

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 26, 2013**

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: February 8, 2013

TO: Public Utility Commission

FROM: Judy Johnson

THROUGH: Jason Eisdorfer, Maury Galbraith, and Marc Hellman

SUBJECT: Portland General Electric: (Docket No. UM 1422(1)) Requests waiver of the compliance requirement contained in OAR 860-038-0640 by June 1, 2013.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve Portland General Electric's (PGE or Company) request for waiver of the compliance requirement contained in OAR 860-038-0640 by June 1, 2013.

DISCUSSION:

Background

PGE filed this application on January 28, 2013, 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 by June 1, 2013. 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 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. It contains rules governing 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.

The Company provides the following reasons why a waiver of OAR 860-038-0640 should be approved:

1. The Company sought a similar waiver for the 2009 compliance year. The Commission granted the waiver in Order No. 09-104, Docket No. UM 1422. Circumstances remain unchanged from the previous request for waiver of compliance with OAR 860-038-0640.
2. Prior to 2011, for each odd-numbered year, PGE enlisted an independent third party to review compliance with the Code of Conduct, and filed a report detailing such compliance with the Commission. The third-party reviewer typically interviewed key personnel, reviewed documentation, reviewed critical processes and then prepared a report based on these assessments. The Company filed these reports by June 1 in 2003, 2005, 2007, and 2011. Each of these reports found the Company to be in compliance with the Code of Conduct. It is further noted, that no complaints have been filed with the Commission related to the Code of Conduct rules.
3. Regarding Division 38 Code of Conduct – the Company proactively works to maintain an environment of awareness of the rules pertaining to the Code of Conduct. Every two years regular training is provided to all key employees and selected workgroups on the specific rules that are relevant to their activities. In addition, PGE has subject matter experts available to assist in answering questions or concerns at any time. The Company employs key business practices to ensure that compliance with the Code of Conduct is maintained.
4. Regarding FERC Standards of Conduct – customer service representatives and customer area managers receive targeted training that pertains to customer-related issues and the Code of Conduct. Over half of PGE's workforce, including all of PGE's Marketing and Transmission personnel and those in critical corporate functions, receive training regarding compliance with the Federal Energy Regulatory Commission (FERC) Standards of Conduct. This training covers important Standards of Conduct principles such as separation of marketing and transmission functions and preventing marketing-function employees from gaining access to non-public transmission-function information. Identified employees conduct training within 30 days of commencing employment and annually thereafter. PGE has additional controls in place governing joint meetings and the protection of non-public transmission-function information. Subject matter experts are available to assist with direct access and Code of Conduct issues. Subject matter experts include representatives from the Company's regulation, legal, and customer service departments.

5. An important reason for requiring the report (i.e. the presence of robust competitive or non-regulated operations) does not apply in PGE's case given that the extent of PGE's competitive operations is immaterial. In 2012, non-utility revenues were slightly over \$2 million or about 0.1 percent of regulated revenues.
6. In the unreleased Staff Audit Report of PGE (Audit Number: 2013-001), dated December 31, 2012, Staff conducted an extensive operational audit over the third and fourth quarters of 2012, including the submission of numerous data requests. Among the items reviewed were affiliate transactions and cost allocations with reliance on PGE's 2011 Annual Affiliate Interest report. There were no issues noted regarding affiliate relationships or cost allocations. In addition, the report highlighted that there were no customer complaints filed with the Commission regarding direct access.
7. The Commission maintains the opportunity to review the Company's relationships and transactions with affiliates through various mechanisms. PGE annually files an affiliated interest report, which provides details of transactions with all affiliates. Granting a waiver of the Code of Conduct third-party review and report requirement will not impede the Commission's ability to request information or investigate potential issues.

Analysis

Staff reviewed Commission Order No. 09-104 granting PGE a waiver of OAR 860-036-0640 by June 1, 2009. As part of this docket, Staff reviewed and verified the Company's training concerning customer-related issues, the Code of Conduct, non-discriminatory access to transmission and distribution facilities, and marketing materials. Staff also reviewed the Company's list of subject matter experts. Staff noted no issues with PGE's training concerning the Code of Conduct.

According to OAR 860-038-500, the purpose of the Code of Conduct rules is to govern the interactions and transactions among the electric company, its Oregon affiliates, and its competitive operations. OAR 860-038-005(8) defines competitive operations as:

...any electric company's activities involving the 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, installations, management, and maintenance of electrical equipment that is used to provide generation, transmission, and distribution related services or enhances the reliability of such services; and*
- (c) Energy management service, including those services related to electricity metering or 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.

The last paragraph of this definition indicates that the Company's Open Access Transmission Tariff, which governs its transmission service for third parties, is not a competitive operation, and is therefore not governed by the Code of Conduct rules.

Per review of the Company's most recent annual Affiliated Interest Report, Staff affirms that PGE has little in the way of Oregon Affiliates during the reporting time period. Staff also agrees that the risk of noncompliance with the rules is significantly mitigated. Staff also notes that no complaints have been filed with the Commission regarding the Company's compliance with the Code of Conduct rules.

The Company's annual Affiliated Interest Report, which includes the Company's Cost Allocation Manual, is submitted to the Commission on an annual basis and reviewed by Staff. In its reviews, Staff has not noted any unusual affiliated relationships or cost allocations.

Resulting from this analysis, Staff supports the Company's request for a waiver of the compliance requirements contained in OAR 860-038-0640 by June 1, 2013, and recommends the Commission approve this waiver.

PGE has reviewed this memo and has no objections or concerns.

PROPOSED COMMISSION MOTION:

Portland General Electric's request for waiver of the compliance requirement contained in OAR 860-038-0640 by June 1, 2013, be approved.