

ORDER NO. 04-010

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BEFORE THE PUBLIC UTILITY COMMISSION**

OF OREGON

AR 472

In the Matter of Adoption of Amendments)	
to OAR 860-038-0540, Consumer)	
Information, to Transfer Proprietary)	ORDER
Consumer Information From Electric)	
Companies to the Energy Trust of Oregon.)	

DISPOSITION: RULE AMENDED; TEMPORARY RULE REPEALED

On October 14, 2003, the Public Utility Commission of Oregon (Commission) initiated a rulemaking proceeding to consider amendments to OAR 860-038-0540, Consumer Information. On October 15, 2003, the Commission filed the notice of rulemaking and statement of need and fiscal impact with the Oregon Secretary of State. Notice of the rulemaking was published in the Oregon Bulletin on November 1, 2003. Initially, interested persons were given until November 21, 2003, to file written comments. This period was later extended until December 19, 2003. Portland General Electric Company (PGE) filed comments on December 19, 2003. No one submitted comments at the public hearing.

On January 6, 2004, the Commission deliberated on this matter at its regular public meeting in Salem, Oregon, and entered the decisions set out in this order.

Background

On July 1, 2003, the Commission adopted temporary amendments to OAR 860-038-0540 regarding the transfer of consumer information from electric companies to the administrator of the conservation and renewable energy public purpose funds. These temporary rules were necessary because the Energy Trust of Oregon (ETO) is now responsible to plan, design, implement, and evaluate energy programs funded by the public purpose funds collected by PGE and PacifiCorp. Since July 1, 2003, numerous participants have met to discuss and draft final proposed rules. As the temporary amendments expire on January 20, 2004, permanent rules are needed to continue the flow of information from the electric companies to the ETO.

Discussion

The new rule has six sections. Section (1) requires an electric company to determine the proprietary information to be made available to electricity service suppliers (ESSs), affiliates, aggregators and its own competitive operations. An electric company is required to file a tariff with the Commission outlining the proprietary information that will be available, along with the price, terms, conditions and consent procedures associated with the transfer of the proprietary information. Section (2) outlines the contents of an Information Transfer Agreement between an electric company and the ETO. Section (3) sets forth the process for resolving disputes between the ETO and an electric company if the ETO believes that the transferred information is insufficient, incomplete or not usable. During the course of the dispute, an electric company is still required to transfer specific information set forth in Section (3). Section (4) describes an opt-out process for consumers whose demand is less than 1MW, while Section (5) describes an opt-in for consumers whose demand is 1MW or greater. Finally, Section (6) states that an electric company shall not be charged with an at-fault complaint regarding the transfer of proprietary information if the electric company has complied with the administrative rules, statutes, tariffs or Commission order.

PGE filed formal comments, recommending that language regarding specific proprietary information to be transferred from the electric company to the ETO should be in Section (2) rather than Section (3). While we understand PGE's request, we are leaving the language in Section (3). Section (2) discusses the contents of an Information Transfer Agreement. While section (3) outlines a dispute resolution, it also requires that specific information be transferred while the dispute is being resolved.

The new rule is necessary to provide the ETO with accurate and complete consumer information. Without this rule, the ETO would not be able to meet its energy program responsibilities. We will adopt the proposed changes.

ORDER

IT IS ORDERED that:

1. The modifications to OAR 860-038-0540, as set forth in Appendix A, are adopted.
2. Temporary OAR 860-038-0540 is repealed on the effective date of the amended rule.

3. The amended rule will be effective upon filing with the Oregon Secretary of State.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

860-038-0540

Consumer Information

~~(1) An electric company shall implement adequate safeguards precluding employees of its competitive operation, electricity services suppliers (ESSs), or other entities from gaining access to information in a manner that would:~~

~~—— (a) Allow or provide a means to transfer proprietary consumer information from an electric company to its competitive operation, electricity services suppliers ESSs, or other entities, without the written consent of the consumer.~~

~~(b) Create an opportunity for preferential treatment or unfair competitive advantage;~~

~~—— (c) Lead to consumer confusion; or~~

~~—— (d) Create significant opportunities for cross-subsidization of its competitive operations.~~

(1)-(2) Subject to Commission approval, an electric company must shall determine the types proprietary consumer information that will be made available to its competitive operations, ESSs, and other entities affiliates and aggregators. An electric company shall file and maintain a tariff with the Commission that specifies the types of information, and along with the prices, terms, conditions, and consent procedures associated with the transfer dissemination of such information with the Commission for approval. An electric company shall only disseminate proprietary consumer information under tariff. to the entities described in this section. The provisions of section (1) do not apply to information transferred pursuant to section (2) of this rule.

(2) An electric company shall transfer to the entity that administers the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B), hereinafter known as the Administrator, proprietary consumer information for a consumer whose demand is less than one megawatt (1MW) unless the consumer has opted-out of the information transfer pursuant to section (4) of this rule. A consumer shall be considered a less than 1MW consumer pursuant to criteria established by an electric company through its billing process. The transfer of such information shall be made pursuant to an Information Transfer Agreement, which is executed and maintained by an electric company and the Administrator. An Information Transfer Agreement shall specify:

(a) The necessary database format and information that will be transferred;

(b) The billing period, payment arrangements, and estimations of incremental costs incurred by an electric company for the transfer of the information;

(c) Timelines for an electric company to notify consumers and transfer information to the Administrator;

(d) Timelines for an electric company to provide updates to the Administrator for all of the usage data and revisions to the underlying database information;

(e) A general non-disclosure statement as well as a specific non-disclosure agreement that each Administrator employee and contractor employee shall sign prior to having access to consumer information, including proprietary consumer information;

(f) That the proprietary consumer information will be used by the Administrator to implement, administer, and evaluate energy efficiency and renewable energy programs and will not be used for telemarketing or direct mailings to consumers;

(g) That the release of proprietary consumer information by the Administrator for any other purpose or to any other party shall not be made without consent of the consumer; and

(h) Provisions for modification of the Information Transfer Agreement. If the Administrator and an electric company cannot agree on the terms and conditions of an Information Transfer Agreement, the Commission shall set the terms and conditions based upon input from the Administrator and electric company.

(3) If the Administrator notifies an electric company that the proprietary information supplied by an electric company is insufficient, incomplete, or not usable, the Administrator and electric company will attempt to resolve the issue and if necessary, modify the Information Transfer Agreement. If the Administrator and electric company cannot resolve the issue, the electric company and the Administrator shall promptly seek Commission resolution of the dispute. An electric company shall, at a minimum, transfer the following proprietary consumer information to the Administrator: consumer name, service address, 18 months of the most recent historical usage data provided on a per month basis, point of delivery identification number, and rate schedule for each consumer. An electric company shall also provide information about any energy efficiency program participation and type of space heat used by consumer to the extent that such information is available in the electric company's records. An electric company shall not provide social security numbers, billing and payment history, credit information, tax identification numbers, driver license numbers, life support information, or any medical information. An electric company shall also provide the Administrator with updates for all of the usage data and revisions to the underlying database information on a periodic basis subject to subsection (2)(d) of this rule.

(4) An electric company shall provide consumers whose demand is less than 1MW an opportunity to opt-out of the information transfer. An electric company shall notify the consumers of the opt-out option by direct mail, company newsletter, or other acceptable communication as set forth in the Information Transfer Agreement. The notification shall at a minimum:

(a) Identify and explain the role of the Administrator;

(b) Identify the type of proprietary consumer information to be transferred by an electric company; and

(c) Describe the nature and use of the proprietary consumer information by the Administrator.

(5) An electric company shall notify in writing consumers whose demand is 1MW or greater (over 1MW consumer) to provide an opportunity to opt-in to the information transfer. Consumers shall be considered an over 1 MW consumer pursuant to criteria established by an electric company through its billing process. The notice provided by an electric shall comply with the requirement of section (4) of this rule. For consumers

without a usage history, demand may be estimated by an electric company for the purpose of this provision and those consumers projected to meet the 1MW or greater demand shall be included. Consumers having multiple accounts may have their accounts treated as a group for the purpose of this rule and may include or exclude all accounts through one notification process. If the over 1MW consumer does not opt-in to the information transfer, all accounts shall be excluded from the information sharing process. The transfer of proprietary consumer information shall be in accordance with section (2) of this rule and the Information Transfer Agreement. An electric company shall also provide periodic opt-in notification for the over 1MW consumers either as a part of a standard consumer contact discussion or in writing pursuant to the timelines agreed upon in the Information Transfer Agreement and set forth in subsection (2)(c) of this rule.

(6) When an electric company has provided proprietary consumer information to the Administrator in accordance with this rule, an electric company shall not be charged with at-fault complaints filed with Commission's Consumer Services Division with respect to the provision of proprietary consumer information if the Commission finds that the electric company did not violate its tariff, Oregon Administrative Rules, Oregon Revised Statutes, or a Commission Order.

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

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

Hist.: PUC 2-2001, f. & cert. ef. 1-5-01