

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT**

DATE: March 22, 2006

TO: Kathryn A. Logan, Administrative Law Judge

FROM: Marion Anderson and Michael Dougherty

THROUGH: Marc Hellman

SUBJECT: AR 475: Agreed-upon Rules Changes in OAR 860-038-0005 through 0640

This rulemaking was initiated in August 2004. The participants have been Pacific Power and Light Company (PacifiCorp), Portland General Electric, PacifiCorp external counsel, Staff, and the Attorney General's office. Numerous workshops have resulted in the final revisions attached hereto. The following explanations cover those final revisions that have not previously been clarified.

- 860-038-0005(8) The redefinition of competitive operations adds specificity by adding:
- "Sale or marketing of electricity services and directly related products" instead of just referring to "provision of electricity services" since current offerings include products such as surge protectors;
 - Distinguishing between competitive operations and regulated services by adding language that specifically addresses what regulated services are (see (i) and (ii));and
 - Includes offerings subject to the rule, with examples.

An example of an Energy Management service is PGE's E-Manager, Schedule 725 which provides electric, gas, water usage and other relevant data, such as weather condition through an online energy maintenance system. PacifiCorp has a similar service, Energy Profiler Online, Schedule 271.

- 860-038-0005(19) Clearly identifies the source of information (obtained through the electric company's provision of services or products that are not considered competitive operations) subject to the rule. The latest changes revised "electric utility's" to "electric company's." The definition also adds "processes" to the list of where data could originate from.

860-038-0005(41) The definition was part of the original rule, but could easily go away.

860-038-0005(44) Adds a leap year amount for “one average megawatt” and changes year to a twelve consecutive month period.

860-038-0005(45) Adds a definition of Oregon affiliate. Since this term is frequently used in the rules, a definition was necessary.

860-038-0500 Strengthens the definition of Code of Conduct and adds the numerical range of rules of the Code of Conduct in the definition. The changes reinforce the purpose of Code and Conduct and what it is designed to prevent (market abuses and anti-competitive practices by electric companies). The revised rule also references affiliated interest rules in Division 27.

The reference to Division 027 was added because the Commission’s Transfer Pricing Policy, OAR 860-027-0048, Allocation of Costs by an Energy Utility is included in this chapter. It is in 027 and not 038 because the rule also applies to natural gas utilities, which would not be included under Division 38.

860-038-0520 Changes the disallowance language to affirmative Oregon affiliate disclaimer requirements and disassociates any utility service tie-in for competitive operations. Additionally it specifically addresses the types of advertising media (television, radio, internet). The rule also:

- Changes the affiliate disclaimer by replacing “quality regulated” services to “safe and reliable electricity” services; and
- Adds a disclaimer for competitive operations.

Concerning your question about print medium, we considered print medium inclusive in the term “Communications.” We also used “safe and reliable electricity” instead of “quality regulated” services because of the broad definition of services. The electric companies noted that when they offer a competitive service it is regulated by the Commission pursuant to ORS 757.205, so we were distinguishing electricity services from regulated services.

860-038-0560 Repeats 0005(8) wording concerning what a traditionally regulated service is (see (i) and (ii)). Additionally, the rule distinguishes Oregon affiliate, adds competitive operations, and excludes the provision of corporate services

The section basically directs that the electric utility will treat competitors in the same fashion as its affiliates and competitive operations. The exclusion of corporate services came about to ensure that the utility would not have to open their corporate services to competition. This language was a request of the utilities, which Staff was agreeable to.

860-038-0580 The rule prevents a utility from providing operational or marketing information to a competitive operation unless it provides the same information to an ESS or other entity. Additionally, the rule directs the electric companies to identify and separately account for revenues and costs of its competitive operations. This is an improvement over the previous language, because 860-027-0048 is already referenced in the Code of Conduct rules and this language affirmatively directs the accounting treatments for its competitive operations.

In this rule the utility is the provider of the operational or marketing information.

860-038-0600 The rule primarily substitutes “Oregon affiliate” for competitive operations. Additionally the rule includes language for the utility to discuss competitive operations upon request of a customer as long as the utility lets the customer know that other providers may exist and that the customer doesn’t have to buy from the affiliate to continue receiving electricity services. The rule also refers to directly related products of an Oregon affiliate. The rule also continues to allow a utility to attend meetings with its affiliate, but must do the same for unaffiliated parties.

860-038-0610 This rule adds a waiver for Code of Conduct rules. However based on 860-038-0001(4), this language is redundant and not necessary.

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860-038-0620 The rule changes Commission access to encompass all transactions and not limited to the provision of electricity services. The previous language limited the review of transaction that were relating to the provision of electricity services.

860-038-0640 Substitutes biennial third-party verified report for an independent audit. This is mainly because of restrictions in auditing mandated by AICPA. This change should make the reports more usable for Staff because it won't have the limits of "agreed upon procedures" that a CPA firm would use. Additionally, this form of reporting should result in a cost savings to the utilities.

Copy: Jason Jones, DOJ

1 **CERTIFICATE OF SERVICE**

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3 I certify that on March 28, 2006, I served the foregoing upon all parties of record in this
4 proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid
5 first class mail or by hand delivery/shuttle mail.

6
7 **PORTLAND GENERAL ELECTRIC**
8 RATES & REGULATORY AFFAIRS
9 RATES & REGULATORY AFFAIRS
10 121 SW SALMON ST 1WTC0702
11 PORTLAND OR 97204
12 pge.opuc.filings@pgn.com

PORTLAND GENERAL ELECTRIC
BARBARA HALLE
121 SW SALMON ST 1 WTC-13
PORTLAND OR 97204
barbara.halle@pgn.com

13 **PACIFICORP**
14 LAURA BEANE
15 825 MULTNOMAH STE 800
16 PORTLAND OR 97232-2153
17 laura.beane@pacificorp.com

STOEL RIVES LLP
KATHERINE A MCDOWELL
900 SW FIFTH AVE STE 1600
PORTLAND OR 97204-1268
kamcdowell@stoel.com

18 **PUBLIC UTILITY COMMISSION OF OREGON**
19 MICHAEL DOUGHERTY
20 550 CAPITOL ST NE - STE 215
21 SALEM OR 97301
22 michael.dougherty@state.or.us

PACIFIC POWER & LIGHT
PAUL M WRIGLEY
825 NE MULTNOMAH STE 800
PORTLAND OR 97232
paul.wrigley@pacificorp.com

23 **STOEL RIVES LLP**
24 STEPHEN C HALL
25 900 SW FIFTH AVE - STE 2600
26 PORTLAND OR 97204-1268
schall@stoel.com

Neoma Lane _____
Neoma Lane
Legal Secretary
Department of Justice
Regulated Utility & Business Section