ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: March 10, 2020

REGULAR X CONSENT ____ EFFECTIVE DATE N/A

DATE: March 4, 2020

TO: Public Utility Commission

FROM: Nolan Moser

THROUGH: Diane Davis

SUBJECT: ADMINISTRATIVE HEARINGS DIVISION: Request for a Determination on the Scope of Issues to Consider for PURPA Complaint Reform and the Creation of a Dispute Resolution Process (AR 629)

RECOMMENDATION:

The Administrative Hearings Division (AHD) recommends that the Commission issue a notice of proposed rulemaking to adopt the attached draft rules described below, and that the Commission open a new rulemaking docket to develop rule amendments for general PURPA complaint reform.

In the alternative, AHD recommends the Commission expand the scope of issues to be considered in docket AR 629.

In the alternative, AHD recommends that the Commission issue a notice of proposed rulemaking to adopt the attached draft rules described below, and take no further action regarding general PURPA complaint reform.

DISCUSSION:

Issue

Whether and how the Commission should expand the scope of issues to consider in docket AR 629 beyond developing rules for an alternative dispute resolution process.

Applicable Law

In Order No. 19-254, entered in docket UM 2000, the Commission opened an informal phase of rulemaking (docket AR 629) to develop dispute resolution processes for

conflicts between qualifying facilities (QFs) and electric companies. In that order, the Commission adopted Staff's recommendation to "Open a rulemaking led by the Administrative Hearings Division to address dispute resolution for PURPA contracts".[1]

Staff's recommendation observed that "There are many drawbacks to the current complaint process. A primary concern is the amount of time being devoted to complaints. An effective dispute resolution process will streamline the process, bringing efficiency."[2]

The Commission's contested case process are governed by ORS 756.500 through 756.558, the Administrative Procedures Act (APA) set forth in ORS 183.310 *et seq*, as well as in rules adopted in OAR 860-001-0300 *et seq*. ORS 756.500 states that any person may file a complaint "against any person whose business or activities are regulated by one or more of the statutes, jurisdictions for the enforcement or regulation of which is conferred upon the commission."

The APA offers the Commission some flexibility in the conduct of contested cases, but the following standards must be adhered to in order to provide for fundamental due process. Persons affected by an agency action must be (1) given prior notice of the case, (2) have a fair opportunity to present evidence and argument on issues raised in the proceeding, and (3) are able to respond to all evidence and argument offered by other parties.

Though an ALJ may be delegated Commission authority, the Commission may not delegate to any individual commissioner or named employed the authority to sign an interim or final order after a hearing, sign any order upon any investigation the commission causes to be initiated, or enter orders on reconsideration or following rehearing.[3]

Analysis

Background
AR 629 was opened on September 11, 2019. The original and primary goal of this rulemaking was to develop dispute resolution processes that reduced burdens on the Commission and parties to Commission proceedings and allow for more effective and efficient resolution of disputes. Shortly following the opening of the docket, AHD issued questions to stakeholders to help frame issues. Stakeholders provided written, docketed

[1] *In the Matter of Public Utility Commission of Oregon*, Docket No. UM 2000, Order No. 19-254, Appendix A at 1 (Jul 31, 2019).
[2] Id. p.4.
[3] ORS 756.055

answers. Workshops were held in the fall and winter, and AHD provided a strawman rulemaking outline in early January. At a late January workshop, stakeholders discussed the strawman concepts, but also recommended expanding this rulemaking to include broader reforms to the PURPA complaint process to allow for resolution of some complaints with less process on a streamlined basis to save party and Commission time and resources.

After the January workshop, AHD provided a modified timeline which included the circulation of draft rules on the alternative dispute resolution process on February 13, 2020, and the submission to the Commission of a scoping memo on the potential of this rulemaking to expand to address streamlined complaint options. The memo would be reviewed by the Commission, and direction on scoping provided at the March 10 Regular Public Meeting. Accordingly, AHD provided stakeholders with a draft version of this memo on February 21, 2020 – requesting comment back by close of business on February 28, 2020. AHD received comment from the Joint Utilities (PGE, PacifiCorp, and Idaho Power) and the QF Trade Associations (The Renewable Energy Coalition, The Northwest Intermountain Power Producers Coalition, and the Community Renewable Energy Association). These comments, and previous comments made by these stakeholders throughout the course of this rulemaking, are discussed below.

The draft alternative dispute resolution process rules are attached as Attachment 1 to this memo.

Summary of Proposed ADR Rules
The proposed rules provide for an ADR process that is led by a meditator appointed by the Chief Administrative Law Judge. The meditator may be an ALJ trained in mediation, an outside party under contract with the Commission, or a third party that is jointly proposed by the two ADR participants. As currently proposed, the rules do not require engagement in the ADR process in order for a party proceed with a complaint. This issue is discussed below.

Under the proposed rules, a petition for ADR may be made by a party. If granted, the ADR process formally begins, with a mediation appointment set no later than 14 business days after the receipt of the petition. Two written documents are provided to the appointed mediator – the petition itself, which is limited to 5 pages and which should describe the issues at stake in the dispute along with general background information, and a response from the other party – which should be provided 7 business days after the petition.

The mediation appointment allows for time for each party to present their view of the issues, uninterrupted. The mediator may ask questions, the parties may ask questions

of each other, and the mediator may reflect back to the parties the issues, impasses, etc. Where appropriate, a negotiation may ensue. At the request of the parties, the mediator may lead this settlement discussion – engage in shuttle diplomacy, and propose solutions to the parties. If an agreement is reached, the mediator may be tasked by the parties with outlining or drafting the terms of the settlement.

The appointment is a confidential settlement meeting. Accordingly, no content of the conversation may be used or provided as evidence in the underlying complaint. The mediator is required to maintain strict confidentiality with the ALJ assigned to the underlying complaint and the Commissioners. The mediator will only report to the Commission that a settlement has or has not been reached. Finally, at the conclusion of the mediation effort, if no settlement has been reached, the mediator may provide an independent assessment of the issues and potential outcome of the case to the parties only.

Stakeholder Positions on Proposed Rules and Revisions to the Draft
The two significant issues left to address in the ADR process rulemaking are the mandatory nature of ADR as originally proposed in rules (as of February 13) prior to the filing of a complaint, and the issue of the confidentiality of statements and proposals made in the course of the ADR negotiation.

The first issue presents a clear-cut question – should all PURPA complaint parties be required to participate in ADR prior to the filing of a complaint? AHD feels this requirement would be valuable in that it would habituate parties to working together to resolve disputes prior to complaints. AHD considers that this requirement could create better overall collaboration between the traditional litigants, and would lead – on the whole – to fewer complaints, less party expense, and less dedication of Commission resources to PURPA complaint issues.

The Joint Utilities proposed early in the rulemaking that the ADR process be mandatory, before a complaint can be acted upon. The QF Trade Associations opposed this, arguing that some disputes involve an amount in controversy that is less than the cost of hiring a lawyer to prepare for and engage dispute resolution. They further argue that mandatory ADR will cause additional delay in getting complaints processed. AHD has worked to address these concerns in draft rules through the following mechanisms.

First, AHD draft proposed rules allow the ADR requirement to be waived for good cause shown. What constitutes good cause would not be spelled out in the rule, but could be discussed in a final order adopting the rule. Presumably, a low amount in controversy might be good cause to waive the requirement – along with other factors, such as the size of the project, the nature of the dispute, etc.

Second, the ADR process as reflected in rules was designed to limit party expense. Prepared materials are page number limited, the number of party representatives that can participate in the process is also limited.

Third, the length of the ADR process has been kept limited to conserve party resources and prevent delay. Under the rules, AHD would be obligated to promptly schedule mediation appointments. A previous provision proposed for the rules, which would have had the mediator make written procedural recommendations to the presiding ALJ has been eliminated, in part to reduce the amount of time the ADR process might consume. Finally, a previous rule proposal highlighted that the time necessary for parties to devote to the ADR process may be considered by the Commission in determining the appropriate avoided cost vintage.

However, in an effort to ensure broad-based support for the ADR process, at this time AHD proposes rules that do not make ADR mandatory. The proposed rules attached to this memo are largely the same as proposed on February 13, with this exception. This is because AHD feels it is important, in order for the ADR process to be effective, to have broad consensus regarding the function of these rules.

Though we may agree with the Joint Utilities that more disputes could be resolved more efficiently by making the process mandatory, the trust in the process of both the QF communities and the electric companies is essential to ensure that the ADR process is effective. Accordingly, for the time being, we recommend that the ADR process not be a mandatory requirement that predicates a complaint, and instead be voluntary, instigated by a petition of a party. That noted, because this is the central issue associated with the ADR process, as this rulemaking continues we commit to continue to review the concept of some ADR requirement as part of complaint filings, and will look for ways in which to functionally address the concerns of both the QF Trade Associations and the Joint Utilities.

The confidentiality issue is more nuanced and can be addressed through a future workshop or comments. The QF Trade Associations argue that confidentially requirements in the rules may need revision. They assert that the rules should allow for communications between QF parties regarding the content of negotiations and settlements with utilities.

The rules are designed to enforce a fairly universal concept of settlement discussions – that the content of settlement discussions should not be used in a subsequent litigated case, that the content of negotiations should not influence the decision maker in that case, and that confidentiality in settlement negotiations should be upheld. AHD has

communicated to stakeholders numerous times that failure to keep the content of negotiations confidential could chill future settlement opportunities, by making parties less likely to propose solutions that might prove workable for one docket but which they do not want publicly disclosed.

AHD Proposed Options for Streamlining the Complaint Process
Throughout this rulemaking, stakeholders and the Department of Justice (DOJ) have discussed and reviewed ways in which PURPA complaint rules could be changed, and ways in which existing rules and procedural flexibility could be utilized, to improve the complaint process and facilitate more efficient resolution of disputes.

In this review, DOJ has identified some complaint elements that cannot be altered. Specifically, the requirements for processing a complaint filed under ORS 756.500 include:

- Allowing defendant ten days from date of notice of complaint to answer (ORS 756.512).
- A hearing with at least ten days' notice (or less if the Commission finds good reason), if the defendant answers the complaint and there is a disputed issue of law or fact (ORS 756.512).
- Opportunity for discovery commensurate with the needs of case (OAR 860-001-0500).
- Opportunity to present evidence and argument on the issues raised (Order No. 14-358; OPUC Internal Operating Guidelines).
- Opportunity to respond to all evidence and argument offered by the other parties (Order No. 14-358, OPUC Internal Operating Guidelines).
- Final written order issued by Commission if a hearing has occurred. (ORS 756.055).
- Opportunity to seek rehearing or rehearing of the Commission final order within 60 days (ORS 756.561).
- Opportunity to seek judicial review within 60 days (ORS 756.610).

Accordingly, these requirements may represent some boundaries on the extent to which the complaint process may be streamlined to allow for more efficient resolution of disputes. This noted, given the flexibility for complaint procedure afforded by the APA, stakeholders have identified a significant number of options for improving the process, where circumstances allow. Assuming proper notice, the fair opportunity to present evidence and argument and the fair opportunity to respond to all evidence and argument offered by other parties, the following options have been discussed in the scope of this rulemaking.

1) Limitations on discovery

Discovery can be limited to the needs of the case, resources available to the parties, and the importance of the issues to which the discovery relates. Limitations of discovery could result in faster overall resolution of cases. Limits could be imposed on topics of discovery, or the quantity of requests.

2) Limitations on the filing of testimony and briefs

Though the APA and the Commission administrative rules requires that parties to case be given the opportunity to be heard, and the opportunity to make, present, and rebut evidence and argument, rules do not require that parties be allowed to file written testimony. Similarly, rules do not require that parties be allowed to file written arguments or briefs. Appropriately limiting the filing of testimony and briefs could result in shortened complaint calendars. Limits could be imposed on issues addressed in testimony and briefing, or in the length of briefs.

3) Evidence and argument limited to hearing

Consistent with appropriate limitations on the filing of testimony and briefs, the Commission can require parties to submit oral testimony and arguments at the hearing required under ORS 756.512 rather than over the course of several months.

4) PURPA complaint forms and requirements can be updated, so that initial complaints are clearer and provide more issue-specific information

The Commission could require that complainants and defendants take additional steps at the beginning of a case to elucidate the issues more holistically. Such a requirement is outlined in the alternative process for dispute resolution for nonstandard contracts, at OAR 860-029-0100. In order to utilize that process, a complainant must provide a statement on attempts at negotiation, a statement on specific unresolved terms and conditions, a description of each party's position on these unresolved issues, and a proposed agreement encompassing all issues. Complaints could more clearly frame and narrow issues under litigation.

5) Published recommended orders and exceptions

Recommended orders could be published and served on all parties by an ALJ, prior to a final decision by the Commission. This could allow for exceptions to be filed by parties, and the Commission would consider exceptions and issue a final order after review that would accept, amend, or replace the recommended order. This procedural option could

allow for more targeted final arguments (exceptions) for parties – these filings would address the narrow issues under specific consideration in a draft order. Parties would have the advantage of reviewing a draft order, and would have the opportunity to address how that order is appropriate, deficient, and to discuss the effect that enforcement of the order might have on the parties.

6) Compliance notification

Commission has the authority to fix a time within which the affected utility must notify the commission whether the terms of the order are accepted and will be obeyed under ORS 756.575. The potential value of this provision is that the Commission and parties to a docket could be put on explicit notice regarding how and whether a Commission directive will be complied with. Knowledge of this intention could allow the Commission to address the utilities proposed implementation of a decision before waiting for a later compliance filing or compliance action that the Commission might determine was inconsistent with its directive.

Stakeholders may agree that some or all of the above options are appropriate in certain circumstances – however deciding when and how to utilize these tools will require considerable discussion and review. Not all disputes will warrant streamlined procedures, and such a determination may need to be made on a case-by-case basis. The rules will need to include a process that can be utilized to determine if and how certain disputes will be streamlined. Accordingly, the following questions will need to be addressed when considering how to establish when streamlined processes are appropriate.

a) How will the issues of a dispute be made clear enough at the outset of a complaint that a determination regarding the use of a streamlined process can be made?

In order to determine the appropriate amount of process to resolve a complaint, the contours of the issues and facts in dispute must be well understood. This may require better and clearer summaries of issues and facts in dispute filed alongside complaints.

b) How should the determination of a streamlined process made?

If there are circumstances where a more limited process seems appropriate to resolve a relatively clear issue, how will that be established?

Stakeholder Comments Regarding Expansion of this Docket
The QF Trade Associations argue that any ADR process must recognize a fundamentally unequal access to justice on the part of utilities and QFs. According to

the QF Trade Associations, electric companies will utilize any opportunity to add more process and cost to litigation with a QF; and features of future rules changing the complaint process could provide electric companies ample opportunity to add delay to proceedings, create litigation traps, discouraging and preventing QFs from functionally exercising due process rights.

Electric companies have larger litigation budgets, and the opportunity to recover litigation costs from customers – this, combined with the electric companies natural incentive to resist all QFs, creates a situation where PURPA complaint rules must level the playing field, and must not assume both parties enter the process as equal counterparties.

Fundamentally, the QF Trade Associations argue that delay is the primary tool used by the electric companies to oppose QFs. Due to the nature of speculative development, delay and uncertainty cause significant financial impacts, and can and do cause projects to fail. Accordingly, anything that could add delay to the process of resolving a dispute is opposed by the QF Trade Associations.

That noted, the QF Trade Associations do support broadening the docket to address other compliant reforms, beyond those proposed by AHD in a draft scoping memo – *if* the Commission commits to recognizing the imbalance in the litigation capacity of utilities and QFs. Essentially, they argue that the universe of potential reforms should not be limited to those initially proposed by AHD, but only if the Commission recognizes this imbalance.

Similarly the Joint Utilities also argue for expansion of the issues to be addressed in the complaint reform portion of this docket. Specifically, the Joint Utilities propose a case management process, and more involved prehearing conferences that can be used to (a) identify the legal and factual issues in dispute, (b) identify prehearing motion practice-such as motions for judgment on the pleadings or summary judgment-that can narrow scope; (c) establish discovery timelines; and (d) allow the ALJ to understand the nature and extent of the process that will be required for resolution.

In general, the Joint Utilities recommend that the Commission consider developing a more detailed process that imparts greater structure on the complaint process – similar to the case-management process used in federal courts. Joint Utilities are concerned that simplified processes not be dictated by categories of cases.

Process Recommendation
The ADR process as proposed in the attached rules is mature enough to progress to a formal rulemaking stage. Two significant outstanding questions remain – but these

questions can be effectively addressed through stakeholder comments in the regular formal process.

In contrast, the expanded scope associated with this rulemaking, which would review holistic changes to the PURPA complaint process, is at an initial stage, and would best be addressed in an informal rulemaking process. This will require ample workshops and stakeholder engagement. AHD provides three procedural options for the Commission to consider to address this dichotomy.

The first option is to open a formal rulemaking in AR 629, while simultaneously opening a new rulemaking, focused on PURPA complaint procedure reform. AHD recommends that the scope of this second rulemaking be expanded beyond our initial proposal, and include the concepts supported and proposed by the Joint Utilities, and include broader reforms as proposed by the QF Trade Associations. As part of the expanded rulemaking regarding PURPA complaint reform, AHD plans to organize and describe all formal proposals for reform from stakeholders and put them before the Commission for consideration, though we will provide specific recommendations of reforms to adopt in rulemaking, at the exclusion of others. Additionally, if there is a later fix necessary to any subsequently adopted ADR process rules that emerges, such a change can be address in the additional PURPA complaint rulemaking.

A second option is to hold the ADR rules from going forward until the broader complaint reform effort produces recommended rule language for a formal rulemaking. This would limit the number of rulemakings associated with ADR and complaint reform, but would slow the adoption of ADR rules that may otherwise be ready for formal rulemaking.

A third option is to keep the scope of AR 629 limited to ADR process, and not to move forward with any expansion in the current docket or an alternative docket regarding broader PURPA complaint reform. Should the Commission determine that stakeholder and Commission resources may be better allocated to other PURPA rulemakings at this time, this option may be appropriate.

We note that the first voluntary request by parties to a complaint for use of ADR, using the outline of the proposed rules, has already been made and will be instigated this month. Accordingly, in a sense the ADR process rules are already being used, on a voluntary basis. AHD believes this argues for moving these rules forward to a formal phase, separate from any decision on a broader complaint reform rulemaking.

Conclusion

AHD recommends moving ADR process rules to a formal phase, while simultaneously opening a rulemaking on broader PURPA compliant reform. In the alternative, AHD recommends either expanding the scope of the docket beyond developing rules for ADR, to include broader complaint reform or completing the ADR process rulemaking without opening a new rulemaking, or expanding the scope of AR 629.

PROPOSED COMMISSION MOTION:

Issue a notice of proposed rulemaking to adopt the attached draft rules described below, and open a separate rulemaking to address revisions to the procedures for PURPA complaints.

Or

In the alternative, expand the scope of AR 629 to address revisions to the procedures for PURPA complaints.

Or

In the alternative, issue a notice of proposed rulemaking to adopt the attached draft rules described below.

Alternative Dispute Resolution for Electric Company and Qualifying Facility Disputes

860-___-____

Applicability of Division ___

(1) The rules in this division apply to a complaint filed pursuant to ORS 756.500 regarding any dispute between an electric company, as defined in OAR 860-089-0020, and a qualifying facility, as defined in OAR 860-029-0010. These provisions supplement the generally applicable filing and contested case procedures contained in OAR chapter 860, division 001.

(2) Upon request or its own motion, the Commission may waive any of the Division ___ rules for good cause shown.

(3) Upon filing of a petition for alternative dispute resolution, all procedural deadlines associated with an accompanying complaint are stayed. The stay is lifted upon the conclusion of the alternative dispute resolution process.

860-___-____

Purpose of Division ____

(1) OAR chapter 860, division ___ is intended to facilitate informal resolution of disputes, prevent the litigation of unnecessary complaints, and save time and resources for electric companies, qualifying facilities, and the Commission.

(2) These rules are intended to provide for fair, timely, and confidential dispute resolution that will aide parties in narrowing issues put before the Commission.

860-___-_____

Definitions

For purposes of this Division, unless the context requires otherwise:

(1) “party” in this division refers to either the qualifying facility participating in this process, or the electric company participating in the alternative dispute resolution process.

(2) “mediator” in this division refers to the person or persons appointed by the Chief Administrative Law judge to serve as the Commission’s representative to lead the alternative dispute resolution process.

(3) “mediation appointment” in this division refers to a confidential meeting, led by the mediator, at which representatives of both parties attend and participate.

OAR 860-___-____

Applicability of Alternative Dispute Resolution Process

(1) Before or concurrent with the filing of a complaint in a dispute between an electric company or qualifying facility, the moving party may petition for dispute resolution support with the Commission. Both parties must agree to the alternative dispute resolution process before the Commission will consent to provide dispute resolution.

(a) To aid the mediator in the review of the dispute, parties are encouraged to file unexecuted or partially executed purchase power agreements with a complaint, if a complaint is filed concurrent with the petition for alternative dispute resolution and relates to a power purchase agreement.

(b) The complaint should describe which terms or values in the unexecuted or partially executed power purchase agreement are disputed and subject to the complaint, if the complaint relates to a power purchase agreement.

OAR 860-0___-____

Petition for Alternative Dispute Resolution and Response Requirements

(1) A petition for alternative dispute resolution must not exceed five pages in length, unless otherwise agreed to by both parties.

(a) The petition must explain the core issues in the dispute and provide a summary of background information.

(b) The petition may be accompanied by reference material intended to aid the mediator's understanding of the issues. Reference material will not count towards the five-page limitation, but should be limited in nature.

(2) A response to a petition for alternative dispute resolution must not exceed five pages in length, unless otherwise agreed to by both parties.

(a) The response must address the core issues in the dispute, and provide summary of background information.

(b) The response may be accompanied by reference material intended to aid the mediator's understanding of the issues. Reference material will not count towards the five-page limitation, but should be limited in nature.

OAR 860-____-____

Assignment of a Mediator

(1) For each request for alternative dispute resolution, the Chief Administrative Law Judge must appoint a mediator to lead the process.

(2) The Chief Administrative Law Judge may appoint an Administrative Law Judge trained in mediation, a mediation expert contracted to provide services to the Commission, or a mediator that has been suggested by both parties.

(a) If the Chief Administrative Law Judge appoints an Administrative Law Judge as mediator, and the underlying complaint proceeds after the completion of the alternative dispute resolution, the mediator will not preside over any associated complaint.

(b) An Administrative Law Judge that acted as mediator for a dispute is not permitted to discuss or review any aspect of the parties' positions, statements, or proposals with the Administrative Law Judge assigned to the underlying complaint, Commissioners, or Commission Advisors.

(c) The mediator must maintain confidentiality with respect to the mediation proceedings, and may only report the terms of agreement, if authorized by the parties, or the fact that no agreement was reached.

OAR 860-___-____

Confidentiality and Use of Statements, Proposals, or Materials in Complaints

(1) All statements, documents prepared for settlement purposes, and offers made during the alternative dispute resolution process must be kept confidential.

(2) Statements, documents prepared for settlement purposes, and offers are deemed confidential and may not be admitted into the record of any associated complaint, unless agreed to in writing by both parties.

OAR 860-___-____

Alternative Dispute Resolution Timeline and Effect on Avoided Cost Determinations

(1) The response to a petition for alternative dispute resolution must be filed no later than seven business days following the filing of the petition.

(2) A mediation appointment will be set 14 business days after the initial petition filing. Subsequent mediation appointments may be set, if both parties agree.

(3) If no agreement is reached in the mediation appointment and parties do not request additional mediation appointments, then, no later than three business days following the mediation appointment, the mediator will file a statement that no agreement was reached.

(4) Upon being informed that no agreement was reached, the hearings division will provide notice in any associated complaint docket that the stay on procedural deadlines is lifted.

(5) After the notice is provided, the parties may jointly file a motion to delay further complaint proceedings to facilitate further settlement discussion.

OAR 860-___-____

Alternative Dispute Resolution Mediation Appointment

(1) Unless otherwise agreed to by the parties, participants from each party are limited to four persons.

(2) The mediation appointment is led by the mediator. The mediator will begin the appointment by introducing parties, reviewing the protocol for the appointment, and stating the goals for the appointment.

(a) At the outset of the mediation, each party will be given time to present their view of the dispute without interruption.

(b) The mediator and the parties may ask questions of each other to clarify issues, needs, and concerns.

(c) The mediator will periodically communicate back the key questions, issues, and describe and summarize any impasses.

(3) Where appropriate, the appointment may result in a negotiation. The assigned mediator will be available to the parties to support the development of settlement proposals.

(a) At the request of parties, the mediator may lead a settlement discussion, engage in shuttle diplomacy between parties, or develop proposed settlement concepts after the appointment for presentation at a subsequent appointment.

(b) If an agreement is reached, at the request of the parties, the mediator may outline specific settlement terms or draft a settlement agreement.

(4) Through presence at the mediation appointment, parties are deemed to be making a good faith effort to resolve issues in controversy.

OAR 860-___-____

Mediator Evaluation

(1) The mediator may provide parties with an independent assessment of the issues and potential outcome of the case.

(2) The mediator may provide the assessment verbally at the conclusion of a mediation appointment or in writing to the parties following the appointment.

(3) The independent assessment will be provided only to the parties. The assessment will not be provided to the Administrative Law Judge presiding over the underlying complaint or the Commissioners and may not be admitted into the record of any associated complaint, unless agreed to in writing by both parties.