

DIVISION 038

DIRECT ACCESS REGULATION

Code of Conduct

860-038-0005

Definitions

As used in this Division:

(1) “Above-market costs of new renewable energy resources” means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.

(2) “Advisory committee” means a group as appointed by the Commission, consisting of representatives from Commission Staff, the Office of Energy and the following:

- (a) Local governments;
- (b) Electric companies;
- (c) Residential consumers; and
- (d) Public or regional interest groups;

(3) “Affiliate” means the same as used in ORS 757.015 “Affiliated Interest” defined.

(34) “Aggregate” means combining retail electricity consumers into a buying group for the purchase of electricity and related services. “Aggregator” means an entity that aggregates.

(45) “Ancillary services” means those services necessary or incidental to the transmission and delivery of electricity from generating facilities to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.

(6) “Arm’s length transaction” means the standard of conduct under which unrelated parties, each acting in its own best interest, would carry out a particular transaction. Applied to related parties, a transaction is at arm’s length if the transaction mirrors the terms and conditions that a disinterested third party could expect in a bargained transaction.

(57) “Commission” means the Public Utility Commission of Oregon.

(68) “Common costs” means costs that cannot be directly assigned to a particular function.

(9) “Competitive operation” means (unless otherwise precluded by statute or Commission policy) the sale of any goods or services by the electric company for which there are viable alternatives.

(10) “Confidential information” means any information not intended for public disclosure and considered to be confidential or proprietary by persons privy

to such information. Confidential information includes but is not limited to information relating to the interconnection of customers to an electric company's transmission or distribution systems, proprietary customer information, trade secrets, competitive information relating to internal manufacturing processes, and information about an electric company's transmission or distribution system, operations, or plans for expansion.

(711) “Consumer-owned utility” means a municipal electric utility, a people’s utility district or an electric cooperative.

(812) “Default supplier” means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.

(913) “Direct access” means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.

(1014) “Direct service industrial consumer” means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(1115) “Distribution” means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(1216) “Distribution utility” means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(1317) “Divestiture” means the sale of all or a portion of an electric company’s ownership share of a generation asset to a third party.

(1418) “Economic utility investment” means all Oregon allocated investments made by an electric company prior to the date the electric company offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. “Economic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(1519) “Electric company” means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(1620) “Electric cooperative” means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(1721) “Electric utility” means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(1822) “Electricity” means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(1923) “Electricity services” means electricity distribution, transmission, generation or generation-related services.

~~(2024)~~ “Electricity service supplier” or “ESS” means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. “Electricity service supplier” does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

~~(2425)~~ “Emergency default service” means a service option provided by an electric company to a nonresidential consumer that requires less than five business days’ notice by the consumer or its electricity service supplier.

(26) “Fully distributed cost” means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.

~~(2227)~~ “Functional separation” means separating the costs of the electric company’s business functions and recording the results within its accounting records, including allocation of common costs.

(28) “Joint marketing” means the offering (including marketing, promotion, and/or advertising) of retail electric service or distribution service in conjunction with competitive, non-utility or affiliate goods or services by an electric company to consumers either through contact initiated by the electric company, its affiliate, or through contact initiated by the consumer.

~~(2329)~~ “Large nonresidential consumer” means a nonresidential consumer that is not a small nonresidential consumer.

~~(2430)~~ “Load” means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

~~(2531)~~ “Local energy conservation” means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.

~~(2632)~~ “Low-income weatherization” means repairs, weatherization and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

~~(2733)~~ “Market transformation” means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

~~(2834)~~ “Municipal electric utility” means an electric distribution utility owned and operated by or on behalf of a city.

~~(2935)~~ “Net system power mix” means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Office of Energy.

~~(3036)~~ “New” as it refers to energy conservation, market transformation and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company, with the exception that “new energy conservation” also includes expenditures by self-directing consumers for conservation projects that have not received funding from electric company conservation programs and have been certified by the Office of Energy after July 23, 1999.

~~(3137)~~ “New renewable energy resource” means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation on or before July 23, 1999. “New renewable energy resource” does not include any portion of a renewable energy

resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

(3238) “Nonresidential consumer” means a retail electricity consumer that is not a residential consumer.

(3339) “Office of Energy” means the Oregon Office of Energy created under ORS 469.030.

(3440) “Ongoing valuation” means the process of determining transition costs or benefits for a generation asset by comparing the value of the output of the asset at forecast market prices for a one-year period to an estimate of the revenue requirements of the asset for the same time period.

(3541) “One-time administrative valuation” means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

(3642) “One average megawatt” means 8,760,000 kilowatt-hours of electricity per year.

(3743) “People’s utility district” has the meaning given that term in ORS 261.010.

(3844) “Portfolio” means a set of product and pricing options for electricity.

(45) “Proprietary customer information” means any information compiled by an electric company on a customer in the normal course of providing electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

(3946) “Qualifying expenditures” means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Office of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(4047) “Registered dispute” means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission’s Consumer Services Division but is not the subject of a formal complaint.

(4148) “Regulated charges” means charges for services subject to the jurisdiction of the Commission.

(4249) “Regulatory assets” means assets that result from rate actions of regulatory agencies.

(4350) “Renewable energy resources” means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; and

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(4451) “Residential consumer” means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. “Residential consumer” does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges and clubs. As used in this subsection, “dwelling” includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles and floating homes.

(4552) “Retail electricity consumer” means the end user of electricity for specific purposes such as heating, lighting or operating equipment and includes all end users of electricity served through the distribution system of an electric company on or after July 23, 1999, whether or not each end user purchases the electricity from the electric company. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after October 1, 2001 at the site.

(4653) “Self-directing consumer” means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Office of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company’s tariff regarding public purpose credits.

(4754) “Serious injury to person” means, in the case of an employee, an injury that results in hospitalization. In the case of a nonemployee, “serious injury” means any contact with an energized high-voltage line, or any incident that results in hospitalization. Treatment in an emergency room is not hospitalization.

(4855) “Serious injury to property” means damage to ESS and non-ESS property exceeding \$25,000 or failure of ESS facilities that causes or contributes to a loss of energy to consumers.

(4956) “Site” means a single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, or buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter.

(5057) “Small nonresidential consumer” means a nonresidential consumer whose demand has not exceeded 30 kW more than once within the preceding 13 months or with seven months or less of service whose demand has not exceeded 30 kW.

(5158) “Special contract” means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.

(5259) “Structural separation” means separating the electric company’s assets by transferring assets to an affiliated interest of the electric company.

(5360) “Total transition amount” means the sum of an electric company’s transition costs and transition benefits.

~~(5461)~~ “Transition benefits” means the value of the below-market costs of an economic utility investment.

~~(5562)~~ “Transition charge” means a charge or fee that recovers all or a portion of an uneconomic utility investment.

~~(5663)~~ “Transition costs” means the value of the above-market costs of an uneconomic utility investment.

~~(5764)~~ “Transition credit” means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

~~(5865)~~ “Transmission grid” means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries.

~~(5966)~~ “Unbundling” means the process of assigning and allocating a utility's costs into functional categories.

~~(6067)~~ “Uneconomic utility investment” means all Oregon allocated investments made by an electric company prior to the date the electric company offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. “Uneconomic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.

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

Stat. Implemented: ORS 756.040. 757.600 to 757.667

Hist.: NEW

860-038-0500

Code of Conduct Purpose

(1) The provisions of this section, addressing code of conduct, establish the safeguards to govern the interactions/transactions between electric companies and their affiliates, both during the transition to and after the introduction of competition, to avoid potential market power abuses and cross-subsidization between regulated and unregulated activities. All transactions between utilities and their competitive affiliates shall be at arm's length. These rules also address activities conducted within the electric company that are subject to competition and other electric company practices in the competitive market.

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

Stat. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

860-038-0520**Electric Company Name and Logo**

(1) An electric company shall not allow the use of its corporate name, trademark, brand, or logo by an affiliate, on the affiliate's employee business cards, or in any written or auditory advertisements of specific services to existing or potential customers located within the electric company's service area. This would apply whether through radio or television, internet-based, or other electronic format accessible to the public, unless the affiliate includes a disclaimer with its use of the electric company's corporate name, trademark, brand, or logo. Such disclaimer of the corporate name, trademark, brand, or logo in the material distributed must be written in a bold and conspicuous manner or clearly audible, as appropriate for the communication medium. It shall state the following: "{Name of affiliate} is not the same company as {name of electric company} and is not regulated by the Public Utility Commission of Oregon, and you do not have to buy {name of affiliate}'s products to continue to receive quality regulated services from {name of electric company}."

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

860-038-0540

Customer Information

(1) An electric company shall implement adequate safeguards precluding employees of an affiliate from gaining access to information in a manner that would:

(a) Allow or provide a means to transfer confidential information from an electric company to an affiliate, without the written consent of the customer;

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

(c) Lead to customer confusion; or

(d) Create significant opportunities for cross-subsidization of affiliates.

(2) An electric company must determine the types of customer information that will be made available to electricity services suppliers (ESS) and other entities. An electric company shall file the types of information, and the prices, terms, and conditions associated with the dissemination of such information, with the Commission for approval. An electric company shall only disseminate customer information under tariff.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

860-038-0560

Treatment of Competitors

(1) An electric company, in its provision of supply, capacity, services, or information; offering of discounts; tariff discretion; and processing requests for services shall treat its competitors fairly in all respects and in a manner consistent with the treatment it affords any of its competitive affiliates.

(2) An electric company shall not condition or otherwise tie the provision of any regulated services provided by the electric company, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any regulated services provided by the electric company, to the taking of any goods or services from its affiliates.

(3) An electric company shall not assign customers to which it currently provides services to any of its affiliates, whether by default, direct assignment, option, or by any other means, unless that means is equally available to all competitors.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

860-038-0580

Prevention of Cross-subsidization Between Competitive Operations and Regulated Operations

(1) Any good or service sold by an electric company to an unaffiliated party must be bid or priced at tariffed rates. If a tariffed rate is not available or the tariff indicates the rate is determined on an individual case basis, the good or service must be bid or priced at a minimum of fully distributed cost. If the good or service is provided under a binding bid that is not adjusted for the company's actual fully distributed cost of providing the good or service, the electric company shall maintain records that document the bid and the actual fully distributed cost of providing the good or service.

(2) Any goods or services provided by an electric company's utility operation to its non-utility operation or affiliate must be provided in accordance with the Commission's transfer pricing policy. The electric company must maintain its books and records consistent with the Commission's transfer pricing policy. For purposes of this rule, "utility" or "regulated" and "non-utility" or "nonregulated" have the meaning given in the Uniform System of Accounts prescribed for Public Utilities and Licensees by the Federal Energy Regulatory Commission.

(3) For purposes of this rule, "goods or services" means a transfer of assets, a sale of supplies, or a sale of services, including any tangible or intangible property of an electric company or other right, entitlement, business opportunity, or other thing of value.

(4) The Public Utility Commission of Oregon transfer pricing policy is:

(a) When an asset is transferred to regulated accounts from nonregulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value;

(b) When an asset is transferred from regulated accounts to nonregulated accounts, the transfer shall be recorded (except as provided for in OAR 860-038-0100 and OAR 860-038-0120) in regulated accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff or price list is applicable, proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value;

(c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The electric company shall record the gain in a manner which will enable the Commission to determine the proper disposition of the gain in a subsequent rate proceeding;

(d) When services or supplies are sold by a regulated activity to a nonregulated activity, sales shall be recorded in regulated revenue accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in regulated accounts at the electric company's fully distributed cost; and

(e) When services or supplies (except for generation) are sold to a regulated activity by a nonregulated activity, sales shall be recorded in regulated accounts at the nonregulated activity's fully distributed cost or the market rate, whichever is

lower. The nonregulated activity's cost shall be calculated using the electric company's most recently authorized rate of return. Then, for generation, when services or supplies are sold to a regulated activity, by a nonregulated activity, sales shall be recorded in regulated accounts at the market rate.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

860-038-0590

Transmission Access

(1) An electric company may be relieved of the requirements of this rule by placing its transmission facilities under the control of a regional transmission organization consistent with FERC Order No. 2000 and obtaining Commission approval of an exemption.

(2) An electric company, prior to joining a regional transmission organization pursuant to FERC Order No. 2000, must implement, to the extent possible, the principles and recommendations of FERC Order No. 2000.

(3) Each electric company shall provide non-discriminatory access to its transmission facilities and ancillary services resources, including resources necessary to serve load in import-limited areas, to serve all retail customers. An electric company must not give preference or priority in transmission pricing, transmission access, or access to and provision of ancillary services, to the electric company or its affiliate relative to persons or entities requesting transmission access to serve direct access consumers. No preference or priority may be given to any customer based on whether the customer is purchasing service from the electric utility, a default supplier or an ESS.

(4) An ESS or scheduling coordinator serving direct access consumers may request that an electric company enter into a special contract to acquire transmission services or ancillary services. The electric company must enter into such contracts with fair and reasonable terms and conditions and with prices that do not exceed its fully distributed cost. The contract must not extend beyond the date that the electric company receives Commission approval of an exemption from this rule. The contract must meet the following requirements:

(a) Any transmission capacity to which the electric company has entitlements, by ownership or by contract, for the purpose of serving the load of the retail electricity consumers of the electric company shall be made available to the electric company, the ESSs and scheduling coordinators that are serving such load on at least a pro rata basis;

(b) The ancillary services obligations of an ESS, scheduling coordinator, or electric company must not depend on whether the consumer is a direct access consumer or a retail electricity consumer that has not chosen direct access;

(A) Except for those ancillary services which cannot be unbundled under FERC Order 888, an ESS or scheduling coordinator may acquire, on behalf of the retail loads for which it is responsible, all ancillary services required in conjunction with the transmission of electricity under the electric company's Open Access Transmission Tariff, or it may contract with the electric company to acquire such ancillary services on its behalf;

(B) The electric company must offer to provide, to all retail electricity consumers through contract, ancillary services from electric generation facilities currently owned by or under contract to the electric company. The terms and conditions under which ancillary services are made available to an ESS or scheduling coordinator must be based on fully distributed costs and comparable to those available to the electric company's operations.

(c) Any energy imbalance requirements in such contracts must consider the requirements of the direct access market environment. Any energy imbalance requirements, including the pricing of imbalances and penalties for imbalances, must be provided to ESSs or scheduling coordinators based on fully distributed costs and comparable to those available to the electric company operations;

(d) Where local generation is required to operate for electric system security or where there is insufficient transmission import capability to serve retail loads without the use of local generation, the electric company shall make services available from such local generation to ESSs and scheduling coordinators based on fully distributed costs and comparable to those available to the electric company operations. The electric company shall also specify such obligations in appropriate sales contracts prior to any divestiture of such resources;

(e) The contract must specify prices, terms, and conditions for scheduling, billing, settlement and other functions that are fair, reasonable, and based on fully distributed costs.;

(f) The contract must implement dispute resolution processes that enable ESSs and scheduling coordinators which serve the retail load of the electric utility to expeditiously resolve claims of discriminatory treatment in the calculation of available transmission capacity, and the reservation, scheduling, use, and curtailment of transmission services;

(g) The contract must incorporate a code of conduct and associated enforcement mechanisms to ensure that the electric company operations, the ESSs, and scheduling coordinators that serve the retail load of the electric utility are treated comparably by the electric company;

(h) Electric companies subject to this rule must convene workshops with affected parties to participate in the development of pro forma pricing methodologies, terms and conditions of such contracts, with the objectives of achieving statewide consistency of the rules and protocols for retail transmission access, input of all affected parties, and consensus by all affected parties, as to the reasonableness of such terms and conditions. Each electric company must submit such pro forma contracts to the Commission by June 1, 2001.

(5) If adherence to OAR 860-038-0590 requires FERC approval of tariff or contract provisions, the electric company must petition FERC for the approval of the tariff or contract provisions within 30 days of the effective date of this rule and as needed thereafter.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

860-038-0600

Joint Marketing and Referral Arrangements

(1) For joint marketing, advertising, and promotional activities an electric company shall not:

(a) Provide or acquire leads on behalf of its competitive affiliates;

(b) Solicit business or acquire information on behalf of its competitive affiliates;

(c) Give the appearance of speaking or acting on behalf of any of its competitive affiliates;

(d) Share market analysis reports or other types of proprietary or non-publicly available reports, including, but not limited to, market forecast, planning, or strategic reports, with its competitive affiliates;

(e) Represent to customers or potential customers that it can offer competitive retail services bundled with its tariffed services; or

(f) Request authorization from its customers to pass on information exclusively to its competitive affiliate.

(2) An electric company shall not engage in joint marketing, advertising, or promotional activities of its products or services with those of a competitive affiliate in a manner that favors the affiliate. Such joint marketing, advertising, or promotional activities include, but are not limited to, the following activities:

(a) Acting or appearing to act on behalf of a competitive affiliate in any communications and contacts with any existing or potential customers;

(b) Joint sales calls;

(c) Joint proposals, either as requests for proposals or responses to requests for proposals;

(d) Joint promotional communications or correspondence, except that an electric company may allow a competitive affiliate access to customer bill advertising inserts according to the terms of a Commission-approved tariff so long as access to such inserts is made available on the same terms and conditions to non-affiliates offering similar services as the competitive affiliate that uses bill inserts;

(e) Joint presentations at trade shows, conferences, or other marketing events within the state of Oregon; and

(f) Providing links from an electric company's internet web site to a competitive affiliate's internet web site.

(3) At a customer's unsolicited request, an electric company may participate in meetings with a competitive affiliate to discuss technical or operational subjects regarding the electric company's provision of transmission or distribution services to the customer, but only in the same manner and to the same extent the electric company participates in such meetings with unaffiliated electric or energy services suppliers and their customers. The electric company shall not listen to, view, or otherwise participate in any way in a sales discussion between a customer and a competitive affiliate or an unaffiliated electric or energy services supplier.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

860-038-0620

Access to Books and Records

(1) The Public Utility Commission of Oregon shall have full access to all books and records of an electric company and its affiliates in order to review all transactions between an electric company and its affiliates.

(2) An electric company and its affiliates shall maintain separate books and records, as well as prepare unconsolidated financial statements.

(3) An electric company and its affiliates shall maintain sufficient records to allow for an audit of the transactions between an electric company and its affiliates. At its discretion, the Commission may require an electric company to initiate, at the electric company's expense, an audit of the transactions between an electric company and its affiliates performed by an independent third party.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

860-038-0640

Compliance Filings

(1) No later than one year after an electric company has unbundled pursuant to ORS 757.603, and at a minimum of every second year thereafter, an electric company shall have an audit prepared by an independent auditor that verifies that the electric company is in compliance with all Code of Conduct rules of the Commission. The electric company shall file the results of each audit with the Commission within one month of the audit's completion.

(2) An electric company shall file, with its annual Affiliated Interest Report required in OAR 860-027-0100, a report that indicates for the prior calendar year, for bids subject to the requirements of OAR 860-038-0580, a listing of all bids that were not adjusted for the company's actual fully distributed cost of providing the good or service and were less than 90 percent of the actual fully distributed cost of providing the good or service.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

Aggregation

860-038-0001

Scope and Applicability of Rules

(1) The rules contained in this Division apply to electric companies and electricity service suppliers, except that these rules do not apply to an electric company serving fewer than 25,000 consumers in this state unless the electric company:

- (a) Offers direct access to any of its retail electricity consumers in this state; or
- (b) Offers to sell electricity services available under direct access to more than one retail electricity consumer of another electric utility **in this state.**

(2) Except as otherwise provided in these rules, an electric company must comply with all other divisions of OAR Chapter 860.

(3) OAR 860-038-0380 applies to aggregators.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

860-038-0380

Aggregation

(1) An aggregator must be registered by the Commission to combine retail electricity consumers into a buying group for the purchase of electricity and related services.

(2) The initial registration fee is \$50.

(3) The annual renewal fee is \$25.

(4) At a minimum, the aggregator applicant must supply the following information:

(a) Name of aggregator applicant, including owners, directors, partners, and officers;

(b) Name, address, and phone number of the aggregator applicant's regulatory contact;

(c) Identification of services intended to be offered;

(d) Identification of targeted customer class(es) and geographical area; and

(e) A signed statement from an authorized representative of the aggregator applicant declaring that all information provided is true and correct.

(5) At a minimum, the aggregator applicant must attest that it will:

(a) Furnish to customers a toll-free number or local number that is staffed during normal business hours to enable a consumer to resolve complaints or billing disputes and a statement of the aggregator's terms and conditions that detail the customer's rights and responsibilities;

(b) Comply with all applicable state and federal laws, rules, and Commission orders; and

(c) Adequately respond to Commission information requests within 10 business days;

(6) An aggregator must take all reasonable steps, including corrective actions, to ensure that persons or agents hired by the aggregator, including but not limited to officers, directors, agents, employees, representatives, successors, and assigns adhere at all times to the terms of all state and federal laws, rules, and Commission orders.

(7) Annually, 30 days prior to expiration, a registered aggregator must notify the Commission that it will not be renewing its registration or it must renew its registration by submitting an application for renewal that includes an update of information specified in section (4) of this rule. The aggregator must state that it continues to attest that it will meet the requirements of section (5) of this rule. The authorized representative of the aggregator must state that all information provided is true and correct and sign the renewal application. If the Commission takes no action on the renewal application, the renewal is granted for a period of one year from the expiration date of the prior registration. If a written complaint is filed or if on the Commission's own motion, the Commission has reason to believe the renewal should not be granted, the Commission will conduct a revocation proceeding per section (8) of this rule. The renewal applicant will be considered temporarily registered during the pending revocation proceeding.

(8) Upon review of a written complaint or on its own motion the Commission may, after reasonable notice and opportunity for hearing, revoke the registration of an aggregator for reasons including, but not limited to, the following:

(a) Material misrepresentation in its initial or renewal application for certification or in any report of material changes in the facts upon which the registration was based;

(b) Material misrepresentations in customer solicitations, agreements, or in the administration of customer contracts;

(c) Dishonesty, fraud, or deceit that benefits the aggregator or disadvantages consumers;

(d) Violation of agreements stated in section (5) of this rule.

(9) An aggregator must promptly report to the Commission any circumstances or events that materially alter information provided to the Commission in the registration process.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

Public Purposes - Allocation of Funds to Education Service Districts

Addition to 860-038-0480

Public Purposes

(1) Each electric company that offers direct access to its retail electricity consumers and each electricity service supplier that provides electricity services to direct access consumers in the electric company's service territory will collect a public purpose charge from its retail electricity consumers for 10 years beginning on the date direct access is first offered.

(2) Except as provided in (6) and (9) below, electric companies and electricity service suppliers will bill and collect from each of their retail electricity consumers a public purpose charge equal to 3 percent of the total revenues billed to those consumers for electricity services, distribution, ancillary services, metering and billing, transition charges and other types of costs that were included in electric rates on July 23, 1999.

(3) The electricity service suppliers will remit monthly to each electric company the public purpose charges they collect from the customers of each electric company.

(4) The electricity service suppliers will remit monthly the public purpose charges collected from direct service industrial consumers they serve to the electric company in whose service territory the direct service industrial site is located.

(5) The electric company whose territory abuts the greatest percentage of the site of an aluminum plant that averages more than 100 average megawatts of electricity use per year will collect monthly from the aluminum company a public purpose charge. The aluminum company will remit to the appropriate electric company a public purpose charge equal to 1 percent of the total revenue from the sale of electricity services to the aluminum plant from any source. Annually, the aluminum company will submit to the electric company an affidavit from a certified public accountant verifying that the costs for electricity services at the site of the aluminum plant and the remittance of the public purpose charges are accurate for the previous calendar year.

(6) A retail electricity consumer, including an aluminum plant as described in (5) above, may receive credits against its public purpose charges for qualifying expenditures incurred for new energy conservation and the above-market costs of new renewable energy resources at any site if the following qualifications for becoming a self-directing consumer are met:

(a) The consumer has used more than one average megawatt of electricity at any such site in the prior calendar year;

(b) The consumer has received final certification from the Office of Energy for expenditures for new energy conservation and/or new renewable energy resources; and

(c) The consumer has notified its electric company or, in the case of a direct service industrial consumer or aluminum company, the electric company in whose service territory the consumer site is located that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.

(7) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to January 1, 2000. For energy conservation measures that were started on or after January 1, 2000, but prior to the implementation of

direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions are met:

(a) The energy conservation measure did not receive funding from an electric company conservation program and was certified by the Office of Energy after July 23, 1999; or

(b) The energy conservation measure did receive funding from an electric company conservation program and was certified by the Office of Energy after July 23, 1999, but the self-directing consumer repaid the amount of such funding (cost of audit and incentives plus interest) no later than 90 days following the implementation of direct access; provided that, a self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures. For purposes of this subsection, “started” means that a contract has been executed to install or implement an energy conservation measure.

(8) The Office of Energy will establish specific rules and procedures that are consistent with these rules for qualifying a self-directing consumer and for determining how the credit process is implemented.

(9) The electric companies and electricity service suppliers will not bill a self-directing consumer for public purpose charges.

(10) Annually, a self-directing consumer will submit to the Office of Energy an affidavit from a certified public accountant verifying that the costs for electricity services at the site and the remittance of the public purpose charges are accurate for the previous calendar year.

(11) Each electric company will establish five separate accounts for the public purpose charges to be funded from its collections of public purpose charges as follows:

- (a) Energy conservation in schools;
- (b) New cost-effective local energy conservation and new market transformation;
- (c) Above-market costs of new renewable energy resources;
- (d) New low-income weatherization; and
- (e) Construction and rehabilitation of low-income housing.

(12) Each electric company will allocate the public purpose funds it collects (billed less uncollectible amounts) from electricity service suppliers and nonself-directing consumers to the five public purpose accounts as follows:

- (a) Energy conservation in schools - 10.0 percent;
- (b) Local and market transformation conservation – 56.7 percent;
- (c) Renewable energy resources - 17.1 percent;
- (d) Low-income weatherization - 11.7 percent; and
- (e) Low-income housing - 4.5 percent.

(13) Each electric company will allocate the funds it collects from each self-directing consumer to the public purpose accounts as reported by the self-directing consumer according to the allocations set forth in (12) above and the Office of Energy’s administrative rules on credits for self-direction.

(14) Each electric company will distribute funds from the public purpose accounts at least monthly as follows:

(a) The funds for conservation in schools to the education service districts located in its service territory;

(b) The funds for local and market transformation conservation as directed by the Commission;

(c) The funds for renewable energy resources as directed by the Commission;

(d) The funds for low-income weatherization to the Housing and Community Services Department; and

(e) The funds for low-income housing to the Housing and Community Services Department Revolving Account.

(15) Each electric company will determine by July 15 of each year the allocation of public purpose funds for schools to the Education Service Districts according to the following methodology:

(a) From the Department of Education, collect current total enrollment and total weighted average daily membership (ADMw) as defined in ORS 327.013 for each Education Service District that contains schools served by the electric company;

(b) For each of the Education Service Districts, compute the ratio of enrollment in schools served by the electric company to total school enrollment;

(c) For each Education Service District, multiply its total weighted average daily membership by the ratio of school enrollment in schools served by the electric company to total school enrollment. The result is an estimate of weighted average daily membership in schools served by the electric company;

(d) Add the estimates of weighted average daily membership for each Education Service District; and

(e) Compute the percentage of the total weighted average daily membership represented by each Education Service District. These are the percentages that will be used to allocate the public purpose funds for schools to Education Service Districts for the 12-month period beginning in September of each year.

(1516) The electric company may be reimbursed for the reasonable administrative costs it incurs to collect and distribute the public purpose funds. Those administrative costs will be deducted from the total amount of public purpose funds collected by the electric company before the funds are allocated to the five public purpose accounts. The electric company will also pay from the total public purpose funds collected or from a specific fund any other administrative costs the Commission directs to be paid for implementation of the public purpose requirements. The entities responsible for administering the public purpose funds will pay for their costs of implementing the public purpose requirements from the public purpose funds they receive from the electric company.

(1517) The electric companies and the administrators of the public purpose funds will collect sufficient information so that biennial reports can be made to the Legislature on what has been accomplished with the public purpose funds and how those funds have benefited the consumers of each electric company. Specifically, information must be collected so that the reporting requirements of ORS 757.617 can be fulfilled.

(a) Each electric company must report the total funds collected by source (that is, electric company customers, electricity service suppliers and self-directing consumers)

for public purposes, the amounts distributed to the administrators of each public purpose fund and its administrative costs;

(b) Each administrator of public purpose funds must report, at a minimum:

(A) The amount of funds received;

(B) The amount of funds spent;

(C) Its administrative costs; and

(D) Its results, for example, measures installed, projects funded, energy saved, homes weatherized and low-income homes built/rehabilitated.

Stat. Authority: ORS Ch. 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: NEW

860-029-0001

Purpose

The purpose of this Division is to implement ORS 758.505 through 758.555 and to implement regulations relating to electric utilities and qualifying cogeneration and small power production facilities as provided under Section 210 of the federal Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95-617 (16 USC 824a-3).

The rules contained in this Division do not apply to public utilities that satisfy their public purpose obligations under ORS 757.612.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Public Utility Commission.]

Stat. Auth.: ORS Ch. 183, 756, **757** & 758

Stats. Implemented: ORS 756.040, **757.612** & 758.505 through 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016)

860-030-0000

Exemptions

(1) Except as provided in section (2) of this rule, the rules contained in this Division do not apply to unincorporated associations and cooperative corporations or to investor-owned electric utilities that satisfy their public purpose obligations under ORS 757.612.

(2) These rules apply to investor-owned electric utilities to the extent required by ORS 469.860 through 469.900.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stat. Implemented: ORS 756.040 & 757.612

Hist.: PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468)

Definitions

860-038-0005

Definitions

As used in this Division:

(1) “Above-market costs of new renewable energy resources” means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.

(2) “Advisory committee” means a group as appointed by the Commission, consisting of representatives from Commission Staff, the Office of Energy and the following:

- (e) Local governments;
- (f) Electric companies;
- (g) Residential consumers; and
- (h) Public or regional interest groups;

(3) “Aggregate” means combining retail electricity consumers into a buying group for the purchase of electricity and related services. “Aggregator” means an entity that aggregates.

(4) “Ancillary services” means those services necessary or incidental to the transmission and delivery of electricity from generating facilities to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.

(5) “Commission” means the Public Utility Commission of Oregon.

(6) “Common costs” means costs that cannot be directly assigned to a particular function.

(7) “Consumer-owned utility” means a municipal electric utility, a people’s utility district or an electric cooperative.

(8) “Default supplier” means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.

(9) “Direct access” means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.

(10) “Direct service industrial consumer” means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(11) “Distribution” means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(12) “Distribution utility” means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(13) “Divestiture” means the sale of all or a portion of an electric company’s ownership share of a generation asset to a third party.

(14) “Economic utility investment” means all Oregon allocated investments made by an electric company prior to the date the electric company offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. “Economic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(15) “Electric company” means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(16) “Electric cooperative” means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(17) “Electric utility” means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(18) “Electricity” means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(19) “Electricity services” means electricity distribution, transmission, generation or generation-related services.

(20) “Electricity service supplier” or “ESS” means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. “Electricity service supplier” does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(21) “Emergency default service” means a service option provided by an electric company to a nonresidential consumer that requires less than five business days’ notice by the consumer or its electricity service supplier.

(22) “Functional separation” means separating the costs of the electric company’s business functions and recording the results within its accounting records, including allocation of common costs.

(23) “Large nonresidential consumer” means a nonresidential consumer that is not a small nonresidential consumer.

(24) “Load” means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(25) “Local energy conservation” means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.

(26) “Low-income weatherization” means repairs, weatherization and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(27) “Market transformation” means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(28) “Municipal electric utility” means an electric distribution utility owned and operated by or on behalf of a city.

(29) “Net system power mix” means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Office of Energy.

(30) “New” as it refers to energy conservation, market transformation and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company, with the exception that “new energy conservation” also includes expenditures by self-directing consumers for conservation projects that have not received funding from electric company conservation programs and have been certified by the Office of Energy after July 23, 1999.

(31) “New renewable energy resource” means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation on or before July 23, 1999. “New renewable energy resource” does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

(32) “Nonresidential consumer” means a retail electricity consumer that is not a residential consumer.

(33) “Office of Energy” means the Oregon Office of Energy created under ORS 469.030.

(34) “Ongoing valuation” means the process of determining transition costs or benefits for a generation asset by comparing the value of the output of the asset at forecast market prices for a one-year period to an estimate of the revenue requirements of the asset for the same time period.

(35) “One-time administrative valuation” means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

(36) “One average megawatt” means 8,760,000 kilowatt-hours of electricity per year.

(37) “People’s utility district” has the meaning given that term in ORS 261.010.

(38) “Portfolio” means a set of product and pricing options for electricity.

(39) “Qualifying expenditures” means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Office of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(40) “Registered dispute” means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission’s Consumer Services Division but is not the subject of a formal complaint.

(41) “Regulated charges” means charges for services subject to the jurisdiction of the Commission.

(42) "Regulatory assets" means assets that result from rate actions of regulatory agencies.

(43) "Renewable energy resources" means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; and

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(44) "Residential consumer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential consumer" does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges and clubs. As used in this subsection, "dwelling" includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles and floating homes.

(45) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting or operating equipment and includes all end users of electricity served through the distribution system of an electric company on or after July 23, 1999, whether or not each end user purchases the electricity from the electric company. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after October 1, 2001 at the site.

(46) "Self-directing consumer" means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Office of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.

(47) "Serious injury to person" means, in the case of an employee, an injury that results in hospitalization. In the case of a nonemployee, "serious injury" means any contact with an energized high-voltage line, or any incident that results in hospitalization. Treatment in an emergency room is not hospitalization.

(48) "Serious injury to property" means damage to ESS and non-ESS property exceeding \$25,000 or failure of ESS facilities that causes or contributes to a loss of energy to consumers.

(49) "Site" means: ~~a single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, or buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter.~~

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) No building or structure included in the site is more than 1,000 feet from any other building or structure in the site; and

(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer.

(50) “Small nonresidential consumer” means a nonresidential consumer whose demand has not exceeded 30 kW more than once within the preceding 13 months or with seven months or less of service whose demand has not exceeded 30 kW.

(51) “Special contract” means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.

(52) “Structural separation” means separating the electric company’s assets by transferring assets to an affiliated interest of the electric company.

(53) “Total transition amount” means the sum of an electric company’s transition costs and transition benefits.

(54) “Transition benefits” means the value of the below-market costs of an economic utility investment.

(55) “Transition charge” means a charge or fee that recovers all or a portion of an uneconomic utility investment.

(56) “Transition costs” means the value of the above-market costs of an uneconomic utility investment.

(57) “Transition credit” means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

(58) “Transmission grid” means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries.

(59) “Unbundling” means the process of assigning and allocating a utility's costs into functional categories.

(60) “Uneconomic utility investment” means all Oregon allocated investments made by an electric company prior to the date the electric company offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. “Uneconomic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.

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

Stat. Implemented: ORS 756.040. 757.600 to 757.667

Hist.: NEW