# Briefing Paper
# Information Transfer Proposal

February 11, 2009

## Summary

Staff proposes to amend administrative rules of the Oregon Public Utility Commission (OPUC), and related provisions of the Energy Trust board policy governing how utilities and Energy Trust share information about their customers and participants. No action is required at this time.

## Background

- OPUC administrative rules (Attachment A) require utilities to provide Energy Trust with certain information about utility customers: consumer name, address, recent historical usage data, and other information.

- The utilities' obligation to provide this information is subject to certain conditions: information about consumers whose demand is less than one megawatt must be provided unless the customer opts out of information transfer. Information on consumers whose demand is more than one megawatt must be provided only if the consumer opts in to information transfer.

- Because only some large users opt in and some smaller users opt out of information transfer, Energy Trust gets only partial information about potential program participants. We estimate that these "missing" customers represent roughly 20-30% of electric utility consumption.

- Because the opt-in and opt-out processes are so awkward, some utilities work around them by providing fragmented information, e.g., meter and usage data but not names. These fragments create problems in providing service and evaluating programs.

- Energy Trust public purpose funds (authorized by SB 1149) benefit all utility customer classes – residential, commercial and industrial. However, supplemental energy efficiency funds authorized by the Oregon Renewable Energy Act may not be used to benefit customers that use more than one megawatt. Because not all large users have opted into information transfer, Energy Trust does not have a full list of large customers, and it is difficult for Energy Trust to ensure that Oregon Renewable Energy Act funds do not benefit large customers.

- The OPUC rules prohibit Energy Trust from using this information for direct mail or telemarketing or releasing the information without the consumer's consent. Thus, Energy Trust cannot send information to potential program participants telling them how they can get help from Energy Trust programs. Staff believes this is a significant barrier to reaching more participants.

- The OPUC rule requires Energy Trust to secure, monitor and enforce confidentiality agreements with its employees, contractors, and contractors' employees. There is a considerable administrative burden associated with this requirement.

- The Energy Trust board has adopted a policy (Attachment B) requiring all information collected from Energy Trust program participants to be treated confidentially, except that for non-residential programs, Energy Trust may report certain information (name, city or county of business, Energy Trust incentive paid, and related energy savings or production) to the legislature, the OPUC and certain other government agencies.

- Energy Trust is unable to share its participant information with the utilities without negotiating confidentiality agreements. This process makes it difficult for Energy Trust staff to collaborate with utility account executives and others to reach more deeply into potential markets.

## Proposal

- The staff proposal would (a) eliminate the opt-in and opt-out processes from the OPUC rule; (b) eliminate the prohibition on Energy Trust using the information to make direct contact with utility customers (but still prohibit residential telemarketing); and (c) amend Energy Trust policy to allow freer exchange of information with the utilities.

- The proposal would also update and refine the list of information provided to Energy Trust to help Energy Trust provide better service to customers, better savings estimates or better evaluations. In most cases, these changes would reflect current practice.

- Finally, the proposal would streamline the process of obtaining and managing confidentiality agreements with Energy Trust contractors, their employees and subcontractors.

## Process and Schedule

- Staff has gotten feedback on the proposal from the utilities, several interest groups, and the CAC. Staff has also submitted the proposal in draft to the OPUC staff.

- The OPUC staff is seeking informal comment on the draft proposal, after which it will decide whether to propose rulemaking on the OPUC rules, which would require public notice, comment and an OPUC decision.

- Once rulemaking is initiated and we are confident of the outcome, Energy Trust staff would ask the board to consider amending its information policy as shown in Attachment B.

# ATTACHMENT A: OPUC Information Transfer Rules

## OAR 860-038-0540, Consumer Information

(1) Subject to Commission approval, an electric company shall determine the proprietary consumer information that will be made available to its competitive operations, ESSs, affiliates and aggregators. An electric company shall file and maintain a tariff with the Commission that specifies the types of information, along with the prices, terms, conditions, and consent procedures associated with the transfer of such information to the entities described in this section. The provisions of section (1) do not apply to information transferred pursuant to section (2) of this rule.

(2) An electric company shall transfer to the entity that administers the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B), hereinafter known as the Administrator, proprietary consumer information for a consumer whose demand is less than one megawatt (1MW) unless the consumer has opted-out of the information transfer pursuant to section (4) of this rule. A consumer shall be considered a less than 1MW consumer pursuant to criteria established by an electric company through its billing process. The transfer of such information shall be made pursuant to an Information Transfer Agreement, which is executed and maintained by an electric company and the Administrator. An Information Transfer Agreement shall specify:

(a) The necessary database format and information that will be transferred;
(b) The billing period, payment arrangements, and estimations of incremental costs incurred by an electric company for the transfer of the information;
(c) Timelines for an electric company to notify consumers and transfer information to the Administrator;
(d) Timelines for an electric company to provide updates to the Administrator for all of the usage data and revisions to the underlying database information;
(e) A general non-disclosure statement as well as a specific non-disclosure agreement that each Administrator employee and contractor employee shall sign prior to having access to consumer information, including proprietary consumer information;
(f) That the proprietary consumer information will be used by the Administrator to implement, administer, and evaluate energy efficiency and renewable energy programs and will not be used for telemarketing or direct mailings to consumers;
(g) That the release of proprietary consumer information by the Administrator for any other purpose or to any other party shall not be made without consent of the consumer; and
(h) Provisions for modification of the Information Transfer Agreement. If the Administrator and an electric company cannot agree on the terms and conditions of an Information Transfer Agreement, the Commission shall set the terms and conditions based upon input from the Administrator and electric company.

(3) If the Administrator notifies an electric company that the proprietary information supplied by an electric company is insufficient, incomplete, or not usable, the Administrator and electric company will attempt to resolve the issue and if necessary, modify the Information Transfer Agreement. If the Administrator and electric company cannot resolve the issue, the electric company and the Administrator shall promptly seek Commission resolution of the dispute. An electric company shall, at a minimum, transfer the following proprietary consumer information to the Administrator: consumer name, service address, 18 months of the most recent historical

usage data provided on a per month basis, point of delivery identification number, and rate schedule for each consumer. An electric company shall also provide information about any energy efficiency program participation and type of space heat used by consumer to the extent that such information is available in the electric company's records. An electric company shall not provide social security numbers, billing and payment history, credit information, tax identification numbers, driver license numbers, life support information, or any medical information. An electric company shall also provide the Administrator with updates for all of the usage data and revisions to the underlying database information on a periodic basis subject to subsection (2)(d) of this rule.

(4) An electric company shall provide consumers whose demand is less than 1MW an opportunity to opt-out of the information transfer. An electric company shall notify the consumers of the opt-out option by direct mail, company newsletter, or other acceptable communication as set forth in the Information Transfer Agreement. The notification shall at a minimum:

(a) Identify and explain the role of the Administrator;
(b) Identify the type of proprietary consumer information to be transferred by an electric company; and
(c) Describe the nature and use of the proprietary consumer information by the Administrator.

(5) An electric company shall notify in writing consumers whose demand is 1MW or greater (over 1MW consumer) to provide an opportunity to opt-in to the information transfer. Consumers shall be considered an over 1 MW consumer pursuant to criteria established by an electric company through its billing process. The notice provided by an electric shall comply with the requirement of section (4) of this rule. For consumers without a usage history, demand may be estimated by an electric company for the purpose of this provision and those consumers projected to meet the 1MW or greater demand shall be included. Consumers having multiple accounts may have their accounts treated as a group for the purpose of this rule and may include or exclude all accounts through one notification process. If the over 1MW consumer does not opt-in to the information transfer, all accounts shall be excluded from the information sharing process. The transfer of proprietary consumer information shall be in accordance with section (2) of this rule and the Information Transfer Agreement. An electric company shall also provide periodic opt-in notification for the over 1MW consumers either as a part of a standard consumer contact discussion or in writing pursuant to the timelines agreed upon in the Information Transfer Agreement and set forth in subsection (2)(c) of this rule.

(6) When an electric company has provided proprietary consumer information to the Administrator in accordance with this rule, an electric company shall not be charged with at-fault complaints filed with Commission's Consumer Services Division with respect to the provision of proprietary consumer information if the Commission finds that the electric company did not violate its tariff, Oregon Administrative Rules, Oregon Revised Statutes, or a Commission Order.

# ATTACHMENT B: Energy Trust Policy on Information Submitted by Utilities, Program Participants, Contractors and Bidders

*Purpose: Energy Trust and its contractors acquire information from utilities, program participants and others. This document establishes Energy Trust policy on collection, use and disclosure of information about program participants. This policy also addresses confidentiality of contracts and bid information. The policy does not apply to information that is in the public domain.*

1. **Energy Trust will inform ~~participants~~ the public of this policy**.

~~Participants in~~ Energy Trust will inform the public~~programs will be advised~~ of ~~the contents of~~ this policy by ~~appropriate means (e.g.,~~ providing summaries or references ~~o~~in Energy Trust program ~~application~~ forms, posting the policy on the Energy Trust web site, ~~and oral communications~~and making it available on request~~)~~.. ~~Energy Trust and its contractors will offer participants a copy of this policy.~~

~~**2. Energy Trust protects information covered by utility information transfer agreements**~~

~~**Utilities provide Energy Trust with information about energy consumers on condition that it is treated confidentially. This information is covered by "information transfer agreements" negotiated with the utility. Energy Trust will not afford access to information protected by utility information transfer agreements to anyone who has not signed a confidentiality agreement consistent with the information transfer agreements. However, if Energy Trust obtains written, oral (documented electronically or in writing), or electronic consent from an Energy Trust program participant, information relating to such participant is no longer subject to utility confidentiality agreements, and instead is governed by sections 4-5 of this policy. Energy Trust may disclose to utilities the names of Energy Trust program participants to ensure that Energy Trust information is accurate.**~~

~~**3. Energy Trust and those it works with use Participant Information only for Energy Trust purposes**~~

~~**A**~~**2. Participant Information covered by this policy**. Utilities provide Energy Trust with information about their energy consumers pursuant to rules of the Oregon Public Utility Commission (see OAR 860-038-0540). Energy Trust and its contractors also acquire information directly from participants in Energy Trust programs. Insofar as information from either source refers to program participants or utility customers by name, address, or other personally identifiable characteristics, it is ~~Definition of Participant Information:~~ "Participant Information" under this policy. ~~means information obtained from program participants that refers specifically to the participant by name, address, or other personally identifiable characteristics~~.

~~**B**~~**3. Protecting Participant Information generally**.

A. Energy Trust employees, contractors and sub-contractors will use Participant Information only for Energy Trust purposes.

B. Energy Trust will protect the confidentiality of all Participant Information by requiring all Energy Trust employees, contractors and sub-contractors to agree to specific non-disclosure requirements in order to gain access to Participant Information.

C. Contractors who receive Participant Information from Energy Trust may not:

a. Disclose such information to any other party unless required by law or the other party has by contract or other written agreement agreed to protect such information consistent with this policy; or

b. Use such information for any purpose other than implementation of Energy Trust programs.

~~Energy Trust employees, contractors and sub-contractors will use Participant Information only for Energy Trust purposes. Contractors who receive Participant Information from Energy Trust may not disclose it to any other party unless required by law or the other party has by contract or other written agreement agreed to protect such information consistent with this Energy Trust policy. Contractors will consult with their Energy Trust contract manager when in doubt.~~

4. **Collaborative analysis**. Energy Trust analyzes Participant Information and aggregates it with other information to plan, evaluate and report on Energy Trust programs. If consistent with section 3 and if the shared data do not reveal Participant Information, Energy Trust may share such aggregated information with other analysts, recognizing that some of these analysts work for organizations with their own information disclosure policies and requirements.

5. **Using Participant Information in marketing**.

A. Before using Participant Information in case studies, brochures, press releases, advertisements~~, marketing~~ or other publicity material, Energy Trust and/or its contractors will obtain participant approval.

B. Energy Trust will not conduct telemarketing to residential participants or customers, but may use Participant Informationor utility customer information for other outreach or marketing activities relating to Energy Trust programs. Energy Trust will establish a process by which participants and customers may opt-out of such marketing and outreach and ensure that Energy Trust or its contractors do not use Participant Information to make unsolicited contact with a participant or customer.

6. **Information provided to utilities**. Energy Trust will share Participant Information with utilities: (a) as part of coordinated energy efficiency or renewable energy activities; (b) if such Information is limited to the particular utility's customers; and (c) involves the particular utility's product or service. Energy Trust will not share one utility customer's energy use with another utility. Utilities may use such information in connection with routine customer service surveys, but not otherwise to evaluate Energy Trust programs.

## 7. Participant Information provided to government ~~entities~~

A. Energy Trust will treat residential program Participant Information as confidential. Energy Trust may report individual residential Participant Information if it does not identify the participant by name, address, telephone or other information that would allow identification of the individual.

B. For non-residential programs, Energy Trust may include the following information in reports to the Bonneville Power Administration, the legislature, the Oregon Public Utility Commission ("OPUC") and other state agencies as necessary to meet Energy Trust responsibilities:

- participant name
- city or county of business
- Energy Trust services or incentive payments provided to the participant, or
- energy saved or generated as a result of Energy Trust services or incentives.

C. Before providing Participant Information other than information listed in section ~~3.E(2)~~6.B, Energy Trust will obtain participant approval.

## 8. Contracts

A. Except for contracts that concern personnel matters, contracts to which Energy Trust is a party will not be treated as confidential. For purposes of this policy "contract" does not mean program application materials.

B. If a contract specifically identifies as confidential sensitive business records or financial or commercial information that is not customarily provided to business competitors, Energy Trust will treat such information as confidential. However, Energy Trust may disclose all other information in the contract.

C. Subject to litigation or other legal disclosure and/or audit requirements, Energy Trust will not disclose information marked as confidential and submitted in response to requests for proposals or other solicitations. However, the fact that a company submitted a bid will not be considered confidential.

## 9. Audit

Energy Trust will afford auditors full access to Participant Information for purposes of audit.

## 10. Resolving issues

In the event the OPUC requests from Energy Trust information that a participant has reasonably designated as Confidential Information, Energy Trust will follow the procedure specified in section 3.c of the Grant Agreement between Energy Trust and the OPUC (available at http://www.energytrust.org/Pages/about/who_we_are/puc_funding_agreement.PDF).