes that the Smart Grid Plans should be taken seriously and that as pilot programs are designed and significant money is invested in Smart Grid, full participation should be ensured in the development of each plan. This requires a staggered schedule.

Rather than allowing a staggered schedule if CUB can convince each utility and stakeholder to go along with a staggered schedule as the Staff proposes, which in turn requires agreement on which utility goes first and which goes last, CUB recommends that the Commission require and set a staggered schedule. CUB recommends that the Commission pick a utility to file in 3 months, one to file in 9 months and one to file in 15 months.

**B. Length of Proceeding.**

Staff suggests that: "Upon receipt of the SGP, a schedule should be established to enable the Commission to issue a final decision in no more than 180 days."[12]

CUB believes that this is too short a time period. Allowing one to three weeks for a prehearing conference to be scheduled (or three of them to be scheduled) and four to six weeks after final comments for the Commission's order (or three of them), leaves a period that is significantly shorter than 180 days for stakeholders to review the plan, conduct discovery, hold workshops and submit comments to the Commission on the plan (or the three plans). If any of these plans include significant investments, this may not allow enough time for a good process.

A more realistic timeline would be to retain the 180 day period, but remove the Commission final decision from that 180 days. Under such a schedule, the utility, Staff and stakeholders would have 180 days to review the plan and get recommendations to the Commission, but the Commission's decision-making could happen after the 180 days had elapsed.

[11] UE 189/CUB/100/Jenks/2-3.
[12] UM 1460 Staff Straw Proposal, page 11.

## IV. Conclusion

Having Oregon utilities issue regular Smart Grid planning reports is a good idea. Smart Grid investments have the potential to reduce costs and provide significant benefits to customers. Smart Grid investments also have the potential to be expensive and risky. A transparent planning process which involves customers and other stakeholders is a necessary step towards getting these investments done correctly.

CUB opposes parts of Staff's Straw Proposal that make policy decisions around issues such as cost recovery, competitive markets, privacy protections, and protections for vulnerable populations. As proposed, these policies would disallow many of the demand response programs that are currently proposed. Until the demand response market is more mature, these policy decisions are premature. CUB recommends that the Commission eliminate these policy decisions and limit this docket to establishing a planning process.

With regard to Staff's recommendations for a planning process, CUB is supportive of Staff's proposed process, with two exceptions. First, CUB recommends that the Commission require a staggered schedule rather than having all utilities file on the same date. Second, the Commission should expand the schedule for consideration of the plan, by allowing for a 180 day process, but removing the Commission decision-making from the 180 days.

With these changes, CUB is very supportive of Staff's Smart Grid Plans and looks forward to these plans being filed.

Respectfully Submitted,
November 16, 2010

Bob Jenks
Executive Director
Citizens' Utility Board of Oregon

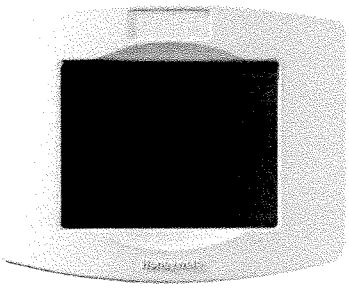
The People's Power

PowerSync

# Join your neighbors in working together to keep EPUD electricity low-priced and dependable!

Local water heaters and thermostats are getting smarter. Thanks to a BPA grant, EPUD is looking for more than 200 Customer-Owners to participate in a pilot program to test a part of the smart grid in their homes.

The two-year pilot program, titled EPUD **PowerSync**, will measure how utility/consumer cooperation can reduce strain on electric systems and control electric costs.



### *Here's how it works:*

1. We'll install a programmable thermostat and/or water heater control in qualifying homes. These are yours to keep!
2. A few times a year, during times of high electric demand, we'll turn down your water heater and adjust your thermostat by a couple of degrees for just a few hours. Studies show you won't even notice and you can override changes if needed.
3. We'll measure how these small changes, spread through many homes, affect overall power demand.

### *Benefits of the PowerSync Pilot Program:*

- All devices installed in your home are yours to keep (up to $2,000 value)
- Receive a $10 sign-up bonus per participant
- Receive a welcome kit with gifts, information, and in-depth details on the program
- Help keep EPUD rates low, use energy more efficiently, and experience new technology first hand

### *Interested in participating?*

There is no cost to be involved in the pilot program and many benefits to participants. Preference is given to homes that are close to the EPUD office and meet both of the below requirements:

- Programmable thermostats: Require an electric heat pump in good condition.
- Water heater controllers: Require electric water heater of any size in good condition.

Sign up by November 5 and receive a FREE gift!

***To learn more, call us at 541-746-1583, or visit*** *www.epud.org/conservation/powersync.aspx.*

**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.

Stat. Auth.: ORS 183, 756 & 757
Stat. Implemented: ORS 756.040 & 757.600 - 757.667
Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

**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}.'

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040 & 757.600 - 757.667
Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

**860-038-0540**

**Consumer Information**

(1) Subject to Commission approval, an electric company shall determine the proprietary consumer information that will be made available to its competitive operations, ESSs, affiliates and aggregators. An electric company shall file and maintain a tariff with the Commission that specifies the types of information, along with the prices, terms, conditions, and consent

procedures associated with the transfer of such information to the entities described in this section. The provisions of section (1) do not apply to information transferred pursuant to section (2) of this rule.

(2) An electric company shall transfer to the entity that administers the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B), hereinafter known as the Administrator, proprietary consumer information for a consumer whose demand is less than one megawatt (1MW) unless the consumer has opted-out of the information transfer pursuant to section (4) of this rule. A consumer shall be considered a less than 1MW consumer pursuant to criteria established by an electric company through its billing process. The transfer of such information shall be made pursuant to an Information Transfer Agreement, which is executed and maintained by an electric company and the Administrator. An Information Transfer Agreement shall specify:

(a) The necessary database format and information that will be transferred;

(b) The billing period, payment arrangements, and estimations of incremental costs incurred by an electric company for the transfer of the information;

(c) Timelines for an electric company to notify consumers and transfer information to the Administrator;

(d) Timelines for an electric company to provide updates to the Administrator for all of the usage data and revisions to the underlying database information;

(e) A general non-disclosure statement as well as a specific non-disclosure agreement that each Administrator employee and contractor employee shall sign prior to having access to consumer information, including proprietary consumer information;

(f) That the proprietary consumer information will be used by the Administrator to implement, administer, and evaluate energy efficiency and renewable energy programs and will not be used for telemarketing or direct mailings to consumers;

(g) That the release of proprietary consumer information by the Administrator for any other purpose or to any other party shall not be made without consent of the consumer; and

(h) Provisions for modification of the Information Transfer Agreement. If the Administrator and an electric company cannot agree on the terms and conditions of an Information Transfer Agreement, the Commission shall set the terms and conditions based upon input from the Administrator and electric company.

(3) If the Administrator notifies an electric company that the proprietary information supplied by an electric company is insufficient, incomplete, or not usable, the Administrator and electric company will attempt to resolve the issue and if necessary, modify the Information Transfer Agreement. If the Administrator and electric company cannot resolve the issue, the electric company and the Administrator shall promptly seek Commission resolution of the dispute. An

electric company shall, at a minimum, transfer the following proprietary consumer information to the Administrator: consumer name, service address, 18 months of the most recent historical usage data provided on a per month basis, point of delivery identification number, and rate schedule for each consumer. An electric company shall also provide information about any energy efficiency program participation and type of space heat used by consumer to the extent that such information is available in the electric company's records. An electric company shall not provide social security numbers, billing and payment history, credit information, tax identification numbers, driver license numbers, life support information, or any medical information. An electric company shall also provide the Administrator with updates for all of the usage data and revisions to the underlying database information on a periodic basis subject to subsection (2)(d) of this rule.

(4) An electric company shall provide consumers whose demand is less than 1MW an opportunity to opt-out of the information transfer. An electric company shall notify the consumers of the opt-out option by direct mail, company newsletter, or other acceptable communication as set forth in the Information Transfer Agreement. The notification shall at a minimum:

(a) Identify and explain the role of the Administrator;

(b) Identify the type of proprietary consumer information to be transferred by an electric company; and

(c) Describe the nature and use of the proprietary consumer information by the Administrator.

(5) An electric company shall notify in writing consumers whose demand is 1MW or greater (over 1MW consumer) to provide an opportunity to opt-in to the information transfer. Consumers shall be considered an over 1 MW consumer pursuant to criteria established by an electric company through its billing process. The notice provided by an electric shall comply with the requirement of section (4) of this rule. For consumers without a usage history, demand may be estimated by an electric company for the purpose of this provision and those consumers projected to meet the 1MW or greater demand shall be included. Consumers having multiple accounts may have their accounts treated as a group for the purpose of this rule and may include or exclude all accounts through one notification process. If the over 1MW consumer does not opt-in to the information transfer, all accounts shall be excluded from the information sharing process. The transfer of proprietary consumer information shall be in accordance with section (2) of this rule and the Information Transfer Agreement. An electric company shall also provide periodic opt-in notification for the over 1MW consumers either as a part of a standard consumer contact discussion or in writing pursuant to the timelines agreed upon in the Information Transfer Agreement and set forth in subsection (2)(c) of this rule.

(6) When an electric company has provided proprietary consumer information to the Administrator in accordance with this rule, an electric company shall not be charged with at-fault complaints filed with Commission's Consumer Services Division with respect to the provision of proprietary consumer information if the Commission finds that the electric company did not violate its tariff, Oregon Administrative Rules, Oregon Revised Statutes, or a Commission Order.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040 & 757.600 - 757.667
Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 13-2003(Temp), f. & cert. ef. 7-24-03 thru 1-20-04; PUC 4-2004, f. & cert. ef. 1-15-04

**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.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040 & 757.600 - 757.667
Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

**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.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040 & 757.600 - 757.667
Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 25-2003, f. & cert. ef. 12-11-03; PUC 6-2006, f. & cert. ef. 5-11-06

**860-038-0590**

**Transmission and Distribution Access**

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

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

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

(a) Any transmission or distribution capacity to which an electric company has entitlements, by ownership or by contract, for the purpose of serving its Oregon load shall be made available to an electric company and ESSs that are serving such load on at least a pro rata basis. An electric

company shall describe in its tariff filings how it proposes to provide substantively comparable transmission and distribution service to all retail consumers at the same or similar rates if:

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

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

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

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

(B) Self-provision; or

(C) Purchases from a third party;

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 183, ORS 756 & ORS 757
Stats. Implemented: ORS 756.040 & ORS 757.600 - ORS 757.667
Hist.: PUC 7-2001, f. & cert. ef. 3-15-01

**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 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.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040 & 757.600 - 757.667
Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

**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.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040 & 757.600 - 757.667
Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

**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.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040 & 757.600 - 757.667
Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

# UM 1460 – CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of November, 2010, I served the foregoing **OPENING COMMENTS OF THE CITIZENS' UTILITY BOARD OF OREGON** in docket UM 1460 upon each party listed in the UM 1460 OPUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one copy and one original by U.S. mail, postage prepaid, to the Commission's Salem offices.

**(W denotes waiver of paper service)**

**(C denotes service of Confidential material authorized)**

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Respectfully submitted,

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