

ISSUED: March 29, 2006

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 475

In the Matter of a Proposed Rulemaking to)
Revise Division 038 Definitions and Rules)
Regarding Code of Conduct.) **RULING**

**DISPOSITION: TIME FOR FILING WRITTEN COMMENTS
EXTENDED**

I made some changes to the draft rules filed March 17, 2006. My intent in most cases was to simplify language, and make it consistent with the administrative rule requirements outlined by the Secretary of State. Because these rules have undergone many changes since the initial draft, I am providing an opportunity for a final round of comments. These comments are due April 12, 2006.

Dated at Salem, Oregon, this 29th day of March 2006.

Kathryn A. Logan
Administrative Law Judge

cc: Administrative Rule Electric list

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 Oregon 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 related to the provision of electricity services conducted by the electric company's nonregulated operation or the electric company's affiliate 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, 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; and

(c) Energy management services, including those services 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 operation 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.~~

(42) “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.

(432) “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.

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

(44) “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 ~~Division~~ **Section** 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 betweenamong the electric company,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. 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. 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 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) 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 service 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. Such The 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 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 yYou do not have to buy {name of Oregon affiliate}'s products to continue to receive **your current quality regulated electricity** 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 your current 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, services, or information; offering of discounts; tariff discretion; and processing requests for services~~ shall treat its competitors fairly in all respects and in a manner consistent with the treatment it affords any of its **Oregon affiliates or** competitive operations.

(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 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 in writing 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 electricity current service from the electric company;

(d) Represent to consumers or potential consumers that it can offer **goods or electricity services or directly related products from the electric company's of its 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 ~~competitive operations~~ **electricity services or directly related products of the Oregon affiliate**. 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 **unaffiliated entities nonaffiliates** 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)

860-038-0620

Access to Books and Records

(1) ~~The~~ **An electric company must provide the** Public Utility Commission of Oregon with ~~shall have~~ full access to all **of the electric company's and affiliates'** 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.

(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 have~~**must file 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)