

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 390

In the Matter of Electric Restructuring	)	PG&E NATIONAL ENERGY
	)	GROUP
	)	
	)	REPLY COMMENTS
	)	
Code of Conduct Rulemaking	)	
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PG&E National Energy Group (PG&E NEG) reiterates its support for the October 16, 2000, draft rules and Opening Comments filed by the Public Utility Commission Staff (Staff) on this docket. The draft rules recognize the need to mitigate the market power of incumbent utilities and to prevent the preferential treatment and cross-subsidization of both utility affiliates and in-house, competitive utility business lines. Staff's approach on draft rule OAR 860-038-0590 is particularly relevant in light of the problems PG&E NEG and other electricity service suppliers (ESSs) have been experiencing in other states that have moved to retail open access.

**UTILITIES, AFFILIATES AND IN-HOUSE COMPETITIVE OPERATIONS**

Our reply comments today will focus on several items. We would like to reinforce and expound upon two points made by the Oregon State Association of Electrical Workers (the Association) in their October 16, 2000, comments before the Public Utility Commission (PUC) on this docket. First, the Association's comments regarding "Utilities versus Affiliates" state that the rules should be clarified to "apply to both utilities and their affiliates," (p 2). PG&E NEG could not agree more. In fact, we touched on this issue at several points in our October 16, 2000, Initial Comments.

One of our greatest concerns surrounds how the utility treats its own in-house operations that will handle the development, offering and scheduling of the Nonresidential Standard Offer, as outlined in OAR 860-038-0250. If the Standard Offer is cross subsidized and/or Standard Offer employees are allowed access to preferential system or consumer information, the Standard Offer could easily become a product that undercuts the competitive market. Clarifications to the Staff's draft rules are necessary in several places to clarify that the rules regarding cross-subsidies and sharing of information apply between utilities and their affiliates and utilities internally, especially those portions of the utilities that will be providing or coordinating scheduling for the Standard Offer. The following clarifications to the draft rules included in Staff' Opening Comments are offered to address this problem:

**0500 Code of Conduct Purpose** – Change the second sentence as follows: “All transactions between utilities, their competitive affiliates and their internal competitive operations, including those providing or scheduling the Nonresidential Standard Offer, shall be at arm's length,” (Staff's comments, p. 7).

**0540 Consumer Information** – Change the following sections of this draft rule as follows:

(1) An electric company shall implement adequate safeguards precluding employees of an affiliate, ESS, internal competitive operation, including that related to the provision or scheduling of the Nonresidential Standard Offer, or other entity 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 an affiliate, ESS, internal competitive operation, including that related to the provision or scheduling of the Nonresidential Standard Offer, or other entity without the written consent of the consumer;

(b) *no changes*

(c) *no changes*

(d) Create significant opportunities for cross-subsidization of affiliates and the Nonresidential Standard Offer Service.

(2) An electric company must determine the types of proprietary consumer information that will be made available to affiliates, electricity services suppliers, internal competitive operations, including those related to the provision or scheduling of the Nonresidential Standard Offer, and other entities. (*no changes to last sentence*).

**0560 Treatment of Competitors** – Before the period at the end of paragraph (1), insert the following: “and internal competitive operations, including those related to the provision or scheduling of the Nonresidential Standard Offer”.

**0620 Access to Books and Records** – Before the period at the end of paragraph (1) insert the following: “including all electric company transactions related to the provision or scheduling of the Nonresidential Standard Offer”.

## **COMPLIANCE AND REPORTING**

PG&E National Energy Group also concurs with the Oregon State Association of Electrical Workers in their call for more frequent compliance filings and the ability for potentially affected parties to file complaints with the Commission about alleged violations of the Code of Conduct (Association Comments and draft rule language, p. 3 “Compliance:”).

We stated in our initial comments that adequate monitoring and enforcement of the Code of Conduct were critical to ensuring its successful implementation. To facilitate adequate monitoring, the PUC should require electric companies to file audits to demonstrate their compliance with the Code of Conduct on a more frequent basis than outlined in the Staff’s draft rules. We suggest increasing the filing frequency outlined in OAR 860-038-0640 to once after the first six months and annually thereafter:

### **0640 Compliance Filings --**

(1) No later than six months ~~one year~~ after an electric company has unbundled pursuant to ORS 757.603, and at a minimum of annually ~~every second year~~ thereafter, an electric company...*(remainder of paragraph unchanged)*.

## **TRANSMISSION AND DISTRIBUTION ACCESS, OAR 860-038-0590**

Although we commented extensively on this section of the draft rules in our Initial Comments on this docket, our concerns in this area and our desire to come to some agreement with the utilities, customers and Staff bear repeating here.

First, Staff’s October 19, 2000, workshop in these draft rules included extensive discussion of this draft rule (OAR 860-038-0590) including the reasons why it is so pivotal to

retail access. Although the discussions helped raise the different parties' understandings of the issues and problems associated with the lack of reasonable access to these facilities, no general consensus or agreement was reached. PG&E NEG supports Staff's efforts to get all of the parties together to resolve these issues in the context of this rulemaking. Resolution of these issues should not be delayed and handled during the utilities' tariff filings on SB 1149 (UE 115 and UE 116). The rules should be uniform across the state so that customers who wish to go to direct access, generators who wish to interconnect with the transmission and distribution grid, and electricity service suppliers (ESSs) who wish to schedule load on the grid understand the common rules of the road and can prepare for the coming of direct access in 2001.

Parties who should be at the table for these technical policy discussions include at least Portland General Electric, PacifiCorp, Staff, Bonneville Power Administration, Oregon Office of Energy, Industrial Customers of Northwest Utilities and PG&E NEG.

PG&E NEG would also like to reiterate the principles on which we hope agreement can be reached:

(i) **Access to All Facilities Required to Serve Retail Load** – The electric company must offer non-discriminatory access to each ESS and scheduling ESS/Scheduling Coordinator that serves retail customers (including the ESS and scheduling ESS/Scheduling Coordinator that provides Standard Offer services) to all of the electric company's transmission facilities and entitlements, distribution facilities, ancillary services resources, and local generation resources in import-limited areas;

(ii) **Identical Access to All Facilities Required to Serve Retail Load** – The rates, terms and conditions regarding access to, and pricing of, the electric company's transmission facilities and entitlements, distribution facilities, ancillary services resources, and local generation resources in import-limited areas must be identical for each ESS and scheduling ESS/Scheduling Coordinator that serves retail customers, including the ESS and scheduling ESS/Scheduling Coordinator that provides Standard Offer services; and

(iii) **Reasonable Terms and Conditions for Access to All Facilities Required to Serve Retail Load** – The terms and conditions regarding access to, and pricing of, the electric company's transmission facilities and entitlements, distribution facilities, ancillary services resources, and local generation resources in import-limited areas must be designed to accommodate the unique requirements associated with serving retail customers.

## **CONCLUSION**

If adopted, the suggested changes outlined in these comments and in our October 16, 2000, Initial Comments would further strengthen the Staff's draft rules on Code of Conduct and transmission and distribution system access. The changes will make cross subsidization, preferential access to information and other anti-competitive behaviors easier for electric companies to avoid, easier for market participants and the PUC to detect, and much simpler to prevent in the first place.

Respectfully submitted,

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