

**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 OPENING COMMENTS

Staff of the Public Utility Commission (Staff) recommends the Commission adopt the proposed rules with certain exceptions.

**I. INTRODUCTION**

On August 8, 2000, the Commission opened Docket AR 390 to consider proposed rules related to the implementation of SB 1149. Those rules were included as Attachments 1-4 of the Public Meeting Memo. Since that time, Staff participated in a workshop and informal discussions with parties to the proceeding. As a product of those discussions, Staff recommends certain modifications to its initial proposed rules. The modifications are incorporated in Attachment 1.1 (Code of Conduct), 2.1 (Aggregation), 3.1 (Public Purposes – Allocation of Funds to Education Service Districts) and 4.1 (Definition of Site). Staff changed the use of the term “customer” to “consumer” to achieve consistency with the rules adopted in AR 380. The reasons for the other proposed changes are described herein.

**II. COMMENTS**

**Code of Conduct**

**860-038-0005 - Definitions**

Staff deleted the definition of “Confidential Information” and added a definition for “Electric Company Operational Information.” Consumer information issues are addressed in 860-038-0540 and rely on the definition of proprietary consumer information. Electric company operational information disclosure issues are not specific to confidential information, but relate to the dissemination of information in a manner that is fair to competitors. Staff proposes 860-038-0580 (1) to address these issues rather than addressing them under 860-038-0540 as initially proposed on August 8, 2000.

**860-038-0540 – Consumer Information**

Staff changed the applicability of this rule to “proprietary consumer information” rather than the previous “confidential information,” a broader definition. Also, Staff recognized that release of consumer information needs safeguards and fair treatment whether the release is with its affiliates or other entities. Staff modified its proposal accordingly.

## **860-038-0580 – Prevention of Cross-subsidization Between Competitive Operations and Regulated Operations**

Parties expressed concern with the pricing restrictions listed in 860-038-0580(1) of the August 8 proposed rules. Staff recognizes that electric companies will charge its non-utility operations or affiliates according to the transfer pricing policy described in 860-038-0580 (4). The electric company will charge tariffed rates or fully distributed costs. The application of this policy will ensure the electric company utility is not dispensing subsidies. If the non-utility operation or affiliate prices its goods or services below cost, the company shareholders will experience the loss. If the electric company's non-utility operations or affiliates engage in predatory pricing, an affected party may seek redress in the appropriate forum. Staff deleted 860-038-0580(1) of the August 8 proposed rules.

Staff continues to have concerns regarding the subsidy that may occur as a result of a transfer of information from the electric company utility operations to its non-utility operations or affiliates to the detriment of competitors. Staff revamped 860-038-0540 to make it specific to consumer information. Staff addresses the transfer of electric company operational information under 860-038-0580 (1) of the attached rules.

Staff also realizes that cross-subsidization may occur when the electric company is purchasing or selling goods or services. Accordingly, Staff clarified 860-038-0580 to indicate the transfer pricing policy applies to both types of transactions.

## **860-038-0590 – Transmission Access**

Staff recognizes that parties have concerns regarding this proposed rule. Staff has pledged to work with parties on these issues and plans to have further discussions during the October 19 workshop.

### **Aggregation**

#### **860-038-0001 – Scope**

Pursuant to ORS 757.659, Staff is required to address requirements for electric companies regarding aggregation. Staff has added section 10 to 860-038-0038 to address this requirement. Therefore, the scope has been changed to reflect the applicability of section 10 to electric companies.

#### **860-038-0380 – Aggregation**

Based on parties' comments and advice from the Department of Justice, Staff limited the information to be provided on the registration form to aggregator name and regulatory contact and eliminated the process for the Commission to revoke an aggregator's registration. The registration of aggregators provides a depository of information to ensure consumer protection. Staff also added section 10, which requires electric companies to allow aggregation of electricity loads, as directed by ORS 757.659(2).

## **Public Purposes – Allocation of Funds to Education Service Districts**

### **Addition to 860-038-0480 – Public Purposes**

Staff and the Oregon Office of Energy propose minor modifications to the proposed rule on the allocation of public purpose funds for schools to the Education Service Districts (ESDs). We recommend replacing references to “enrollment” in the rule with “average daily membership” (ADM). It is our understanding that ADM is a better measurement of students in school than enrollment. ADM is the standard by which the Oregon Department of Education allocates funding to individual school districts. Staff proposed this modification to the AR 390 rules at the September 22, 2000 workshop. Workshop participants raised no objections to the proposed modification to the rule on allocation of funds to ESDs.

### **Definition of Site**

#### **Modification of 860-038-0005 – Definitions**

For purposes of discussion at the October 19 workshop, staff proposes the revised definition shown in the attached rules. The definition of site is modified in two ways. First, it allows facilities to stretch out 1,000 feet from one to the next in a chain, instead of requiring that they all be within 1,000 feet of each other. Second, it allows land to be considered contiguous even if there is an intervening public or railroad right of way, except that right of way lands for municipal infrastructure would not be considered contiguous. These changes address the concerns raised at the September 22 workshop, that facilities on a large tract or campus should be able to qualify as a single site but that the chain approach should not apply to facilities like streetlights. Whether the revised definition unreasonably includes or excludes groups of facilities as single sites will be discussed at the October 19 workshop.