BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 390

In the Matter of a Proposed Rulemaking to Implement the Code of Conduct, Aggregation, and Allocation of Funds to Education Service Districts Provisions of SB 1149.	STAFF'S COMMENTS ON PROPOSED ORDER

To clarify the use of certain terms, Staff of the Public Utility Commission (Staff) asks the Commission to accept the following comments on the proposed order:

860-038-0500 – **Code of Conduct Purpose -** In the first sentence, "affiliates" should be replaced with "affiliates engaged in competitive operations." In the sentence that begins "All transactions," the term "competitive affiliates" should be replaced with "affiliates."

860-038-0520 – **Electric Company Name and Logo -** In subsection (1), after "affiliate," insert "engaged in competitive operations." In subsection (1) (a), after the first use of the word "affiliate," insert "engaged in competitive operations." In subsection (1) (b), after the first use of the word "affiliate," insert "engaged in competitive operations."

860-038-0560 – **Treatment of Competitors -** In subsection (1), "competitive affiliates" should be replaced with "competitive operations."

860-038-0600 – **Joint Marketing and Referral Arrangements** - In subsection (1) (d), "competitive retail services" should be replaced with "goods or services of its competitive operations."

860-038-005(57) – Site Definition - The proposed order sets forth guidelines for interpreting the statutory definition of "site" without incorporating the language in rules. Staff disagrees with this approach and a specific element of the guidelines for the following reasons:

1. The staff public meeting memo recommending that the Commission open a rulemaking docket proposed language to make it clear that there are two definitions of site (one before and one after the comma in the statutory definition) and to interpret the conditions in the statutory language (e.g., that buildings or other structures are separated by not more than 1,000 feet). The utilities have been treating each meter as a single site, an approach consistent with one of the alternative definitions but not the other. To apply the other definition, the utilities need guidance on the meaning of the 1,000 foot criterion and other terms. The Commission adopted the staff recommendation to open a rulemaking on several issues, including the site definition, on August 8, 2000.
2. The proposed order elsewhere supports including the Commission's guidelines in rules. The decision on the "joint marketing" definition says, "Generally, we support defining terms and phrases in administrative rules. This allows the parties in a proceeding to

know the Commission's frame of reference for decision making. Further, it aids the parties in making a determination about the applicability, or lack thereof, of a rule to a particular set of facts." (Proposed order, page 5) The proposed order also adopts a lengthy definition of "proprietary consumer information," reasoning that "more explanation is better than less." (Proposed order, page 6)

3. The apparent explanation for not folding the guidelines into the definition itself is that it is "unwise to adopt a definition that differs from the statutory definition" and "it is safest to maintain he language established by the Legislature." (Proposed order, page 8) But sections (a) and (b) of staff's final proposed rule contain the exact language of the statutory definition, rearranged to make it clear that the phrase "served through a single electric meter" applies to only one of the alternative definitions. The subsections for the definition in (b) interpret the language with respect to the 1,000 foot criterion, ownership of land and facilities, and the meaning of "contiguous."
4. The statement of the guidelines leaves too much open to interpretation, in the use of phrases like, "as a general guideline" and "commonly viewed." Staff suggests that it is better to have clear requirements in the rule definition. Since it is not certain that the proposed rule includes all customers and facilities that should be treated as singles sites and excludes those who should not, Staff will monitor consumer requests to qualify as a single site and recommend rule changes as needed.
5. The proposed order rejects the provision that the land containing and connecting the subject buildings or structures must be owned by a single retail electricity consumer. (Staff notes that this requirement is intended to apply only to the definition in (b), not the definition in (a) regarding service through a single electric meter.) Without that requirement, it is unclear how to give meaning to the statutory language pertaining to "a single contiguous area of land." What would cause a candidate site to fail on this score, i.e., what would make a single area of land not contiguous? An intervening waterway or private right of way? Staff suggests that two facilities that are 1,000 feet apart and owned by a single customer would not commonly be considered a site if the customer did not own the intervening property.

Accordingly, Staff recommends that its final proposal (shown on page 8 of the proposed order) be adopted into the rule.