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April 12, 2006

***Via Electronic Filing and U.S. Mail***

Oregon Public Utility Commission  
Attention: Filing Center  
PO Box 2148  
Salem OR 97308-2148

Re: In the Matter of a Proposed Rulemaking to Revise Division 038 Definitions and Rules  
Regarding Code of Conduct  
OPUC Docket No. AR 475

Attention Filing Center:

Enclosed for filing in the above-captioned docket are the Final Comments of Portland General Electric, OPUC Staff, and PacifiCorp. This document is being filed by electronic mail with the Filing Center.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,

/s/ BARBARA W. HALLE

BWH:am

cc: AR 475 Service List

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

**AR 475**

In the Matter of a Proposed Rulemaking to Revise ) FINAL COMMENTS OF  
Division 038 Definitions and Rules Regarding Code of ) PORTLAND GENERAL  
Conduct ) ELECTRIC COMPANY,  
) OPUC STAFF and  
) PACIFICORP

Pursuant to the Administrative Law Judge’s Ruling dated March 29, 2006, and after reviewing her proposed final version of the rules (“Proposed Final Rules”) and the commentary contained in the draft Order, Portland General Electric Company, the OPUC Staff and PacifiCorp (collectively, the “Parties”) would like to jointly submit the following comments and suggestions for the Commission’s consideration.

The Parties have worked hard over a long period of time to reach resolution on the revisions to the Code of Conduct rules to which all three Parties could agree. This agreed-upon approach is contained in the amended revised rules (“Amended Revised Rules”) filed on March 17, 2006. We appreciate the time and effort of Administrative Law Judge Logan in reviewing the many versions of these rules that have resulted from our discussions. Overall, Judge Logan’s proposed changes are helpful and supported by the Parties, except as noted below. These comments are organized according to the rule addressed. A complete redlined version of the rules, taking into account our comments below and the portions of the Proposed Final Rules that are supported by the Parties, is attached as Attachment A to these comments.

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

### “Competitive Operations”

The first sentence of OAR 860-038-0520 in the Proposed Final Rules changes the second use of the term “competitive operations” to “competitive provider.” “Competitive operations” was used in the Amended Revised Rules because it is a defined term under OAR 860-038-0005(8). “Competitive provider” is not a defined term in the rules. We would therefore recommend that “competitive operations,” which is used throughout the Code of Conduct rules, be restored for purposes of clarity and consistency.

### “Subsection (a)”

In subsection (a) of the rule, the word “products” should be followed by the words “or services,” as agreed to by the Parties in the Amended Revised Rules, because it better tracks the language in the rest of the rules.

Additionally, subsection (a) in the Proposed Final Rules changes the phrase “safe and reliable electricity services” to “your current electricity service.” The Parties believe that the version (“safe and reliable electricity services”) agreed to in the Amended Revised Rules is better, and not just for promotional reasons. First, PGE is already using the phrase “safe and reliable electricity services” in the disclaimers required by several of its Commission-approved tariff filings. Second, the language helps reassure customers that their service will not be degraded if they do not purchase goods or services from the electric company’s Oregon affiliate or competitive operation. Third, it shows that the statutory standards for the electric company’s services will continue to apply.

The final version of this rule should restore the phrase “safe and reliable electricity services” in subsection (a).

### Subsection (b)

The Parties' comments and recommendation under subsection (a) also applies to the substitution of the phrase "your current electricity service" for "safe and reliable electricity services" in the Proposed Final Rules.

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

### Subsection (1)

The Parties appreciate Judge Logan's desire to simplify this subsection. However, the Parties believe that the version of subsection (1) in the Amended Revised Rules should be adopted because it reflects two important concepts: a) that the electric company must provide its regulated and monopoly services in a non-discriminatory manner, and b) that it must do so with regard to the competitors of its Oregon affiliates or its competitive operations. To accomplish this, the rule must be clear about (i) which services we are talking about, and (ii) to whom the obligation runs.

With regards to the "which," the Amended Revised Rules took the course of detailing the types of services that were covered, rather than using the more general term "regulated services" or "monopoly services". It was perceived by some that the more general term would make it difficult to administer because it might not be clear what was included in those terms. On the other hand, the Proposed Final Rules eliminate any mention of which information or services the rule covers, or which services are specifically excluded from the requirements of this rule.<sup>1</sup> Instead, the Proposed Final Rules make the language overly general, and potentially stray into

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<sup>1</sup> For example, the Proposed Final Rules eliminate the carefully crafted description of which information the electric company must provide in a fair manner to certain competitors. It should only be the information the electric company gathers in conjunction with providing the services over which it has a monopoly.

the territory covered by the state and federal anti-trust laws, instead of maintaining the focus on the types of services regulated by the Commission.

With regard to the “whom,” the Proposed Final Rules refer to the electric company’s competitors generally, rather than the competitors of its Oregon affiliates and its competitive operations. The electric company is a regulated monopoly, with competitors in only limited subject areas, as addressed in ORS 757.600 et seq. The Parties believe that the rule should reflect what the statute addresses. Therefore, this subsection should specifically state that the obligation of fair treatment runs to competitors of the electric company’s Oregon affiliates and its competitive operations,<sup>2</sup> as agreed to by the Parties in the Amended Revised Rules.

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

##### Explanation

The explanation in the draft Order regarding this section does not reflect the purpose of the related amendments in the Amended Revised Rules and is therefore confusing when read in the context of what follows.

The draft Order states that “[t]he proposed amendments substitute ‘Oregon affiliates’ for competitive operations.” In fact, the proposed amendments in both sets of rules (both the Amended Final Rules and the Proposed Final Rules) do not substitute “Oregon affiliates” for “competitive operations”. The new language in both versions leaves the term “affiliates” in place, adds the qualifier “Oregon” [consistent with the definitional change in 860-038-0001(44)], and completely eliminates all references to “competitive operations”. The Parties had two reasons for recommending these changes.

First, there are provisions in the rule that can, practically speaking, only apply to Oregon affiliates, not competitive operations. Affiliates are separate entities; competitive operations are not. It makes no sense to say that an electric company cannot act or appear to act on behalf of its competitive operation when its competitive operation is part of the same company. A company cannot be prohibited from acting on behalf of itself.

Second, the Parties agreed that the appropriate requirements and restrictions that relate to competitive operations are contained in various other sections of the Amended Final Rules. Therefore, it is unnecessary for OAR 860-038-0600 to apply to competitive operations.

The Parties suggest the following explanation be substituted for the one in the Proposed Final Rules:

The proposed amendments eliminate all references to “competitive operations” as the appropriate requirements and restrictions are contained in other rules. If a customer requests information about products or services available from an Oregon affiliate, the information may be supplied if the required disclaimer language is included.

#### Subsection (1)(c)

The Parties do not support the addition of the words “in writing” to this last sentence of this subsection. While providing the required information in writing would tend to reduce complaints that the information was never provided, the likelihood is that the customer request will come up in the context of a discussion between the customer and a representative of the electric company. It would be impractical for the representative to have to hand the customer a written statement containing the required information, particularly if the discussion takes place on the telephone. While the Parties recognize that covering the information orally leaves open

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<sup>2</sup> Since electric companies cannot compete with Electricity Service Suppliers except through an affiliate, all relevant parties addressed by the statute are covered by the version agreed to by the Parties in the Amended Revised Rules.

the possibility of misunderstandings or memory lapses, the electric companies should have the option of providing the information in the manner best suited to the customer and the circumstances.

In addition, the Parties have the same objection to the substitution of the words “customer’s current electric service” for “safe and reliable electricity services” as is discussed above under OAR 860-038-0520. The Parties’ version of this language should be adopted.

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

#### **Subsection (1)**

The version of subsection (1) in the Proposed Final Rules has the same problems as the rule it is intended to amend. First, it is overbroad, as it speaks to all affiliates, not just Oregon affiliates, whose actions are directed by this rule.

Second, it mixes up transactions between the electric company and its affiliates, on the one hand, and between the electric company and its competitive operations on the other. In order to confirm compliance with the rules, this subsection should make clear that the Commission can review the books and records of the electric company in order to review transactions between it and its affiliates. As to transactions between the electric company and its competitive operations, subsection (3) of this rule already creates the appropriate oversight requirements.

Finally, the Proposed Final Rules preserve the old language that talks about reviewing transactions related only to the provision of electricity services between the electric company and its affiliates. The language agreed to the Parties relates to all transactions between the electric company and its Oregon affiliates. The latter version is likely to give the Commission a fuller

view of compliance with the rules because it would also cover review of transactions involving support services such as those listed in PGE's Master Service Agreement.

The Parties' version of subsection (1) should be adopted instead of the one in the Proposed Final Rules. However, the Parties support a revised explanatory paragraph (to be substituted for the one accompanying the Proposed Final Rules) to read as follows:

In the past, some issues have arisen about Commission access to an electric company's and its affiliates' books and records. The amended subsection (1) of the rule covers access to the electric company's books and records to review all transactions between the electric company and its Oregon affiliates. This rule is not intended to limit any statutory authority the Commission might otherwise have to review books and records of an affiliate of an electric company, whether it is an Oregon affiliate or not, nor is it intended to limit any access to the books and records of affiliates that the electric company might agree to provide and which is included in an order of the Commission.

The Parties respectfully suggest that the Commission approve the changes contained in the attachment to these comments, which reflects our recommendations above and the portions of the Proposed Final Rules to which we agree.

DATED this 12th day of April, 2006.

Respectfully submitted,

/s/ BARBARA W. HALLE

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**CERTIFICATE OF SERVICE**

I certify that I have caused to be served the foregoing **FINAL COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY, OPUC STAFF and PACIFICORP** in OPUC Docket No AR 475, by U.S. Mail and electronic mail, to the following parties:

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Dated this 12<sup>th</sup> day of April, 2006.

/s/ BARBARA W. HALLE  
Barbara W. Halle

**860-038-0005**

**Definitions for Direct Access Regulation**

As used in this Division:

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.

(2) "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Department of Energy, and the following:

- (a) Local governments;
- (b) Electric companies;
- (c) Residential consumers;
- (d) Public or regional interest groups; and
- (e) Small nonresidential consumers.

(3) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.

(4) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services. "Aggregator" means an entity that aggregates.

(5) "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.

(6) "Commission" means the Public Utility Commission of Oregon.

(7) "Common costs" means costs that cannot be directly assigned to a particular function.

(8) "Competitive operations" means any **electric company's** activities **involving the** ~~related to the provision of electricity services conducted by the electric company's nonregulated operation or the electric company's affiliate~~ **sale or marketing of electricity services or directly-related products in an Oregon retail market. Competitive operations include, but are not limited to, the following:**

**(a) Energy efficiency audits and programs;**

**(b) Sales, installation, management, and maintenance of electrical equipment that is used to provide generation, transmission, and distribution related services or enhances the reliability of such services;**

**(c) Energy management services, including those related to electricity metering and billing. Services or products provided by the electric company as part of its electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to its direct access customers are not competitive operations.**

(9) "Consumer-owned utility" means a municipal electric utility, a people's utility district, or an electric cooperative.

(10) "Cost-of-service consumer" means a retail electricity consumer who is eligible for a cost-of-service rate under ORS 757.603.

(11) "Default supplier" means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.

(12) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.

(13) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(14) "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(15) "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(16) "Divestiture" means the sale of all or a portion of an electric company's ownership share of a generation asset to a third party.

(17) "Economic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and

contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. "Economic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(18) "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

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

(20) "Electric cooperative" means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(21) "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(22) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(23) "Electricity services" means electricity distribution, transmission, generation, or generation-related services.

(24) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(4241)~~ “Ongoing valuation” means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.

~~(4342)~~ “One-time administrative valuation” means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

~~(4443)~~ “One average megawatt” means 8,760,000 kilowatt-hours **(8,784,000 in a leap year)** of electricity per year **twelve consecutive month period.**

~~(4544)~~ **“Oregon affiliate” means an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market.**

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

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

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

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

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

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

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

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

(53) “Renewable energy resources” means:

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

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; and

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(54) “Residential consumer” means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. “Residential consumer” does not include retail electricity consumers in a

dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, “dwelling” includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.

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

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

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

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

**(59)** “Site” means:

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

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

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

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

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

**(60)** “Small nonresidential consumer” means a nonresidential consumer that is not a large nonresidential consumer.

**(61)** “Special contract” means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.

**(62)** “Structural separation” means separating the electric company’s assets by transferring assets to an affiliated interest of the electric company.

**(63)** “Total transition amount” means the sum of an electric company’s transition costs and transition benefits.

**(64)** “Traditional allocation methods” means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company’s last Oregon rate proceeding completed prior to December 31, 2000.

**(65)** “Transition benefits” means the value of the below-market costs of an economic utility investment.

**(66)** “Transition charge” means a charge or fee that recovers all or a portion of an uneconomic utility investment.

**(67)** “Transition costs” means the value of the above-market costs of an uneconomic utility investment.

**(68)** “Transition credit” means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

**(69)** “Transmission grid” means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries.

**(70)** “Unbundling” means the process of assigning and allocating a utility’s costs into functional categories.

**(71)** “Uneconomic utility investment” means all Oregon allocated investments made by an electric

company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation, and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. "Uneconomic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.

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

Stat. Implemented: ORS 756.040 & 757.600 to 757.667

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

### **860-038-0500**

#### **Code of Conduct Purpose**

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

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

Stat. Implemented: ORS 756.040 & 757.600 through 757.667

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

### **860-038-0520**

#### **Electric Company Name and Logo**

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

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

(b) Such disclaimer of the corporate name, trademark, brand, or logo in the material distributed must be written in a bold and conspicuous manner or clearly audible, as appropriate for the communication medium. The disclaimer shall state the following: '(Name of affiliate engaged in competitive operations) is not the same company as (name of electric company) and is not regulated by the Public Utility Commission of Oregon, and you do not have to buy (name of affiliate)'s products to continue to receive quality regulated services from (name of electric company).'

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

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

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

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

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

#### **860-038-0560**

##### **Treatment of Competitors**

(1) An electric company, in its provision of supply, capacity, **electricity** services, or information **obtained as a result of providing (i) electric service to its non-direct access customers within its certificated service territory or (ii) transmission and distribution services to direct access customers;** offering of discounts; tariff discretion; and processing requests for **electricity related** services, shall treat **its competitors fairly in all 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. The provision of this section (1) shall not apply to the provision or joint purchasing of corporate services such as accounting, auditing, financial, legal, or information technology services.**

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

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

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

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

#### **860-038-0580**

##### **Prevention of Cross-subsidization Between Competitive Operations and Regulated Operations**

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

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

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

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

**860-038-0600**

**Joint Marketing and Referral Arrangements**

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

- (a) Provide or acquire leads on behalf of its ~~Oregon affiliates competitive operations~~;
- (b) Solicit business or acquire information on behalf of its ~~Oregon affiliates competitive operations~~;
- (c) Give the appearance of speaking or acting on behalf of its ~~Oregon affiliates competitive operations~~

**except that an electric company, pursuant to a customer request, may provide information on electricity services or directly related products offered by the electric company's Oregon affiliates. Prior to providing the information, the electric company must also 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 safe and reliable electricity services from the electric company;**

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

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

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

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

(b) Joint sales calls;

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

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

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

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

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

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

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

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

**Stats. Implemented: ORS 756.040 & 757.600 through 757.667**

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

**860-038-0620**

**Access to Books and Records**



(1) ~~The Public Utility Commission of Oregon shall have full access to all books and records of an electric company and its affiliates in order to review all transactions related to the provision of electricity services between an electric company and its competitive operations.~~ **The electric company will provide access to the Commission to all of its 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 Ch. 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

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

### **860-038-0640**

#### **Compliance Filings**

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

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

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