

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: May 7, 2019

REGULAR  X  CONSENT \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

DATE: April 23, 2019

TO: Public Utility Commission

FROM: *SS*  
Sabrinna Soldavini

THROUGH: *I JG JC*  
Jason Eisdorfer, John Crider, and *MG*  
Marianne Gardner

SUBJECT: PORTLAND GENERAL ELECTRIC: (Docket No. UM 1422) Request for waiver of OAR 860-038-0640 Code of Conduct audit reporting requirement.

**STAFF RECOMMENDATION:**

Approve Portland General Electric's (PGE or Company) request for a waiver of the compliance requirement contained in OAR 860-038-0640 subject to the following conditions:

1. PGE's Internal Audit division will conduct the Code of Conduct review, submitting a report summarizing their findings to the Commission no later than October 1, 2019.
2. PGE acknowledges that the completion of a 2019 internal review does not grant the expectation of a waiver of the OAR 860-038-0640 compliance requirements for the 2021 reporting period.

**DISCUSSION:**

Issue

Whether the Oregon Public Utility Commission (Commission) should approve PGE's request for a waiver of the Direct Access (Code of Conduct) compliance requirement set forth under Oregon Administrative Rule (OAR) 860-038-0640.

### Applicable Rule

PGE filed its Application for Waiver of OAR 860-038-0640 (Application) on February 28, 2019, pursuant to OAR 860-038-0001(4), which states that the Commission may waive any of the Division 038 rules for good cause shown. The Company is requesting that the Commission waive the compliance requirement contained in OAR 860-038-0640 for June 1, 2019. OAR 860-038-0640 requires that electric companies 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.

OAR 860-038-0500 through 860-038-0620 contains the Commission's rules for Direct Access Code of Conduct (Code of Conduct), which was designed to protect against abuses and anticompetitive practices by electric companies in the Oregon retail electric markets. The Code of Conduct rules govern the sharing of customer information, the cross-subsidization between competitive operations and regulated operations, access to transmission and distribution facilities, joint marketing practices, and other issues.

### Analysis

#### *Background*

PGE submitted the required Code of Conduct third party compliance report by June 1 in the years 2003, 2005, 2007, and 2011.

In 2009, 2013 and 2015, PGE requested a waiver of the requirement to file a third party review. The Commission waived PGE's 2009 Code of Conduct reporting requirement in Order No. 09-104, its 2013 Code of Conduct reporting requirement in Order No. 13-060, and the Company's 2015 Code of Conduct reporting requirement in Order No. 15-088:

In 2017, PGE requested the option to use a report submitted by PGE's Internal Audit Department in lieu of a third party review. In Order No. 17-317 the Commission accepted Staff's recommendation to allow the Company to waive the requirements of OAR-038-0640, with Staff noting in its recommendation, "this approach will maintain the purpose of the third party review, reduce costs, and likely expedite the report... Staff supports this approach as it will provide a thorough review by competent analysts at a lower cost to customers."

#### *Application*

On February 28, 2019, the Company filed its request to waive the Code of Conduct reporting requirement for 2019. In its Application, the Company provides the following reasons why a waiver of OAR 860-038-0640 should be granted:

1. Circumstances remain unchanged from the previously granted requests for waiver of compliance with OAR 860-038-0640. Specifically, the Company sought a similar waiver for the 2013, 2015 and 2017 compliance years. The Commission granted these waivers in Order No. 13-060, Order No. 15-088, and Order No. 17-037, respectively.
2. Each of the Company's previously filed reports found the Company to have satisfactorily complied with the Code of Conduct.
3. Regarding Division 038 Code of Conduct – The Company proactively works to maintain a work environment of awareness of, and compliance with, the Code of Conduct. The Company provides biennial Code of Conduct compliance training to identified employees and selected workgroups on the Division 38 rules pertaining to their activities. The Company also notes that it has regulatory and subject matter experts available to assist in answering coworker questions or concerns regarding the requirements of Division 38 Code of Conduct, at any time.
4. The “immaterial” extent of PGE’s competitive or non-regulated operations. PGE did not have any Oregon affiliates<sup>1</sup> during the period that would be covered by the report to be filed June 1, 2019, and only three competitive operations (Schedule 54 Large Nonresidential Renewable Energy Certificates Rider, Schedule 320 Meter Information Services, and Schedule 715 Electrical Equipment Services), thereby lowering the risk that PGE would be found in non-compliance with the Code of Conduct.
5. The Company notes that the granting of a waiver of the Code of Conduct review would not affect the Commission’s ability to request information or investigate concerns.

#### *Summary of Staff's Analysis*

Staff reviewed Commission Order Nos. 13-060, 15-088, and 17-317 granting PGE a waiver of OAR 860-038-0640 for 2013, 2015, and 2017 filing years. As noted above, in Staff's 2017 memo appended to Order No. 17-317, PGE had engaged a third party to review PGE's compliance with OAR-038-0640. To save costs, the Code of Conduct report was issued by PGE rather than the third party. Staff explained, “Staff supports this approach as it will provide a thorough review by competent analysts at a lower cost to customers.” In addition, Staff agreed that PGE had shown good cause for a waiver of the OAR-038-0640 verified report requirement.

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<sup>1</sup> An Oregon affiliate is an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market. See OAR 860-038-0005(45).

Staff also asked for and received copies of all internal or external Code of Conduct reviews the Company has conducted. Staff reviewed these reports to confirm the Company's compliance with OAR 860-038-0500 through OAR 860-038-620. Staff agrees that the Company has satisfactorily complied with the Code of Conduct.

In its review, Staff looked at developing trends related to direct access. 2018 Senate Bill 978, as enacted, instructed that the OPUC "shall establish a public process for the purpose of investigating how developing industry trends, technologies and policy drivers in the electricity sector might impact the existing regulatory system and incentives currently employed by the commission. If warranted, the commission may consider changes to the existing regulatory system and incentives."<sup>2</sup> Among the list of directives, the Commission was required to investigate the obligations and benefits to electric customers that participate in direct access.<sup>3</sup> In the OPUC's resulting SB 978 legislative report,<sup>4</sup> the report notes, "New technologies have led to new providers and new options for utility customers."<sup>5</sup> Customers have more options such as leaving the utility system or electing a direct access program.<sup>6</sup> As an example, recently, in Docket No. AR 614, Order 18-341, the Commission adopted rules, OAR 860-038-0700 through 860-038-0760, for New Large Load Direct Access programs.

As such, in communications with the Company, Staff expressed interest in the Company performing an internal review to continue to establish a baseline for competitive operations performance. In response, PGE proposed that if the waiver is granted, the Company's Internal Audit Division would conduct an internal Code of Conduct review and prepare an accompanying report to be submitted to the Commission no later than October 1, 2019. PGE also acknowledged that it has no expectation of a waiver in 2021.

### Conclusion

Staff supports PGE's request to waive the third-party compliance review under OAR 860-038-0040, conditioned on PGE's (1) agreement to have its Internal Audit division conduct an internal Code of Conduct review for the preceding two calendar years, to be submitted to the Commission no later than October 1, 2019, with Company; and (2) acknowledgement that it has no expectation of a waiver in 2021. Staff notes that PGE did not have any Oregon affiliates and only three competitive operations during the

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<sup>2</sup> See Enrolled Senate Bill 978, Section 1(1).

<sup>3</sup> *Ibid.*, Section 1(2)(b).

<sup>4</sup> Oregon Public Utility Commission, *SB 978 Actively Adapting to the Changing Electricity Sector*, September 2018 PUC, <https://www.puc.state.or.us/Renewable%20Energy/SB978LegislativeReport-2018.pdf>. Accessed 14 Feb. 2019.

<sup>5</sup> *Ibid.*, page 11, paragraph 3.

<sup>6</sup> *Ibid.*

period that would be covered by the report to be filed June 1, 2019. And, PGE's previous three third party reviews have not raised red flags or provided any indication that PGE operates in a manner as to be non-compliant with OAR 860-038-0500 through 860-038-0620. Staff believes that in these circumstances an internal review is sufficient for 2019.

However, Staff believes that, due to changes in developing industry trends related to direct access and changes in Commission policy, it is important that an examination of PGE's current processes take place to establish a baseline, as the likelihood of customers participating in direct access options increases. To this end, Staff does not anticipate that it will support a waiver of the third party reporting requirement in 2021 and the Company has acknowledged that it does not have the expectation of a waiver in 2021. Indeed, while circumstances are subject to change in the future, Staff expects that PGE will file a third-party Code of Conduct review with the Commission in 2021.

**PROPOSED COMMISSION MOTION:**

Approve PGE's request for a waiver of the compliance requirement contained in OAR 860-038-0640 subject to the above conditions.