

**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 REPLY 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. On October 16, 2000, Staff filed opening comments. On October 19, 2000, Staff conducted its third and final workshop. Staff recommends certain modifications to its initially proposed rules and the updated rules filed in its opening comments. The current modifications are incorporated in Attachment 1.2 (Code of Conduct), 2.2 (Aggregation) and 4.2 (Definition of Site). There appears to be agreement on the October 16, 2000, version of the Public Purpose proposed rule change, and likely on Aggregation with the Staff's change made in the comments below. However, there still remain differences regarding the Code of Conduct and Definition of Site proposed rules.

II. COMMENTS

Code of Conduct

860-038-0005 - Definitions

PGE commented that the Code of Conduct should only apply to the provision of electricity services. Staff modified its definition of "competitive operation" to address PGE's concern.

860-038-0520 – Company Name and Logo

Staff modified the language to clarify the applicability of the disclaimer and ensure that this section reflected conditional use, and not a prohibited use by an affiliate.

860-038-0540 – Consumer Information

Staff replaced the word affiliate or affiliates with competitive operations as defined in 860-038-0005 (9). This term includes an electric company's nonregulated operations and its affiliate(s). Other changes were nonsubstantive corrections.

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

PGE commented on 860-038-0580 (1) as originally proposed by Staff. Staff recommended deletion of the provision in its opening comments. Staff reworded subsection (3) to be consistent with its transfer pricing policy definition language found in 860-027-0052 and deleted the reference to “price list,” a term used in telecommunications regulation.

860-038-0590 – Transmission and Distribution Access

In response to opening comments, Staff changed the term “special contract” to “contract” to avoid confusion with the unique meaning of special contract under laws administered by the PUC.

Staff engaged in extensive discussion during the workshop with the parties.

PG&E National Energy Group (PG&E) expressed concerns with 860-038-0590 (1) that an RTO will not necessarily resolve the competitive issues addressed in the rules. Staff agrees the RTO will not necessarily resolve the issues, but Commission review of applications for exemptions will ensure that exemptions are granted only under appropriate conditions. PG&E also expressed a concern that the electric company could impede competition by limiting interconnection with the distribution system. Staff modified its proposal to address access to the distribution system. PG&E expressed concern with the June 1 date in (4)(h) and requested a February 1 date to allow resolution in a manner that would facilitate direct access. Staff recommends a March 1 date.

PGE and PacifiCorp expressed concern that this rule intrudes on FERC jurisdiction and contract arrangements. Staff is not asking the Commission to exercise FERC jurisdiction, but merely asking the electric companies to make certain filings at FERC. FERC retains full jurisdiction, including ratemaking. Staff is not intruding on existing contracts in effect between the electric companies and other entities, including the Bonneville Power Administration. Staff recognizes that the electric companies have access to transmission capacity as a result of those contracts and is not asking the electric companies to transfer those rights to other parties, give up those rights or modify the execution of the contracts. Staff’s recommendation is that the electric companies use their rights to provide transmission services to ESSs under rates, terms and conditions that will promote fair competition.

860-038-0600 - Joint Marketing and Referral Arrangements

PGE expressed uncertainty regarding the prohibitions listed in 860-038-0600 (1). Staff believes that these are necessary prohibitions to promote fair competition. The proposed provision should not be read to contain exemptions. In response to PGE’s concern regarding the sharing of information, Staff removed the prohibition regarding the sharing of marketing information. The sharing is subject to the equal treatment standard. See changes to definition of “Electric company operational information.” Staff, for the

same reason stated above in 860-038-0540, replaced the word affiliate or affiliates with competitive operations.

860-038-0620 - Access to Books and Records

Staff, for the same reason stated above in 860-038-0540, replaced the word affiliate or affiliates with competitive operations. Also, in response to a concern raised by PacifiCorp, staff modified subsection (2) to require unconsolidated financial statements only whenever possible.

860-038-0640 – Compliance Filings

Staff, deleted subsection (2) as it was directly related to subsection (1) of 860-038-0580 which Staff deleted in its October 16, 2000 comments, in response to concerns raised by parties. Staff inadvertently did not make this deletion in its prior comments.

Aggregation

860-038-0380 – Aggregation

Staff clarified the applicability of provision 5 (c) based on comments received during the October 19, 2000 workshop.

Definition of Site

Modification of 860-038-0005 – Definitions

Most of the discussion in the workshops on the definition of “site” centered on two issues: 1) whether the 1,000-foot criterion allows facilities to stretch out 1,000 feet from one to the next in a chain or requires that they all be within 1,000 feet of each other, and 2) whether an area of land can be contiguous if there is an intervening right of way. ICNU provided an example of an industrial customer with facilities stretching more than 1,000 feet from one end to the other on a large tract of land with an intervening public right of way. The Office of Energy noted that the site definition affects who can qualify for self-direction of public purpose charges and that a customer like Oregon State University would not qualify as a single site under the proposed rule. Most parties at the workshops agreed that the examples cited should be considered single sites, but Staff and others expressed the concern that expanding the definition to include these examples would make it too broad, allowing streetlights and other groups of facilities not commonly considered a single site to qualify.

As a result, Staff recommends that the Commission adopt a revised definition that allows facilities to stretch out 1,000 feet from one to the next and allows land to be considered contiguous even if there is an intervening public or railroad right of way, except that rights of way land for municipal infrastructure would not be considered contiguous. Staff will monitor the requests by customers to PGE and PacifiCorp to qualify as single sites and recommend further rule changes if necessary.

Staff also recommends modifying the proposed rule (in subsection (49)(b)(B)) to make it clear that a facility can be included in the owner's site only if the owner (as opposed to a lessee) is taking service at the facility.