Chapter 757

2013 EDITION

Utility Regulation Generally

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GENERAL PROVISIONS

757.005 Definitions. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection, "public utility" means:

(A) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

(B) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with the public utility.

(b) As used in this chapter, "public utility" does not include:

(A) Any plant owned or operated by a municipality.

(B) Any railroad, as defined in ORS 824.020, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same.

(C) Any corporation, company, individual or association of individuals providing heat, light or power:

(i) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14, 1985;

(ii) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers;

(iii) From solar or wind resources to any number of customers; or

(iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any number of customers.

(D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to 758.555.

(E) Any person furnishing heat, but not delivering electricity or natural gas to its customers, except:

(i) As provided in ORS 757.007 and 757.009; or

(ii) With respect to heat furnished in municipalities which on January 1, 1989, had a municipally owned system that was furnishing steam or other thermal forms of heat to its customers.

(F) Notwithstanding subparagraph (E) of this paragraph, any corporation, company, partnership, individual or association of individuals furnishing heat to a single thermal end user from an electric generating facility, plant or equipment that is physically interconnected with the single thermal end user.

(G) Any corporation, company, partnership, individual or association of individuals that furnishes natural gas, electricity, ethanol, methanol, methane, biodiesel or other alternative fuel to any number of customers for use in motor vehicles and does not furnish any utility service described in paragraph (a) of this subsection.

(H) An electricity service supplier, as defined in ORS 757.600.

(2) Nothing in subsection (1)(b)(C) of this section shall prohibit third party financing of acquisition or development by a utility customer of energy resources to meet the heat, light or power requirements of that customer. [Amended by 1953 c.583 §2; 1967 c.241 §1; 1967 c.314 §1; 1971 c.655 §64a; 1973 c.726 §1; 1979 c.62 §1; 1981 c.360 §1; 1981 c.749 §21; 1983 c.118 §1; 1983 c.799 §7; 1985 c.550 §1; 1985 c.633 §7; 1985 c.779 §1; 1987 c.447 §96; 1987 c.900 §3; 1989 c.5 §2; 1989 c.999 §§1,2; 1991 c.294 §1; 1995 c.267 §1; 1999 c.330 §2; 1999 c.491 §1; 1999 c.865 §21; 2001 c.104 §292; 2003 c.82 §4]

757.007 Contract and rate schedule filing for certain furnishers of heat exempt from regulation; procedure. (1) Every person exempt from regulation under ORS 757.005 (1)(b)(E) shall file with the Public Utility Commission, not later than 30 days prior to their effective date, all contracts and schedules establishing rates, terms and conditions for the provision of heating services.

(2) Prior to the effective date, the commission may suspend the effective date of such contracts or schedules for an additional period of not more than 120 days in order to determine the reasonableness of such contracts or schedules, taking into consideration the services being provided, the costs and risks of service, the availability and costs of alternative forms of service and other reasonable considerations, including the impact on existing customers of the utilities furnishing electricity and natural gas and on the public generally.

(3) If the contract or schedule is not suspended, or if the contract or schedule is determined reasonable by the commission after suspension, the contract or schedule shall not be subject to further commission review during its term or such other period as the commission may specify, except as provided in ORS 757.009.

(4) In any proceeding before the commission to determine the reasonableness of con-

tracts or schedules proposed under this section, the burden shall be upon the proponent of the contract or schedule to establish its reasonableness. [1989 c.999 §§4a,4c; 2003 c.82 §5]

757.009 Procedure for reregulation of furnishers of heat. (1) Except as provided in subsection (2) of this section, the Public Utility Commission may, upon written complaint or upon the commission's own motion, regulate, under ORS 757.205 to 757.240, or any part thereof, any person otherwise exempt from regulation under ORS 757.005 (1)(b)(E) as follows:

(a) With respect to any or all customers, if the commission finds that the activities of such person have an adverse effect upon the customers of public utilities furnishing electricity or natural gas and the benefits of such regulation outweigh any adverse effect on the public generally; or

(b) With respect to any customer receiving service not exceeding 500 million British thermal units per year or any residential customer, if the commission finds that such person has engaged in unjust or unreasonable practices with respect to the services or rates available to the customer and the customer has no reasonable alternative to the services provided.

(2) The commission shall not regulate persons under subsection (1)(a) of this section with respect to contracts that became effective prior to the date of service of the complaint or with respect to heating systems already in place on the date of service of the complaint if the commission determines that continued expansion will increase the efficiency of those systems. [1989 c.999 §§4b,4d; 2003 c.82 §6]

757.010 [Repealed by 1971 c.655 §250]

757.015 "Affiliated interest" defined for ORS 757.105 (1) and 757.495. As used in ORS 757.105 (1) and in ORS 757.495, "affiliated interest" with a public utility means:

(1) Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of such public utility.

(2) Every corporation and person in any chain of successive ownership of five percent or more of voting securities of such public utility.

(3) Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public utility or by any person or corporation in any chain of successive ownership of five percent or more of voting securities of such public utility.

(4) Every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of such public utility.

(5) Every corporation which has two or more officers or two or more directors in common with such public utility.

(6) Every corporation and person, five percent or more of which is directly or indirectly owned by a public utility.

(7) Every corporation or person which the Public Utility Commission determines as a matter of fact after investigation and hearing actually is exercising any substantial influence over the policies and actions of such public utility, even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section.

(8) Every person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated. [Amended by 1971 c.655 §65; 1989 c.17 §1]

757.020 Duty of utilities to furnish adequate and safe service at reasonable rates. Every public utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited. [Amended by 1971 c.655 §66]

757.025 [Amended by 1971 c.655 §14; renumbered 756.062]

757.030 [Repealed by 1971 c.655 §250]

757.035 Adoption of safety rules and regulations; enforcement. (1) The Public Utility Commission has power, after a hearing had upon the motion of the commission or upon complaint, to require by general or special orders embodying reasonable rules or regulations, every person or municipality, their agents, lessees or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership or control of telegraph, telephone, signal or power lines within this state, upon the public streets or highways, and also upon all other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every line, plant, system, equipment or appara-

tus in such manner as to protect and safeguard the health and safety of all employees, customers and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commission necessary or proper for the protection of the health or safety of all employees, customers or the public.

(2) When acting pursuant to subsection (1) of this section, the Public Utility Commission shall adopt by rule as the standard of such construction, operation and maintenance the 1973 edition of the American National Standard, National Electrical Safety Code, C2.

(3) In lieu of subsection (2) of this section, or in addition thereto, the commission may adopt by rule any revision or edition of or amendment to the National Electrical Safety Code approved by the American National Standards Institute after July 14, 1977, and in effect on the date of adoption by the commission. [Amended by 1969 c.530 §1; 1971 c.655 §68; 1975 c.658 §1; 1977 c.346 §1]

757.039 Regulation of hazardous substance distribution and storage operations; cooperation with federal agencies; disclosure of reports and information. (1) As used in this section, "hazardous substance or material" means:

(a) Fuel gas, whether in a gaseous, liquid or semisolid state;

(b) Petroleum or petroleum products; and

(c) Any other substance or material which may pose an unreasonable risk to life or property when transported by pipeline facilities.

(2) The Public Utility Commission has power, after a hearing had upon the commission's own motion or upon complaint, to require by general or special orders embodying reasonable rules, every person or municipality, their agents, lessees or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership or control of facilities for the transmission or distribution of a hazardous substance or material by pipeline; or of facilities for the storage or treatment of a hazardous substance or material to be transmitted or distributed by pipeline or upon the public streets or highways; or of any other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every pipeline, plant, system, equipment or apparatus used in the transmission, distribution, storage or treatment of a hazardous substance or material to be transmitted by pipeline or upon the public streets or highways in such manner as to protect and safeguard the health and safety of all employees, customers and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commission necessary or proper for the protection of the health and safety of all employees, customers or the public.

(3) The commission is authorized to cooperate with, make certifications to and enter into agreements with the Secretary of Transportation of the United States of America and to assume responsibility for, and carry out on behalf of the Secretary of Transportation, safety jurisdiction relating to pipeline facilities and transportation of hazardous substances and materials in Oregon in any manner not otherwise subject to the jurisdiction of any other agency of this state.

(4) Notwithstanding any other provisions to the contrary, the commission shall make public such reports as are required to be made public under applicable federal law and regulations and provide such information as is required by the Secretary of Transportation.

(5) The jurisdiction of the commission over propane, butane or mixtures of these gases shall be limited to systems transporting such gases to 10 or more customers, or to systems any portion of which is located in a public place. [Formerly 757.095; 1983 c.540 §3; 2001 c.35 §1]

757.040 [Amended by 1971 c.655 §101; renumbered 758.035]

757.045 [Amended by 1967 c.394 §1; repealed by 1971 c.781 §1]

757.050 Authority of commission to order extension of service to unserved areas. The Public Utility Commission has power to require any public utility, after a public hearing of all parties interested, to extend its line, plant or system into, and to render service to, a locality not already served when the existing public convenience and necessity requires such extension and service. However, no such extension of service shall be required until the public utility has been granted such reasonable franchises as may be necessary for the extension of service, and unless the conditions are such as to reasonably justify the necessary investment by the public utility in extending its line, plant or system into such locality and furnishing such service. [Amended by 1971 c.655 §67]

757.055 [Repealed by 1971 c.655 §250]

757.056 Information on energy conservation to be furnished by certain utilities; rules. (1) As used in this section, "energy conservation services" means services provided by public utilities to educate and inform customers and the public about energy conservation. Such services include but are not limited to providing answers to questions concerning energy saving devices and providing inspections and making suggestions concerning the construction and siting of buildings and residences.

(2) All public utilities as defined in ORS 757.005, that produce, transmit, deliver or furnish heat, light or power shall establish energy conservation services and shall provide energy conservation information to customers and to the public. The services shall be performed in accordance with such rules as the Public Utility Commission may prescribe. [1977 c.197 §2; 1977 c.887 §11]

757.060 [Amended by 1955 c.145 §1; repealed by 1961 c.691 §20]

757.061 Regulation of water utilities; rules. (1) For the purposes of this section:

(a) "Rate regulation" means regulation under this chapter, except for regulation under ORS 757.105 to 757.110.

(b) "Service regulation" means regulation under this chapter, except for regulation under ORS 757.105 to 757.110, 757.140, 757.205 to 757.220, 757.225, 757.245, 757.259, 757.355, 757.400 to 757.460, 757.485, 757.490, 757.495 and 757.500.

(2) Except as provided in this section, water utilities are not subject to regulation under this chapter or required to pay the fee provided for in ORS 756.310.

(3) The following utilities are subject to rate regulation and must pay the fee provided for in ORS 756.310:

(a) A water utility that serves 500 or more customers.

(b) A water utility that serves fewer than 500 customers, if the water utility also provides wastewater services to the public inside the boundaries of a city.

(c) A water utility that serves fewer than 500 customers, if the Public Utility Commission grants a petition from the water utility requesting that the water utility be subject to rate regulation.

(d) A water utility that satisfies all of the following conditions:

(A) The water utility serves fewer than 500 customers;

(B) The water utility proposes to charge a rate for water service that exceeds the maximum rates established by the commission under subsection (5) of this section; and

(C) Twenty percent or more of the customers of the water utility file a petition with the commission requesting that the water utility be subject to rate regulation.

(4) The following utilities are subject to service regulation and must pay the fee provided for in ORS 756.310:

(a) A water utility that serves fewer than 500 customers and that is found by the commission, pursuant to an investigation under ORS 756.515, to have provided inadequate or discriminatory service at any time.

(b) A water utility that serves fewer than 500 customers and that at any time charges an average annual residential rate of $24 per month or more.

(5)(a) The commission shall adopt rules establishing maximum rates for water utilities serving fewer than 500 customers for the purpose of determining whether a petition may be filed under subsection (3)(d)(C) of this section.

(b) To encourage metered water systems for water utilities serving fewer than 500 customers, the commission shall establish a higher maximum rate for water utilities with metered water systems than for water utilities with unmetered systems.

(6) Not less than 60 days before a water utility that serves fewer than 500 customers increases any rate to exceed any maximum rate prescribed under subsection (5) of this section, the water utility shall provide written notice to all of its customers advising the customers of their right to file a petition under subsection (3)(d)(C) of this section. The commission shall adopt rules prescribing the content of the written notice. [1989 c.403 §2; 1999 c.330 §1; 2003 c.82 §1; 2009 c.429 §1; 2011 c.76 §1; 2013 c.96 §4]

757.063 Regulation of associations furnishing water upon petition. (1) Any association of individuals that furnishes water to members of the association is subject to regulation in the same manner as provided by this chapter for public utilities, and must pay the fee provided for in ORS 756.310, if 20 percent or more of the members of the association file a petition with the Public Utility Commission requesting that the association be subject to such regulation.

(2) The provisions of this section apply to an association of individuals even if the association does not furnish water directly to or for the public. The provisions of this section do not apply to any cooperative formed under ORS chapter 62 or to any public body as defined by ORS 174.109. [2003 c.82 §3]

757.065 [Renumbered 756.370]

757.068 Use of fees to make emergency repairs to water service plants. (1) In each biennium the Public Utility Commission may use not more than $5,000 of the fees collected under ORS 756.310 to make emergency repairs to the plants of public utilities providing water service. The commission may expend moneys under the provisions of this section only if the commission determines that:

(a) Customers of the utility are without service and are likely to remain without service for an unreasonable period of time;

(b) The utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and

(c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The commission shall attempt to recover fees used under this section from the utility providing water service. The commission may also recover a penalty as provided in ORS 756.350 from the time the fees are expended. [2003 c.202 §8]

757.069 Notice of delinquency on water bill. (1) If a customer of a water utility fails to pay a water bill for more than 120 days after the bill becomes due, the water utility shall mail notice of the delinquency to the persons who are listed as the owners of the property in the real property tax records for the county only if the utility asserts that the property owners are responsible for the bill. The notice must be mailed to the addresses of the owners as reflected in the real property tax records.

(2) The provisions of this section apply to water utilities operated by public utilities, municipalities, cooperatives and unincorporated associations. [2005 c.168 §2; 2007 c.211 §1]

757.070 [Renumbered 756.375]

757.072 Agreements for financial assistance to organizations representing customer interests; rules. (1) A public utility providing electricity or natural gas may enter into a written agreement with an organization that represents broad customer interests in regulatory proceedings conducted by the Public Utility Commission relating to public utilities that provide electricity or natural gas. The agreement shall govern the manner in which financial assistance may be provided to the organization. The agreement may provide for financial assistance to other organizations found by the commission to be qualified under subsection (2) of this section. More than one public utility or organization may join in a single agreement. Any agreement entered into under this section must be approved by the commission before any financial assistance is provided under the agreement.

(2) Financial assistance under an agreement entered into under this section may be provided only to organizations that represent broad customer interests in regulatory proceedings before the commission relating to public utilities that provide electricity or natural gas. The commission by rule shall establish such qualifications as the commission deems appropriate for determining which organizations are eligible for financial assistance under an agreement entered into under this section.

(3) In administering an agreement entered into under this section, the commission by rule or order may determine:

(a) The amount of financial assistance that may be provided to any organization;

(b) The manner in which the financial assistance will be distributed;

(c) The manner in which the financial assistance will be recovered in the rates of the public utility under subsection (4) of this section; and

(d) Other matters necessary to administer the agreement.

(4) The commission shall allow a public utility that provides financial assistance under this section to recover the amounts so provided in rates. The commission shall allow a public utility to defer inclusion of those amounts in rates as provided in ORS 757.259 if the public utility so elects. An agreement under this section may not provide for payment of any amounts to the commission. [2003 c.234 §2]

757.075 [Repealed by 1971 c.655 §250]

757.077 Incorrect billings; collections; refunds. (1) If a public utility determines that a current or former customer of the public utility was previously billed an incorrect amount for a service provided by the public utility under rate schedules or tariffs in effect for the public utility on the date on which the service was provided, the public utility may:

(a) If the public utility underbilled the customer, issue a bill to the customer for amounts the customer owes the public utility in accordance with subsection (2) of this section; or

(b) If the public utility overbilled the customer, refund the customer for amounts the public utility owes the customer in accordance with subsection (3) of this section.

(2)(a) Except as provided in paragraph (b) of this subsection, when issuing a bill under subsection (1)(a) of this section, a public utility:

(A) May only collect amounts incorrectly billed during the 12-month period ending on the date on which the public utility issued the last incorrect bill; and

(B) May not collect amounts incorrectly billed more than two years before the date on which the public utility identified the incorrect bill.

(b) If an incorrect billing described in subsection (1) of this section is the result of fraud, tampering, diversion, theft, misinformation or other dishonest or unlawful conduct for which the customer is responsible, the public utility may collect full payment for any amount that the customer of the public utility owes the public utility.

(3) When making a refund under subsection (1)(b) of this section, a public utility:

(a) May only refund amounts incorrectly received during the 12-month period ending on the date on which the public utility issued the last incorrect bill; and

(b) May not refund amounts incorrectly received more than three years before the date on which the public utility identified the incorrect bill. [2013 c.170 §2]

757.080 [1953 c.356 §1; 1961 c.354 §1; 1971 c.655 §30a; renumbered 756.380]

757.085 [1953 c.356 §2; 1961 c.354 §2; renumbered 756.385]

757.090 [1953 c.356 §3; 1961 c.354 §3; renumbered 756.390]

757.095 [1969 c.372 §2; 1971 c.655 §69; renumbered 757.039]

BUDGET, ACCOUNTS AND REPORTS OF UTILITIES

757.105 Filing of budget; rules; review by commission; pensions as operating expenses. (1) The Public Utility Commission has the right and power of regulation, restriction and control over the budgets of expenditures of public utilities, as to all items covering:

(a) Proposed payment of salaries of executive officers;

(b) Donations;

(c) Political contributions and political advertising;

(d) Expenditures for pensions or for a trust to provide pensions for employees and officers;

(e) Other expenditures and major contracts for the sale or purchase of equipment; and

(f) Any payment or contemplated payment to any person or corporation having an affiliated interest for service, advice, auditing, associating, sponsoring, engineering, managing, operating, financing, legal or other services.

(2) On or before a date prescribed by the commission by rule, each public utility shall prepare a budget showing the amount of money which, in its judgment, shall be needed during the ensuing year for covering all such activities and expenditures, and file it with the commission.

(3) When any such budget has been filed with the commission, the commission shall examine into and investigate the same and unless rejected within 60 days thereafter, the proposed budget is presumptively fair and reasonable and not contrary to public interest.

(4) Proposed expenditures for pensions or for a trust to provide pensions for the employees and officers of such utility whether for future service or past service or both, shall be recognized as an operating expense if the trust fund is irrevocably committed to the payment of pensions or benefits to employees and if such pensions are reasonable and nondiscriminatory. The commission may disallow as an operating expense any expenditure for pension purposes in excess of the amount necessary and proper to maintain an actuarially sound retirement plan for the employees of the utility in Oregon. [Amended by 1957 c.593 §1; 1971 c.655 §82; 2013 c.96 §1]

757.107 Supplemental budgets and orders. Adjustment and additions to such budget expenditures may be made from time to time during the year by filing supplementary budgets with the Public Utility Commission. The provisions of ORS 757.105 (3) apply to adjustments and additions to budgets. [Amended by 1971 c.655 §83]

757.110 Effect of budget orders. (1) Any finding and order made and entered by the Public Utility Commission under ORS 757.105 or 757.107 shall have the effect of prohibiting any unapproved or rejected expenditure from being recognized as an operating expense or capital expenditure in any rate valuation proceeding or in any proceeding or hearing unless and until the propriety thereof has been established to the satisfaction of the commission. Any such finding and order shall remain in full force and effect, unless and until it is modified or set aside by the commission or is set aside, modified or remanded in a proceeding for judicial review of an order in a contested case in the manner provided by ORS 756.610.

(2) Nothing in ORS 757.105 or 757.107 prevents the commission from at any time making and filing orders rejecting imprudent and unwise expenditures or payments. Such orders when so made shall be in full force and effect, and the public utility shall not have the right to make such expenditures or payments found to be imprudent or unwise until the order has been modified or set aside

by the commission or is set aside, modified or remanded in a proceeding for judicial review of an order in a contested case in the manner provided by ORS 756.610. [Amended by 1971 c.655 §84; 2005 c.638 §7]

757.115 [Amended by 1971 c.655 §20; renumbered 756.105]

757.120 Accounts required. (1) Every public utility shall keep and render to the Public Utility Commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. All forms of accounts which may be prescribed by the commission shall conform as nearly as practicable to similar forms prescribed by federal authority.

(2) Every public utility engaged directly or indirectly in any other business than that of a public utility shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this chapter shall apply with like force and effect to the accounts and records of such other business. [Amended by 1971 c.655 §85]

757.125 Duty of utility to keep records and accounts; duty of commission to furnish blanks. (1) The Public Utility Commission shall prescribe the accounts and records required to be kept, and every public utility is required to keep and render its accounts and records accurately and faithfully in the manner prescribed by the commission and to comply with all directions of the commission relating to such accounts and records.

(2) No public utility shall keep any other accounts or records of its public utility business transacted than those prescribed or approved by the commission except such as may be required by the laws of the United States.

(3) The commission shall cause to be prepared suitable blanks for reports for carrying out the purposes of this chapter, and shall, when necessary, furnish such blanks for reports to each public utility. [Amended by 1971 c.655 §86]

757.130 [Repealed by 1971 c.655 §250]

757.135 Closing accounts and filing balance sheet; rules; auditing accounts. (1) Except as provided in subsection (2) of this section, the accounts required under ORS 757.120 and 757.125 shall be closed annually on December 31 and a balance sheet of that date promptly taken therefrom. On or before a date prescribed by the Public Utility Commission by rule, such balance sheet, together with such other information as the commission shall prescribe, verified by an officer of the public utility, shall be filed with the commission.

(2) If a public utility maintains its accounts and records on a fiscal year basis, the accounts required by ORS 757.120 and 757.125 shall be closed annually on the last day of the fiscal year and a balance sheet shall be promptly taken from those accounts. On or before the first day of the fourth month following the end of the public utility's fiscal year, the balance sheet together with such information as the commission shall prescribe must be verified by an officer of the public utility and filed with the commission. The commission may require that a public utility filing information at the time specified in this subsection also file with the commission on a calendar year basis such additional information as may be prescribed by the commission.

(3) The commission may examine and audit any account. Items shall be allocated to the accounts in the manner prescribed by the commission. [Amended by 1983 c.540 §4; 2001 c.733 §1; 2013 c.96 §2]

757.140 Depreciation accounts; use of certain undepreciated investment in rates. (1) Every public utility shall carry a proper and adequate depreciation account. The Public Utility Commission shall ascertain and determine the proper and adequate rates of depreciation of the several classes of property of each public utility. The rates shall be such as will provide the amounts required over and above the expenses of maintenance, to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to the rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as the commission may find to be necessary.

(2) In the following cases the commission may allow in rates, directly or indirectly, amounts on the utility's books of account which the commission finds represent undepreciated investment in a utility plant, including that which has been retired from service:

(a) When the retirement is due to ordinary wear and tear, casualties, acts of God, acts of governmental authority; or

(b) When the commission finds that the retirement is in the public interest. [Amended by 1971 c.655 §87; 1989 c.956 §2]

757.145 [Repealed by 1971 c.655 §250]

757.150 [Repealed by 1971 c.655 §250]

757.155 [Amended by 1971 c.655 §90; renumbered 757.480]

757.160 [Amended by 1971 c.655 §91; renumbered 757.485]

757.165 [Amended by 1971 c.655 §92; renumbered 757.490]

757.170 [Amended by 1971 c.655 §93; renumbered 757.495]

757.175 [Amended by 1971 c.655 §94; renumbered 757.500]

757.180 [Amended by 1971 c.655 §21; renumbered 756.115]

RATE SCHEDULES; MEASURING EQUIPMENT

757.205 Filing schedules with commission; data filed with schedules. (1) Every public utility shall file with the Public Utility Commission, within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it.

(2) Every public utility shall file with and as part of every such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service. Every public utility shall also file with the commission copies of interstate rate schedules and rules and regulations issued by it or to which it is a party.

(3) Where a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedules shall in like manner be printed and filed with the commission. [Amended by 1971 c.655 §70]

757.210 Hearing to establish new schedules; alternative regulation plan. (1)(a) Whenever any public utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine whether the rate or schedule is fair, just and reasonable. The commission shall conduct the hearing upon written complaint filed by the utility, its customer or customers, or any other proper party within 60 days of the utility's filing; provided that no hearing need be held if the particular rate change is the result of an automatic adjustment clause. At the hearing the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable. The commission may not authorize a rate or schedule of rates that is not fair, just and reasonable.

(b) As used in this subsection, "automatic adjustment clause" means a provision of a rate schedule that provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred, taxes paid to units of government or revenues earned by a utility and that is subject to review by the commission at least once every two years.

(2)(a) Subsection (1) of this section does not apply to rate changes under an approved alternative form of regulation plan, including a resource rate plan under ORS 757.212.

(b) Any alternative form of regulation plan shall include provisions to ensure that the plan operates in the interests of utility customers and the public generally and results in rates that are just and reasonable and may include provisions establishing a reasonable range for rate of return on investment. In approving a plan, the commission shall, at a minimum, consider whether the plan:

(A) Promotes increased efficiencies and cost control;

(B) Is consistent with least-cost resources acquisition policies;

(C) Yields rates that are consistent with those that would be obtained following application of ORS 757.269;

(D) Is consistent with maintenance of safe, adequate and reliable service; and

(E) Is beneficial to utility customers generally, for example, by minimizing utility rates.

(c) As used in this subsection, "alternative form of regulation plan" means a plan adopted by the commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-service rate regulation.

(d) Prior to implementing a rate change under an alternative form of regulation plan, the utility shall present a report that demonstrates the calculation of any proposed rate change at a public meeting of the commission.

(3) Except as provided in ORS 757.212, the commission, at any time, may order a utility to appear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this section are in conformity with the plan and are just and reasonable. Except as provided in ORS 757.212, such rates, and the alternative form of regulation plan under which the rates are set, also shall be subject to complaint under ORS 756.500.

(4) Periodically, but not less often than every two years after the implementation of a plan referred to in subsection (2) of this section, the commission shall submit a report to the Legislative Assembly that shows the

impact of the plan on rates paid by utility customers.

(5) The commission and staff may consult at any time with, and provide technical assistance to, utilities, their customers, and other interested parties on matters relevant to utility rates and charges. If a hearing is held with respect to a rate change, the commission's decisions shall be based on the record made at the hearing. [Amended by 1971 c.655 §70a; 1981 c.715 §1; 1985 c.550 §2; 1987 c.447 §97; 1987 c.613 §1; 1989 c.5 §§3,23; 1995 c.785 §1; 2001 c.913 §3; 2005 c.845 §5; 2011 c.137 §3]

757.212 Resource rate plans; customers who may elect to be exempt; order approving plan; effect of approving plan. (1) For purposes of this section:

(a) "Resource rate plan" means a plan by a public utility to construct a generating plant or to enter into a wholesale power purchase or sales agreement with a term that is longer than one year.

(b) "Site" means:

(A) Buildings or other related structures that are interconnected by facilities owned by a single public utility customer 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:

(i) Each building or structure included in the site is not more than 1,000 feet from at least one other building or structure in the site;

(ii) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a public utility customer who is billed for electricity use at the buildings and structures; and

(iii) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights-of-way land on which municipal infrastructure facilities exist, such as street lighting, sewerage transmission and roadway controls, shall not be considered contiguous.

(2) The Public Utility Commission may approve a resource rate plan as an alternative form of regulation plan under ORS 757.210. A public utility must make a separate tariff filing for each proposed resource rate plan. If the commission approves a resource rate plan by a public utility based on the construction of a generating plant, the order approving the plan must state how the commission will reflect the costs and revenues of the generating plant in the utility's rates during all or a portion of the expected useful life of the generating plant. If the commission approves a resource rate plan based on a wholesale power purchase or sales agreement with a term longer than one year, the order approving the plan must state how the commission will reflect the costs and revenues under the wholesale power purchase or sales agreement in the utility's rates during all or a portion of the term of the agreement.

(3) A customer receiving electricity from a public utility may elect to be exempt from the costs and benefits of a resource rate plan for any single site at which the customer has had a peak load in excess of nine megawatts in any hour during the 12-month period immediately preceding the date on which the public utility files a tariff under this section. A public utility filing a tariff under this section must give written notice of the provisions of this subsection to all of its customers that are eligible to make an election under this subsection. The notice must be given within three days after the tariff is filed. An election under this subsection must be made by a customer within 30 days after the tariff is filed.

(4) A public utility customer that elects to be exempt under subsection (3) of this section may also elect to be exempt from the costs and benefits of a resource rate plan for any single site at which the customer has had a peak load in excess of one megawatt in any hour during the 12-month period immediately preceding the date on which the public utility files a tariff under this section. An election under this subsection must be made as part of the election under subsection (3) of this section.

(5) The commission shall ensure that customers making an election under subsection (3) or (4) of this section are charged the market cost for all electricity that is required to replace the electricity that would otherwise have been provided under the resource rate plan, and that the election does not result in increased costs or risks to the public utility or to other customers of the public utility.

(6) The commission, by rule, may allow customers of a public utility other than those customers described in subsection (3) of this section to elect to be exempt from the costs and benefits of a resource rate plan.

(7) If the commission approves a resource rate plan, the order of the commission must also address:

(a) The extent to which the public utility will use power from the generating plant or from the power purchase or sales agreement to serve its retail customers in Oregon;

(b) The allocation of power available from the generating plant or power purchase

or sales agreement among different classes of the public utility's customers;

(c) The ratemaking consequences of the generating plant or power purchase or sales agreement, including the consequences of variations in the amount of power that is actually available after the plan is in operation compared with the amount of power that was anticipated to be available at the time the plan was approved; and

(d) Any other issue the commission chooses to consider.

(8) If the commission approves a resource rate plan, the commission may not thereafter review the costs and rates specific to the resource rate plan or other obligations of the public utility under the plan, or consider any complaint under ORS 756.500 seeking review of the costs and rates specific to the resource rate plan or other obligations of the public utility under the plan, except for the purpose of determining whether the public utility is in compliance with the plan and has established rates in accordance with the plan.

(9) A resource rate plan and a public utility's rates under a resource rate plan are not subject to ORS 757.355.

(10) The commission may not set aside or modify an order approving a resource rate plan unless the public utility operating under the plan approves the setting aside or modification. [2001 c.913 §2; 2005 c.638 §8]

Note: 757.212 was added to and made a part of 757.205 to 757.220 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.215 Commission authorized to suspend new rates or order interim rates during hearings; revenues collected under unapproved rates to be refunded; order after hearing. (1) The Public Utility Commission may, pending such investigation and determination, order the suspension of the rate or schedule of rates, provided the initial period of suspension shall not extend more than six months beyond the time when such rate or schedule would otherwise go into effect. If the commission finds that the investigation will not be completed at the expiration of the initial suspension, the commission may enter an order further suspending such rate or schedule for not more than three months beyond the last day of the initial suspension.

(2) This section does not prevent the commission and the utility from entering into a written stipulation at any time extending any period of suspension.

(3) After full hearing, whether completed before or after such rate or schedule has gone into effect, the commission may make such order in reference thereto as would be proper in a proceeding initiated after such rate or schedule has become effective.

(4) If the commission is required to or determines to conduct a hearing on a rate or schedule of rates filed pursuant to ORS 757.210, but does not order a suspension thereof, any increased revenue collected by the utility as a result of such rate or rate schedule becoming effective shall be received subject to being refunded. If the rate or rate schedule thereafter approved by the commission is for a lesser increase or for no increase, the utility shall refund the amount of revenues received that exceeds the amount approved as nearly as possible to the customers from whom such excess revenues were collected, by a credit against future bills or otherwise, in such manner as the commission orders.

(5) The commission may in a suspension order authorize an interim rate or rate schedule under which the utility's revenues will be increased by an amount deemed reasonable by the commission, not exceeding the amount requested by the utility. Any such interim increase for a public utility as defined in ORS 757.005 that produces, transmits, delivers or furnishes heat, light or power shall be effected by rates designed to increase the utility's revenues without materially changing the revenue relationships among customer classes or between the revenues derived from demand charges and from energy charges. An interim rate or rate schedule shall remain in effect until terminated by the commission. Upon completion of the hearing and decision, the commission shall order the utility to refund that portion of the increase in the interim rate or schedule that the commission finds is not justified. Any refund of an interim increase under this subsection shall be based upon an analysis of the utility's earnings for a period reasonably representative of the period during which the interim increase was in effect. Refunds shall be made as nearly as possible to the customers against whom the interim rates were charged, by credits against future bills or in such other manner as the commission orders.

(6) Refunds ordered by the commission under subsection (4) or (5) of this section shall include interest on the amount determined to be subject to refund from the date such interim rate or rate schedules took effect. [Amended by 1981 c.715 §2; 1991 c.964 §1]

757.220 Notice of schedule changes required; exception for alternative regulation. No change shall be made in any schedule, including schedules of joint rates, except upon 30 days' notice to the Public Utility Commission. All changes shall be plainly indicated upon existing schedules, or

by filing new schedules in lieu thereof 30 days prior to the time they are to take effect. However, the commission, for good cause shown, may allow changes without requiring the 30 days' notice by filing an order specifying the changes to be made and the time when they shall take effect. This section does not apply to rate changes authorized under an alternative form of regulation plan under ORS 757.210 (2). [Amended by 1995 c.785 §2]

757.225 Utilities required to collect for their services in accordance with schedules. No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in ORS 757.210 to 757.220. [Amended by 1971 c.655 §71; 1985 c.550 §3; 1991 c.67 §204]

757.227 Rate mitigation for certain electric company rate increases. (1) As used in this section, "electric company" has the meaning given that term in ORS 757.600.

(2) The Public Utility Commission shall require that an electric company mitigate a rate increase payable by a class of customers described in subsection (5) of this section if:

(a) The increase results from a transition to an electric company's generally applicable cost-based rate from the rates established under the contracts described in subsection (5) of this section; and

(b) The increase in the cost of electricity to that class of customers by reason of the transition will exceed 50 percent during the first 12 calendar months after the transition occurs.

(3) The commission shall require an electric company to mitigate a rate increase under this section by means of a schedule of rate credits for the class of customers described in subsection (5) of this section. The rate credits provided by an electric company under the schedule shall automatically decrease each year to the lowest credit necessary to avoid a rate increase that is greater than 50 percent in any subsequent year. Rate credits under this section may not be provided for more than seven years after the transition occurs.

(4) For the purpose of determining the increase in the cost of electricity to a class of customers by reason of a transition described in subsection (2)(a) of this section, the commission shall:

(a) Include the total charges for electricity service, including all special charges and credits other than the rate credit provided under this section; and

(b) Exclude any local taxes or fees paid by the class of customers.

(5) This section applies only to customers of an electric company that purchase electricity at metering points that before the transition described in subsection (2)(a) of this section were eligible for rates that were set under contracts entered into before 1960 and remained unchanged throughout the period of the contract.

(6) The full cost of providing rate credits under this section shall be spread equally among all other customers of the electric company. [2005 c.594 §3]

757.230 Control of commission over classification of services and forms of schedules; rules. (1) The Public Utility Commission shall provide for a comprehensive classification of service for each public utility, and such classification may take into account the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration. Based on such considerations the commission may authorize classifications or schedules of rates applicable to individual customers or groups of customers. The service classifications and schedule forms shall be designed consistently with the requirements of ORS 469.010. Each public utility is required to conform its schedules of rates to such classification. If the commission determines that a tariff filing under ORS 757.205 results in a rate classification primarily related to price competition or a service alternative, the commission, at a minimum, shall consider the following:

(a) Whether the rate generates revenues at least sufficient to cover relevant short and long run costs of the utility during the term of the rates;

(b) Whether the rate generates revenues sufficient to insure that just and reasonable rates are established for remaining customers of the utility;

(c) For electric and natural gas utilities:

(A) Whether it is appropriate to incorporate interruption of service in the utility's rate agreement with the customer; and

(B) Whether the rate agreement requires the utility to acquire new resources to serve the load; and

(d) For electric utilities, for service to load not previously served, the effect of the rate on the utility's average system cost through the residential exchange provision of the Pacific Northwest Electric Power

Planning and Conservation Act of 1980, Public Law 96-501, as amended.

(2) The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient. The commission shall adopt rules which allow any person who requests notice of tariff filings described under subsection (1) of this section to receive such notice. [Amended by 1971 c.655 §72; 1977 c.682 §1; 1987 c.900 §1]

757.235 [Amended by 1953 c.285 §2; repealed by 1981 c.715 §3]

757.240 Filing schedules in business office. (1) A copy of so much of all schedules, including schedules of joint rates and charges, as the Public Utility Commission deems necessary for the use of the public shall be printed in plain type and kept on file in every business office of such public utility, open to the public, and in such form and place as to be readily accessible to the public for convenient inspection.

(2) Copies of all new schedules shall be filed in every business office of such public utility 30 days prior to the time the schedules are to take effect, unless the commission prescribes a shorter time. [Amended by 1971 c.655 §73]

757.245 Establishment of joint rates. (1) A public utility may establish reasonable through service and joint rates and classifications with other public utilities. Public utilities establishing joint rates shall establish just and reasonable regulations and practices in connection therewith and just, reasonable and equitable divisions thereof as between the public utilities participating therein, which shall not unduly prefer or prejudice any of such participating public utilities, and every unjust and unreasonable rate, classification, regulation, practice and division is prohibited.

(2) The Public Utility Commission may, and shall, whenever deemed by the commission to be necessary or desirable in the public interest, after full hearing upon complaint, or upon the commission's own initiative without complaint, establish through service, classifications and joint rates, the divisions of such rates and the terms and conditions under which such through service shall be rendered. If any tariff or schedule canceling any through service or joint rate or classification without the consent of all the public utilities parties thereto or authorization by the commission is suspended by the commission for investigation, the burden of proof is upon the public utilities proposing such cancellation to show that it is consistent with the public interest.

(3) Whenever, after full hearing upon complaint or upon the commission's own initiative without complaint, the commission is of the opinion that the divisions of joint rates between the public utilities are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the public utilities parties thereto, whether agreed upon by such public utilities or otherwise established, the commission shall, by order, prescribe the just, reasonable and equitable divisions thereof to be received by the several public utilities. In cases where the joint rate was established pursuant to the finding or order of the commission and the divisions thereto are found by the commission to have been unjust, unreasonable or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what, for the period subsequent to the filing of the complaint or petition or the making of the order of investigation, would have been the just, reasonable and equitable division thereof to be received by the several public utilities and require adjustment to be made in accordance therewith.

(4) In so prescribing and determining the divisions of joint rates, the commission shall give due consideration, among other things, to:

(a) The efficiency with which the public utilities concerned are operated;

(b) The amount of revenue to pay their respective operating expenses, taxes and a fair return on their public utility property held for and used in service;

(c) The importance to the public of the services of such public utilities;

(d) Whether any particular participating public utility is an originating, intermediate or delivering utility; and

(e) Any other fact or circumstance which ordinarily would entitle one public utility to a greater or less proportion of the joint rate than another. [Amended by 1971 c.655 §74]

757.247 Tariff schedules for energy resource measures. (1) The Public Utility Commission may authorize a public utility, upon application of the utility, to file and place into effect a tariff schedule establishing rates or charges for the cost of energy resource measures provided to an individual property owner or customer pursuant to an agreement entered into between the individual property owner or customer and the public utility. Energy resource measures provided under this section may include:

(a) The installation of renewable energy generation facilities on the property of property owners or the premises of customers;

(b) The implementation of energy conservation measures, including measures that are not cost-effective;

(c) The installation of equipment or devices or the implementation of measures that enable demand reduction, peak load reduction, improved integration of renewable energy generation or more effective utilization of energy resources;

(d) Loans for the purposes described in paragraphs (a) to (c) of this subsection; and

(e) Direct payments to third parties for the purposes described in paragraphs (a) to (c) of this subsection.

(2) Subject to the agreement entered into between the individual property owner or customer and the public utility, a tariff schedule placed into effect under this section may include provisions for:

(a) The payment of the rates or charges over a period of time;

(b) Except as provided in subsection (5) of this section, a reasonable rate of return on any investment made by the public utility;

(c) The application of any payment obligation to successive owners of the property to which the energy resource measure is attached or to successive customers located at the premises to which the energy resource measure is attached; and

(d) The application of the payment obligation to the current property owner or customer alone, secured by methods agreed to by the property owner or customer and the public utility.

(3) Application of a tariff schedule under this section is subject to approval by the commission.

(4) If a payment obligation applies to successive property owners or customers as described in subsection (2)(c) of this section, a public utility shall record a notice of the payment obligation in the records maintained by the county clerk under ORS 205.130. The commission may prescribe by rule other methods by which the public utility shall notify property owners or customers of such payment obligations.

(5) A public utility may use moneys obtained through a rate established under ORS 757.603 (2)(a) to provide a renewable energy generation facility to a property owner or customer under this section. A public utility may not charge interest to a property owner or customer for a renewable energy generation facility acquired with moneys obtained through a rate established under ORS 757.603 (2)(a).

(6) Agreements entered into and tariff schedules placed into effect under this section are not subject to ORS 470.500 to 470.710, 757.612 or 757.689. [1991 c.268 §2; 2007 c.885 §3; 2013 c.344 §1]

757.250 Standards and appliances for measuring service; rules. (1) The Public Utility Commission shall ascertain and prescribe for each kind of public utility suitable and convenient standard commercial units of service. These shall be lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of the service rendered by any public utility and prescribe reasonable regulations for examination and testing of such service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for the measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto. [Amended by 1971 c.655 §75]

757.255 Testing of measuring appliances; rules; fees. (1) The Public Utility Commission may provide for the examination and testing of any and all appliances used for the measuring of any service of a public utility, and may provide by rule that no such appliance shall be installed and used for the measuring of any service of any public utility until it has been examined and tested by the commission and found to be accurate.

(2) The commission shall declare and establish a reasonable fee governing the cost of such examination and test, which shall be paid to the commission by the public utility.

(3) The commission shall declare and establish reasonable fees for the testing of such appliances on the application of the customer, the fee to be paid by the customer at the time of the customer's request, but to be repaid to the customer by the commission and to be paid by the public utility if the appliance is found defective or incorrect to the disadvantage of the customer or used beyond such reasonable limit as may be prescribed by the commission.

(4) All fees collected under the provisions of this section shall be paid by the commission into the State Treasury.

(5) The commission may purchase such materials, apparatus and standard measuring instruments for the examination and tests as the commission deems necessary. [Amended by 1971 c.655 §76]

757.259 Amounts includable in rate schedule; deferral; limit in effect on rates by amortization; rules. (1) In addition to powers otherwise vested in the Public Utility Commission, and subject to the limitations contained in this section, under amortization

schedules set by the commission, a rate or rate schedule:

(a) May reflect:

(A) Amounts lawfully imposed retroactively by order of another governmental agency; or

(B) Amounts deferred under subsection (2) of this section.

(b) Shall reflect amounts deferred under subsection (3) of this section if the public utility so requests.

(2) Upon application of a utility or ratepayer or upon the commission's own motion and after public notice, opportunity for comment and a hearing if any party requests a hearing, the commission by order may authorize deferral of the following amounts for later incorporation in rates:

(a) Amounts incurred by a utility resulting from changes in the wholesale price of natural gas or electricity approved by the Federal Energy Regulatory Commission;

(b) Balances resulting from the administration of Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980;

(c) Direct or indirect costs arising from any purchase made by a public utility from the Bonneville Power Administration pursuant to ORS 757.663, provided that such costs shall be recovered only from residential and small-farm retail electricity consumers;

(d) Amounts accruing under a plan for the protection of short-term earnings under ORS 757.262 (2); or

(e) Identifiable utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.

(3) Upon request of the public utility, the commission by order shall allow deferral of amounts provided as financial assistance under an agreement entered into under ORS 757.072 for later incorporation in rates.

(4) The commission may authorize deferrals under subsection (2) of this section beginning with the date of application, together with interest established by the commission. A deferral may be authorized for a period not to exceed 12 months beginning on or after the date of application. However, amounts deferred under subsection (2)(c) and (d) or (3) of this section are not subject to subsection (5), (6), (7), (8) or (10) of this section, but are subject to such limitations and requirements that the commission may prescribe and that are consistent with the provisions of this section.

(5) Unless subject to an automatic adjustment clause under ORS 757.210 (1), amounts described in this section shall be allowed in rates only to the extent authorized by the commission in a proceeding under ORS 757.210 to change rates and upon review of the utility's earnings at the time of application to amortize the deferral. The commission may require that amortization of deferred amounts be subject to refund. The commission's final determination on the amount of deferrals allowable in the rates of the utility is subject to a finding by the commission that the amount was prudently incurred by the utility.

(6) Except as provided in subsections (7), (8) and (10) of this section, the overall average rate impact of the amortizations authorized under this section in any one year may not exceed three percent of the utility's gross revenues for the preceding calendar year.

(7) The commission may allow an overall average rate impact greater than that specified in subsection (6) of this section for natural gas commodity and pipeline transportation costs incurred by a natural gas utility if the commission finds that allowing a higher amortization rate is reasonable under the circumstances.

(8) The commission may authorize amortizations for an electric utility under this section with an overall average rate impact not to exceed six percent of the electric utility's gross revenues for the preceding calendar year. If the commission allows an overall average rate impact greater than that specified in subsection (6) of this section, the commission shall estimate the electric utility's cost of capital for the deferral period and may also consider estimated changes in the electric utility's costs and revenues during the deferral period for the purpose of reviewing the earnings of the electric utility under the provisions of subsection (5) of this section.

(9) The commission may impose requirements similar to those described in subsection (8) of this section for the amortization of other deferrals under this section, but may not impose such requirements for deferrals under subsection (2)(c) or (d) or (3) of this section.

(10) The commission may authorize amortization of a deferred amount for an electric utility under this section with an overall average rate impact greater than that allowed by subsections (6) and (8) of this section if:

(a) The deferral was directly related to extraordinary power supply expenses incurred during 2001;

(b) The amount to be deferred was greater than 40 percent of the revenue received by the electric utility in 2001 from Oregon customers; and

(c) The commission determines that the higher rate impact is reasonable under the circumstances.

(11) If the commission authorizes amortization of a deferred amount under subsection (10) of this section, an electric utility customer that uses more than one average megawatt of electricity at any site in the immediately preceding calendar year may prepay the customer's share of the deferred amount. The commission shall adopt rules governing the manner in which:

(a) The customer's share of the deferred amount is calculated; and

(b) The customer's rates are to be adjusted to reflect the prepayment of the deferred amount.

(12) The provisions of this section do not apply to a telecommunications utility. [1987 c.563 §2; 1989 c.18 §1; 1989 c.956 §1; 1993 c.175 §1; 1999 c.865 §31; 2001 c.733 §3; 2003 c.132 §1; 2003 c.234 §3]

757.260 [Amended by 1971 c.655 §18; renumbered 756.075]

757.262 Rates to encourage acquisition of cost-effective conservation resources; rules. (1) The Public Utility Commission, by rule, may adopt policies designed to encourage the acquisition of cost-effective conservation resources and small-scale, renewable-fuel electric generating resources.

(2) In furtherance of the policies adopted pursuant to subsection (1) of this section, and in such manner as the commission considers proper, the commission may authorize periodic rate adjustments for the purpose of providing some protection to a utility from reduction of short-term earnings that may result from implementation of such policies. The adjustments may include, but are not limited to, adjustments based in whole or in part upon the extent to which actual sales deviate from a base level of sales the commission considers appropriate. [1993 c.175 §3; 1999 c.944 §3]

757.265 [Repealed by 1971 c.655 §250]

757.266 Rates may encourage tree planting programs as offset to carbon dioxide emissions. The Public Utility Commission of Oregon may allow a rate or rate schedule of a public utility to reflect amounts for small scale programs that enable the utility to gain experience with tree planting on underproducing forestland, as defined by the State Forestry Department, as an offset to carbon dioxide emissions. [1993 c.286 §1]

Note: 757.266 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.267 [2005 c.845 §2; repealed by 2011 c.137 §5]

757.268 [2005 c.845 §3; repealed by 2011 c.137 §5]

757.269 Setting of rates based upon income taxes paid by utility; limitation on use of tax information; rules. (1) When establishing schedules and rates under ORS 757.210 for an electricity or natural gas utility, the Public Utility Commission shall act to balance the interests of the customers of the utility and the utility's investors by setting fair, just and reasonable rates that include amounts for income taxes. Subject to subsections (2) and (3) of this section, amounts for income taxes included in rates are fair, just and reasonable if the rates include current and deferred income taxes and other related tax items that are based on estimated revenues derived from the regulated operations of the utility.

(2) During ratemaking proceedings conducted pursuant to ORS 757.210, the Public Utility Commission must ensure that the income taxes included in the electricity or natural gas utility's rates:

(a) Include all expected current and deferred tax balances and tax credits made in providing regulated utility service to the utility's customers in this state;

(b) Include only the current provision for deferred income taxes, accumulated deferred income taxes and other tax related items that are based on revenues, expenses and the rate base included in rates and on the same basis as included in rates;

(c) Reflect all known changes to tax and accounting laws or policy that would affect the calculated taxes;

(d) Are reduced by tax benefits generated by expenditures made in providing regulated utility service to the utility's customers in this state, regardless of whether the taxes are paid by the utility or an affiliated group;

(e) Contain all adjustments necessary in order to ensure compliance with the normalization requirements of federal tax law; and

(f) Reflect other considerations the commission deems relevant to protect the public interest.

(3) During a ratemaking proceeding conducted under ORS 757.210 for an electricity or natural gas utility that pays taxes as part of an affiliated group, the Public Utility Commission may adjust the utility's estimated income tax expense based upon:

(a) Whether the utility's affiliated group has a history of paying federal or state income taxes that are less than the federal or

state income taxes the utility would pay to units of government if it were an Oregon-only regulated utility operation;

(b) Whether the corporate structure under which the utility is held affects the taxes paid by the affiliated group; or

(c) Any other considerations the commission deems relevant to protect the public interest.

(4)(a) Because tax information of unregulated nonutility business in an electricity or natural gas utility's affiliated group is commercially sensitive, and public disclosure of such information could provide a commercial advantage to other businesses, the Public Utility Commission may not use the tax information obtained under this section for any purpose other than those described in this section, in ORS 757.511 and as necessary for the implementation and administration of this section and ORS 757.511.

(b) The commission shall adopt rules to implement paragraph (a) of this subsection that:

(A) Identify all documents and tax information that an electricity or natural gas utility must file in its initial filing in a proceeding to change rates that include amounts for income taxes, recognizing that any party may object to providing such documents on the grounds that they are not relevant; and

(B) Determine the procedures under which intervenors in such proceedings may obtain and use documents and tax information to fully participate in the proceeding.

(5) As used in this section, "affiliated group" means a group of corporations of which the public utility is a member and that files a consolidated federal income tax return. [2011 c.137 §1]

Note: 757.269 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ATTACHMENTS REGULATION

757.270 Definitions for ORS 757.270 to 757.290. As used in ORS 757.270 to 757.290, unless the context requires otherwise:

(1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves, or other phenomena, or for the transmission of electricity for light, heat or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television or communications right of way, duct, conduit, manhole or handhole or other similar facility or facilities owned or controlled, in whole or in part, by one or more public utility, telecommunications utility or consumer-owned utility.

(2) "Consumer-owned utility" means a people's utility district organized under ORS chapter 261, a municipal utility organized under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

(3) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association that is authorized to construct attachments upon, along, under or across the public ways.

(4) "Public utility" has the meaning for that term provided in ORS 757.005, and does not include any entity cooperatively organized or owned by federal, state or local government, or a subdivision of state or local government.

(5) "Telecommunications utility" has the meaning for that term provided in ORS 759.005, and does not include any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government. [1979 c.356 §2; 1989 c.5 §4; 1999 c.832 §4]

757.271 Authorization from pole owner required for attachment. (1) Subject to applicable regulations of the Public Utility Commission, a person shall not establish an attachment to a pole or other facility of a public utility, telecommunications utility or consumer-owned utility unless the person has executed a contract with and has authorization from the utility allowing the attachment.

(2) A licensee shall report all pole attachments to the pole owner. A pole owner may impose on a licensee a penalty charge for failing to report an attachment. The pole owner also may charge the licensee for any expenses incurred as a result of an unauthorized attachment or any attachment that exceeds safety limits established by rule of the commission. [1999 c.832 §2]

757.272 Pole owner may approve or reject attachment. (1) A licensee shall notify a public utility, telecommunications utility or consumer-owned utility of all attachments to the utility's poles according to the terms of any agreement between the licensee and the utility.

(2) Notwithstanding subsection (1) of this section, the public utility, telecommunications utility or consumer-owned utility may approve or reject the attachment. If the attachment is rejected, the licensee shall remove the attachment within three business days of the date the attachment is rejected. If the attachment is not removed within three business days of the date the attach-

ment is rejected, the utility may remove the attachment and charge the licensee for all costs incurred by the utility in removing the attachment. [1999 c.832 §3]

757.273 Attachments to public utility and telecommunications utility facilities regulated. The Public Utility Commission of Oregon shall have the authority to regulate in the public interest the rates, terms and conditions for attachments by licensees to poles or other facilities of public utilities and telecommunications utilities. All rates, terms and conditions made, demanded or received by any public utility or telecommunications utility for any attachment by a licensee shall be just, fair and reasonable. [1979 c.356 §3; 1989 c.5 §5]

757.276 Attachments by licensees to consumer-owned utility facilities regulated. The Public Utility Commission of Oregon shall have the authority to regulate the rates, terms and conditions for attachments by licensees to poles or other facilities of consumer-owned utilities. All rates, terms and conditions made, demanded or received by any consumer-owned utility for any attachment by a licensee shall be just, fair and reasonable. [1979 c.356 §4; 1987 c.414 §164; 1999 c.832 §5]

757.279 Fixing rates or charges by commission; cost of hearing. (1) Whenever the Public Utility Commission of Oregon finds, after hearing had upon complaint by a licensee, a public utility, a telecommunications utility or a consumer-owned utility that the rates, terms or conditions demanded, exacted, charged or collected in connection with attachments or availability of surplus space for such attachments are unjust or unreasonable, or that such rates or charges are insufficient to yield a reasonable compensation for the attachment and the costs of administering the same, the commission shall determine the just and reasonable rates, terms and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing such rates, terms and conditions, the commission shall consider the interest of the customers of the licensee, as well as the interest of the customers of the public utility, telecommunications utility or consumer-owned utility that owns the facility upon which the attachment is made.

(2) When the order applies to a consumer-owned utility, the order shall also provide for payment by the parties of the cost of the hearing. The payment shall be made in a manner which the commission considers equitable. [1979 c.356 §5; 1983 c.251 §1; 1987 c.414 §165; 1989 c.5 §6; 1999 c.832 §6]

757.282 Criteria for just and reasonable rate for attachments; rate reduction. (1) A just and reasonable rate shall ensure the public utility, telecommunications utility or consumer-owned utility the recovery from the licensee of not less than all the additional costs of providing and maintaining pole attachment space for the licensee nor more than the actual capital and operating expenses, including just compensation, of the public utility, telecommunications utility or consumer-owned utility attributable to that portion of the pole, duct or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum attachment grade level, as compared to all other uses made of the subject facilities, and uses that remain available to the owner or owners of the subject facilities.

(2) A licensee shall receive a rental deduction if the licensee is in compliance with rules adopted by the Public Utility Commission for certifying compliance with the laws regulating pole attachments. A licensee is eligible for the rental reduction unless the commission or the utility authorizing the attachment notifies the licensee in writing that the licensee has failed to comply with either the commission's rules or the terms of a contract between the licensee and the utility authorizing the attachment.

(3) For purposes of determining the rental rate for a pole attachment, the usable space on the pole shall include 20 inches of safety clearance space between communication circuits and electric circuits, provided the licensee is in compliance with rules and agreements as described in subsection (2) of this section. [1979 c.356 §6; 1989 c.5 §7; 1999 c.832 §7]

757.285 Presumption of reasonableness of rates set by private agreement. Agreements regarding rates, terms and conditions of attachments shall be deemed to be just, fair and reasonable, unless the Public Utility Commission finds upon complaint by a public utility, telecommunications utility, consumer-owned utility or licensee party to such agreement and after hearing, that such rates, terms and conditions are adverse to the public interest and fail to comply with the provisions hereof. [1979 c.356 §7; 1987 c.414 §166; 1989 c.5 §8; 1999 c.832 §8]

757.287 Application to electrical utility attachments. Nothing in ORS 757.270 to 757.290 shall be deemed to apply to any attachment by one or more electrical utilities on the facilities of one or more other electrical utilities. [1979 c.356 §8]

757.290 Regulatory procedures. The procedures of the Public Utility Commission for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those otherwise generally applicable to the commission. [1979 c.356 §9; 1987 c.414 §167]

NET METERING FACILITIES

757.300 Net metering facility allowed to connect to public utility; conditions for connecting and measuring energy; rules; application to out-of-state utilities. (1) As used in this section:

(a) "Customer-generator" means a user of a net metering facility.

(b) "Electric utility" means a public utility, a people's utility district operating under ORS chapter 261, a municipal utility operating under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

(c) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator and fed back to the electric utility over the applicable billing period.

(d) "Net metering facility" means a facility for the production of electrical energy that:

(A) Generates electricity using:

(i) Solar power;

(ii) Wind power;

(iii) Fuel cells;

(iv) Hydroelectric power;

(v) Landfill gas;

(vi) Digester gas;

(vii) Waste;

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

(ix) Low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues; or

(x) Geothermal energy;

(B) Is located on the customer-generator's premises;

(C) Can operate in parallel with an electric utility's existing transmission and distribution facilities; and

(D) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(2) An electric utility that offers residential and commercial electric service:

(a) Shall allow net metering facilities to be interconnected using a standard meter that is capable of registering the flow of electricity in two directions.

(b) May at its own expense install one or more additional meters to monitor the flow of electricity in each direction.

(c) May not charge a customer-generator a fee or charge that would increase the customer-generator's minimum monthly charge to an amount greater than that of other customers in the same rate class as the customer-generator. However, the Public Utility Commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, may authorize an electric utility to assess a greater fee or charge, of any type, if the electric utility's direct costs of interconnection and administration of the net metering outweigh the distribution system, environmental and public policy benefits of allocating such costs among the electric utility's entire customer base. The commission may authorize a public utility to assess a greater fee or charge under this paragraph only following notice and opportunity for public comment. The governing body of a municipal electric utility, electric cooperative or people's utility district may assess a greater fee or charge under this paragraph only following notice and opportunity for comment from the customers of the utility, cooperative or district.

(3)(a) For a customer-generator, an electric utility shall measure the net electricity produced or consumed during the billing period in accordance with normal metering practices.

(b) If an electric utility supplies a customer-generator more electricity than the customer-generator feeds back to the electric utility during a billing period, the electric utility shall charge the customer-generator for the net electricity that the electric utility supplied.

(c) Except as provided in paragraph (d) of this subsection, if a customer-generator feeds back to an electric utility more electricity than the electric utility supplies the customer-generator during a billing period, the electric utility may charge the minimum monthly charge described in subsection (2) of this section but must credit the customer-generator for the excess kilowatt-hours generated during the billing period. An electric utility may value the excess kilowatt-hours at the avoided cost of the utility, as determined by the commission or the appropriate governing body. An electric utility that values the excess kilowatt-hours at the avoided cost shall bear the cost of measuring the excess kilowatt-hours, issuing payments and billing for the excess hours. The electric utility also shall bear the cost of providing and installing additional metering to measure the reverse flow of electricity.

(d) For the billing cycle ending in March of each year, or on such other date as agreed to by the electric utility and the customer-generator, any remaining unused kilowatt-hour credit accumulated during the previous year shall be granted to the electric utility for distribution to customers enrolled in the electric utility's low-income assistance programs, credited to the customer-generator or dedicated for other use as determined by the commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, following notice and opportunity for public comment.

(4)(a) A net metering facility shall meet all applicable safety and performance standards established in the state building code. The standards shall be consistent with the applicable standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers and Underwriters Laboratories or other similarly accredited laboratory.

(b) Following notice and opportunity for public comment, the commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, may adopt additional control and testing requirements for customer-generators to protect public safety or system reliability.

(c) An electric utility may not require a customer-generator whose net metering facility meets the standards in paragraphs (a) and (b) of this subsection to comply with additional safety or performance standards, perform or pay for additional tests or purchase additional liability insurance. However, an electric utility shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metering facility, or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party.

(5) Nothing in this section is intended to prevent an electric utility from offering, or a customer-generator from accepting, products or services related to the customer-generator's net metering facility that are different from the net metering services described in this section.

(6) The commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, may not limit the cumulative generating capacity of solar, wind, geothermal, fuel cell and microhydroelectric net metering systems to less than one-half of one percent of a utility's, cooperative's or district's historic single-hour peak load. After a cumulative limit of one-half of one percent has been reached, the obligation of a public utility, municipal electric utility, electric cooperative or people's utility district to offer net metering to a new customer-generator may be limited by the commission or governing body in order to balance the interests of retail customers. When limiting net metering obligations under this subsection, the commission or the governing body shall consider the environmental and other public policy benefits of net metering systems. The commission may limit net metering obligations under this subsection only following notice and opportunity for public comment. The governing body of a municipal electric utility, electric cooperative or people's utility district may limit net metering obligations under this subsection only following notice and opportunity for comment from the customers of the utility, cooperative or district.

(7) The commission or the governing body may adopt rules or ordinances to ensure that the obligations and costs associated with net metering apply to all power suppliers within the service territory of a public utility, municipal electric utility, electric cooperative or people's utility district.

(8) This section applies only to net metering facilities that have a generating capacity of 25 kilowatts or less, except that the commission by rule may provide for a higher limit for customers of a public utility.

(9) Notwithstanding subsections (2) to (8) of this section, an electric utility serving fewer than 25,000 customers in Oregon that has its headquarters located in another state and offers net metering services or a substantial equivalent offset against retail sales in that state shall be deemed to be in compliance with this section if the electric utility offers net metering services to its customers in Oregon in accordance with tariffs, schedules and other regulations promulgated by the appropriate authority in the state where the electric utility's headquarters are located. [1999 c.944 §2; 2005 c.145 §1; 2013 c.648 §5]

757.305 [Amended by 1971 c.655 §77; repealed by 1979 c.190 §431]

ILLEGAL PRACTICES

757.310 Prohibition related to charges for service. (1) A public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount prescribed in the schedules or tariffs for the public utility.

(2) A public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount the public utility charges any other customer for a like and contemporaneous service under substantially similar circumstances.

(3) A difference in rates or amounts charged does not constitute a violation of subsection (2) of this section if the difference is based on:

(a) Service classification under ORS 757.230;

(b) Contracts for services under ORS 757.516; or

(c) An optional schedule or tariff for the provision of energy service that takes into account a customer's past energy usage and provides price incentives designed to encourage changes in the customer's energy usage that correspond to changes in the cost of providing energy. [Amended by 1971 c.655 §78; 1987 c.900 §2; 1993 c.485 §3; 2005 c.594 §1]

757.315 When free service or reduced rates allowed. (1) ORS 757.310 does not prevent any public utility from giving free service, or reduced rates therefor, to:

(a) Its officers, directors, employees and members of their families;

(b) Former employees of such public utilities or members of their families where such former employees have become disabled in the service of such public utility or are unable from physical disqualification, including retirement, to continue in the service; or

(c) Members of families of deceased employees of such public utility.

(2) The Public Utility Commission may require any public utility to file with the commission a list, verified under oath, of all free or reduced rate privileges granted by a public utility under the provisions of this section.

(3) The Public Utility Commission may authorize a natural gas public utility, upon application of the utility, to include in rates for residential customers of the utility amounts for the purpose of generating funds to be used for bill payment assistance to low-income residential customers of the utility. [Amended by 1971 c.655 §79; 2001 c.856 §1]

757.320 Reducing rates for persons furnishing part of necessary facilities. (1) No public utility shall demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the public utility in consideration of the furnishing by such person of any part of the facilities incident thereto.

(2) This section does not prohibit any public utility from renting any customer's facilities incident to providing its services and for paying a reasonable rental therefor.

(3) This section does not require a public utility to furnish any part of such appliances which are situated in and upon the premises of any customer, except meters and appliances for measurements of any service, unless otherwise ordered by the Public Utility Commission. [Amended by 1971 c.655 §80]

757.325 Undue preferences and prejudices. (1) No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(2) Any public utility violating this section is guilty of unjust discrimination.

757.330 Soliciting or accepting special privileges from utilities. No person shall knowingly solicit, accept or receive any rebate, concession or discrimination in respect to any service whereby any such service shall, by any device, be rendered free or at a lesser rate than that named in the published schedules and tariffs in force, or whereby any service or advantage is received other than authorized in this chapter. [Amended by 1971 c.655 §81]

757.335 [Amended by 1971 c.655 §25; renumbered 756.185]

757.340 [Amended by 1971 c.655 §22; renumbered 756.125]

757.345 [Repealed by 1971 c.655 §250]

757.350 [Repealed by 1971 c.655 §250]

757.355 Costs of property not presently providing utility service excluded from rate base; exception. (1) Except as provided in subsection (2) of this section, a public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property not presently used for providing utility service to the customer.

(2) The Public Utility Commission may allow rates for a water utility that include the costs of a specific capital improvement if the water utility is required to use the additional revenues solely for the purpose of completing the capital improvement. [1979 c.3 §2; 2003 c.202 §2]

SOLAR ENERGY

757.360 Definitions for ORS 757.360 to 757.380. As used in ORS 757.360 to 757.380:

(1) "Electric company" has the meaning given that term in ORS 757.600.

(2) "Nameplate capacity" means the maximum rated output of a generator or other electric power production equipment under specific conditions designated by the manufacturer.

(3) "Qualifying system" means:

(a) An alternative energy system used for emergency backup power by a state agency or facility that is at least 30 percent more

efficient than existing agency or facility sources, including fuel cells; or

(b) A solar photovoltaic energy system that:

(A) Directly connects to an electric company's electrical system within this state or indirectly connects through the system of an electric company's retail electricity consumer or the electric system of a third party that is not an electric company's retail electricity consumer but whose system is located within this state;

(B) Has meters or other devices in place to monitor and measure the quantity of energy generated by the solar photovoltaic energy system; and

(C) Meets any other siting, design, interconnection, installation and electric output standards and codes required by the laws of this state.

(4) "Residential qualifying system" means a qualifying system with a nameplate capacity of 10 kilowatts or less.

(5) "Resource value" means the estimated value to an electric company of the electricity delivered from a solar photovoltaic energy system associated with:

(a) The avoided cost of energy, including avoided fuel price volatility, minus the costs of firming and shaping the electricity generated from the facility; and

(b) Avoided distribution and transmission cost.

(6) "Retail electricity consumer" means a retail electricity consumer, as defined in ORS 757.600, that is located in Oregon and is served by an electric company.

(7) "Small commercial qualifying system" means a qualifying system with a nameplate capacity greater than 10 kilowatts and less than or equal to 100 kilowatts.

(8) "Solar photovoltaic energy system" means equipment and devices that have the primary purpose of collecting solar energy and generating electricity by photovoltaic effect. [2009 c.748 §1; 2010 c.78 §1]

Note: 757.360 to 757.385 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.365 Pilot program for small solar energy systems; rules; limits to program; report to Legislative Assembly. (1) The Public Utility Commission shall establish a pilot program for each electric company to demonstrate the use and effectiveness of volumetric incentive rates and payments for electricity or for the nonenergy attributes of electricity, or both, from solar photovoltaic energy systems that are permanently installed in this state by retail electricity consumers and that first become operational after the program begins. The cumulative nameplate capacity of the qualifying systems enrolled in all of the pilot programs may not exceed 27.5 megawatts of alternating current. Qualifying systems enrolled in the pilot program may not have nameplate generating capacity greater than 500 kilowatts.

(2) The commission by rule shall adopt requirements for the pilot programs described in subsection (1) of this section. Each electric company shall file for commission approval tariff schedules for the pilot programs that conform to the requirements.

(3) The commission may establish incentive rates for the pilot programs to enable the development of the most efficient solar photovoltaic energy systems.

(4) A retail electricity consumer participating in a pilot program may receive payments based on electricity generated from solar photovoltaic energy system output for 15 years from the consumer's date of enrollment in the program, at rates or through a rate formula in a tariff schedule established at the time of enrollment, or at rates otherwise established at the time of enrollment. The consumer thereafter may receive payments based upon electricity generated from the qualifying system at a rate equal to the resource value.

(5) The commission may adjust the tariff schedule as needed for new pilot program participants for the purpose of meeting the goal established in subsection (1) of this section. Once a retail electricity consumer is enrolled in a program, the rates or rate formula for determining payments to the consumer may not be modified.

(6) The commission may adopt and adjust a percentage goal for capacity deployed by residential and small commercial qualifying systems based upon the costs of the energy generated, the feasibility of attaining the goal and other factors. For purposes of attaining the goal described in this subsection, the commission shall require 2.5 megawatts of alternating current from the cumulative nameplate capacity of qualifying systems to be generated by individual systems with a nameplate generating capacity between five and 100 kilowatts.

(7) The commission may establish total generator nameplate capacity limits for an electric company so that the rate impact of the pilot program for any customer class does not exceed 0.25 percent of the electric company's revenue requirement for the class in any year.

(8) Ownership of renewable energy certificates established under ORS 469A.130 that

are associated with renewable energy generation under the pilot programs must be transferred to the electric company and may be used to comply with the renewable portfolio standard described in ORS 469A.052 or 469A.055.

(9) To the extent that rates paid under a pilot program exceed the resource value, qualifying systems participating in the pilot programs are not eligible for expenditures under ORS 757.612 (3)(b)(B) or tax credits under ORS 469B.100 to 469B.118 or 469B.130 to 469B.169.

(10) All prudently incurred costs associated with compliance with this section are recoverable in the rates of an electric company.

(11) The commission shall advise and assist the owners and operators of qualifying systems in identifying and using grants, incentive moneys, federal funding and other sources of noninvestment financial support for the construction and operation of qualifying systems.

(12) The pilot programs described in subsection (1) of this section close to new participants on the earlier of:

(a) March 31, 2016; or

(b) The date the cumulative nameplate capacity of solar photovoltaic energy systems that have been permanently installed by retail electricity consumers under the pilot programs equals 27.5 megawatts of alternating current.

(13) The commission shall submit a report to the Legislative Assembly by January 1 of each odd-numbered year. The report must evaluate the effectiveness of the pilot programs described in subsection (1) of this section compared to the effectiveness of expenditures under ORS 757.612 (3)(b)(B) or tax credits under ORS 469B.100 to 469B.118 or 469B.130 to 469B.169 for promoting the use of solar photovoltaic energy systems and reducing system costs. The report must also estimate the cost of the program to retail electricity consumers and the resource value of solar energy. [2009 c.748 §2; 2010 c.78 §2; 2013 c.244 §§1,3]

Note: The amendments to 757.365 by section 3, chapter 244, Oregon Laws 2013, become operative March 31, 2014. See section 2, chapter 244, Oregon Laws 2013. The text that is operative until March 31, 2014, is set forth for the user's convenience.

757.365. (1) The Public Utility Commission shall establish a pilot program for each electric company to demonstrate the use and effectiveness of volumetric incentive rates and payments for electricity or for the nonenergy attributes of electricity, or both, from solar photovoltaic energy systems that are permanently installed in this state by retail electricity consumers and that first become operational after the program begins. The cumulative nameplate capacity of the qualifying systems enrolled in all of the pilot programs may not exceed 27.5 megawatts of alternating current. Qualifying systems enrolled in the pilot program may not have nameplate generating capacity greater than 500 kilowatts.

(2) The commission by rule shall adopt requirements for the pilot programs described in subsection (1) of this section. Each electric company shall file for commission approval tariff schedules for the pilot programs that conform to the requirements.

(3) The commission may establish incentive rates for the pilot programs to enable the development of the most efficient solar photovoltaic energy systems.

(4) A retail electricity consumer participating in a pilot program may receive payments based on electricity generated from solar photovoltaic energy system output for 15 years from the consumer's date of enrollment in the program, at rates or through a rate formula in a tariff schedule established at the time of enrollment, or at rates otherwise established at the time of enrollment. The consumer thereafter may receive payments based upon electricity generated from the qualifying system at a rate equal to the resource value.

(5) The commission may adjust the tariff schedule as needed for new pilot program participants for the purpose of meeting the goal established in subsection (1) of this section. Once a retail electricity consumer is enrolled in a program, the rates or rate formula for determining payments to the consumer may not be modified.

(6) The commission may adopt and adjust a percentage goal for capacity deployed by residential and small commercial qualifying systems based upon the costs of the energy generated, the feasibility of attaining the goal and other factors.

(7) The commission may establish total generator nameplate capacity limits for an electric company so that the rate impact of the pilot program for any customer class does not exceed 0.25 percent of the electric company's revenue requirement for the class in any year.

(8) Ownership of renewable energy certificates established under ORS 469A.130 that are associated with renewable energy generation under the pilot programs must be transferred to the electric company and may be used to comply with the renewable portfolio standard described in ORS 469A.052 or 469A.055.

(9) To the extent that rates paid under a pilot program exceed the resource value, qualifying systems participating in the pilot programs are not eligible for expenditures under ORS 757.612 (3)(b)(B) or tax credits under ORS 469B.100 to 469B.118 or 469B.130 to 469B.169.

(10) All prudently incurred costs associated with compliance with this section are recoverable in the rates of an electric company.

(11) The commission shall advise and assist the owners and operators of qualifying systems in identifying and using grants, incentive moneys, federal funding and other sources of noninvestment financial support for the construction and operation of qualifying systems.

(12) The pilot programs described in subsection (1) of this section close to new participants on the earlier of:

(a) March 31, 2016; or

(b) The date the cumulative nameplate capacity of solar photovoltaic energy systems that have been permanently installed by retail electricity consumers under the pilot programs equals 27.5 megawatts of alternating current.

(13) The commission shall submit a report to the Legislative Assembly by January 1 of each odd-numbered year. The report must evaluate the effectiveness of the pilot programs described in subsection (1) of this section compared to the effectiveness of expenditures under ORS 757.612 (3)(b)(B) or tax credits under

ORS 469B.100 to 469B.118 or 469B.130 to 469B.169 for promoting the use of solar photovoltaic energy systems and reducing system costs. The report must also evaluate the estimated cost of the program to retail electricity consumers.

Note: See note under 757.360.

757.370 Minimum solar energy capacity standard for electric companies; rules. (1) On or before January 1, 2020, the total solar photovoltaic generating nameplate capacity, from qualifying systems generating at least 500 kilowatts, of all electric companies in this state must be at least 20 megawatts of alternating current with no single project greater than five megawatts of alternating current.

(2) For the purpose of complying with the solar photovoltaic generating capacity standard established by this section, on or before January 1, 2020, each electric company is required to maintain a minimum generating capacity from qualifying systems. The minimum generating capacity for each electric company is determined by multiplying 20 megawatts by a fraction equal to the electric company's share of all retail electricity sales made in this state in 2008 by all electric companies.

(3) For the purposes of ORS 757.360 to 757.380, capacity of a solar photovoltaic energy system is measured on the alternating current side of the system's inverter using the measurement standards set forth by the Public Utility Commission by rule. If the system does not use an inverter, the measurement shall be made at the direct current level.

(4) An electric company may satisfy the solar photovoltaic generating capacity standard established by this section with solar photovoltaic energy systems owned by the company or with contracts for the purchase of electricity from qualifying systems.

(5) All costs prudently incurred by an electric company to comply with the solar photovoltaic generating capacity standard established by this section, including above-market costs, are recoverable in the company's rates and are eligible for an automatic adjustment clause established by the commission under ORS 469A.120.

(6) The commission may adopt rules implementing and enforcing this section. [2009 c.748 §3; 2010 c.79 §2]

Note: See note under 757.360.

757.375 Credit toward compliance with renewable portfolio standard; limits. (1) Any electricity produced from a qualifying system under ORS 757.370 that is physically located in this state may be used by an electric company to comply with the renewable portfolio standard established under ORS 469A.005 to 469A.210.

(2) For each kilowatt-hour of electricity produced from a qualifying system that first becomes operational before January 1, 2016, and generates at least 500 kilowatts, an electric company will be credited with two kilowatt-hours of qualifying electricity toward the company's compliance with the renewable portfolio standard under ORS 469A.005 to 469A.210, up to a maximum of 20 megawatts of capacity. [2009 c.748 §4]

Note: See note under 757.360.

757.380 Applicability of ORS 757.360 to 757.380. ORS 757.360 to 757.380 apply only to qualifying systems that are solar photovoltaic energy systems. [2009 c.748 §5]

Note: See note under 757.360.

757.385 Allowance of fair and reasonable rates. Nothing in ORS 276.910 and 757.360 to 757.380 affects the authority of the Public Utility Commission to set fair and reasonable rates as authorized under ORS 756.040 (1). [2009 c.748 §8]

Note: See note under 757.360.

ISSUANCE OF SECURITIES

757.400 "Stocks" defined for ORS 757.400 to 757.460. As used in ORS 757.400 to 757.460, "stocks" means stocks, stock certificates or other evidence of interest or ownership.

757.405 Power to regulate issuance of utility securities. The power of public utilities to issue stocks and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state. Such power shall be exercised as provided by law and under such rules and regulations as the Public Utility Commission may prescribe.

757.410 When issuance of securities is void. All stocks and bonds, notes or other evidences of indebtedness, and any security of a public utility shall be void when issued:

(1) Without an order of the Public Utility Commission authorizing the same then in effect except as provided in ORS 757.412 or 757.415 (3).

(2) With the authorization of the commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain; but no failure to comply with the terms or conditions of the order of authorization of the commission and no informality or defect in the application or in the proceedings in connection therewith or with the issuance of such order shall render void any stock or bond, note or other evidence of

indebtedness, or security issued pursuant to and in substantial conformity with an order of the commission, except as to a person taking the same otherwise than in good faith and for value and without actual notice. [Amended by 1997 c.261 §1]

757.412 Exemption from securities regulation. Subject to such terms and conditions as the Public Utility Commission may prescribe, the commission, by rule or order, may exempt the following from any or all of the provisions of ORS 757.400 to 757.480, if the commission finds that application of the law is not required by the public interest:

(1) Any stocks and bonds, notes or other evidences of indebtedness and any other security or guarantee or class of securities or guarantees for which commission authorization would otherwise be required prior to the issuance, incurrence or assumption thereof.

(2) Any public utility or class of public utilities. [1997 c.261 §3]

Note: 757.412 was added to and made a part of ORS chapter 757 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.415 Purposes for which securities and notes may be issued; order required. (1) Except as otherwise permitted by subsection (4) of this section, a public utility may issue stocks and bonds, notes and other evidences of indebtedness, certificates of beneficial interests in a trust and securities for the following purposes and no others:

(a) The acquisition of property, or the construction, completion, extension or improvement of its facilities.

(b) The improvement or maintenance of its service.

(c) The discharge or lawful refunding of its obligations.

(d) The reimbursement of money actually expended from income or from any other money in the treasury of the public utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such public utility, for any of the purposes listed in paragraphs (a) to (c) of this subsection except the maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the Public Utility Commission of Oregon to ascertain the amount of money so expended and the purposes for which such expenditures were made.

(e) The compliance with terms and conditions of options granted to its employees to purchase its stock, if the commission first finds that such terms and conditions are reasonable and in the public interest.

(f) The finance or refinance of bondable conservation investment as described in ORS 757.455. Bonds, notes, certificates of beneficial interests in a trust and other evidences of indebtedness or ownership, issued for this purpose are conservation bonds for the purposes of ORS 757.460. Conservation bonds may rely partly or wholly for repayment on conservation investment assets and revenues arising with respect to conservation investment assets.

(2) Before issuing such securities a public utility, in addition to the other requirements of law, shall secure from the commission upon application an order authorizing such issue, stating:

(a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to be applied;

(b) In the opinion of the commission, the money, property or labor to be procured or paid for by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility, and will not impair its ability to perform that service; and

(c) Except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) This section and ORS 757.410 apply to demand notes but do not apply to the issuance or renewal of a note or evidence of indebtedness maturing not more than one year after date of such issue or renewal.

(4) Nothing in ORS 757.400 to 757.460 shall prevent issuance of stock to stockholders as a stock dividend if there has been secured from the commission an order:

(a) Finding that the stock dividend is compatible with the public interest;

(b) Authorizing such issue and a transfer of surplus to capital in an amount equal to the par or stated value of the stock so authorized; and

(c) Finding that a sum equal to the amount to be so transferred was expended for the purposes enumerated in subsection (1) of this section.

(5) Conservation bonds authorized pursuant to subsection (1) of this section may be issued directly by a public utility or through a finance subsidiary. A "finance subsidiary" means any corporation, limited liability company, company, association, trust or other entity that is:

(a) Beneficially owned, directly or indirectly, by a public utility or, in the case of a trust, for which a public utility or subsidiary thereof is the grantor; or

(b) Unaffiliated with a public utility and acquires bondable conservation investment directly or indirectly from a public utility in a transaction approved by the commission. [Amended by 1961 c.319 §1; 1995 c.539 §4; 2005 c.22 §504]

757.417 Limitation on application of ORS 757.415. ORS 757.415 does not apply to the issuance, renewal or assumption of liability on any evidence of indebtedness when such issuance, renewal or assumption is for the purpose of acquiring specific real or personal property, if the aggregate principal amount thereof, together with all other then outstanding evidences of indebtedness issued, renewed or assumed under this section, does not exceed whichever is the greater of the following amounts:

(1) The amount of $75,000.

(2) The amount of one-half of one percent of the sum of:

(a) The total principal amount of all bonds or other securities representing secured indebtedness of the public utility issued or assumed and then outstanding; and

(b) The capital and surplus as then stated on the books of account of the public utility. [1971 c.655 §88]

757.419 Limitation on application of ORS 757.480. ORS 757.480 does not apply to any mortgage or other encumbrance upon any real or personal property given to secure payment of any evidence of indebtedness issued under ORS 757.415. [1971 c.655 §89]

757.420 Hearings and supplemental orders relating to issuance of securities; joint approval of issuance by interstate utility. (1) To enable the Public Utility Commission to determine whether the commission will issue an order under ORS 757.415, the commission may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents and contracts and require the filing of such data as the commission deems necessary. The application for such order shall be given priority and shall be disposed of by the commission within 30 days after the filing of such application, unless that period is extended with the consent of the public utility.

(2) The commission may, upon application of the public utility, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as the commission finds necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, extent to which, or the condition under which, any security theretofore authorized or its proceeds may be applied. Such supplemental orders are subject to the requirements of ORS 757.415. The period of time permitted under subsection (1) of this section for disposing of applications shall not apply to supplemental orders.

(3) If a commission or other agency is empowered by another state to regulate and control the amount and character of securities to be issued by any public utility within such other state, the commission of Oregon has power to agree with such commission or agency of such other state on the issue of stocks, bonds, notes, other evidences of indebtedness or securities by a public utility owning or operating a public utility both in such state and in this state, and has power to approve such issue jointly with such commission or agency and to issue a joint certificate of such approval. However, no such joint approval is required in order to express the consent to and approval of such issue by the State of Oregon if the issue is separately approved by the Oregon commission.

757.425 State not obligated following approval of issuance. No provision of ORS 757.405 to 757.450, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of Oregon to pay or guarantee, in any manner whatsoever, any stock or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of ORS 757.405 to 757.450.

757.430 Conditional approval of issuance authorized. The Public Utility Commission may by order grant permission for the issue of stocks or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of the permission such condition or conditions as the commission deems reasonable and necessary.

757.435 Disposal of proceeds from issuance of securities; rules. (1) No public utility shall, without the consent of the Public Utility Commission, apply the issue of any stock or bond, note or other evidence of indebtedness, or any part or proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof.

(2) The commission has power to require public utilities to account for the disposition of the proceeds of all sales of stocks and bonds, notes and other evidences of indebtedness, in such form and detail as the com-

mission deems advisable, and to establish such rules and regulations as the commission deems reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in the order.

757.440 Approval required before utility may guarantee another's indebtedness. No public utility shall assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than 12 months after the date thereof, without first having secured from the Public Utility Commission an order authorizing it so to do. Every assumption made other than in accordance with such an order is void.

757.445 Wrongful issues or use of proceeds by utility. No public utility shall directly or indirectly, issue or cause to be issued any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same or contrary to the provisions of ORS 757.400 to 757.460, or of the Constitution of this state, or apply the proceeds from the sale thereof, or any part thereof, to any purpose other than the purposes specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount in the order authorized for such purpose.

757.450 Wrongful acts relating to issuance of securities. No person shall:

(1) Knowingly authorize, direct, aid in, issue or execute, or cause to be issued or executed, any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same, or contrary to the provisions of ORS 757.400 to 757.460 or of the Constitution of this state.

(2) In any proceeding before the commission, knowingly make any false statement or representation or with knowledge of its falsity file or cause to be filed with the commission any false statement or representation which may tend in any way to influence the commission to make an order authorizing the issue of any stock or bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order.

(3) With knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission to make such order, issue, execute or negotiate, or cause to be issued, executed or negotiated, any stock or bond, note or other evidence of indebtedness.

(4) Directly or indirectly, knowingly apply, or cause or assist to be applied, the proceeds, or any part thereof, from the sale of any stock or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose.

(5) With knowledge that any stock or bond, note or other evidence of indebtedness, has been issued or executed in violation of ORS 757.400 to 757.460, negotiate, or cause the same to be negotiated.

757.455 Conservation program investment policy; application for bondable investments; utility rates to include investment costs. (1) It is the policy of the Public Utility Commission of Oregon to encourage financing investments at the lowest possible cost to utility customers, including but not limited to conservation program expenditures.

(2) If the commission decides that a public utility should defer and amortize certain conservation program expenditures, the public utility may apply to the commission for an order designating all or part of the conservation program expenditures as bondable conservation investment, for the purpose of financing or refinancing the designated expenditures under ORS 757.415 (1)(f). After notice and an opportunity for a hearing, the commission may approve the application if it finds that the conservation program expenditures included in the application are used, useful and prudent and that financing or refinancing is likely to be more favorable to customers than other reasonably available alternatives. Upon approval, the commission shall issue an order stating the amount of the conservation program expenditures that qualify as bondable conservation investment.

(3) The commission shall set rates to include in revenue requirement recovery of a public utility's bondable conservation investment, as well as the costs of equity and debt capital associated with it, including, without limitation, the payment of principal, premium, if any, and interest on conservation bonds. Revenues collectible or collected under this subsection shall be known as "conservation investment assets." The commission shall not revalue bondable conservation investment for rate-making purposes, determine that revenues required to recover bondable conservation investment and associated equity and debt capital costs are unjust or unreasonable, impair or reduce in any way the value of conservation investment assets, or impair the timing or the amount of revenues arising with respect to conservation investment assets that have

been used to secure financing or refinancing under ORS 757.415 (1)(f).

(4) Subsections (2) and (3) of this section shall apply to any amounts presently deferred by a utility regardless of whether expended prior to September 9, 1995.

(5) As used in this section, "conservation program expenditures" includes, without limitation, loans and cash payments made to customers, the costs of conservation measures installed at the expense of the public utility, specific acquisition program development, promotion and labor costs and associated general supervision, rents, leases and overheads. [1995 c.539 §3]

757.460 Pledge of conservation investment assets as bond collateral; perfection of security interest; foreclosure. (1) A public utility or finance subsidiary may pledge conservation investment assets as collateral for conservation bonds by providing for a security interest in the conservation investment assets. A security interest in conservation investment assets is created and perfected only upon entry of an order by the Public Utility Commission of Oregon approving a contract governing the granting of the security interest, and the filing with the Secretary of State of a Uniform Commercial Code Article I financing statement showing such pledger as "debtor" and identifying the conservation investment assets and the bondable conservation investment pledged as security. The security interest is enforceable against the debtor and all third parties, subject to the rights of any third parties holding security interests in the conservation investment assets perfected in the manner described in this section if value has been given by the purchasers of the conservation bonds. An approved security interest in conservation investment assets is a continuously perfected security interest in all revenues and proceeds arising with respect to the associated bondable conservation investment, whether or not those revenues have accrued. Upon approval by the commission, the priority of the security interest shall be as set forth in the contract governing the conservation bonds. Conservation investment assets constitute property for the purposes of contracts securing the conservation bonds, whether or not the related revenues have accrued.

(2) The relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to conservation investment assets with other funds of the debtor. The holders of conservation bonds shall have a perfected security interest in all cash and deposit accounts of the debtor in which revenues arising with respect to conservation investment assets pledged to the holders of conservation bonds have been commingled with other funds, but the perfected security interest is limited to an amount not greater than the amount of the revenues received by the debtor within 12 months before any default under the conservation bonds held by the holders or the institution of insolvency proceedings by or against the debtor, less payments made from the revenues to the holders during that 12-month period. If a default occurs under an approved contract governing conservation bonds, the holders of the conservation bonds or their authorized representatives, as secured parties, may foreclose or otherwise enforce the perfected security interest in the conservation investment assets securing the conservation bonds, subject to the rights of any third parties holding prior security interests in the conservation investment assets perfected in the manner provided in this section. Upon application by the holders of the conservation bonds or their representatives, without limiting other remedies of those holders or representatives, the commission shall order the sequestration and payment to the holders or their representatives of revenues arising with respect to the debtor.

(3) The granting, perfection and enforcement of security interests in conservation investment assets to secure conservation bonds is governed by this section and not by ORS chapter 79.

(4) A transfer of conservation investment assets by a public utility to a finance subsidiary that the parties have expressly stated in the governing documentation to be a sale or other absolute transfer, in a transaction approved in an order issued by the commission and made in connection with the issuance by the finance subsidiary of conservation bonds, shall be treated as a true sale and not as a pledge or other financing of the conservation investment assets. According the holders of conservation bonds a preferred right to revenues of the public utility or the provision by the utility of other credit enhancement with respect to conservation bonds does not impair or negate the characterization of any transfer as a true sale.

(5) Any successor to a public utility pursuant to any bankruptcy, reorganization or other insolvency proceeding shall perform and satisfy all obligations of the utility under an approved contract governing conservation bonds in the same manner and to the same extent as was required of the utility before the proceeding, including, without limitation, collecting and paying to the holders of the conservation bonds or their representatives revenues arising with respect to the conser-

vation investment assets pledged to secure the conservation bonds.

(6) As used in this section:

(a) "Conservation investment assets" has the meaning given under ORS 757.455.

(b) "Finance subsidiary" has the meaning given under ORS 757.415. [1995 c.539 §2]

TRANSACTIONS INVOLVING UTILITIES

757.480 Approval needed prior to disposal, mortgage or encumbrance of certain operative utility property or consolidation with another public utility; exceptions. (1) A public utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction:

(a) Except as provided in subsection (5) of this section, sell, lease, assign or otherwise dispose of the whole of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of $100,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such public utility or public utility property, or perform any service as a public utility;

(b) Mortgage or otherwise encumber the whole or any part of the property of such public utility necessary or useful in the performance of its duties to the public, including any franchise, permit or right to maintain and operate such public utility or public utility property, or perform any service as a public utility; or

(c) By any means whatsoever, directly or indirectly, merge or consolidate any of its lines, plant, system or other property whatsoever, or franchise or permit to maintain or operate any public utility property, or perform any service as a public utility, or any part thereof, with any other public utility.

(2) A public utility that sells, leases, assigns or otherwise disposes of the whole of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of $25,000, but less than $100,000, shall notify the commission of the sale within 60 days following the date of the sale.

(3) Every sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation subject to subsection (1) of this section made other than in accordance with the order of the commission authorizing the same is void.

(4) This section does not prohibit or invalidate the sale, lease or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public.

(5) A water utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction, sell, lease, assign or otherwise dispose of the whole of the property of such water utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of $10,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such water utility or water utility property, or perform any service as a water utility. [Formerly 757.155; 1999 c.530 §1]

757.485 Purchase of property or stocks of one utility by another. (1) No public utility shall, directly or indirectly, purchase, acquire or become the owner of any of the stocks or bonds or property utilized for utility purposes and having a value in excess of $10,000 of any other public utility unless authorized so to do by the Public Utility Commission.

(2) Every contract by any public utility for the purchase, acquisition, assignment or transfer to it of any of the stock of any other public utility by or through any person, partnership or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract is effective for any purpose. [Formerly 757.160]

757.490 Approval needed for certain contracts. (1) When any public utility doing business in this state enters into a contract with another corporation with relation to the construction, operation, maintenance or use of the property of said public utility in Oregon, or the use of the property of the other contracting party, or any part thereof, or for service, advice, engineering, financing, rentals, leasing or for any construction or management charges in respect of any such property, or for the purchase of property, materials or supplies, the proposed contract shall be filed with the Public Utility Commission for the investigation and approval when the public utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations.

(2) Any such proposed contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. The commission shall promptly investigate and act upon the contract in accordance with ORS 757.495 (3) and (6).

(3) In making such investigation the commission and accountants, examiners and agents, appointed by the commission for the purpose, shall be given free access to all books, books of account, documents, data and records of the public utility as well as of the corporation with which it is proposing to contract, which the commission may deem material to the investigation. The failure or refusal of either of the parties to the proposed contract to comply with this subsection is prima facie evidence that such contract is unfair, unreasonable and contrary to public interest, and is sufficient to justify a determination and finding of the commission to that effect, which has the same force and effect as any other determination or order of the commission. [Formerly 757.165; 1989 c.956 §6]

757.495 Contracts involving utilities and persons with affiliated interests. (1) When any public utility doing business in this state enters into any contract to make any payment, directly or indirectly, to any person or corporation having an affiliated interest, for service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other services, or enter any charges therefor on its books, which shall be recognized as an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the Public Utility Commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(2) When any public utility doing business in this state enters into any contract, oral or written, with any person or corporation having an affiliated interest relating to the construction, operation, maintenance, leasing or use of the property of such public utility in Oregon, or the purchase of property, materials or supplies, which shall be recognized as the basis of an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(3) When any such contract has been submitted to the commission, the commission promptly shall examine and investigate the contract. If, after such investigation, the commission determines that the contract is fair and reasonable and not contrary to the public interest, the commission shall enter findings and an order to this effect and serve a copy thereof upon the public utility, whereupon any expenses and capital expenditures incurred by the public utility under the contract may be recognized in any rate valuation or other hearing or proceeding. If, after such investigation, the commission determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest, the commission shall enter findings and an order accordingly and serve a copy thereof upon the public utility, and, except as provided in subsection (4) of this section, it shall be unlawful to recognize the contract for the purposes specified in this section.

(4) When any such contract has been filed with the commission within 90 days of execution and the commission has not entered an order disapproving the contract under subsection (3) of this section, the commission may not base its refusal to recognize any expenses or capital expenditures incurred under the contract in any rate valuation or other hearing or proceeding solely on the basis that such contract has not been approved under subsection (3) of this section.

(5) No public utility shall issue notes or lend its funds or give credit on its books or otherwise to any person or corporation having an affiliated interest, either directly or indirectly, without the approval of the commission.

(6) The action of the commission with respect to all the matters described in this section when submitted to the commission shall be by findings and an order to be entered within 90 days after the matter has been submitted to the commission for consideration, and the findings and order of the commission with respect to any of such matters shall be and remain in full force and effect, unless and until set aside, modified or remanded in a proceeding for judicial review of an order in a contested case in the manner provided by ORS 756.610. The public utility, or any other person or corporation affected by any such findings and order, may seek judicial review in the manner provided by ORS 756.610. [Formerly 757.170; 1989 c.956 §7; 2005 c.22 §505; 2005 c.638 §9]

757.500 Contracts between certain public utilities. When any public utility is primarily engaged in another enterprise and is only indirectly engaged in the production, transmission, delivery or furnishing of heat, light, water or power to or for the public by reason of a contract or agreement, express or implied, between itself and another public utility which is directly engaged in such business, the jurisdiction of the Public Utility Commission over such public utility extends only to the right to modify, control,

rescind, alter or amend any such existing contract or agreement where the interest of the customers of such public utility directly engaged in such business demands. No such contract or agreement is valid or enforceable until it has been approved by the commission as being in the public interest. [Formerly 757.175]

757.505 [Repealed by 1971 c.655 §250]

757.506 Findings and policy regarding exercise of influence over utility by person not engaged in utility business. (1) The Legislative Assembly finds and declares that:

(a) The protection of customers of public utilities which provide heat, light or power is a matter of fundamental statewide concern;

(b) Existing legislation requires the Public Utility Commission's approval of one public utility's acquisition of another public utility's stocks, bonds and certain property used for utility purposes, but does not require the commission's approval of such acquisitions by persons not engaged in the public utility business in Oregon; and

(c) An attempt by a person not engaged in the public utility business in Oregon to acquire the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power could result in harm to such utility's customers, including but not limited to the degradation of utility service, higher rates, weakened financial structure and diminution of utility assets.

(2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not engaged in the public utility business in Oregon of the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power in the manner set forth in this section and ORS 757.511 in order to prevent unnecessary and unwarranted harm to such utilities' customers. [1985 c.632 §2]

757.510 [Repealed by 1971 c.655 §250]

757.511 Application for authority to exercise influence over utility; contents of application; issuance of order; dissemination of information about acquisition. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility which provides heat, light or power without first securing from the Public Utility Commission, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015 (1), (2) or (3).

(2) Notice must be given to the commission of an application under this section at least 60 days before the application is filed with the commission. The notice must indicate whether the transaction is a transaction described in ORS 757.814 (1). If the transaction is a transaction as described in ORS 757.814 (1), the commission shall give notice to cities and counties as required by ORS 757.814 (1).

(3) The application required by subsection (1) of this section shall set forth detailed information regarding:

(a) The applicant's identity and financial ability;

(b) The background of the key personnel associated with the applicant;

(c) The source and amounts of funds or other consideration to be used in the acquisition;

(d) The applicant's compliance with federal law in carrying out the acquisition;

(e) Whether the applicant or the key personnel associated with the applicant have violated any state or federal statutes regulating the activities of public utilities;

(f) All documents relating to the transaction giving rise to the application;

(g) The applicant's experience in operating public utilities providing heat, light or power;

(h) The applicant's plan for operating the public utility;

(i) How the acquisition will serve the public utility's customers in the public interest; and

(j) Such other information as the commission may require by rule.

(4)(a) The commission promptly shall examine and investigate each application received pursuant to this section. Except as provided in subsection (5) of this section, the commission shall issue an order disposing of the application within 19 business days of its receipt. If the commission determines that approval of the application will serve the public utility's customers and is in the public interest, the commission shall issue an order granting the application. The commission may condition an order authorizing the acquisition upon the applicant's satisfactory performance or adherence to specific requirements. The commission otherwise shall issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest.

(b) In reviewing an application received pursuant to this section for an electricity or natural gas utility, the Public Utility Com-

mission must consider the effect of the acquisition or merger on the amount of income taxes paid by the utility or its affiliated group and make any necessary adjustments to the rates of the utility, including the establishment of a balancing account to track income tax expense, to ensure that the acquisition or merger serves the utility's customers and is in the public interest.

(5) The commission may postpone issuance of an order disposing of an application under this section if notice has been given to cities and counties under ORS 757.814 (1). In no event may the commission postpone issuance of an order disposing of the application for more than 90 days under the provisions of this subsection.

(6) Nothing in this section shall prohibit dissemination by any party of information concerning the acquisition so long as such dissemination is not otherwise in conflict with state or federal law. [1985 c.632 §3; 2007 c.807 §2a; 2011 c.137 §4]

757.515 [Amended by 1971 c.655 §39; renumbered 756.515]

757.516 Contracts between natural gas utilities and customers for commodity and services; determination by commission of reasonableness of contract and utility activities. (1) Following a Public Utility Commission determination that such services are subject to competition, a natural gas utility may enter into a contract with any customer for the provision of natural gas commodity, rights to pipeline capacity and natural gas transportation services when such services are provided in advance of the point of interconnection between the facility of the natural gas utility and the facility of an interstate pipeline.

(2) Contracts for services described under subsection (1) of this section are not schedules of rates, tolls or charges within the meaning of ORS 757.205 and are not subject to the requirements of ORS 757.205, 757.230 and 757.310.

(3) A contract for services described under subsection (1) of this section may include services provided after the point of interconnection between a natural gas utility's facility and the interstate pipeline's facility. Services provided after the point of interconnection are subject to the requirements of ORS 757.205, 757.230 and 757.310 and shall be separately priced in accordance with the utility's filed tariffs.

(4) A natural gas utility entering contracts for services described under subsection (1) of this section shall make available to the commission any information necessary for review of such contracts for ratemaking purposes. Notwithstanding ORS 192.410 to 192.505, the commission shall not release the terms of any contract or portion of a contract for services described in subsection (1) of this section without the consent of the customer and the natural gas utility except for contracts entered into between a natural gas utility and an affiliated interest of that natural gas utility. Notwithstanding any other provision of this section, a contract for services described in subsection (1) of this section between a natural gas utility and another public utility may be released by the commission pursuant to a hearing held under ORS 757.210.

(5) Nothing in this section shall restrict the commission from subsequent investigation of the reasonableness of contracts entered into under subsection (1) of this section for ratemaking purposes. The commission's review of such contracts for ratemaking purposes shall not in any way affect the obligations or rights of the parties under the contracts.

(6) In accordance with ORS 756.515, the commission may investigate the activities of a natural gas utility related to contracts described under subsection (1) of this section. Notwithstanding any other provision of this section, if the commission finds that the activities of a natural gas utility have not generally been in the public interest, the commission, by order, may require the natural gas utility to file all future contracts described under subsection (1) of this section as provided under ORS 757.205 or 757.240. Any such finding by the commission shall not affect the obligations or rights of the parties under any existing contracts.

(7) Nothing in this section, nor any action taken by the commission pursuant to this section, shall be deemed state action for the purpose of exempting a natural gas utility from liability for anticompetitive conduct or other unlawful practices.

(8) As used in this section, "natural gas utility" means a public utility providing natural gas service to customers. [1993 c.485 §2]

757.520 [Repealed by 1971 c.655 §250]

GREENHOUSE GAS EMISSIONS STANDARDS

757.522 Definitions for ORS 757.522 to 757.536. As used in ORS 757.522 to 757.536:

(1) "Additional interest" means:

(a) The acquisition, by the holder of an interest in a generating facility located in Oregon, of a separate interest in that generating facility that is producing energy and is in service for tax purposes, commercially operable or in rates on July 1, 2010; and

(b) The renewal of an existing contract of five or more years that includes the acquisition of baseload electricity for an addi-

tional term of five or more years where the expected greenhouse gas emissions profile of the contract renewal is substantially similar to that of the previous contract.

(2) "Annual plant capacity factor" means the ratio of the electricity produced by a generating facility during one year, measured in kilowatt-hours, to the electricity the generating facility could have produced if it had been operated at its rated capacity throughout the same year, expressed in kilowatt-hours.

(3)(a) "Baseload electricity" means electricity produced by a generating facility that is designed and intended, at the time a site certificate is issued to the owner of the facility or a permit authorizing the construction and operation of the facility is issued to the owner of the facility by another state or country, to provide electricity on a continuous basis at an annual plant capacity factor of at least 60 percent.

(b) "Baseload electricity" does not include electricity from:

(A) A qualifying facility under the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 to 2645;

(B) A generating source that uses natural gas or petroleum distillates as a fuel source and that is primarily used to serve either peak demand or to integrate energy from a renewable energy source described in ORS 469A.025; or

(C) A generating facility that:

(i) Previously used coal as the facility's primary fuel source;

(ii) Is owned in whole or in part by an electric company; and

(iii) Currently uses natural gas or another resource as the facility's primary fuel source.

(4) "Construction" has the meaning given that term in ORS 469.300.

(5) "Consumer-owned utility" has the meaning given that term in ORS 757.600.

(6) "Electric company" has the meaning given that term in ORS 757.600.

(7) "Electricity service supplier" has the meaning given that term in ORS 757.600.

(8) "Generating facility" includes one or more jointly operated electricity generators that use the same fuel type, have the same in-service date and operate at the same location as described in ORS 469.300.

(9) "Governing board" means the legislative authority of a consumer-owned utility.

(10)(a) "Long-term financial commitment" means an investment in or upgrade of a generating facility that produces baseload electricity, or a contract with a term of more than five years, beginning on the date on which the contract is executed, that includes acquisition of baseload electricity.

(b) "Long-term financial commitment" does not include:

(A) Routine or necessary maintenance;

(B) Installation of emission control equipment;

(C) Installation, replacement or modification of equipment that improves the heat rate of the facility or reduces a generating facility's pounds of greenhouse gases per megawatt-hour of electricity;

(D) Installation, replacement or modification of equipment where the primary purpose is to maintain reliable generation output capability and not to extend the life of the generating facility, and that does not increase the heat input or fuel usage as specified in existing generation air quality permits, but that may result in incidental increases in generation capacity;

(E) Repairs necessitated by sudden and unexpected equipment failure; or

(F) An acquisition of an additional interest.

(11) "Output-based methodology" means a greenhouse gas emissions standard that is expressed in pounds of greenhouse gases emitted per megawatt-hour, factoring in the useful thermal energy employed for purposes other than the generation of electricity.

(12) "Site certificate" has the meaning given that term in ORS 469.300.

(13) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload facility. [2009 c.751 §1; 2013 c.172 §1]

Note: 757.522 to 757.538 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.524 Greenhouse gas emissions standard applicable to electric companies and electricity service suppliers. (1) The greenhouse gas emissions standard that applies to electric companies and electricity service suppliers is 1,100 pounds of greenhouse gases per megawatt-hour for a generating facility.

(2) The greenhouse gas emissions standard applies only to carbon dioxide emissions.

(3) For purposes of applying the emissions standard to cogeneration facilities, the Public Utility Commission shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases

for cogeneration facilities recognizes the total usable energy output of the process and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. [2009 c.751 §2; 2013 c.172 §2]

Note: See note under 757.522.

757.525 [Repealed by 1971 c.655 §250]

757.526 Petition by electric companies and electricity service suppliers to study greenhouse gas emissions standard; report to Legislative Assembly. No sooner than 90 days after the enactment of a federal law, state law, regulation or rule regulating the emission of greenhouse gases from generating facilities, an electric company, electricity service supplier or the customer of an electric company or electricity service supplier may petition the Public Utility Commission to study the greenhouse gas emissions standard established under ORS 757.524. If the commission undertakes the study, the commission shall determine whether the standard is still necessary to reduce greenhouse gases emitted by electric companies and electricity service suppliers and whether the standard should be repealed or maintained in whole or in part. In making the determination, the commission shall consider whether the enacted federal law, state law, regulation or rule is inconsistent with the standard or renders the standard redundant. The commission shall report the results of the study, and shall include recommendations for legislation, to the Legislative Assembly in the manner described in ORS 192.245 no later than 12 months after receiving the petition. [2013 c.172 §4]

Note: See note under 757.522.

757.528 Greenhouse gas emissions standard applicable to consumer-owned utilities; modification; rules. (1) Unless modified by rule by the State Department of Energy as provided in this section, the greenhouse gas emissions standard that applies to consumer-owned utilities is 1,100 pounds of greenhouse gases per megawatt-hour for a generating facility.

(2) Unless modified pursuant to subsection (4) of this section, the greenhouse gas emissions standard includes only carbon dioxide emissions.

(3) For purposes of applying the emissions standard to cogeneration facilities, the department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for cogeneration facilities recognizes the total usable energy output of the process and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy.

(4) The department shall review the greenhouse gas emissions standard established under this section no more than once every three years. After public notice and hearing, and consultation with the Public Utilities Commission, the department may:

(a) Modify the emissions standard to include other greenhouse gases as defined in ORS 468A.210, with the other greenhouse gases expressed as their carbon dioxide equivalent; and

(b) Modify the emissions standard based upon current information on the rate of greenhouse gas emissions from a commercially available combined-cycle natural gas generating facility that:

(A) Employs a combination of one or more gas turbines and one or more steam turbines and produces electricity in the steam turbines from waste heat produced by the gas turbines;

(B) Has a heat rate at high elevation within the boundaries of the Western Electricity Coordinating Council; and

(C) Has a heat rate at ambient temperatures when operating during the hottest day of the year.

(5) In modifying the greenhouse gas emissions standard, the department shall:

(a) Use an output-based methodology to ensure that the calculation of greenhouse gas emissions through cogeneration recognizes the total usable energy output of the process and includes all greenhouse gases emitted by the generating facility in the production of both electrical and thermal energy; and

(b) Consider the effects of the emissions standard on system reliability and overall costs to electricity consumers.

(6) If upon a review conducted pursuant to subsection (4) of this section, the department determines that a mandatory greenhouse gas emissions limit has been established pursuant to state or federal law, the department shall issue a report to the appropriate legislative committees of the Legislative Assembly stating which portions, if any, of the greenhouse gas emissions standard are no longer necessary as a matter of state law. [2009 c.751 §3]

Note: See note under 757.522.

757.530 [Repealed by 1971 c.655 §250]

757.531 Emissions standard-based restrictions on long-term financial commitments by electric companies or electricity service suppliers; rules. (1)(a) An electric company or electricity service supplier may not enter into a long-term financial commitment unless the baseload electricity acquired under the commitment is

produced by a generating facility that complies with a greenhouse gas emissions standard established under ORS 757.524.

(b) A generating facility complies with the greenhouse gas emissions standard established under ORS 757.524 if the rate of emissions of the facility does not exceed the emissions standard.

(c) In determining whether a generating facility complies with the emissions standard, the total emissions associated with producing baseload electricity at the generating facility are included in determining the rate of emissions of greenhouse gases. The total emissions associated with producing electricity at the generating facility do not include emissions associated with transportation, fuel extraction or other life-cycle emissions associated with obtaining the fuel for the facility.

(2) Notwithstanding subsection (1) of this section, the emissions standard does not apply to greenhouse gas emissions produced by a generating facility owned by an electric company or electricity service supplier or contracted through a long-term financial commitment if the emissions:

(a) Come from a facility powered exclusively by renewable energy sources described in ORS 469A.025;

(b) Come from a cogeneration facility in this state that is fueled by natural gas, synthetic gas, distillate fuels, waste gas or a combination of these fuels, and that is producing energy, in service for tax purposes, commercially operable, or in rates as of July 1, 2010, until the facility is subject to a new long-term financial commitment; or

(c) Come from a generating facility that has in place a plan, as determined by the Public Utility Commission, to be a low-carbon emissions resource, pursuant to sufficient technical documentation, within seven years of commencing plant operations.

(3) Notwithstanding ORS 757.524 and subsection (1) of this section, the commission may exempt a long-term financial commitment by an electric company or an electricity service supplier from the greenhouse gas emissions standard if the commission finds that the commitment is a necessary and prudent response to:

(a) Unanticipated electricity system reliability needs; or

(b) Catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(4) Notwithstanding subsection (1) of this section, an electric company may enter into a long-term financial commitment that does not meet the emissions standard established under ORS 757.524 if the electric company does not seek recovery of the costs in retail sales in this state.

(5) The commission by rule shall establish:

(a) Standards for identifying contracts for electricity for which the emissions cannot readily be determined with any specificity; and

(b) Emissions to be attributed to such contracts for purposes of determining compliance with the emissions standard established under ORS 757.524. [2009 c.751 §4]

Note: See note under 757.522.

757.533 Emissions standard-based restrictions on long-term financial commitments by consumer-owned utilities; rules. (1)(a) A governing board of a consumer-owned utility may not enter into a long-term financial commitment unless the baseload electricity acquired under the commitment is produced by a generating facility that complies with a greenhouse gas emissions standard established under ORS 757.528.

(b) A generating facility complies with the greenhouse gas emissions standard established under ORS 757.528 if the rate of emissions of the facility does not exceed the emissions standard.

(c) In determining whether a generating facility complies with the emissions standard, the total emissions associated with producing baseload electricity at the generating facility shall be included in determining the rate of emissions of greenhouse gases. The total emissions associated with producing electricity at the generating facility do not include emissions associated with transportation, fuel extraction or other life-cycle emissions associated with obtaining the fuel for the facility.

(2) Notwithstanding subsection (1) of this section, the emissions standard does not apply to greenhouse gas emissions produced by a generating facility owned by a consumer-owned utility or contracted through a long-term financial commitment if the emissions:

(a) Come from a facility powered exclusively by renewable energy sources described in ORS 469A.025;

(b) Come from a cogeneration facility in this state that is fueled by natural gas, synthetic gas, distillate fuels, waste gas or a combination of these fuels, and that is producing energy, in service for tax purposes, commercially operable, or in rates as of July 1, 2010, until the facility is subject to a new long-term financial commitment; or

(c) Come from a generating facility that has in place a plan to be a low-carbon emis-

sion resource, as determined by the State Department of Energy, pursuant to sufficient technical documentation, within seven years of commencing plant operations.

(3) The governing board may provide an exemption for an individual generating facility from the emissions performance standard to address:

(a) Unanticipated electricity system reliability needs;

(b) Catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances; or

(c) Long-term financial commitments between members of a joint operating entity recognized under federal law or the joint operating entity's predecessor organization, or with the joint operating entity for a baseload resource that the consumer-owned utility had an ownership interest in prior to July 1, 2010.

(4) A governing board shall report to the consumer-owned utility's customers or members and to the State Department of Energy information on any case-by-case exemption from the emissions performance standard granted by the governing board.

(5) For purposes of ORS 757.522 to 757.536, a long-term financial commitment for a consumer-owned utility does not include agreements to purchase electricity from the Bonneville Power Administration.

(6) The department by rule shall establish:

(a) Standards for identifying contracts for electricity for which the emissions cannot readily be determined with any specificity; and

(b) Emissions to be attributed to such contracts for purposes of determining compliance with the emissions standard established under ORS 757.528. [2009 c.751 §5]

Note: See note under 757.522.

757.535 [Repealed by 1971 c.655 §250]

757.536 Public Utility Commission review of plans and rates to ensure compliance with greenhouse gas emissions standard; rules. (1)(a) The Public Utility Commission may not acknowledge in an integrated resource plan, or allow in customer rates, the costs of a long-term financial commitment by an electric company or by an electricity service supplier unless the baseload electricity proposed to be acquired under the commitment is produced by a generating facility that complies with the greenhouse gas emissions standard established under ORS 757.524.

(b) The commission shall revoke the certification under ORS 757.649 of an electricity service supplier entering into a long-term financial commitment to serve customers in this state if baseload electricity acquired under the commitment is produced by a generating facility that does not comply with the greenhouse gas emissions performance standard established under ORS 757.524.

(2) Pursuant to ORS 756.040, the commission shall adopt rules for the implementation of this section.

(3) Within 90 days of application by an electric company or electricity service supplier, the commission shall determine whether the electric company's or electricity service supplier's proposal to enter into a long-term financial commitment complies with the greenhouse gas emissions standard established under ORS 757.524. The commission may not decide in a proceeding under this subsection issues involving the actual costs to construct and operate the selected resource, cost recovery or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs. [2009 c.751 §6]

Note: See note under 757.522.

757.538 Rules. The Public Utility Commission and the State Department of Energy shall adopt rules as necessary to implement ORS 757.522 to 757.536. [2009 c.751 §8]

Note: See note under 757.522.

Note: Sections 9 and 12, chapter 751, Oregon Laws 2009, provide:

Sec. 9. (1) The Public Utility Commission shall develop estimates of the rate impacts for electric companies and natural gas companies to meet the following alternative greenhouse gas emission reduction goals for 2020:

(a) Ten percent below 1990 levels, as specified in ORS 468A.205; and

(b) Fifteen percent below 2005 levels.

(2) The commission shall submit a report presenting the estimates and explaining the analysis used to develop the estimates to the appropriate interim committee of the Legislative Assembly prior to November 1 of each even-numbered year. [2009 c.751 §9]

Sec. 12. Section 9 of this 2009 Act is repealed on January 2, 2020. [2009 c.751 §12]

VOLUNTARY EMISSION REDUCTION PROGRAM

757.539 Eligibility criteria; contents of application; project proposal processes; recovery of costs; rate cap; report to Legislative Assembly. (1) As used in this section, "emission" means any anthropogenic gas, such as carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

(2) The Public Utility Commission shall establish a voluntary emission reduction program for the purposes of incentivizing public utilities that furnish natural gas to invest in projects that reduce emissions and

providing benefits to customers of public utilities that furnish natural gas.

(3) As part of the emission reduction program, the commission shall establish eligibility criteria for projects. The eligibility criteria must include:

(a) That the public utility requesting the project be a public utility that furnishes natural gas and that the project involve the provision of natural gas;

(b) That the project directly or indirectly reduce emissions;

(c) That the project benefit customers of the public utility as identified by the commission by rule or order;

(d) That the public utility, without the emission reduction program, would not invest in the project in the ordinary course of business;

(e) That the public utility, prior to filing an application under subsection (4) of this section, involve stakeholders as required by the commission by rule or order; and

(f) That the rate impact of the aggregate of all projects undertaken by a public utility under this section not exceed an amount established by the commission by rule or order.

(4) For each project that a public utility proposes under this section, the public utility must file with the commission an application. An application filed under this subsection must include:

(a) A description of the project;

(b) The projected amount of capital and operating costs necessary to complete and operate the project;

(c) The projected amount of reduced emissions created by the project;

(d) The potential of the project to reduce emissions not identified in paragraph (c) of this subsection;

(e) The projected date on which the project will become operational;

(f) A requested method, as described in subsection (8) of this section, for recovery of costs incurred and investments made;

(g) An explanation of why the public utility, without the emission reduction program, would not invest in the project in the ordinary course of business;

(h) Proof of stakeholder involvement;

(i) The projected rate impact of the project;

(j) The projected aggregate rate impact of all projects proposed by the public utility under this section and approved by the commission for the public utility under this section;

(k) An explanation of how the public utility will provide the commission with progress updates during the life of the project, including updates on costs and reduced emissions associated with the project; and

(L) Any other information required by the commission by rule or order.

(5)(a) The commission shall establish a two-tiered process for submitting a project proposal under the emission reduction program. For the purpose of establishing the tiers, the commission shall:

(A) Establish a threshold for overall project cost; and

(B) Establish a threshold for overall project cost per metric ton of reduced emissions.

(b) If a proposed project meets both the threshold described in paragraph (a)(A) of this subsection and the threshold described in paragraph (a)(B) of this subsection, the project is a tier one project subject to the requirements of subsection (6) of this section. If a proposed project does not meet the threshold described in paragraph (a)(A) of this subsection or the threshold described in paragraph (a)(B) of this subsection, the project is a tier two project subject to the requirements of subsection (7) of this section.

(6) For tier one projects, the commission shall:

(a) Provide interested parties with an opportunity to submit written comment in response to the proposed project;

(b) Hold a public hearing to address all submitted written comments; and

(c) Issue a final order on the proposed project within 90 days of receiving the application for the project, or at a later time as authorized by the public utility.

(7) For tier two projects, the commission shall:

(a) By rule or order, provide interested parties with an opportunity to submit testimony in response to the proposed project and be heard; and

(b) Issue a final order on the proposed project within 180 days of receiving the application for the project, or at a later time as authorized by the public utility.

(8) If a final order issued under subsection (6)(c) or (7)(b) of this section authorizes a project, the order shall specify:

(a) The type of ratepayer from whom the public utility that submitted the project proposal may recover costs incurred and investments made. A public utility may recover costs incurred and investments made from a type of ratepayer under this paragraph only if the commission makes a finding that the

type of ratepayer receives a benefit from the project. If the commission makes a finding that more than one type of ratepayer receives a benefit from the project, the commission shall allow recovery from each type of ratepayer in an amount that is proportionate to the proportion of the benefit received, as determined by the commission, by the type of ratepayer.

(b) The method by which the public utility that submitted the project proposal may recover costs incurred and investments made and the amount that the public utility may recover. Methods of recovery include:

(A) Payment per unit of reduced emissions;

(B) Preapproval for inclusion in the public utility's rates of costs prudently incurred and of investments prudently made;

(C) Return of investment and return on investment; and

(D) Any other method approved by the commission by rule or order.

(9) For purposes related to the emission reduction program established under this section, the commission may consider the amount of reduced emissions created by a project or the value of reduced emissions created by a project.

(10) The commission shall establish a rate cap for each public utility for which a project is authorized under this section. The rate cap must limit the cost of all of the public utility's projects authorized under this section to an amount that does not exceed a percentage of the public utility's revenue requirement as identified by the commission by rule or order.

(11) The commission shall biennially conduct a study on whether federal law or regulation or other state laws or rules provide adequate incentives for public utilities that furnish natural gas to invest in projects that reduce emissions in the ordinary course of business. The commission shall report the results of a study conducted under this subsection, and may make recommendations for legislation, to the Legislative Assembly in the manner described in ORS 192.245 not later than February 1 of each odd-numbered year. [2013 c.607 §2]

757.540 [Amended by 1971 c.655 §53; renumbered 756.568]

757.541 [1987 c.599 §1; repealed by 1995 c.691 §8]

OREGON UTILITY NOTIFICATION CENTER

757.542 Definitions for ORS 757.542 to 757.562. As used in ORS 757.542 to 757.562 and 757.993:

(1) "Business day" means any 24-hour day other than a Saturday, Sunday or federal or state legal holiday.

(2) "Damage" means harm to or destruction of underground facilities including, but not limited to, the weakening of structural, lateral or subjacent support; the penetration, impairment or destruction of any coating, housing or other protective device; and the denting of, penetration into or severance of underground facilities.

(3) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the road grade or original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right of way or easement for underground facilities.

(4) "Excavator" means any person who engages in excavation.

(5) "Operator" means any person, public utility, municipal corporation, political subdivision of the state or other person with control over underground facilities.

(6) "Underground facilities" means items partially or entirely below the surface of the ground for use in connection with the storage or conveyance of electrical energy, water, sewage, petroleum products, gas, gaseous vapors or hazardous liquids, or the transmission of electronic, telephonic, telegraphic or cable communications. Such items include, but are not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors that are underground.

(7) "Unlocatable underground facilities" means underground facilities that cannot be marked with reasonable accuracy, including nonconductive sewers and nonmetallic underground facilities that have no trace wires. [1995 c.691 §1]

Note: 757.542 to 757.562 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.545 [Repealed by 1971 c.655 §250]

757.546 [1987 c.599 §2; repealed by 1995 c.691 §8]

757.547 Oregon Utility Notification Center; board; member qualifications; terms; meetings; rules. (1)(a) The Oregon Utility Notification Center is created as an independent not-for-profit public corporation. The corporation shall be governed by a board of directors consisting of one member appointed to represent each of the following:

(A) Cities with a population of 25,000 or more;

(B) Cities with a population under 25,000;

(C) Counties;

(D) Natural gas utilities regulated by the Public Utility Commission under ORS chapter 757;

(E) Electric utilities regulated by the Public Utility Commission under ORS chapter 757;

(F) Water districts, special districts, sanitary districts or water and sanitary authorities;

(G) Telecommunications utilities serving fewer than 50,000 access lines and regulated by the Public Utility Commission under ORS chapter 759;

(H) Telecommunications utilities serving 50,000 access lines or more and regulated by the Public Utility Commission under ORS chapter 759;

(I) Telecommunications cooperatives;

(J) Electric cooperatives;

(K) People's utility districts;

(L) Contractors;

(M) Excavators;

(N) Railroads;

(O) Cable system operators; and

(P) Municipal electric utilities.

(b) To facilitate appointment of members of the first board of directors, the Public Utility Commission shall, by order, select organizations that are most representative of each of the groups set forth in paragraph (a) of this subsection. Each organization so selected may nominate a member for the board and may, within the time allowed by the commission's order, submit the name of the nominee to the Governor, who shall consider the nominee before making any other appointment to the board.

(c) After appointment of the first board of directors, to facilitate appointment of new members to the board, the board shall, by rule, select organizations that are most representative of each of the groups set forth in paragraph (a) of this subsection. Each organization so selected may nominate a member for the board and may, within the time allowed by rule, submit the name of the nominee to the Governor, who shall consider the nominee before making any other appointment to the board.

(d) If the board of directors determines that a group not listed in paragraph (a) of this subsection should be represented on the board, the board may select an organization that is most representative of the group and may ask that organization to nominate a member. Upon receipt of the nomination, the board may request that the Governor appoint the nominee.

(e) The Governor shall also appoint to the board of directors one employee of the commission and one employee of the Department of Transportation.

(2) The term of office of a member is four years. A member is eligible for reappointment. Before the expiration of the term of a member, the board of directors shall solicit a nomination as provided in subsection (1) of this section and the Governor shall appoint a successor. If there is a vacancy for any cause, the board shall solicit a nomination as provided in subsection (1) of this section and the Governor shall make an appointment to become immediately effective for the unexpired term. A member may continue to serve until a successor is appointed. Nothing in this subsection or subsection (1) of this section shall restrict the authority of the Governor to appoint a person other than one of the persons nominated according to this subsection or subsection (1) of this section.

(3) The board of directors shall select one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers as the board considers necessary for the performance of the functions of those offices. A minimum of seven of the members of the board constitutes a quorum for the transaction of business.

(4) The board of directors shall meet at least once every three months at a time and place determined by the board. The board shall meet at such other times and places specified by the call of the chairperson or of a majority of the members of the board. [1995 c.691 §2; 1999 c.451 §2]

Note: See note under 757.542.

757.550 [Repealed by 1971 c.655 §250]

757.551 [1987 c.599 §3; repealed by 1995 c.691 §8]

757.552 Duties of center; fees for services; rules; exemption from certain financial administration laws. (1) It is the function of the board of directors to operate the Oregon Utility Notification Center, through which a person shall notify operators of underground facilities of proposed excavations and request that the underground facilities be marked.

(2) The board of directors shall:

(a) Utilize a competitive process to contract with any qualified person to provide the notification required under subsection (1) of this section.

(b) Subject to subsection (3) of this section, establish rates, on a per call basis, under which subscribers shall pay to fund all

of the activities of the Oregon Utility Notification Center.

(c) Adopt rules according to ORS chapter 183 that regulate the notification and marking of underground facilities to prevent damage to underground facilities. The rules, insofar as is practicable, shall be consistent with the Oregon Utilities Coordinating Council Standards Manual of March 31, 1995.

(3) The Oregon Utility Notification Center shall have all of the powers of a state agency. Except as provided in subsection (2) of this section, the provisions of ORS 279.835 to 279.855 and 283.085 to 283.092 and ORS chapters 240, 276, 279A, 279B, 279C, 282, 283, 291, 292 and 293 do not apply to the Oregon Utility Notification Center.

(4) Notwithstanding subsection (2)(b) of this section, the board of directors shall not establish rates or other charges that require payments from any subscriber who receives fewer than 50 telephone calls in the calendar year or that result in annual payments of more than $500 for any of the following subscribers:

(a) Cities with a population under 15,000;

(b) Telecommunications utilities serving fewer than 50,000 access lines and regulated by the Public Utility Commission under ORS chapter 759;

(c) Cable system operators serving fewer than 15,000 customers;

(d) Utilities, special districts, people's utility districts or authorities providing electricity, water or sanitary sewer service to fewer than 15,000 residential customers; and

(e) Telecommunications cooperatives. [1995 c.691 §3; 1999 c.451 §3; 2001 c.104 §293; 2003 c.794 §329; 2012 c.107 §69]

Note: See note under 757.542.

757.555 [Amended by 1971 c.655 §49; renumbered 756.555]

757.556 [1987 c.599 §5; repealed by 1995 c.691 §8]

757.557 Underground utility facility operators required to subscribe to center; liability for damage from excavation for nonsubscribers; exemption. (1) Every operator of underground facilities shall subscribe to the Oregon Utility Notification Center.

(2) Any person intending to excavate shall notify the Oregon Utility Notification Center at least two but not more than 10 business days before commencing an excavation. The board of directors shall, by rule, provide an exception to the requirement of advance notice for excavators in cases that involve an immediate danger to life or property, or a customer service outage. The board may adopt additional exceptions as the board, in its discretion, determines necessary.

(3) Nonsubscribing operators of underground facilities shall be responsible to all injured parties for all costs associated with damages to such facilities, loss of product or service or damages that occur as a result of excavation where the facilities damaged are under the control of the nonsubscribing operator and proper notice was given to the Oregon Utility Notification Center.

(4) The provisions of this section shall not apply to operators of underground facilities that are located entirely on private property and that provide services exclusively for the use of residents or owners of the property. [1995 c.691 §4; 2001 c.104 §294]

Note: See note under 757.542.

757.560 [Repealed by 1971 c.655 §250]

757.561 [1987 c.599 §4; repealed by 1995 c.691 §8]

757.562 Report to Legislative Assembly of center activities; contracts to carry out duties. (1) The board of directors shall file with the Legislative Assembly and the Governor, not later than April 15 of each year, a report covering the activities and operations of the Oregon Utility Notification Center for the preceding calendar year according to the provisions of ORS 192.230 to 192.250.

(2) In carrying out the duties, functions and powers imposed by law on the Oregon Utility Notification Center, the board of directors may contract with any state agency or private party for the performance of such duties, functions and powers as the board considers appropriate. [1995 c.691 §5]

Note: See note under 757.542.

757.565 [Repealed by 1971 c.655 §250]

757.566 [1987 c.599 §6; repealed by 1995 c.691 §8]

757.570 [Repealed by 1971 c.655 §250]

757.571 [1987 c.599 §§7,8; repealed by 1995 c.691 §8]

757.575 [Repealed by 1971 c.655 §250]

757.580 [Repealed by 1971 c.655 §250]

757.585 [Repealed by 1971 c.655 §250]

757.590 [Amended by 1971 c.655 §48; renumbered 756.552]

757.595 [Repealed by 1971 c.655 §250]

DIRECT ACCESS REGULATION

757.600 Definitions for ORS 757.600 to 757.689. As used in ORS 757.600 to 757.689, unless the context requires otherwise:

(1) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services.

(2) "Ancillary services" means services necessary or incidental to the transmission and delivery of electricity from generating facilities to retail electricity consumers, including but not limited to scheduling, load

shaping, reactive power, voltage control and energy balancing services.

(3) "Commission" means the Public Utility Commission.

(4) "Consumer-owned utility" means a municipal electric utility, a people's utility district or an electric cooperative.

(5) "Default supplier" means an electricity service supplier or electric company that has a legal obligation to provide electricity services to a consumer, as determined by the commission.

(6) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services, as determined by the commission for an electric company or the governing body of a consumer-owned utility, directly from an entity other than the distribution utility.

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

(8) "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.

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

(10) "Economic utility investment" means all electric company investments, 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.

(11) "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.

(12) "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.

(13) "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.

(14) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(15) "Electricity services" means electricity distribution, transmission, generation or generation-related services.

(16) "Electricity service supplier" 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.

(17) "Governing body" means the board of directors or the commissioners of an electric cooperative or people's utility district, or the council or board of a city with respect to a municipal electric utility.

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

(19) "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.

(20) "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.

(21) "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 is not in operation on 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.

(22) "One average megawatt" means 8,760,000 kilowatt-hours of electricity per year.

(23) "People's utility district" has the meaning given that term in ORS 261.010.

(24) "Portfolio access" means the ability of a retail electricity consumer to choose from a set of product and pricing options for electricity determined by the governing board of a consumer-owned utility and may include product and pricing options offered by the utility or by an electricity service supplier.

(25) "Power generation company" means a company engaged in the production and

sale of electricity to wholesale customers, including but not limited to independent power producers, affiliated generation companies, municipal and state authorities, provided the company is not regulated by the commission.

(26) "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 State Department of Energy by rule may establish a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(27) "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.

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

(28) "Residential electricity consumer" means an electricity consumer who resides at a dwelling primarily used for residential purposes. "Residential electricity 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.

(29) "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 utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility.

(30) "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.

(31) "Transition charge" means a charge or fee that recovers all or a portion of an uneconomic utility investment.

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

(33) "Transmission facility" means the plant and equipment used to transmit electricity in interstate commerce.

(34) "Undue market power" means the unfair or improper exercise of influence to increase or decrease the availability or price of a service or product in a manner inconsistent with competitive markets.

(35) "Uneconomic utility investment" means all electric company investments, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and workforce 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. [1999 c.865 §1; 2001 c.134 §8; 2003 c.186 §75]

757.601 Implementation dates for direct access and portfolio of rate options; exemption for certain small electric companies. (1) All retail electricity consumers of an electric company, other than residential electricity consumers, shall be allowed direct access beginning on March 1, 2002. Retail electricity consumers shall not be allowed direct access before that date.

(2) Residential electricity consumers shall be allowed to purchase electricity from among a portfolio of rate options as described in ORS 757.603 not later than March 1, 2002.

(3) ORS 757.600 to 757.691 do not apply to an electric company providing electricity services to fewer than 25,000 consumers in this state unless the electric company offers direct access to any of its retail electricity consumers in this state or offers to sell electricity services available under direct access to more than one retail electricity consumer of another electric utility. [1999 c.865 §2; 2001 c.819 §1; 2003 c.14 §454]

Note: 757.601 was added to and made a part of ORS chapter 757 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.603 Electric company required to provide cost-of-service rate option to all retail electricity consumers; waiver; portfolio of rate options for residential consumers. (1)(a) Except as provided in this subsection, on and after March 1, 2002, an electric company shall provide all retail electricity consumers that are connected to the electric company's distribution system with a regulated, cost-of-service rate option.

(b) The Public Utility Commission by order may waive the requirement of paragraph (a) of this subsection for any retail electricity consumer other than residential electricity consumers and small commercial electricity consumers. A waiver under this paragraph may not take effect before July 1, 2003. Before ordering a waiver under this paragraph, the commission shall conduct such studies as the commission deems necessary and provide notice and opportunity for public comment and hearings. The commission may order a waiver under this paragraph if the commission finds, based on an evidentiary record developed through public comment and hearings, that a market exists in which retail electricity consumers subject to the waiver are able to:

(A) Purchase supplies of electricity adequate to meet the needs of the retail electricity consumers;

(B) Obtain multiple offers for electricity supplies within a reasonable period of time;

(C) Obtain reliable supplies of electricity; and

(D) Purchase electricity at prices that are not unduly volatile and that are just and reasonable.

(2) Not later than March 1, 2002, each electric company shall provide each residential electricity consumer that is connected to its distribution system a portfolio of rate options. The portfolio shall include at least the following options:

(a) A rate that reflects significant new renewable energy resources; and

(b) A market-based rate.

(3)(a) The commission shall regulate the cost-of-service rate option under subsection (1) of this section and the portfolio of rate options under subsection (2) of this section. The commission shall reasonably ensure that the costs and risks of serving each option are reflected in the rates for each option.

(b) The commission may prohibit or otherwise limit the use of a cost-of-service rate by retail electricity consumers who have been served through direct access, and may limit switching among portfolio options and the cost-of-service rate by residential electricity consumers. [1999 c.865 §4; 2001 c.819 §2]

757.605 [1961 c.691 §2; 1971 c.655 §97; renumbered 758.400]

757.606 [Formerly 758.040; renumbered 165.475]

757.607 Direct access conditions; cost recovery. The Public Utility Commission shall ensure that direct access programs offered by electric companies meet the following conditions:

(1) The provision of direct access to some retail electricity consumers must not cause the unwarranted shifting of costs to other retail electricity consumers of the electric company. The commission may, in establishing any rates and charges under ORS 757.600 to 757.667, consider and mitigate the rate impact on consumers from the reduction or elimination of subsidies in existing rate structures.

(2) The direct access, portfolio of rate options and cost-of-service rates may include transition charges or transition credits that reasonably balance the interests of retail electricity consumers and utility investors. The commission may determine that full or partial recovery of the costs of uneconomic utility investments, or full or partial pass-through of the benefits of economic utility investments to retail electricity consumers, is in the public interest.

(3) The commission shall allow recovery, through a transition charge, of any otherwise unrecoverable costs arising from or related to an electric company's contractual or other legal obligations to the Bonneville Power Administration under ORS 757.663, or arising from or related to a failure of the Bonneville Power Administration to meet its contractual or other legal obligations to the electric company, from those classes of consumers for which electric power was purchased from the Bonneville Power Administration.

(4) Notwithstanding ORS 757.355, the commission may allow a return on the unamortized balance of an uneconomic utility investment or an economic utility investment that is included in rates. [1999 c.865 §8]

757.609 Date for announcing prices for electricity in subsequent calendar year; estimated prices. (1) The Public Utility Commission shall set a date on which all electric companies must announce prices that will be charged for electricity by the companies in the subsequent calendar year. Retail electricity consumers who are eligible for direct access must be allowed at least three business days after the date set by the commission to elect whether to use direct access or to purchase electricity from an electric company.

(2) All electricity service suppliers and electric companies must announce estimated prices that will be charged for electricity by

the suppliers and companies in the subsequent calendar year or contract period at least five days before the date set by the commission under subsection (1) of this section. [2003 c.478 §2]

Note: 757.609 was added to and made a part of 757.600 to 757.689 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.610 [1961 c.691 §18; renumbered 758.405]

757.611 [Formerly 758.050; renumbered 165.480]

757.612 Requirements for public purpose expenditures; electric bill payment assistance charge; rules. (1) There is established an annual public purpose expenditure standard for electric companies and Oregon Community Power to fund new cost-effective local energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources and new low-income weatherization. The public purpose expenditure standard shall be funded by the public purpose charge described in subsection (2) of this section.

(2)(a) Beginning on the date an electric company or Oregon Community Power offers direct access to its retail electricity consumers, except residential electricity consumers, the electric company or Oregon Community Power shall collect a public purpose charge from all of the retail electricity consumers located within its service area until January 1, 2026. Except as provided in paragraph (b) of this subsection, the public purpose charge shall be equal to three percent of the total revenues collected by the electric company, Oregon Community Power or the electricity service supplier from its retail electricity consumers for electricity services, distribution, ancillary services, metering and billing, transition charges and other types of costs included in electric rates on July 23, 1999.

(b) For an aluminum plant that averages more than 100 average megawatts of electricity use per year, beginning on March 1, 2002, the electric company or Oregon Community Power whose territory abuts the greatest percentage of the site of the aluminum plant shall collect from the aluminum company a public purpose charge equal to one percent of the total revenue from the sale of electricity services to the aluminum plant from any source.

(3)(a) The Public Utility Commission shall establish rules implementing the provisions of this section relating to electric companies and Oregon Community Power.

(b) Subject to paragraph (e) of this subsection, funds collected by an electric company or Oregon Community Power through public purpose charges shall be allocated as follows:

(A) Sixty-three percent for new cost-effective conservation, new market transformation.

(B) Nineteen percent for the above-market costs of constructing and operating new renewable energy resources with a nominal electric generating capacity, as defined in ORS 469.300, of 20 megawatts or less.

(C) Thirteen percent for new low-income weatherization.

(D) Five percent shall be transferred to the Housing and Community Services Department Electricity Public Purpose Charge Fund established by ORS 456.587 (1) and used for the purpose of providing grants as described in ORS 458.625 (2).

(c) The costs of administering subsections (1) to (6) of this section for an electric company or Oregon Community Power shall be paid out of the funds collected through public purpose charges. The commission may require that an electric company or Oregon Community Power direct funds collected through public purpose charges to the state agencies responsible for implementing subsections (1) to (6) of this section in order to pay the costs of administering such responsibilities.

(d) The commission shall direct the manner in which public purpose charges are collected and spent by an electric company or Oregon Community Power and may require an electric company or Oregon Community Power to expend funds through competitive bids or other means designed to encourage competition, except that funds dedicated for low-income weatherization shall be directed to the Housing and Community Services Department as provided in subsection (7) of this section. The commission may also direct that funds collected by an electric company or Oregon Community Power through public purpose charges be paid to a nongovernmental entity for investment in public purposes described in subsection (1) of this section. Notwithstanding any other provision of this subsection:

(A) At least 80 percent of the funds allocated for conservation shall be spent within the service area of the electric company that collected the funds; or

(B) If Oregon Community Power collected the funds, at least 80 percent of the funds allocated for conservation shall be spent within the service area of Oregon Community Power.

(e)(A) The first 10 percent of the funds collected annually by an electric company or Oregon Community Power under subsection (2) of this section shall be distributed to school districts that are located in the ser-

vice territory of the electric company or Oregon Community Power. The funds shall be distributed to individual school districts according to the weighted average daily membership (ADMw) of each school district for the prior fiscal year as calculated under ORS 327.013. The commission shall establish by rule a methodology for distributing a proportionate share of funds under this paragraph to school districts that are only partially located in the service territory of the electric company or Oregon Community Power.

(B) A school district that receives funds under this paragraph shall use the funds first to pay for energy audits for schools located within the school district. A school district may not expend additional funds received under this paragraph on a school facility until an energy audit has been completed for that school facility. To the extent practicable, a school district shall coordinate with the State Department of Energy and incorporate federal funding in complying with this paragraph. Following completion of an energy audit for an individual school, the school district may expend funds received under this paragraph to implement the energy audit. Once an energy audit has been conducted and completely implemented for each school within the school district, the school district may expend funds received under this paragraph for any of the following purposes:

(i) Conducting energy audits. A school district shall conduct an energy audit prior to expending funds on any other purpose authorized under this paragraph unless the school district has performed an energy audit within the three years immediately prior to receiving the funds.

(ii) Weatherization and upgrading the energy efficiency of school district facilities.

(iii) Energy conservation education programs.

(iv) Purchasing electricity from environmentally focused sources and investing in renewable energy resources.

(f) The commission may not establish a different public purpose charge than the public purpose charge described in subsection (2) of this section.

(g) If the commission directs funds collected through public purpose charges to a nongovernmental entity, the entity shall:

(A) Include on the entity's board of directors an ex officio member designated by the commission, who shall also serve on the entity's nominating committee for filling board vacancies.

(B) Require the entity's officers and directors to provide an annual disclosure of economic interest to be filed with the commission on or prior to April 15 of each calendar year for public review in a form similar to the statement of economic interest required for public officials under ORS 244.060.

(C) Require the entity's officers and directors to declare actual and potential conflicts of interest at regular meetings of the entity's governing body when such conflicts arise, and require an officer or director to abstain from participating in any discussion or vote on any item where that officer or director has an actual conflict of interest. For the purposes of this subparagraph, "actual conflict of interest" and "potential conflict of interest" have the meanings given those terms in ORS 244.020.

(D) Arrange for an independent auditor to audit the entity's financial statements annually, and direct the auditor to file an audit opinion with the commission for public review.

(E) File with the commission annually the entity's budget, action plan and quarterly and annual reports for public review.

(F) At least once every five years, contract for an independent management evaluation to review the entity's operations, efficiency and effectiveness, and direct the independent reviewer to file a report with the commission for public review.

(h) The commission may remove from the board of directors of a nongovernmental entity an officer or director who fails to provide an annual disclosure of economic interest or declare actual or potential conflict of interest, as described in paragraph (g)(B) and (C) of this subsection, in connection with the allocation or expenditure of funds collected through public purpose charges and directed to the entity.

(4)(a) An electric company that satisfies its obligations under this section shall have no further obligation to invest in conservation, new market transformation or new low-income weatherization or to provide a commercial energy conservation services program and is not subject to ORS 469.631 to 469.645 and 469.860 to 469.900.

(b) Oregon Community Power, for any period during which Oregon Community Power collects a public purpose charge under subsection (2) of this section:

(A) Shall have no other obligation to invest in conservation, new market transformation or new low-income weatherization or to provide a commercial energy conservation services program; and

(B) Is not subject to ORS 469.631 to 469.645 and 469.860 to 469.900.

(5)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against public purpose charges billed by an electric company or Oregon Community Power for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of the annual public purpose charges, and the above-market costs of purchases of new renewable energy resources incurred by the retail electricity consumer, not to exceed 19 percent of the annual public purpose charges, less administration costs incurred under this subsection. The credit may not exceed, on an annual basis, the lesser of:

(A) The amount of the retail electricity consumer's qualifying expenditures; or

(B) The portion of the public purpose charge billed to the retail electricity consumer that is dedicated to new energy conservation, new market transformation or the above-market costs of new renewable energy resources.

(b) To obtain a credit under this subsection, a retail electricity consumer shall file with the State Department of Energy a description of the proposed conservation project or new renewable energy resource and a declaration that the retail electricity consumer plans to incur the qualifying expenditure. The State Department of Energy shall issue a notice of precertification within 30 days of receipt of the filing, if such filing is consistent with this subsection. The credit may be taken after a retail electricity consumer provides a letter from a certified public accountant to the State Department of Energy verifying that the precertified qualifying expenditure has been made.

(c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that are not used in one year may be carried forward for use in subsequent years.

(d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may request that the State Department of Energy hire an independent auditor to assess the potential for conservation investments at the site. If the independent auditor determines there is no available conservation measure at the site that would have a simple payback of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment obligation for public purpose charges related to the site. If the independent auditor determines that there are potential conservation measures available at the site, the retail electricity consumer shall be entitled to a credit against public purpose charges related to the site equal to 54 percent of the public purpose charges less the estimated cost of available conservation measures.

(B) A retail electricity consumer shall be entitled each year to the credit described in this subsection unless a subsequent independent audit determines that new conservation investment opportunities are available. The State Department of Energy may require that a new independent audit be performed on the site to determine whether new conservation measures are available, provided that the independent audits shall occur no more than once every two years.

(C) The retail electricity consumer shall pay the cost of the independent audits described in this subsection.

(6) Electric utilities and retail electricity consumers shall receive a fair and reasonable credit for the public purpose expenditures of their energy suppliers. The State Department of Energy shall adopt rules to determine eligible expenditures and the methodology by which such credits are accounted for and used. The rules also shall adopt methods to account for eligible public purpose expenditures made through consortia or collaborative projects.

(7)(a) In addition to the public purpose charge provided under subsection (2) of this section, an electric company or Oregon Community Power shall collect funds for low-income electric bill payment assistance in an amount determined under paragraph (b) of this subsection.

(b) The commission shall establish the amount to be collected by each electric company in calendar year 2008 from retail electricity consumers served by the company, and the rates to be charged to retail electricity consumers served by the company, so that the total anticipated collection for low-income electric bill payment assistance by all electric companies in calendar year 2008 is $15 million. In calendar year 2009 and subsequent calendar years, the commission may not change the rates established for retail electricity consumers, but the total amount collected in a calendar year for low-income electric bill payment assistance may vary based on electricity usage by retail electricity consumers and changes in the number of retail electricity consumers in this state. In no event shall a retail electricity consumer be required to pay more than $500 per month per site for low-income electric bill payment assistance.

(c) Funds collected by the low-income electric bill payment assistance charge shall be paid into the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2). Moneys deposited in the

fund under this paragraph shall be used by the Housing and Community Services Department for the purpose of funding low-income electric bill payment assistance. The department's cost of administering this subsection shall be paid out of funds collected by the low-income electric bill payment assistance charge. Moneys deposited in the fund under this paragraph shall be expended solely for low-income electric bill payment assistance. Funds collected from an electric company or Oregon Community Power shall be expended in the service area of the electric company or Oregon Community Power from which the funds are collected.

(d)(A) The Housing and Community Services Department, in consultation with the advisory committee on energy established by ORS 458.515, shall determine the manner in which funds collected under this subsection will be allocated by the department to energy assistance program providers for the purpose of providing low-income bill payment and crisis assistance.

(B) The department shall investigate and may implement alternative delivery models specified by the advisory committee on energy, in consultation with electric companies, to effectively reduce service disconnections and related costs to retail electricity consumers and electric utilities.

(C) Priority assistance shall be directed to low-income electricity consumers who are in danger of having their electricity service disconnected.

(D) The department shall maintain records and provide those records upon request to an electric company, Oregon Community Power and the Citizens' Utility Board established under ORS chapter 774 on a quarterly basis. Records maintained must include the numbers of low-income electricity consumers served, the average amounts paid and the type of assistance provided. Electric companies and Oregon Community Power shall, if requested, provide the department with aggregate data relating to consumers served on a quarterly basis to support program development.

(e) Interest on moneys deposited in the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2) may be used to provide bill payment and crisis assistance to electricity consumers whose primary source of heat is not electricity.

(f) Notwithstanding ORS 757.310, the commission may allow an electric company or Oregon Community Power to provide reduced rates or other payment or crisis assistance or low-income program assistance to a low-income household eligible for assistance under the federal Low Income Home Energy Assistance Act of 1981, as amended and in effect on July 23, 1999.

(8) For purposes of this section, "retail electricity consumers" includes any direct service industrial consumer that purchases electricity without purchasing distribution services from the electric utility.

(9) For purposes of this section, amounts collected by Oregon Community Power through public purpose charges are not considered moneys received from electric utility operations. [1999 c.865 §3; 2001 c.134 §9; 2001 c.819 §3; 2005 c.22 §506; 2007 c.217 §9; 2007 c.301 §27; 2007 c.807 §43a; 2007 c.837 §2a; 2009 c.813 §1; 2011 c.467 §10; 2011 c.566 §2]

Note: Sections 3 and 4, chapter 566, Oregon Laws 2011, provide:

Sec. 3. Notwithstanding the $15 million limitation described in ORS 757.612 (7)(b), the Public Utility Commission shall direct electric companies or Oregon Community Power to collect a combined total of an additional $5 million per 12-month period from residential electricity consumers for the low-income electric bill payment assistance provided for in ORS 757.612 (7)(a) if the Housing and Community Services Department requests an increase. [2011 c.566 §3; 2013 c.254 §1]

Sec. 4. Section 3, chapter 566, Oregon Laws 2011, is repealed on January 2, 2016. [2011 c.566 §4; 2013 c.254 §2]

757.613 Use of public purpose charge moneys for whole building assessments. (1) If an electric company or Oregon Community Power invests moneys collected as a public purpose charge under ORS 757.612 on new cost-effective local energy conservation, or if the nongovernmental entity described in ORS 757.612 (3)(g) invests moneys paid to the nongovernmental entity under ORS 757.612 (3)(d) on new cost-effective local energy conservation, and if the investment involves updating the energy efficiency of a residential or nonresidential building, the electric company, Oregon Community Power or the nongovernmental entity may make those investments by conducting a whole building assessment of the energy efficiency of the building and, in consideration of the whole building assessment, by maximizing the overall energy efficiency of the building. For purposes of this subsection, a "whole building assessment" means a single assessment of savings opportunities, as identified by the Public Utility Commission by rule or order.

(2) An investment described in subsection (1) of this section must be limited to an investment in a single project, as authorized by the commission by rule or order. [2013 c.383 §1]

Note: 757.613 becomes operative July 1, 2014. See section 17, chapter 383, Oregon Laws 2013.

Note: 757.613 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.615 [1961 c.691 §§3,11; part renumbered 757.652; 1971 c.655 §98; renumbered 758.410]

757.616 [Formerly 758.060; renumbered 165.485]

757.617 Report to Legislative Assembly on public purpose expenditures; independent nongovernmental entity to prepare report; report on low-income bill assistance. (1)(a) The Public Utility Commission and the State Department of Energy jointly shall select an independent nongovernmental entity to prepare a biennial report to the Legislative Assembly describing program spending and results for public purpose requirements undertaken pursuant to ORS 757.612. The first report shall be due on January 1, 2003.

(b) The commission and the department jointly shall select an independent nongovernmental entity to prepare a report to the Legislative Assembly describing proposed modifications to public purpose requirements undertaken pursuant to ORS 757.612. The report shall be due on January 1, 2007.

(c) The commission and the department jointly shall select an independent nongovernmental entity to prepare a report to the Legislative Assembly recommending whether the public purpose funding requirements under ORS 757.612 should be renewed. The report shall be due on January 1, 2011.

(2) The Housing and Community Services Department shall prepare a biennial report to the Legislative Assembly describing program spending and needs for low-income bill assistance. The first report shall be due on January 1, 2003. [1999 c.865 §3a]

757.620 [1961 c.691 §4; renumbered 758.415]

757.621 [Formerly 758.070; renumbered 165.490]

757.622 Commission to establish terms and conditions for default electricity service to nonresidential consumers. The Public Utility Commission shall establish the terms and conditions for providing default electricity service for nonresidential electricity consumers in an emergency. The commission also shall establish reasonable terms and conditions for providing default service to a nonresidential electricity consumer in circumstances when the consumer is receiving electricity services through direct access and elects instead to receive such services through the default service. The terms and conditions for default service established by the commission shall provide for viable competition among electricity service suppliers. [1999 c.865 §4a]

757.625 [1961 c.691 §5; renumbered 758.420]

757.626 [Formerly 758.080; renumbered 165.495]

757.627 Retail electricity consumers eligible for direct access may aggregate electricity loads. (1) An electric company shall permit retail electricity consumers that are eligible for direct access to voluntarily aggregate their electricity loads.

(2) A retail electricity consumer that is eligible for direct access may voluntarily aggregate its electricity load with the electricity load of any other retail electricity consumer that is eligible for direct access. [1999 c.865 §9]

757.629 Reciprocal sales to nonresidential electricity consumers. An electric utility that sells electricity, either directly or through a related party, to a nonresidential electricity consumer of another electric utility in this state shall permit any other electricity service supplier to sell electricity to nonresidential electricity consumers of the electric utility. [1999 c.865 §11]

757.630 [1961 c.691 §6; renumbered 758.425]

757.631 [Formerly 758.090; renumbered 165.840]

757.632 Electricity service supplier's access to electric company's distribution facilities. Every electricity service supplier is authorized to use the distribution facilities of an electric company on a nondiscriminatory basis after the retail electricity consumers of the electricity service supplier are afforded direct access pursuant to ORS 757.601. [1999 c.865 §7]

757.635 [1961 c.691 §7; renumbered 758.430]

757.636 [Formerly 758.100; renumbered 165.845]

757.637 Comparable access to transmission and distribution facilities. To the extent permissible under federal law, the Public Utility Commission shall ensure that an electric company that offers direct access:

(1) Provides electricity service suppliers and retail electricity consumers access to its transmission facilities and distribution system comparable to that provided for its own use; and

(2) Provides electricity service suppliers and retail electricity consumers timely access to information about its transmission facilities and distribution system, metering and loads comparable to that provided to its own nondistribution divisions, affiliates and related parties. [1999 c.865 §10]

757.640 [1961 c.691 §8; renumbered 758.435]

757.641 [Formerly 758.110; renumbered 165.850]

757.642 Unbundling electricity assets; records. (1) Not later than March 1, 2002, an electric company shall unbundle the costs of electricity services into power generation, transmission, distribution and retail services.

(2) Every electric company shall maintain separate accounting records for each component of electricity service provided by the electric company to retail electricity consumers. Accounts shall be maintained according to regulations issued by the Federal Energy Regulatory Commission.

(3) Unless required to provide a different accounting under federal requirements, each electric company shall, to a reasonable level of detail, separately identify and account for its costs of:

(a) Generation;

(b) Transmission services;

(c) Distribution services;

(d) Ancillary services;

(e) Consumer service charges levied on retail electricity consumers, including but not limited to metering and billing;

(f) Investment in public purposes; and

(g) State and local taxes paid by retail electricity consumers.

(4) An electric company shall separately identify and account for the costs of any additional components as the Public Utility Commission may require. [1999 c.865 §5; 2001 c.819 §4]

757.645 [1961 c.691 §9; renumbered 758.440]

757.646 Commission policies to eliminate barriers to competitive retail market structures and rules to establish code of conduct for electric companies; rules. (1) The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market structure. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies, prohibit preferential treatment, or the appearance of such treatment, of generation or market affiliates and determine the electricity services likely to be competitive. The commission may require an electric company acting as an electricity service supplier do so through an affiliate.

(2) The commission shall establish by rule a code of conduct for electric companies and their affiliates to protect against market abuses and anticompetitive practices. The code shall, at a minimum:

(a) Require an electric company and any affiliate that shares the same name and logo to disclose to all consumers the relationship between the company and affiliate and to clarify that the affiliate is not the same as the electric company and that in order to receive service from the company a consumer does not have to purchase the services of the affiliate;

(b) Prohibit preferential access by an electric company affiliate to confidential consumer information;

(c) Prohibit cross-subsidization between competitive operations and regulated operations, including the use of electric company personnel and other resources;

(d) Prohibit joint marketing activities and exclusive referral arrangements between an electric company and its affiliates;

(e) Provide the commission with all necessary access to books and records;

(f) Require electric companies to make regular compliance filings; and

(g) Require fair treatment of all competitors by a distribution utility.

(3) An electric company shall provide the commission access to all books and records necessary for the commission to monitor the electric company and its affiliate relationships. The commission shall require an electric company biannually to file a report detailing compliance with this subsection. [1999 c.865 §6; 2001 c.683 §18]

757.649 Certification of electricity service suppliers; safety standards for distribution systems; billing requirements; rules. (1)(a) A person or other entity shall not act as an electricity service supplier unless the person or entity is certified by the Public Utility Commission. The commission, by rule, shall establish standards for certification of persons or other entities as electricity service suppliers in this state. The rules shall, at a minimum, address:

(A) The ability of the person or entity to meet the person's or entity's obligation to provide electricity services pursuant to direct access; and

(B) The ability of the person or entity to comply with applicable consumer protection laws.

(b) The commission may require an electricity service supplier to provide a bond or other security.

(c) The commission may establish a fee, not to exceed $500, for initial certification and annual recertification of electricity service suppliers.

(d) The commission, at any time, may revoke an electricity service supplier's certification for failure to comply with applicable statutes and rules.

(e) The commission may require an electricity service supplier to provide information necessary to ensure compliance with ORS 757.612. The commission shall ensure the privacy of all information and the protection of any proprietary information provided.

(2) Every electric utility shall maintain the integrity of its transmission facilities and distribution system and provide safe, reliable service to all retail electricity consumers. Nothing in ORS 757.600 to 757.667 or 757.669 to 757.687 shall reduce or diminish the statutory or contractual obligations of electric utilities to maintain the safety and reliability

of their transmission facilities and distribution system and other infrastructure and equipment used to deliver electricity.

(3) The commission for electric companies, or the governing body for other electric utilities, shall adopt rules, ordinances, policies and service quality standards designed to maintain a reliable, safe and efficient distribution system. The commission shall regulate electrical safety regarding generation, transmission, substation and distribution facilities for electric utilities and other electrical system owners and operators as provided under ORS 757.035.

(4) Every bill to a direct access retail electricity consumer from an electricity service supplier shall contain at least:

(a) The rate and amount due for each service or product that the retail electricity consumer is purchasing and other price information necessary to facilitate direct access, as determined by the commission;

(b) The rates and amounts of state and local taxes or fees, if any, imposed on the retail electricity consumer;

(c) The amount of any public purpose charge or credit;

(d) The amount of any transition charge or transition credit; and

(e) Power source and environmental impact information necessary to ensure that all consumers have useful, reliable and necessary information to exercise informed choice, as determined by the commission.

(5)(a) A retail electricity consumer of an electric company shall receive, upon request, a separate bill from every individual electricity service supplier that provides products or services to the retail electricity consumer. If a retail electricity consumer of an electric company does not request separate bills, or a consolidated bill from an electricity service supplier as provided in paragraph (c) of this subsection, the electric company shall consolidate the bills for all electricity services into a single statement, and electricity service suppliers shall provide to the electric company the information necessary to prepare a consolidated statement.

(b) The requirement for bill consolidation by an electric company shall continue through December 31, 2001, after which time the commission may waive the requirement if the waiver results in effective billing procedures for retail electricity consumers.

(c) Upon the request of a retail electricity consumer of an electric company, an electricity service supplier shall consolidate the bills for all electricity services into a single statement, and electric utilities and other electricity service suppliers shall provide to the billing electricity service supplier any information necessary to prepare a consolidated statement.

(d) For retail electricity consumers of an electric company, the commission shall adopt by rule provisions relating to the failure of a consumer to make full payment on a consolidated bill. The rules shall address collection of payments, service disconnection and reconnection, and the allocation of costs associated with collection, disconnection and reconnection. A distribution utility shall be solely responsible for actual disconnection and reconnection. [1999 c.865 §14]

757.650 [1961 c.691 §10; renumbered 758.445]

757.652 [Formerly part of 757.615; 1965 c.242 §1; renumbered 758.450]

757.654 Commission authority to investigate allegations of undue market influence. Upon receiving a complaint, or on its own motion, the Public Utility Commission is authorized to investigate, as provided under ORS 756.515, whether any electric company that is an electricity service supplier has exercised undue market power with respect to the sale or distribution of electricity services. The commission may take such action as authorized by law to mitigate an exercise of undue market power. [1999 c.865 §12]

757.655 [1961 c.691 §13; renumbered 758.455]

757.656 Failure to comply with ORS 757.600 to 757.667; cause of action. Any claim that an electric company has failed to comply with ORS 757.600 to 757.667 shall be filed as a complaint with the Public Utility Commission pursuant to ORS 756.500. After reasonable notice to the electric company and exhausting all available remedies before the commission, any person injured by an electric company's failure to comply with any provision of ORS 757.600 to 757.667 may file an action in the circuit court for the county where the electric company has its principal business office in this state for an order requiring compliance with ORS 757.600 to 757.667. [1999 c.865 §13]

757.659 Commission rules; contents. According to the applicable provisions of ORS 756.060 and ORS chapter 183, the Public Utility Commission shall adopt such rules as are necessary to implement ORS 757.600 to 757.667. Rules adopted by the commission shall address at least the following:

(1) Requirements and methodologies for each electric company to provide unbundled rates and services pursuant to ORS 757.642.

(2) Requirements for each electric company allowing aggregation of electricity loads pursuant to ORS 757.627, which may include aggregation of demand for other services available under direct access.

(3) Requirements for consumer protection. Consumer protection rules adopted by the commission that relate to electricity service suppliers shall be applicable throughout this state and shall, at a minimum, contain provisions for the disclosure of price, power source and environmental impact in contract offers and marketing information.

(4) Market valuation methodologies for determining the amount and recovery of the costs of uneconomic utility investment and the amount of and credit for economic utility investment.

(5) Requirements for each electric company to offer a portfolio of rate options under ORS 757.603.

(6) The method of determining a default supplier for those consumers who are not eligible to participate in a portfolio program under ORS 757.603 in a manner that provides for viable competition among electricity service suppliers and among power generation companies. The commission may condition the use of a default service option by requiring reasonable notice and commitment from a consumer who intends to use the default service option in nonemergency situations.

(7) Requirements for market structure described in ORS 757.646.

(8) Requirements for public purpose charges and credits under ORS 757.612.

(9) Requirements for meters, metering services, billing and collection services, and customer response functions. [1999 c.865 §15; 2001 c.683 §19]

757.660 Use of arbitration to resolve disputes relating to valuation of electric company investments; rules. (1) In adopting market valuation methodologies under ORS 757.659 (4), the Public Utility Commission may provide for use of arbitration to resolve disputes relating to valuation of electric company investments.

(2) The commission shall adopt rules for the following purposes:

(a) Establishing the process for selecting an arbitrator under this section.

(b) Establishing the type, scope and subject matter of arbitrations under this section, and the procedure for conducting those arbitrations.

(c) Establishing standards for the decision of an arbitrator under this section.

(d) Governing who may be a party to an arbitration under this section.

(3)(a) An arbitrator selected under rules adopted pursuant to subsection (2) of this section must be experienced in valuing generating resources and may not have any material conflict of interest in the result of the arbitration.

(b) Any party to the arbitration may challenge the selection of an arbitrator by direct petition to the commission. The commission's review of the selection shall be limited to allegations of bias and lack of qualifications. The commission shall hold a hearing within 10 days after the filing of a petition, and the commission shall issue a final decision within 10 days after the hearing. The commission may require selection of a different arbitrator.

(4) The arbitrator shall control the time, manner and place of the arbitration, subject to any limitations established by commission rule.

(5) An arbitrator acts on behalf of the commission in performing duties and powers under this section and under rules adopted by the commission pursuant to this section. Nothing in this section shall be construed to grant any rights or privileges to an arbitrator that are otherwise afforded to persons employed by the state.

(6) The commission shall enforce an arbitration decision made pursuant to this section, unless any party to the arbitration files written exceptions with the commission for any of the following causes:

(a) The decision was procured by corruption, fraud or undue means;

(b) There was evident partiality or corruption on the part of the arbitrator;

(c) The arbitrator exceeded the arbitrator's powers, or so imperfectly executed the arbitrator's powers that the rights of the party were substantially prejudiced;

(d) There was an evident material miscalculation of figures or an evident material mistake in the description of any thing or property referred to in the decision; or

(e) The decision was based on an erroneous interpretation of a statute, rule or other law.

(7) If, after a hearing on the exceptions filed as provided in subsection (6) of this section, it appears to the commission that the decision should be set aside or modified, the commission may by order refer the decision back to the arbitrator with proper instructions for correction or rehearing.

(8) A commission order or decision under this section may not be appealed until after the commission issues a final order adopting the arbitration decision. [2001 c.134 §1a; 2005 c.22 §507; 2005 c.638 §10]

Note: 757.660 was added to and made a part of 757.600 to 757.689 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.661 Commission authority to require filing. The Public Utility Commission may require an electric company to make any filings under this chapter that the commission determines necessary to implement ORS 757.600 to 757.667. [1999 c.865 §20]

757.663 Commission authority to require electric company to enter into contracts with Bonneville Power Administration. In order to preserve the benefits of federal low-cost power for residential and small-farm consumers of electric utilities, the Public Utility Commission may require an electric company to enter into contracts with the Bonneville Power Administration for the purpose of securing such benefits. The contracts shall be subject to approval by the commission. In reviewing a contract, the commission, at a minimum, shall consider:

(1) The short-term expected cost of electric power from the Bonneville Power Administration compared to market-priced alternatives;

(2) The long-term benefit of retaining the rights to purchase electric power from the Bonneville Power Administration at cost, compared to market-priced alternatives; and

(3) Other factors deemed relevant by the commission. [1999 c.865 §19]

757.665 Limitation on installing, servicing electric meters. Electric meter installation, testing and maintenance shall be performed only by a distribution utility. [1999 c.865 §15a]

757.667 City authority over rights of way. Nothing in ORS 757.600 to 757.667 shall diminish, or authorize regulations that diminish, a city's authority to control the use of its rights of way and to collect license fees, privilege taxes, rent or other charges for the use of the city's rights of way. [1999 c.865 §17]

757.669 Policy regarding consumer-owned electric utilities. The Legislative Assembly declares that it is the policy of the State of Oregon regarding consumer-owned utilities to:

(1) Preserve and enhance the ability of community-based, consumer-owned utilities to provide reliable electric power to their consumers;

(2) Recognize that communities served by consumer-owned utilities located in various parts of the State of Oregon may differ in their needs and desires concerning the provision of electricity and related products and services;

(3) Preserve and enhance the ability of consumer-owned utilities and their elected governing bodies to respond to their consumers' needs and desires;

(4) Retain local control over consumer-owned utilities that provide or distribute electricity to retail electricity consumers;

(5) Preserve, clarify and, as provided herein, enhance the rights and authorities of consumer-owned utilities and their governing bodies; and

(6) Preserve the existing exclusive distribution rights of electric utilities as and to the extent such rights exist under current law. [1999 c.865 §22]

757.670 [1961 c.691 §14; renumbered 758.460]

757.672 Application of ORS 757.603 to 757.667 to consumer-owned electric utility; reciprocal electricity sales. (1) Nothing in ORS 757.603 to 757.667 is intended to limit or restrict the rights and authority of a consumer-owned utility, or to subject a consumer-owned utility to the regulatory authority of the Public Utility Commission not otherwise provided by law. ORS 757.603 to 757.667 shall not apply to a consumer-owned utility.

(2) Notwithstanding subsection (1) of this section, a consumer-owned utility that sells electricity, either directly or through a related party, to a nonresidential electricity consumer of another electric utility in this state, shall permit any other electricity service supplier to sell electricity to the consumer-owned utility's nonresidential electricity consumers whose electricity use, measured in average megawatts per year, is equal to or greater than the use of the nonresidential electricity consumer of the other electric utility. Such consumer-owned utility shall be subject to ORS 757.649 (1) to (4) and rules adopted thereunder. [1999 c.865 §23]

757.675 [1961 c.691 §12; 1971 c.655 §99; renumbered 758.465]

757.676 Consumer-owned utility authorized to offer direct, portfolio or other forms of access to electricity services. The governing body of a consumer-owned utility is authorized to determine whether and under what terms and conditions it will offer its retail electricity consumers direct access, portfolio access or other forms of access to electric service suppliers. In making such determination, the governing body of a consumer-owned utility shall consider such factors as it deems appropriate. A consumer-owned utility shall have sole authority to determine:

(1) The quality and nature of electric service, including but not limited to different product and pricing options, which shall be made available to its retail electricity consumers.

(2) The extent to which products and services will be unbundled and the rates,

tariffs, terms and conditions on which they may be offered.

(3) Whether one or more pilot programs for direct access, portfolio access or other forms of access to alternative suppliers will be offered.

(4) Notwithstanding ORS 757.600 (10) and (35), what constitutes an economic or uneconomic utility investment, the value of such investments and, in the case of uneconomic utility investments, the manner and means of mitigating such investments.

(5) Whether and on what basis a transition charge will be adopted, assessed and collected from a retail electricity consumer located within the utility's service territory, including but not limited to a nonbypassable distribution charge, the amount and period of recovery for the charges, the allocation of the charges among retail electricity consumers located within the utility's service territory and the method of collecting such charges including but not limited to whether to impose a nonbypassable distribution charge.

(6) The manner of collecting stranded distribution charges, systems benefit charges, franchise fees, taxes and payments made in lieu of taxes from retail electricity consumers located within the utility's service territory for electric power transactions using transmission facilities, whether or not such transactions use distribution facilities. The governing body may assign charges on the basis of usage, demand or any combination or method it finds appropriate. Charges need not be assigned to specific facilities.

(7) The collection from retail electricity consumers located within the utility's service territory through rates, fees or charges, including the imposition of a nonbypassable distribution charge, in amounts sufficient to recover 100 percent of stranded costs imposed by, or incurred pursuant to the purchase of cost-based electric power from, the Bonneville Power Administration. Such stranded cost charges may include the difference in cost associated with purchasing electric power from the Bonneville Power Administration and the cost of purchasing a like and similar amount of electric power at market prices.

(8) The establishment of technical capability requirements, financial responsibility requirements and other protections for retail electricity consumers located within the utility's service territory and the consumer-owned utility in dealings with electric service suppliers.

(9) Access to or use of the utility's transmission facilities or distribution system by retail electricity consumers or electric service suppliers.

(10) The utility's qualification standards for energy service suppliers in addition to any certification standards established by the Public Utility Commission, provided that the qualification standards are uniformly applied to electricity service providers in a nondiscriminatory manner. [1999 c.865 §24; 2003 c.186 §80]

757.679 Net billing agreements. (1) Nothing in ORS 757.669 to 757.687 is intended to impair the rights or obligations of any party to net billing agreements. Notwithstanding any other provision of ORS 757.600 to 757.667, 757.676 and 757.687, and in the event a participating utility is required to make payments pursuant to a net billing agreement, the governing body of a participating utility may levy a rate, fee or charge, including a nonbypassable distribution system access charge against retail electricity consumers located within the utility's service territory, to meet its obligations.

(2) As used in this section:

(a) "EWEB" means the City of Eugene, Oregon, acting by and through the Eugene Water and Electric Board.

(b) "Net billing agreements" means those certain agreements that provide for the payment, through net billing of costs of certain nuclear power projects, including the payment of bonds, notes or other evidences of indebtedness issued by EWEB and by the supply system, respectively, to pay such project costs entered into prior to July 23, 1999:

(A) Between the administrator of the Bonneville Power Administration and EWEB;

(B) Among a participating utility, the administrator of the Bonneville Power Administration and EWEB; or

(C) Among a participating utility, the administrator of the Bonneville Power Administration and the supply system.

(c) "Participating utility" means a consumer-owned utility established by, or organized and existing under, the Oregon Constitution and laws of the State of Oregon, and that is a party to a net billing agreement.

(d) "Supply system" means the Washington Public Power Supply System, a municipal corporation or joint power agency organized and existing under and pursuant to the laws of the State of Washington. [1999 c.865 §25]

757.680 [1961 c.691 §15; renumbered 758.470]

757.683 Consumer-owned utility's distribution rights and control over distribution system. Notwithstanding the provisions of ORS 757.600 to 757.667, a con-

sumer-owned utility shall have exclusive distribution rights, to the extent such rights are provided by law, and exclusive responsibility for the performance and oversight of its distribution system including the acquisition, construction, financing, operation and maintenance of distribution facilities and metering, billing, collection and consumer response functions relating to the distribution of electricity to retail electricity consumers located within the utility's service territory. Nothing in this section shall diminish or enlarge the rights of any person under ORS 758.400 to 758.475. [1999 c.865 §26]

757.685 [1961 c.691 §16; 1965 c.242 §2; 1971 c.655 §99a; renumbered 758.475]

757.687 Consumer-owned utility offering direct access; public purpose charge; bill assistance program. (1) Beginning on the date a consumer-owned utility provides direct access to any class of retail electric consumers, the consumer-owned utility shall collect from that consumer class a nonbypassable public purpose charge until January 1, 2026. Except as provided in subsection (8) of this section, the amount of the public purpose charge shall be sufficient to produce revenue of not less than three percent of the total revenue collected by the consumer-owned utility from its retail electricity consumers for electricity services, distribution, ancillary services, metering and billing, transition charges and any other costs included in rates as of July 23, 1999, except that the consumer-owned utility may exclude from the calculation of such costs any cost related to the public purposes described in subsection (5) of this section. If a consumer-owned utility has fewer than 17 consumers per mile of distribution line, the amount of the public purpose charge shall be sufficient to produce revenue not less than three percent of the total revenue from the sale of electricity services in the utility's service area to the consumer class that is provided direct access, or the utility's consumer class percentage share of state total electricity sales multiplied by three percent of total statewide retail electric revenue, whichever is less.

(2) Except as provided in subsection (9) of this section, the governing body of a consumer-owned utility shall determine the manner of collecting and expending funds for public purposes required by law to be assessed against and paid by the retail electric consumers of the utility. A determination by the governing body shall include:

(a) The manner for collecting public purpose charges;

(b) Public purpose programs upon which revenue from the charges may be expended; and

(c) The allocation of expenditures for each program.

(3) Beginning on the same date two years after July 23, 1999, a consumer-owned utility shall report annually to the State Department of Energy created under ORS 469.030 on the public purpose charges paid to the utility by its retail electric consumers and the public purposes on which the revenue was expended.

(4) A consumer-owned utility may comply with the public purpose requirements of this section by participating in collaborative efforts with other consumer-owned utilities located in this state.

(5) Funds assessed and paid by, and credits or other financial assistance issued or extended to, retail electric consumers for purposes of this section may, in the discretion of the governing body of the consumer-owned utility, be expended to fund programs for energy conservation, renewable resources or low-income energy services otherwise required by the laws of this state, adopted by the governing body pursuant to the National Energy Conservation Policy Act (Public Law 95-619, as amended November 10, 1981), or conducted by the utility pursuant to agreement with the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501). All such funds expended, credits issued and incremental costs incurred in connection with the performance of a consumer-owned utility's obligations under this section shall be credited toward the utility's public purpose funding obligation under this section.

(6) A consumer-owned utility also may credit toward its funding obligations under this section any incremental costs incurred by the utility for capital expenditures made to reduce its distribution system energy losses, existing biomass gas and waste to energy systems, existing hydroelectric generation projects using fish attraction water, for new energy conservation and renewable resource funding costs included in its wholesale power supplier's charges and for electric power generated by renewable or cogeneration resources pursuant to requirements of the Public Utilities Regulatory Policy Act of 1978 (Public Law 95-617), to the extent that such costs exceed the average cost of the utility's other electric power resources.

(7) A consumer-owned utility also may credit toward its public purpose funding obligations under this section any costs incurred in complying with ORS 469.649 to 469.659.

(8) Beginning on March 1, 2002, a consumer-owned utility whose territory abuts the greatest percentage of the site of an alu-

minum plant that averages more than 100 megawatts of electricity use per year shall collect from the aluminum company a public purpose charge equal to one percent of the total revenue from the sale of electricity services to the aluminum plant from any source.

(9)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against public purpose charges billed by a consumer-owned utility for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of the annual public purpose charges, and the above-market costs of purchases of new renewable energy resources incurred by the retail electricity consumer, less administration costs incurred under this subsection. The credit shall not exceed, on an annual basis, the lesser of:

(A) The amount of the retail electricity consumer's qualifying expenditures; or

(B) The portion of the public purpose charge billed to the retail electricity consumer that is dedicated to new energy conservation, new market transformation or the above-market costs of new renewable resources.

(b) To obtain a credit under this subsection, a retail electricity consumer shall file with the department a description of the proposed conservation project, new market transformation or new renewable energy resource and a declaration that the retail electricity consumer plans to incur the qualifying expenditure. The department shall issue a notice of precertification within 30 days of receipt of the filing, if such filing is consistent with this subsection. Notice shall be issued to the retail electricity consumer and the appropriate consumer-owned utility. The credit may be taken after a retail electricity consumer provides a letter from a certified public accountant to the department verifying that the precertified qualifying expenditure has been made.

(c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that are not used in one year may be carried forward for use in subsequent years.

(d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may request that the department hire an independent auditor to assess the potential for conservation measures at the site. If the independent auditor determines there is no available conservation measure at the site that would have a simple payback of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment obligation for public purpose charges related to the site. If the auditor determines that there are potential conservation measures available at the site, the retail electricity consumer shall be entitled to a credit against public purpose charges related to the site equal to 54 percent of the public purpose charges less the estimated cost of available conservation measures.

(B) A retail electricity consumer shall be entitled each year to the credit described in this paragraph unless a subsequent audit determines that new conservation investment opportunities are available. The department may require that a new audit be performed on the site to determine whether new conservation measures are available, provided that the audits occur no more than once every two years.

(C) The retail electricity consumer shall pay the cost of the audits described in this subsection.

(10) A retail electricity consumer with a load greater than one average megawatt shall not be required to pay a public purpose charge in excess of three percent of the consumer's total cost of electricity services unless the charge is established in an agreement between the consumer and the consumer-owned utility.

(11) Beginning on March 1, 2002, a consumer-owned utility shall have in operation a bill assistance program for households that qualify for federal low-income energy assistance in the consumer-owned utility's service area. A consumer-owned utility shall report annually to the Housing and Community Services Department detailing the utility's program and program expenditures.

(12) A consumer-owned utility may require an electricity service supplier to provide information necessary to ensure compliance with this section. The consumer-owned utility shall ensure the privacy and protection of any proprietary information provided. [1999 c.865 §27; 2001 c.819 §5; 2007 c.301 §29]

757.689 Recovery of costs of energy conservation measures in rates of electric company. (1) In addition to the public purpose charge established by ORS 757.612, the Public Utility Commission may authorize an electric company to include in its rates the costs of funding or implementing cost-effective energy conservation measures implemented on or after June 6, 2007. The costs may include amounts for weatherization programs that conserve energy.

(2) The commission shall ensure that a retail electricity consumer with a load greater than one average megawatt:

(a) Is not required to pay an amount that is more than three percent of the consumer's

total cost of electricity service for the public purpose charge under ORS 757.612 and any amounts included in rates under this section; and

(b) Does not receive any direct benefit from energy conservation measures if the costs of the measures are included in rates under this section. [2007 c.301 §46]

757.690 [1961 c.691 §17; repealed by 1967 c.164 §4]

757.691 Applicability. Nothing in ORS 757.669 to 757.687 is intended to affect administration and enforcement of ORS 758.400 to 758.475 or to diminish or enlarge the rights of any person under ORS 758.400 to 758.475. [1999 c.865 §28]

EMERGENCY CURTAILMENT OF ELECTRICITY OR NATURAL OR MANUFACTURED GAS

757.710 Emergency curtailment plan required; credits for weatherization or alternate energy devices. (1) Any person, as defined in ORS 758.400, engaged in the sale or resale of electricity or natural or synthetic gas in this state shall present for approval by the Public Utility Commission a plan for curtailment of electrical or gas load in the event of any predictable circumstance that may jeopardize prolonged continuity of service. Utility plans shall be submitted in such form and within such time limits as the commission shall specify.

(2) Utility plans may provide for a credit against future curtailment for a customer who has already accomplished a reduction in demand for the utility's service by installing an alternative energy device or by weatherization or other installed conservation measures equivalent to the proposed level of curtailment. Where the level of curtailment exceeds the demand reduction produced, by the conservation measures or installed alternative energy device of the customer, the utility plan may provide for credit against the level of curtailment ordered to the extent of the demand reduction produced by the conservation measure or alternate energy device.

(3) The commission shall approve the feature of any plan concerning such credit against curtailment to the extent of the demand reduction produced and shall not penalize either the utility or the customer, in the event of a curtailment order, under ORS 757.720 for the amount of reduced demand. [1973 c.309 §2; 1975 c.606 §10; 1979 c.355 §1]

757.720 Factors to be considered in approving plan; authority to establish plan; consultation with State Department of Energy. (1) Approval of utility plans for the curtailment of load shall be based on the following factors:

(a) The consistency of the plan with the public health, safety and welfare;

(b) The technical feasibility of implementation of the plan;

(c) The effectiveness with which the plan minimizes the impact of any curtailment; and

(d) Consistency with Oregon energy policies formulated under ORS 469.010 to 469.155, 469.300 to 469.563 and 757.710 and this section.

(2) In the event of an emergency threatening the health, safety and welfare of the general public, the Public Utility Commission may on the commission's own motion and without hearing establish a plan for the curtailment of load by any person referred to in ORS 757.710. If an emergency is not present, the commission shall prior to approval hold public hearings with respect to any proposed plan and give reasonable notice of such hearings.

(3) The commission shall consult with the Director of the State Department of Energy before approving a plan. [1973 c.309 §3; 1975 c.606 §11; 2005 c.22 §508]

757.730 Liability when curtailment occurs. A utility shall not be liable for damages to persons or property resulting from a curtailment of service in accordance with a plan approved by the Public Utility Commission. [1973 c.309 §4]

KLAMATH RIVER DAMS

757.732 Definitions for ORS 757.732 to 757.744. As used in ORS 757.732 to 757.744:

(1) "Agreement in principle" means the agreement signed November 13, 2008, by the states of Oregon and California, by the United States Department of the Interior and by PacifiCorp.

(2) "Allocated share" means the portion of PacifiCorp's costs assigned to this state under the interjurisdictional cost allocation methodology used by the Public Utility Commission for the purpose of establishing rates for PacifiCorp.

(3) "Customers" means the Oregon retail electricity customers of PacifiCorp.

(4) "Final agreement" means a successor agreement to the agreement in principle.

(5) "Klamath River dam" means the J.C. Boyle Dam located in Oregon, the Copco 1 Dam located in California, the Copco 2 Dam located in California or the Iron Gate Dam located in California. [2009 c.690 §2]

757.734 Recovery of investment in Klamath River dams. (1) Not more than six months after the execution of a final agreement, the Public Utility Commission shall determine a depreciation schedule under

ORS 757.140 for each Klamath River dam based on the assumption that the dam will be removed in 2020. The commission may change a depreciation schedule determined under this section at any time if removal of a dam will occur during a year other than 2020.

(2) The commission shall use the depreciation schedules prepared under this section to establish rates and tariffs for the recovery of Oregon's allocated share of undepreciated amounts prudently invested by PacifiCorp in a Klamath River dam. Amounts recoverable under this section include, but are not limited to:

(a) Return of investment and return on investment;

(b) Capital improvements required by the United States or any state for continued operation of the dam until dam removal;

(c) Amounts spent by PacifiCorp in seeking relicensing of the dam before July 14, 2009;

(d) Amounts spent by PacifiCorp for settlement of the issues of relicensing or removal of the dam; and

(e) Amounts spent by PacifiCorp for the decommissioning of the dam in anticipation of the dam's removal.

(3) If any amount specified under subsection (2) of this section has not been recovered by PacifiCorp before a dam is removed, the Public Utility Commission shall allow recovery of that amount by PacifiCorp in PacifiCorp's rates and tariffs. The commission shall allow the recovery without an amortization schedule if the impact of the recovery does not exceed one-half of one percent of PacifiCorp's annual revenue requirement. If the impact exceeds one-half of one percent of PacifiCorp's annual revenue requirement, the commission may establish an amortization schedule that limits the annual impact to one-half of one percent of PacifiCorp's annual revenue requirement. [2009 c.690 §3]

757.736 Surcharges for funding costs of removing Klamath River dams; judicial review. (1) Not more than 30 days after the execution of a final agreement, PacifiCorp must file a copy of the final agreement with the Public Utility Commission along with full and complete copies of all analyses or studies that relate to the rate-related costs, benefits and risks for customers of removing or relicensing Klamath River dams and that were reviewed by PacifiCorp during the decision-making process that led to PacifiCorp's entering into the final agreement.

(2) PacifiCorp must include with the filing made under subsection (1) of this section tariffs for the collection of two nonbypassable surcharges from its customers for the purpose of paying the costs of removing Klamath River dams as described in subsection (11) of this section. Notwithstanding the commission's findings and conclusions under subsection (4) of this section, the commission shall require PacifiCorp to begin collecting the surcharges on the date that the filing is made under subsection (1) of this section, or on January 1, 2010, whichever is later, and PacifiCorp shall continue to collect the surcharges pending a final decision on the commission's order under subsection (4) of this section. The surcharges imposed under this section shall be:

(a) A surcharge for the costs of removing the J.C. Boyle Dam; and

(b) A surcharge for the costs of removing the Copco 1 Dam, the Copco 2 Dam and the Iron Gate Dam.

(3) The surcharges imposed under this section may not exceed the amounts necessary to fund Oregon's share of the customer contribution of $200 million identified in the agreement in principle. In addition, the total amount collected in a calendar year under both surcharges may not exceed more than two percent of PacifiCorp's annual revenue requirement as determined in PacifiCorp's last case under ORS 757.210 decided by the commission before January 1, 2010.

(4) Not more than six months after a filing is made under subsection (1) of this section, the commission shall conduct a hearing under ORS 757.210 on the surcharges imposed under this section, and shall enter an order setting forth findings and conclusions as to whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable.

(5) Notwithstanding ORS 183.482 (1), jurisdiction for judicial review of any appeal of an order entered under subsection (4) of this section is conferred on the Supreme Court, and a person seeking judicial review of the order must file a petition for review with the Supreme Court in the manner provided by ORS 183.482. ORS 183.482 (3) does not apply to an order entered under subsection (4) of this section. If a petition for review is filed, the surcharges imposed under the terms of the final agreement shall remain in effect pending a final decision on the petition, but shall be refunded if the rates resulting from the surcharges are finally determined not to be fair, just and reasonable. A petition filed under this subsection must indicate on its face that the petition is filed pursuant to this subsection.

(6) The commission may not use any commercially sensitive information provided

to the commission in a filing made under subsection (1) of this section for any purpose other than determining whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable. Notwithstanding ORS 192.410 to 192.505, the commission may not release commercially sensitive information provided to the commission under this section, and shall require any person participating in a proceeding relating to the surcharge to sign a protective order prepared by the commission before allowing the participant to obtain and use the information.

(7) The surcharges imposed under this section must be of a specified amount per kilowatt hour billed to retail customers, as determined by the commission. The amount of each surcharge shall be calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's share of the customer contribution of $200 million identified in the agreement in principle. To the extent practicable, the commission shall set the surcharges so that total annual collections of the surcharges remain approximately the same during the collection period, and, when setting the rate for the surcharges, the commission shall account for the actual and expected changes in energy usage over the collection period and account for the actual and expected changes in interest rates on the collected funds over the collection period. The commission may change the collection schedule if a Klamath River dam will be removed during a year other than 2020.

(8) Except as provided in ORS 757.738 (2), all amounts collected under the surcharges imposed under this section shall be paid into the appropriate trust account established under ORS 757.738.

(9) If the commission determines at any time that amounts have been collected under this section in excess of those needed, or in excess of those allowed, the commission must:

(a) Direct the trustee of the appropriate trust account under ORS 757.738 to refund these excess amounts to customers or to otherwise use these amounts for the benefit of customers; or

(b) Adjust future surcharge amounts as necessary to offset the excess amounts.

(10) If one or more Klamath River dams will not be removed, the commission shall direct PacifiCorp to terminate collection of all or part of the surcharges imposed under this section. In addition, the commission shall direct the trustee of the appropriate trust account under ORS 757.738 to apply any excess balances in the accounts to Oregon's allocated share of prudently incurred costs to implement Federal Energy Regulatory Commission relicensing requirements. If any excess amounts remain in the trust accounts after that application, the Public Utility Commission shall order that the excess amounts be refunded to customers or otherwise be used for the benefit of customers in accordance with Public Utility Commission rules and policies.

(11) For the purposes of subsection (2) of this section, "the costs of removing Klamath River dams" includes costs of:

(a) Physical removal of the dams;

(b) Site remediation and restoration;

(c) Avoiding downstream impacts of dam removal;

(d) Downstream impacts of dam removal;

(e) Permits that are required for the removal;

(f) Removal and disposal of sediment, debris and other materials, if necessary; and

(g) Compliance with environmental laws. [2009 c.690 §4; 2011 c.394 §1]

757.738 Surcharge trust accounts related to removal of Klamath River dams. (1)(a) The Public Utility Commission shall establish a separate trust account for amounts generated by each of the two surcharges imposed under ORS 757.736. The commission shall establish the trust accounts as interest-bearing accounts:

(A) With an agency of the United States identified in the final agreement;

(B) In a depository that is qualified under ORS 295.001 to 295.108 to receive public funds; or

(C) With the State Treasurer, to be invested as provided in ORS 293.701 to 293.857.

(b) The commission may establish each of the two trust accounts with a different trustee among those listed in paragraph (a) of this subsection.

(c) The commission may authorize transfer of funds from one trust account to another as necessary to fund removal of the Klamath River dams.

(2) If an agreement is entered into under ORS 757.742 (2), the parties to the agreement may agree that a portion of the amounts collected under one surcharge may be deposited in the trust account established for amounts collected under the other surcharge.

(3) Upon request of an agency of the United States, or upon request of the designee of an agency of the United States, the commission shall require the trustee of the

appropriate trust account established under this section to transfer to the agency or designee the amounts that are necessary to pay the costs of removing the Klamath River dams as described in ORS 757.736 (11).

(4) If any amounts remain in a trust account established under this section after the trustee makes all payments necessary for the costs of removing the Klamath River dams as described in ORS 757.736 (11), the commission shall direct the trustee of the account to refund those amounts to customers or to otherwise use the excess amounts for the benefit of customers. [2009 c.690 §5; 2011 c.394 §2]

757.740 Recovery of other costs incurred as result of changes in operation to or removal of Klamath River dams. Pursuant to ORS 757.210, the Public Utility Commission shall allow PacifiCorp to include in its rates and tariffs this state's allocated share of any costs that are prudently incurred by PacifiCorp from changes in operation of Klamath River dams before removal of the dams, or that are prudently incurred for replacement power after the dams are removed, that are not otherwise recovered under ORS 757.734 and 757.736. [2009 c.690 §6]

757.742 Public Utility Commission authorization to enter agreement with California related to cost apportionment and trust fund. (1) The State of Oregon may enter into an agreement with representatives of the State of California, either as part of a final agreement or by separate agreement, that establishes each state's share of the customer contribution of $200 million identified in the agreement in principle.

(2) The Public Utility Commission may enter into an agreement with representatives of the State of California to establish and administer the trust accounts authorized under ORS 757.738 and to ensure that trust account moneys are disbursed for dam removal costs that are necessary and appropriate. [2009 c.690 §7]

757.744 Disclaimers. (1) ORS 757.732 to 757.744 do not authorize the expenditure of any public moneys for removal of Klamath River dams.

(2) ORS 757.732 to 757.744 do not create a cause of action against the State of Oregon or against any of the officers, employees or agents of the state and may not be used as the basis for an assertion of liability on the part of the State of Oregon or of any officers, employees or agents of the state. [2009 c.690 §8]

HEALTH ENDANGERING TERMINATION OF RESIDENTIAL UTILITY SERVICE

757.750 Legislative findings. The Legislative Assembly finds that the termination of residential electric and natural gas utility service can lead to the serious impairment of human health and possibly to loss of life; therefore, the Legislative Assembly has enacted ORS 757.750 to 757.760. [1979 c.868 §2; 1983 c.326 §1]

757.755 Termination of residential electric or natural gas service prohibited; rules of commission. (1) The Public Utility Commission of Oregon shall establish rules to prohibit the termination of residential electric or natural gas service when such termination would significantly endanger the physical health of the residential consumer.

(2) The commission shall provide by rule a method for determining when the termination of residential electric or natural gas service would significantly endanger the physical health of the residential consumer. [1979 c.868 §3; 1983 c.326 §2]

757.760 Requirements for notice of termination of service; payment schedules; rules. The Public Utility Commission shall establish rules to require each electric and natural gas utility to:

(1) Give written or personal notice of a proposed termination of residential service in a manner reasonably calculated to reach the residential consumer within a reasonable period of time before the proposed date of termination;

(2) Accept reasonable partial payment on the outstanding account and to establish a reasonable payment schedule for any indebtedness, including a deposit, that the utility claims the residential consumer owes for service at any residential address in lieu of termination of or refusal to provide service, and to inform the residential consumer of the provisions of this subsection;

(3) Inform those residential consumers who cannot afford to pay their bills or deposits of the names and telephone numbers of the appropriate unit within the Department of Human Services or other appropriate social service agencies that can help the consumer investigate what federal, state or private aid might be available to that consumer; and

(4) Provide that a transfer of service from one premises to another within the utility's service area shall not be considered a discontinuation of service. [1979 c.868 §4; 1983 c.326 §3]

OUTDOOR LIGHTING FIXTURES

757.765 Public utility provision of shielded outdoor lighting fixtures to customers. (1) As used in this section:

(a) "Outdoor lighting fixture" means an automatically controlled searchlight, spotlight, floodlight or other device used for architectural lighting, lighting streets or parking lots, landscape lighting, billboards or other artificial illumination or advertising purposes.

(b) "Public utility" has the meaning given that term in ORS 757.005.

(c) "Shielded" means that a light fixture is designed to ensure that direct or indirect light rays emitted from the fixture are projected below a horizontal plane running through the lowest light-emitting point of the fixture.

(2) A public utility supplying electricity that provides a customer with outdoor lighting fixtures shall make the option of using shielded outdoor lighting fixtures available to the customer. The utility shall notify a customer to whom the utility provides outdoor lighting fixtures that a shielded outdoor lighting fixture option is available through the utility. The utility shall file an application with the Public Utility Commission to establish rates and charges for providing the shielded outdoor lighting fixture option.

(3) Subsection (2) of this section does not require a utility to reimburse a customer for the cost of a shielded outdoor lighting fixture installed before the date the utility sends a notice to the customer under this section, or to provide an option for a customer to acquire:

(a) Incandescent outdoor lighting fixtures of not more than 150 watts;

(b) Light sources of not more than 70 watts that are not incandescent lighting fixtures;

(c) Outdoor lighting fixtures on advertising signs on interstate or federal primary highways;

(d) Navigational lighting systems at airports or other lighting necessary for aircraft safety; or

(e) Outdoor lighting fixtures necessary for worker safety at farms, ranches, dairies or feedlots or at industrial, mining, oil or gas facilities. [2009 c.588 §1]

Note: 757.765 and 757.770 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.770 Deadline for public utility filing of outdoor lighting fixture rate and charge application; required notification to customers. (1) A public utility that is subject to ORS 757.765 shall file an initial rate and charge application as required by ORS 757.765 (2) on or before January 1, 2010.

(2) A utility that is subject to ORS 757.765 shall give a customer notice of the shielded outdoor lighting fixture option on or before the later of the date the utility first begins providing outdoor lighting fixtures to the customer or 60 days after the rate or charge takes effect. [2009 c.588 §2]

Note: See note under 757.765.

HIGH VOLTAGE POWER LINE REGULATION

757.800 Definitions for ORS 757.800 and 757.805. As used in this section and ORS 757.805, unless the context requires otherwise:

(1) "Authorized person" means:

(a) An employee of a utility which produces, transmits or delivers electricity.

(b) An employee of a utility which provides and whose work relates to communication services or state, county or municipal agencies which have authorized circuit construction on or near the poles or structures of a utility.

(c) An employee or agent of an industrial plant whose work relates to the electric system of the industrial plant.

(d) An employee of a cable television or communication services company or an employee of a contractor of a cable television or communication services company if specifically authorized by the owners of the poles to make cable television or communication services attachments.

(e) An employee or agent of state, county or municipal agencies which have or whose work relates to overhead electric lines or circuit construction or conductors on poles or structures of any type.

(f) An employee of a transmission company as defined in ORS 758.015.

(2) "High voltage" means voltage in excess of 600 volts measured between conductors or between a conductor and the ground.

(3) "Overhead line" means all bare or insulated electric conductors installed above ground.

(4) "Person" or "business entity" means those parties who contract to perform any function or activity upon any land, building, highway or other premises.

(5) "Utility" means any electric or communication utility described by ORS 757.005,

any plant owned or operated by a municipality, any person furnishing community antenna television service to the public and any cooperative corporation or people's utility district engaged in furnishing electric or communication service to customers.

(6) "Proximity" means within 10 feet or such greater distance as may be prescribed by rule adopted pursuant to ORS chapter 654. [1989 c.672 §2; 2001 c.913 §5]

757.805 Accident prevention required for work near high voltage lines; effect of failure to comply; applicability; other remedies unaffected. (1) Any person or business entity responsible for performing any function, activity, work or operation in proximity to a high voltage overhead line shall guard effectively against accidents involving such high voltage overhead line, as required by rules adopted pursuant to ORS chapter 654.

(2) If any violation of subsection (1) of this section or rules adopted pursuant to ORS chapter 654 results in, or is a contributing cause of, a physical or electrical accident involving any high voltage overhead line, the person or business entity violating subsection (1) of this section or rules adopted pursuant to ORS chapter 654 is liable to the utility operating the high voltage overhead lines for all damages to its facilities and all costs and expenses, including damages to any third persons, incurred by the utility as a result of the accident. However, any person or business entity that has given advance notice of the function, activity or work to the utility operating the high voltage overhead line, and has otherwise substantially complied with rules adopted pursuant to ORS chapter 654, shall only be liable for such damages in proportion to that person or business entity's comparative fault in causing or contributing to the accident.

(3) This section and ORS 757.800 do not apply to:

(a) Construction, reconstruction, operation or maintenance by an authorized person of overhead electric or communication circuits or conductors and their supporting structures or electric generation, transmission or distribution systems or communication systems.

(b) Fire, police or other emergency service workers acting under authority of a state agency or other public body while engaged in emergency operations.

(4) The provisions of this section and ORS 757.800 are not intended to displace any other remedies which may be available to the utility by statute or common law. [1989 c.672 §§3,4,5,6]

757.810 [1985 c.550 §5; renumbered 759.015 in 1989]

OREGON COMMUNITY POWER

(Definitions)

757.812 Definitions for ORS 757.812 to 757.950. As used in ORS 757.812 to 757.950:

(1) "Board" means the board of directors of Oregon Community Power.

(2) "Incumbent utility" means an investor-owned utility that is the subject of a transaction described in ORS 757.814.

(3) "Investor-owned utility" means a utility that sells electricity and that is operated by a corporation with shareholders.

(4) "Rate" has the meaning given that term in ORS 756.010.

(5) "Service" has the meaning given that term in ORS 756.010.

(6) "Service territory" means the geographic area within which a utility provides electricity to customers. [2007 c.807 §1]

Note: 757.812 to 757.954 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Acquisition Review Committee)

757.814 Creation of acquisition review committee. (1)(a) Except as provided in subsection (9) of this section, the Public Utility Commission shall give notice to the cities and counties specified in paragraph (b) of this subsection whenever the commission receives notice of a proposed transaction under ORS 757.511 (2):

(A) Relating to an investor-owned utility for which approval of the Public Utility Commission is required under ORS chapter 757; and

(B) Involving the sale of 50 percent or more of the voting shares of the utility to a person that is not an affiliated interest with the utility as defined in ORS 757.015.

(b) Notice under subsection (1) of this section shall be given to a city or county if the investor-owned utility that is the subject of the proposed transaction has service territory within the boundaries of the city or county.

(2) Upon receiving notice under subsection (1) of this section, each city or county may appoint a member to an acquisition review committee formed to represent the affected cities and counties. An acquisition review committee must be formed not more than 60 days after notice is given by the commission under subsection (1) of this section. If an acquisition review committee is not formed within 60 days after notice is given by the commission under subsection (1) of this section, the commission shall proceed

with any application made under ORS 757.511 for approval of the transaction.

(3) An acquisition review committee formed under this section shall consider a proposed transaction described in subsection (1) of this section for the purpose of determining whether:

(a) Acquisition of the investor-owned utility by Oregon Community Power would be in the best interests of the customers served by the investor-owned utility; and

(b) Acquisition of the utility can be accomplished in a manner that is consistent with the policy described in ORS 757.910.

(4) An acquisition review committee created under this section may decide to enter into negotiations for the acquisition of an investor-owned utility that is the subject of a proposed transaction described in subsection (1) of this section only by the affirmative vote of members of the committee representing counties in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility, and the affirmative vote of members of the committee representing cities in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility. If an acquisition review committee determines that negotiations should commence, the committee shall:

(a) Enter into negotiations with the incumbent utility or persons that have authority to negotiate the disposition of the incumbent utility or the electric utility assets of the incumbent utility; and

(b) If the negotiations result in an agreement between the committee and the incumbent utility or persons described in paragraph (a) of this subsection, the committee shall immediately give notice to the commission and file an application with the commission under ORS 757.511 for approval of the transaction.

(5) An acquisition review committee created under this section may decide to acquire an investor-owned utility under subsection (4) of this section only by the affirmative vote of members of the committee representing counties in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility, and the affirmative vote of members of the committee representing cities in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility. An acquisition review committee may vote to acquire an incumbent utility under this subsection only after public notice and consultation with groups representing customers of the incumbent utility.

(6) An acquisition review committee must complete negotiations and vote to enter into an agreement not more than 150 days after notice is given to cities and counties under subsection (1) of this section. If the incumbent utility agrees in writing, the committee may request that the time limitation imposed by this section be extended by 90 days.

(7) If the commission approves acquisition of the incumbent utility by Oregon Community Power, the commission shall inform the Governor and the Governor shall activate Oregon Community Power by convening an initial Oregon Community Power Board Nominating Committee under section 7, chapter 807, Oregon Laws 2007. As soon as the first board of directors of Oregon Community Power is appointed under ORS 757.834, the board shall implement the agreement and acquire the incumbent utility or the electric utility assets of the incumbent utility in the name of Oregon Community Power.

(8) An acquisition review committee shall give notice to the commission immediately if the committee proposes to dissolve or decides not to enter into negotiations under subsection (4) of this section or if negotiations do not result in an agreement.

(9) The commission may not give notice to cities and counties under subsection (1) of this section if a person providing notice of a proposed transaction under ORS 757.511 (2) also provides to the commission written consent forms signed by persons with authority to act on behalf of counties in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility and on behalf of cities in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility.

(10) An acquisition review committee may enter into an agreement for the acquisition of an incumbent utility or the electric utility assets of the incumbent utility only if the committee obtains approval for the acquisition from the appropriate state agencies in all states in which the incumbent utility serves retail electricity consumers.

(11) Notwithstanding any other provision of law, Oregon Community Power is responsible for and shall pay all costs relating to the acquisition of an incumbent utility, including but not limited to:

(a) The costs of acquiring the electric utility assets of the incumbent utility;

(b) The costs of acquiring any necessary generating capacity and transmission capacity dedicated to serving the customers in the

service area that will be acquired, including but not limited to electricity generating assets and alternate energy generating assets under construction but not yet in service;

(c) Depreciation;

(d) Loss of revenue to the incumbent utility; and

(e) All electric utility assets necessary to reintegrate the system of the incumbent utility after detaching the portion of the utility acquired by Oregon Community Power. [2007 c.807 §2]

Note: See note under 757.812.

757.815 [1985 c.550 §6; 1987 c.447 §72; renumbered 759.020 in 1989]

(Oregon Community Power Created)

757.818 Oregon Community Power created. (1) Oregon Community Power is created as a public corporation. Oregon Community Power shall exercise and carry out all powers, rights and privileges that are conferred upon Oregon Community Power under ORS 757.812 to 757.950.

(2) Oregon Community Power is created as a public corporation in order to carry out public services in sectors of the economy in which activities or services are also provided by private enterprise. Oregon Community Power is granted all needed operating flexibility under ORS 757.812 to 757.950 in order to ensure the success of Oregon Community Power while retaining principles of public accountability and oversight.

(3) The primary mission of Oregon Community Power is to provide reliable, low-cost electricity to electricity consumers in the service territory in which Oregon Community Power undertakes to provide electricity service. [2007 c.807 §3]

Note: See note under 757.812.

757.820 [1985 c.550 §6a; 1987 c.302 §1; renumbered 759.025 in 1989]

757.822 Laws applicable to Oregon Community Power. (1) Except as provided in subsection (2) of this section, the provisions of ORS chapters 35, other than ORS 35.550 to 35.575, 180, 190, 192 and 244 and ORS 30.260 to 30.460, 200.005 to 200.025, 200.045 to 200.090, 221.450, 236.605 to 236.640, 243.650 to 243.782, other than 243.696, 297.040, 307.090 and 307.112 apply to Oregon Community Power under the same terms as they apply to any other subdivision of state government.

(2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 238, 238A, 240, 270, 273, 276, 279A, 279B, 279C, 283, 286A, 291, 292, 293, 294, 295 and 297 and ORS 35.550 to 35.575, 183.710 to 183.725, 183.745, 183.750, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105, 200.035, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 282.010 to 282.150, 283.085 to 283.092, 287A.140, 287A.150, 287A.472 and 656.017 (2) do not apply to Oregon Community Power.

(3) Oregon Community Power is not a participating public employer in the Public Employees Retirement System.

(4) Any funds held by or under the control of Oregon Community Power are not public funds, as defined in ORS 295.001. [2007 c.807 §4; 2009 c.11 §96; 2009 c.538 §13; 2012 c.107 §70]

Note: See note under 757.812.

757.824 Regulatory authority of Public Utility Commission over Oregon Community Power. (1) Solely for purposes of determining the authority of the Public Utility Commission to regulate Oregon Community Power and the activities and operations of Oregon Community Power, Oregon Community Power shall be considered a consumer-owned utility, as defined in ORS 757.270, and the commission shall regulate Oregon Community Power as a consumer-owned utility.

(2) In addition to having the authority granted the commission under subsection (1) of this section, the commission has the authority to:

(a) Regulate electricity service suppliers that conduct business with or use the facilities of Oregon Community Power;

(b) Determine a claim by an electricity service supplier that Oregon Community Power has acted in an anticompetitive manner; and

(c) Take action against Oregon Community Power to enforce consumer protection rules adopted under ORS 757.659 (3) and applicable to direct access consumers.

(3) Oregon Community Power may not be required to obtain the approval of the Public Utility Commission to make an acquisition described in ORS 757.812 to 757.950.

(4) As used in this section, "direct access" and "electricity service supplier" have the meanings given those terms in ORS 757.915. [2007 c.807 §5]

Note: See note under 757.812.

757.825 [1985 c.550 §7; 1987 c.447 §73; 1987 c.613 §2; 1989 c.5 §§9,23; 1989 c.378 §1; 1989 c.543 §1; renumbered 759.030 in 1989]

(Board of Directors)

757.830 Nominating committee. (1) There is established the Oregon Community Power Board Nominating Committee. The purpose of the nominating committee is to assist the Governor in appointing members to the board of directors of Oregon Community Power under ORS 757.834.

(2) The nominating committee shall consist of five members, as follows:

(a) One member shall be a delegate from the Citizens' Utility Board and shall represent the interests of residential electricity consumers.

(b) One member shall be a delegate from a qualified organization that represents the interests of primarily commercial electricity consumers.

(c) One member shall be a delegate from a qualified organization that represents the interests of primarily industrial electricity consumers.

(d) One member shall be a delegate from the League of Oregon Cities and shall represent the interests of municipalities and their residents.

(e) One member shall be a delegate from the Association of Oregon Counties and shall represent the interests of counties and their residents.

(3) Of the members described in subsection (2)(d) and (e) of this section, one shall be from a local government that is within the service territory of Oregon Community Power and one shall be from a local government that is outside of the service territory of Oregon Community Power.

(4)(a) In order for the nominating committee to convene, the board of directors of Oregon Community Power shall prepare a proposed direction to convene as soon as is practicable following the earlier of the date that a vacancy occurs on the board or the date that it becomes known that a vacancy on the board will occur within six months.

(b) The proposed direction to convene shall state the qualified organizations that are to provide the delegates described in subsection (2)(b) and (c) of this section. The board shall send copies of the proposed direction to the Public Utility Commission and to each organization that served as a qualified organization at a prior convening of the nominating committee.

(c) Within 15 days after receipt of the proposed direction to convene, the commission shall review the proposed direction. The commission shall afford the opportunity for a hearing if requested by any party. If the proposed direction lists organizations that meet the qualifications of subsection (2)(b) and (c) of this section, the commission shall approve the direction. If the proposed direction does not list organizations that are qualified organizations under subsection (2)(b) and (c) of this section, the commission may modify the direction prior to approval. A determination by the commission may be appealed as a contested case under ORS chapter 183.

(5) The nominating committee shall convene as soon as is practicable after receiving an approved direction to convene under subsection (4) of this section, and shall forward the first slate of nominees to the Governor for consideration under ORS 757.834 no later than 90 days after the date an approved direction to convene is issued.

(6) The nominating committee shall nominate three individuals for each position on the board to be filled.

(7) A nominating committee that has been convened shall remain convened until each vacant position on the board is filled. The nominating committee shall forward a second slate of nominees to the Governor if requested by the Governor under ORS 757.834 (2).

(8) In forwarding nominees to the Governor, the nominating committee shall strive to select individuals who:

(a) Meet the qualifications described in ORS 757.834 (6);

(b) If appointed, would result in a board of directors that represents the geographic diversity of Oregon Community Power's service territory; and

(c) Have the ability and experience to fulfill the principal duties of the board under ORS 757.880.

(9) As used in this section, "qualified organization" means a nonprofit organization that represents a broad class of commercial or industrial customers and that has a substantial record of representing the class before state agencies or the Legislative Assembly in matters related to public utility rates, terms and conditions and energy policy issues affecting the class. [2007 c.807 §6]

Note: See note under 757.812.

Note: Section 7, chapter 807, Oregon Laws 2007, provides:

Sec. 7. (1) Notwithstanding section 6 of this 2007 Act [757.830], the Governor shall convene the initial Oregon Community Power Board Nominating Committee for the first board of directors of Oregon Community Power on the date the Governor activates Oregon Community Power under section 2 of this 2007 Act [757.814].

(2) The nominating committee shall forward the first slate of nominees to the Governor for consideration under section 8 of this 2007 Act [757.834] within 30 days following the convening of the committee by the Governor.

(3) If necessary, the nominating committee shall forward a second slate of nominees to the Governor for consideration within 10 days after the Governor's request for a second slate of nominees under section 8 (2) of this 2007 Act.

(4) For purposes of section 6 (3) of this 2007 Act, the service territory of the incumbent utility is considered to be the service territory of Oregon Community Power. [2007 c.807 §7]

757.834 Board of directors. (1) Oregon Community Power shall be governed by a board of seven directors appointed by the Governor using the procedure set forth in this section.

(2)(a) Prior to making any appointment to the board, the Governor shall consider the nominations of the Oregon Community Power Board Nominating Committee.

(b) If the Governor reviews an initial slate of nominees made by the nominating committee and determines not to appoint a nominee, the Governor shall request that the nominating committee forward a second slate of nominees. If the Governor determines not to appoint a nominee from the second slate of nominees, the Governor may appoint any individual the Governor determines meets the qualifications of subsection (6) of this section.

(3) Notwithstanding the requirement that the Governor consider the nominations of the nominating committee prior to making an appointment, the Governor shall appoint an individual to be a board member within 120 days following the vacancy of a position on the board.

(4) Each appointment shall be subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(5) The term of office for each board member shall be four years. A board member may be nominated and appointed to successive terms, but within 150 days prior to the expiration of the term of the member, the board shall issue a proposed direction to convene the nominating committee under ORS 757.830 for the purpose of nominating individuals to fill the board position.

(6) A member of the board shall have significant experience or expertise in one or more of the following areas:

(a) Business operations;

(b) Utility management;

(c) Legal or financial affairs;

(d) Regional energy issues; or

(e) Developing public policy.

(7) The Governor may remove any member of the board for cause, after notice and public hearing. [2007 c.807 §8]

Note: See note under 757.812.

Note: Section 9, chapter 807, Oregon Laws 2007, provides:

Sec. 9. (1) Notwithstanding section 8 (5) of this 2007 Act [757.834 (5)], the term of office for the first board of directors of Oregon Community Power shall be as follows:

(a) Two members shall be appointed for a term that ends one year following the date the Governor convenes the board;

(b) Two members shall be appointed for a term that ends two years following the date the Governor convenes the board;

(c) Two members shall be appointed for a term that ends three years following the date the Governor convenes the board; and

(d) One member shall be appointed for a term that ends four years following the date the Governor convenes the board.

(2) Consistent with subsection (1) of this section, the Governor shall designate the duration of the term of office of each member of the first board of directors at the time the Governor convenes the board. [2007 c.807 §9]

757.835 [1985 c.389 §3; 1987 c.447 §74; renumbered 759.230 in 1989]

757.840 [1987 c.1 §§1,2,3; 1989 c.5 §10; renumbered 759.235 in 1989]

757.842 Board meetings and procedures. (1) The board of directors of Oregon Community Power shall meet at least once each month to conduct the business of the board.

(2) A majority of board members shall constitute a quorum.

(3) The board shall select one of its members as chairperson.

(4) The board shall adopt bylaws establishing rules of procedure for board meetings and decisions.

(5) A member of the board shall be compensated as provided in ORS 757.886 (12).

(6) The board, not later than April 15 of each year, shall file a report with the Governor and the Legislative Assembly. The report shall explain the activities and operations of Oregon Community Power for the preceding calendar year, including a summary of the audit described in ORS 757.902. [2007 c.807 §10]

Note: See note under 757.812.

757.850 [1987 c.613 §4; 1989 c.5 §11; 1989 c.378 §2; 1989 c.543 §2; renumbered 759.195 in 1989]

(Acquisition of Incumbent Utility)

757.852 Acquisition of incumbent utility; use of eminent domain. (1) As soon as practicable after being appointed, the board of directors of Oregon Community Power shall implement the agreement entered into by an acquisition review committee under ORS 757.814 (4)(b).

(2) Notwithstanding ORS 757.890 (1), Oregon Community Power may not use the power of eminent domain to accomplish all or a part of an acquisition described in subsection (1) of this section unless the incumbent utility or the persons that have the authority to negotiate the disposition of the incumbent utility or the electric utility assets of the incumbent utility consent to the use of eminent domain for acquisition purposes. [2007 c.807 §11]

Note: See note under 757.812.

757.855 Funding of preliminary activities and negotiations. (1) Following a request by an acquisition review committee under ORS 757.862, the Public Utility Commission shall transfer from the Public Utility Commission Account to the Oregon Community Power Utility Acquisition Fund established under ORS 757.857 all amounts necessary to fund any preliminary activities needed to determine:

(a) The appropriateness or desirability of an acquisition described in ORS 757.812 to 757.950;

(b) The requirements and terms of the acquisition; and

(c) Any due diligence activities related to the acquisition and the negotiations for the acquisition.

(2) Notwithstanding any other provision of law, the commission may increase the rates of an incumbent utility in order to recover the costs incurred in negotiating an acquisition by an acquisition review committee under ORS 757.814 (4).

(3) Notwithstanding any other provision of law, the commission may assess a fee on an incumbent utility in order to fund the transfer described in subsection (1) of this section. [2007 c.807 §12]

Note: See note under 757.812.

757.857 Oregon Community Power Utility Acquisition Fund. (1) The Oregon Community Power Utility Acquisition Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Community Power Utility Acquisition Fund shall be credited to the Oregon Community Power Utility Acquisition Fund.

(2) Moneys in the Oregon Community Power Utility Acquisition Fund are continuously appropriated to the Public Utility Commission for the purpose of transferring moneys to an acquisition review committee as described in ORS 757.855. [2007 c.807 §13]

Note: See note under 757.812.

757.860 [1987 c.302 §3; 1989 c.5 §12; renumbered 759.225 in 1989]

757.862 Request to Public Utility Commission for transfer of funds. (1) An acquisition review committee created under ORS 757.814 may request that the Public Utility Commission transfer moneys appropriated under ORS 757.857 in order to fund any preliminary activities the committee undertakes to determine:

(a) The appropriateness or desirability of an acquisition described in ORS 757.812 to 757.950;

(b) The requirements and terms of the acquisition; and

(c) Any due diligence activities related to the acquisition and the negotiations for the acquisition.

(2) An acquisition review committee shall submit a budget and plan of operations with a request under subsection (1) of this section. The commission may approve the transfer only after notice and public hearing on the request. [2007 c.807 §14]

Note: See note under 757.812.

757.864 Conduct of business after acquisition. If Oregon Community Power acquires an incumbent utility under ORS 757.812 to 757.950, all electric utility operations undertaken by Oregon Community Power after the acquisition shall be conducted under the name of Oregon Community Power. [2007 c.807 §15]

Note: See note under 757.812.

757.868 Oregon Community Power to be successor in interest to incumbent utility; rules. (1) If Oregon Community Power acquires an incumbent utility under ORS 757.812 to 757.950, unless otherwise required by the Oregon Constitution, Oregon Community Power shall constitute the successor in interest to the incumbent utility as of the date of the acquisition for all purposes, including but not limited to:

(a) Allocation of territory and contracts allocating territory;

(b) City franchise fee agreements; and

(c) Contracts or obligations of any nature, to the extent the contracts or obligations apply to a successor in interest to the incumbent utility.

(2) Until the board of directors of Oregon Community Power establishes bylaws governing the procedures for conducting a ratemaking hearing and establishing rates under ORS 757.812 to 757.950 and under those procedures establishes one or more new rates or tariffs or establishes one or more changes in rates or tariffs, Oregon Community Power shall:

(a) Adopt all existing rate schedules in effect for the incumbent utility on the date of acquisition;

(b) Adopt the general rules and regulations of the incumbent utility's tariffs; and

(c) Maintain Oregon Community Power books and records in accordance with generally accepted accounting principles and with the uniform system of accounts established by the Federal Energy Regulatory Commission.

(3) If Oregon Community Power acquires an incumbent utility under ORS 757.812 to

757.950, Oregon Community Power is subject to all privilege taxes imposed by municipalities that the incumbent utility was required to pay to municipalities immediately before the acquisition. [2007 c.807 §16]

Note: See note under 757.812.

757.870 [1987 c.388 §2; 1989 c.5 §13; 1989 c.574 §6; renumbered 759.040 in 1989]

757.872 Equity and assets of incumbent utility held in trust; disclaimer of state interest. (1) Any equity of the incumbent utility, any electric utility assets of the incumbent utility or any combination of equity and assets of the incumbent utility that Oregon Community Power acquires under ORS 757.812 to 757.950 shall be held in trust by Oregon Community Power, acting as a trustee, for the exclusive purpose of carrying out the powers, rights and privileges of Oregon Community Power under ORS 757.812 to 757.950 for the benefit of the retail electricity consumers of Oregon Community Power. Notwithstanding any other provision of law, retail electricity consumers of Oregon Community Power may not pursue any judicial remedy in any court of this state for any action of Oregon Community Power, except as provided in ORS 757.812 to 757.950.

(2) The State of Oregon declares that it has no proprietary interest in Oregon Community Power or in any tangible or intangible property of any form owned or acquired by Oregon Community Power. The state disclaims any right to reclaim any contributions made to Oregon Community Power under ORS 757.812 to 757.950.

(3) Except as provided in ORS 757.812 to 757.950, Oregon Community Power may not receive any moneys from the State of Oregon other than:

(a) Electric utility operational revenues;

(b) Public purpose charge revenues under ORS 757.612;

(c) Nonrecourse bond proceeds or proceeds from any other nonrecourse borrowing; or

(d) Loans, grants, payments or other assistance that any local government as defined in ORS 174.116 would be eligible to receive. [2007 c.807 §17]

Note: See note under 757.812.

(Duties and Powers of Oregon Community Power)

757.880 Board duties. The principal duties of the board of directors of Oregon Community Power are to:

(1) Establish policy and develop consistent positions on core utility issues that promote and implement the primary mission of Oregon Community Power under ORS 757.818;

(2) Oversee the investments and operations of Oregon Community Power;

(3) Take all actions to ensure that revenues and income from electric utility operations are sufficient to satisfy all costs, including principal and interest payments on all outstanding bonds and other debt obligations issued by Oregon Community Power, and to maintain financial integrity in the operation of Oregon Community Power;

(4) Make decisions that are in the best interests of the consumers and communities within the service territory of Oregon Community Power and that are consistent with the primary mission of Oregon Community Power; and

(5) Consider the social, economic and environmental impacts of electricity generation, transmission and distribution in board decision-making. [2007 c.807 §18]

Note: See note under 757.812.

757.883 Payments in lieu of property taxes. (1) Oregon Community Power shall make payments in lieu of property taxes on all property that would otherwise be subject to assessment under ORS 308.505 to 308.665 if owned by a taxable owner. Oregon Community Power shall pay to each county in which property of Oregon Community Power is located an amount equal to the ad valorem property taxes that would have been charged by the county if Oregon Community Power property had been assessed to a taxable owner as of January 1 of the assessment year for which payment is being made.

(2) The Department of Revenue shall determine the assessed value of Oregon Community Power property as if the property were subject to assessment under ORS 308.505 to 308.665, and shall transmit the value information as provided in ORS 308.505 to 308.665 to the appropriate county assessor. Oregon Community Power shall comply with property reporting requirements under ORS 308.505 to 308.665 as if the property were subject to assessment under ORS 308.505 to 308.665.

(3) The amount of the in lieu payment to be made to each county under this section shall be determined and certified annually by the county assessor of the county. A notice of the determination and certification shall be mailed to Oregon Community Power not later than October 15. The notice shall contain a statement of the value of the property and a complete explanation of the method used in computing the amount of the in lieu payment due under this section. Not later than November 15, Oregon Community Power shall pay the amount due to each

county under this section, less a discount equivalent to that which is provided in ORS 311.505. Payment shall be made to the county treasurer. The county treasurer shall distribute the payment to the taxing districts of the county in accordance with the schedule of percentages computed under ORS 311.390. [2007 c.807 §19]

Note: See note under 757.812.

757.886 Powers of Oregon Community Power. The board of directors of Oregon Community Power shall establish the policies of Oregon Community Power to be used in the exercise of the powers enumerated for Oregon Community Power or the board, and may thereafter modify those policies. The board may delegate the exercise of powers enumerated for Oregon Community Power to a president, chief executive officer or general manager of Oregon Community Power. Delegated powers shall be exercised by the delegatee in a manner that is consistent with the policies established by the board. The powers of Oregon Community Power, as exercisable by the board of directors or by a president, chief executive officer or general manager under policies adopted by the board, are as follows:

(1) To acquire and hold, including by lease-purchase agreement, real and other property necessary or incident to the business of Oregon Community Power, within or outside of, or partly within or partly outside of, the service territory of Oregon Community Power, and to sell or dispose of that property.

(2) To execute contracts to purchase, sell or lease assets, power, services or property.

(3) To execute contracts for the management or operation of any Oregon Community Power facilities.

(4) To issue bonds, notes or otherwise borrow moneys, incur indebtedness or issue, sell or assume evidence of indebtedness to the extent allowed under the Oregon Constitution.

(5) To sue and be sued.

(6) To refund and retire any indebtedness that may exist against or be assumed by Oregon Community Power or that may exist against the revenues of Oregon Community Power.

(7) To build, acquire, own, operate and maintain generation, transmission and distribution resources that are sufficient to maintain an adequate supply of electricity to the service territory.

(8) To enter into agreements with local governments or other state agencies or subdivisions of state government.

(9) To periodically develop least-cost plans at regular intervals. A least-cost plan may be developed only with public participation. A least-cost plan shall take into consideration economic and environmental risks of providing adequate and reliable energy for consumers, energy efficiency, renewable resources and cogeneration, in order to achieve adequate resources at the least overall cost.

(10) To oversee all aspects of Oregon Community Power operations.

(11) To hire and fire employees of Oregon Community Power.

(12) To make contracts, to set wages, to set salaries and provide compensation for services rendered by employees and by board members, to provide for life insurance, hospitalization, disability, health and welfare and retirement plans for employees and to do all things necessary and convenient for full exercise of the powers granted in this subsection. The provision of life insurance, hospitalization, disability, health and welfare and retirement plans for employees is in addition to any other right or power of Oregon Community Power to participate in those plans and does not repeal or modify any statutes except those that may be in conflict with the provision of life insurance, hospitalization, disability, health and welfare and retirement plans.

(13) To enter into contracts with the United States Government, with any other state, municipality or utility district or with any other person, for carrying out any provisions of ORS 757.812 to 757.950.

(14) To fix, maintain and collect electric energy rates as prescribed in ORS 757.812 to 757.950 and to establish and collect charges for any other commodity or service furnished, developed or sold by Oregon Community Power.

(15) To construct works across or along any street or public highway or over any lands that are the property of this state, or of any city or other subdivision of this state, subject to any franchise agreement, privilege tax or municipal regulation that would apply to the works, and to construct works across or along any stream of water or watercourse. Any works across or along any state highway shall be constructed only with the permission of the Department of Transportation. Any works across or along any county highway shall be constructed only with the permission of the county governing body. Any works across or along any city street shall be constructed only with the permission of the city governing body and upon compliance with applicable city regulations and payment of any fees called for under applicable franchise agreements, intergovernmental agree-

ments under ORS chapter 190 or contracts providing for payment of these fees. Oregon Community Power shall restore any street or highway to its former state as near as may be practicable, and may not use the street or highway in a manner that impairs its usefulness unnecessarily.

(16) To enter into franchise agreements with cities and pay fees under negotiated franchise agreements, intergovernmental agreements under ORS chapter 190 and contracts providing for the payment of such fees, and to pay privilege taxes imposed under ORS 221.450 or other applicable privilege taxes.

(17) To exercise the power of eminent domain, as prescribed in ORS 757.852 or 757.890.

(18) To adopt bylaws as prescribed in ORS 757.905.

(19) To make payments in lieu of property taxes as prescribed in ORS 757.883.

(20) To acquire property, execute contracts or otherwise conduct business with or within the territory of any state or local government that is outside Oregon, any Indian tribe wherever located or Canada or any province of Canada.

(21) To execute any contract necessary to acquire, hedge or sell fuel or energy in any form, to manage electric utility operations, to construct, maintain or repair any energy generation or transmission facilities or equipment, to increase capacity for energy generation or transmission, to transfer any asset owned by Oregon Community Power or to acquire any asset for use in electric utility operations conducted by Oregon Community Power.

(22) To establish any funds or accounts at depository banks or other financial institutions that are determined to be necessary, useful or convenient for the conduct of business by Oregon Community Power.

(23) To take any other actions necessary or convenient for the proper exercise of the powers granted to Oregon Community Power by ORS 757.812 to 757.950. [2007 c.807 §20]

Note: See note under 757.812.

757.890 Eminent domain. (1) Oregon Community Power may exercise the power of eminent domain for the purpose of acquiring any property, within or outside the service territory of Oregon Community Power, necessary for carrying out the electric utility operations of Oregon Community Power. Oregon Community Power may use the power of eminent domain to acquire an incumbent utility pursuant to an agreement under ORS 757.814 only as provided by ORS 757.852.

(2) Notwithstanding subsection (1) of this section, eminent domain may not be used:

(a) To acquire service territory of another electric utility; or

(b) To acquire any property for a purpose that is unrelated to electric utility operations. [2007 c.807 §21]

Note: See note under 757.812.

(Rates)

757.895 Ratemaking. (1) The board of directors of Oregon Community Power shall establish rates for the provision of electricity within the service territory of Oregon Community Power using the procedure set forth under ORS 757.897.

(2) The board shall establish a rate structure under which rates that apply to a specific class of customers are designed to recover the costs of providing electricity and related services to that class of customers.

(3) The rates adopted by the board shall be sufficient to accomplish the following purposes:

(a) To properly maintain and operate all Oregon Community Power property and facilities;

(b) To recover the overall costs of the electric utility operations of Oregon Community Power;

(c) To reflect the income tax exempt status of Oregon Community Power so that the savings from tax exemption accrue to the benefit of the customers of Oregon Community Power;

(d) To pay all franchise fees, in lieu payments, privilege taxes and other charges and assessments that are properly imposed on Oregon Community Power or the property or facilities of Oregon Community Power;

(e) To pay principal and interest on all bonds, warrants or other obligations of any character in accordance with the terms and provisions of the obligations, including but not limited to bonds issued by Oregon Community Power for an acquisition described in ORS 757.812 to 757.950;

(f) To pay any other indebtedness or obligation for which Oregon Community Power may be obligated to pay;

(g) To pay any debt administration costs associated with bonds, warrants, obligations or other indebtedness described in paragraphs (e) and (f) of this subsection;

(h) To fund operating reserves in sufficient amounts to ensure the continued efficient operation of Oregon Community Power; and

(i) To establish and maintain any special funds that Oregon Community Power is obli-

gated to create for the purpose of paying bond issues or other obligations. [2007 c.807 §22]

Note: See note under 757.812.

757.897 Notice of ratemaking; ratemaking hearings. (1) Whenever the board of directors of Oregon Community Power determines to seek a modification in any rate imposed by the board for electricity service, the board shall give notice of a ratemaking hearing, at least 30 days in advance, as follows:

(a) In newspapers of general circulation that are published in the service territory;

(b) As a separate insert accompanying billing statements sent to customers;

(c) To persons that have requested notice of ratemaking action by the board; and

(d) By publication on the Oregon Community Power website.

(2) The notice shall state:

(a) The date, time and location of the ratemaking hearing of the board;

(b) The new rates or modifications to existing rates being proposed by the board; and

(c) Any other information deemed relevant by the board.

(3) At the time that the board issues a notice of a ratemaking hearing, the board shall publish on the Oregon Community Power website or otherwise make available to the public the underlying utility information upon which the proposed rates are based. The board shall provide the specific information required by bylaws adopted under ORS 757.905 (1).

(4)(a) Pursuant to ORS 183.625, the board shall request, and the Office of Administrative Hearings shall assign, an administrative law judge to conduct the ratemaking hearing. The ratemaking hearing shall be conducted under ratemaking hearing procedures established by bylaws adopted under ORS 757.905 (2). The hearing shall be conducted in a manner that allows interested parties to present information and argument and to establish a record upon which the board may establish or modify rates pursuant to ORS 757.895.

(b) The administrative law judge shall ensure that the rates established at the ratemaking hearing are sufficient to accomplish all of the purposes described in ORS 757.895 (3).

(5) Notwithstanding ORS 757.822, a decision by the board to establish or modify rates may be appealed as a contested case under ORS chapter 183. [2007 c.807 §23]

Note: See note under 757.812.

(Participation by Citizens' Utility Board)

757.900 Intervention by Citizens' Utility Board in proceedings. (1) Whenever the Citizens' Utility Board of Governors determines that an Oregon Community Power proceeding may affect the interests of utility consumers, the Citizens' Utility Board may intervene as of right as an interested party or otherwise participate in the proceeding.

(2) The Citizens' Utility Board shall have standing to obtain judicial or administrative review of any action of Oregon Community Power, and may intervene as of right as an interested party or otherwise participate in any proceeding that involves the review or enforcement of any action by Oregon Community Power, if the Citizens' Utility Board of Governors determines that the action may affect the interests of utility consumers. [2007 c.807 §24]

Note: See note under 757.812.

(Audits)

757.902 Annual audit of Oregon Community Power. The board of directors of Oregon Community Power shall cause an independent audit to be performed at least annually. The audit shall review and report on the financial affairs of Oregon Community Power and on any other aspects of Oregon Community Power as the board may direct. [2007 c.807 §25]

Note: See note under 757.812.

(Bylaws)

757.905 Adoption of bylaws. The board of directors of Oregon Community Power may adopt bylaws necessary to administer ORS 757.812 to 757.950, including but not limited to:

(1) Bylaws establishing the information the board must make available to the public prior to conducting a ratemaking hearing.

(2) Bylaws establishing procedures for conducting a ratemaking hearing that provide for substantially the same procedures as set forth in ORS 183.415, 183.425, 183.440 and 183.450.

(3) Bylaws to facilitate the implementation of the primary mission of Oregon Community Power under ORS 757.818. [2007 c.807 §26]

Note: See note under 757.812.

(Electricity From Bonneville Power Administration)

757.910 Policy. (1) The Legislative Assembly declares that it is the policy of the State of Oregon to:

(a) Ensure that the formation and operation of Oregon Community Power does not

directly or indirectly diminish the amount of federal electric power available for purchase by consumer-owned utilities to serve their retail electricity consumers;

(b) Ensure that the formation and operation of Oregon Community Power does not, directly or indirectly, increase the lowest cost-based rates charged by the Bonneville Power Administration to consumer-owned utilities for the purchase of federal electric power above the level that would most likely have been charged absent the formation and operation of Oregon Community Power;

(c) Preserve the existing exclusive distribution rights of consumer-owned utilities;

(d) Ensure the preservation of contract rights currently existing between consumer-owned utilities and an incumbent utility;

(e) Preserve the authority of cities to impose franchise fees and privilege taxes and to execute contracts with Oregon Community Power; and

(f) Ensure that Oregon Community Power has access to benefits from the Bonneville Power Administration, as mandated by the federal Pacific Northwest Electric Power Planning and Conservation Act, that are equivalent to the benefits received by the incumbent utility at the time the utility is acquired by Oregon Community Power.

(2) As used in this section, "federal electric power" means electricity generated, distributed or sold by the Bonneville Power Administration. [2007 c.807 §27]

Note: See note under 757.812.

(Direct Access)

757.915 Definitions for ORS 757.915 to 757.930. As used in ORS 757.915 to 757.930:

(1) "Ancillary services" has the meaning given that term in ORS 757.600.

(2) "Direct access" means the ability of a retail electricity consumer to purchase electricity and ancillary services, as determined by the board of directors of Oregon Community Power, directly from an entity other than Oregon Community Power.

(3) "Economic utility investment" means all investments, including plants and equipment and contractual or other legal obligations, made by Oregon Community Power and properly dedicated to generation or conservation, the full benefits of which are no longer available to consumers as a result of electing direct access, absent transition credits.

(4) "Electricity," "electricity services" and "electricity service supplier" have the meanings given those terms in ORS 757.600.

(5) "Nonresidential electricity consumer" means a retail electricity consumer that is not a residential electricity consumer.

(6) "Portfolio access" means the ability of a retail electricity consumer to choose from a set of product and pricing options for electricity determined by the board and may include product and pricing options offered by Oregon Community Power or by an electricity service supplier.

(7) "Retail electricity consumer" means the end user of electricity for specific purposes that is served through the distribution system of Oregon Community Power, whether or not the end user purchases the electricity from Oregon Community Power.

(8) "Transition charge" and "transition credit" have the meanings given those terms in ORS 757.600.

(9) "Uneconomic utility investment" means all investments, including plants and equipment and contractual or other legal obligations, made by Oregon Community Power and properly dedicated to generation, conservation and workforce commitments, the full costs of which are no longer recoverable as a result of direct access, absent transition charges. [2007 c.807 §28]

Note: See note under 757.812.

757.918 Oregon Community Power required to allow direct access. (1) Oregon Community Power shall allow nonresidential electricity consumers direct access.

(2) Unless the board of directors of Oregon Community Power determines otherwise, Oregon Community Power shall provide all retail electricity consumers of Oregon Community Power with a regulated, cost-of-service rate option.

(3)(a) Oregon Community Power shall supply default electricity service to a nonresidential electricity consumer in an emergency.

(b) The board shall establish reasonable terms and conditions for providing default service to a nonresidential electricity consumer in circumstances in which the consumer is receiving electricity services through direct access and elects instead to receive electricity services through the default service.

(4)(a) Oregon Community Power shall permit retail electricity consumers that are eligible for direct access to voluntarily aggregate their electricity loads.

(b) A retail electricity consumer that is eligible for direct access may voluntarily aggregate its electricity load with the electricity load of any other retail electricity consumer that is eligible for direct access. [2007 c.807 §29]

Note: See note under 757.812.

757.920 Rights of electricity service suppliers. (1) Every electricity service supplier is authorized to use the distribution facilities of Oregon Community Power on a nondiscriminatory basis.

(2) Oregon Community Power shall provide:

(a) Electricity service suppliers and retail electricity consumers access to the Oregon Community Power transmission facilities and distribution system that is comparable to that provided for Oregon Community Power's own use; and

(b) Electricity service suppliers and retail electricity consumers timely access to information about the Oregon Community Power transmission facilities and distribution system, metering and loads comparable to that provided to Oregon Community Power's own nondistribution divisions, affiliates and related parties.

(3) Oregon Community Power shall allow any electricity service supplier that has been certified by the Public Utility Commission to provide direct access to nonresidential electricity consumers. [2007 c.807 §30]

Note: See note under 757.812.

757.922 Transition credits and charges. (1) Each retail electricity consumer of Oregon Community Power shall receive a transition credit or pay a transition charge as determined under this section.

(2) The total of all transition credits or transition charges shall equal the net value of all economic utility investments and all uneconomic utility investments of Oregon Community Power.

(3) The board of directors of Oregon Community Power shall adopt one of the following methods to establish the net value described under subsection (2) of this section and all procedures connected with the adopted method:

(a) Auction;

(b) Administrative valuation; or

(c) Ongoing valuation.

(4) The transition credit or transition charge that applies to a retail electricity consumer under this section may change to reflect the duration of the service option chosen by the consumer, but may not be changed because of the electricity service supplier chosen by the consumer. [2007 c.807 §31]

Note: See note under 757.812.

757.924 Portfolio access to electricity service providers. The board of directors of Oregon Community Power shall determine whether and under what conditions Oregon Community Power will offer retail electricity consumers portfolio access to electricity service suppliers. The board shall have sole authority to determine:

(1) The quality and nature of electricity services, including but not limited to different product and pricing options, that will be made available to its retail electricity consumers.

(2) The extent to which products and services will be unbundled and the rates, tariffs, terms and conditions on which they may be offered.

(3) Whether one or more pilot programs for direct access, portfolio access or other forms of access to alternative suppliers will be offered.

(4) The degree to which provision of portfolio access necessitates modification of transition credits, transition charges and the net value described in ORS 757.922 (2) on which transition credits or transition charges are based.

(5) The establishment of technical capability requirements, financial responsibility requirements and other protections for retail electricity consumers located within the Oregon Community Power service territory in dealings with electricity service suppliers.

(6) Access to or use of the Oregon Community Power transmission facilities or distribution system by retail electricity consumers or electricity service suppliers.

(7) Oregon Community Power's qualification standards for electricity service suppliers in addition to any certification standards established by the Public Utility Commission, provided that the qualification standards are uniformly applied to electricity service suppliers in a nondiscriminatory manner. [2007 c.807 §32]

Note: See note under 757.812.

(Consumer-Owned Utilities)

757.930 Distribution rights; service territories. (1) Notwithstanding any other provision of law, a consumer-owned utility has exclusive distribution rights, to the extent the distribution rights are provided by law other than ORS 757.812 to 757.950, and exclusive responsibility for the performance and oversight of:

(a) The utility's distribution system, including the acquisition, construction, financing, operation and maintenance of distribution facilities; and

(b) Metering, billing, collection and consumer response functions related to the distribution of electricity to retail electricity consumers located within the utility's service territory.

(2) ORS 757.812 to 757.950 do not:

(a) Diminish or enlarge the rights of any person under ORS 758.400 to 758.475; or

(b) Affect the administration or enforcement of ORS 758.400 to 758.475. [2007 c.807 §33]

Note: See note under 757.812.

(Financing Agreements)

757.935 Definitions for ORS 757.935 to 757.945. As used in ORS 757.935 to 757.945:

(1) "Credit enhancement agreement" means any agreement or contractual relationship between Oregon Community Power and any bank, trust company, insurance company, surety bonding company, pension fund or other financial institution providing additional credit on or security for a financing agreement or certificates of participation authorized by ORS 757.935 to 757.945.

(2) "Financing agreement" means a bond, installment sale agreement, loan agreement, note, note agreement, short-term promissory note, commercial paper, line of credit or similar obligation or any other agreement to finance real or personal property, tangible or intangible, that is or will be owned and operated by Oregon Community Power, to otherwise borrow money, or to refinance previously executed financing agreements. [2007 c.807 §34]

Note: See note under 757.812.

757.937 Financing agreements authorized. (1) Oregon Community Power may enter into financing agreements in accordance with ORS 757.935 to 757.945 upon such terms as the board of directors of Oregon Community Power determines to be necessary or desirable. Amounts payable by Oregon Community Power under a financing agreement shall be limited to funds specifically pledged, budgeted for or otherwise made available by Oregon Community Power. If there are insufficient available funds to pay amounts due under a financing agreement, the lender may exercise any property rights that Oregon Community Power has granted to the lender in the financing agreement against the property that was purchased with the proceeds of the financing agreement, and may apply the amounts so received toward payments scheduled to be made by Oregon Community Power under the financing agreement.

(2) Oregon Community Power may enter into a financing agreement only following adoption by the board of directors of a resolution authorizing the execution of the financing agreement or a series of similar financing agreements.

(3) Any obligation of any kind incurred by Oregon Community Power shall state on its face that it is solely an obligation of Oregon Community Power. [2007 c.807 §35]

Note: See note under 757.812.

757.940 Delegation of powers relating to financing agreements. The board of directors of Oregon Community Power may delegate to any board member, or to the chief executive officer, president, general manager or chief financial officer of Oregon Community Power, the authority to determine maturity dates, principal amounts, redemption provisions, interest rates or methods for determining variable or adjustable interest rates, denominations, methods of sale, agreements for the exchange of interest rates as an issuer under ORS 287A.335 and other terms and conditions of a financing agreement that are not appropriately determined at the time of enactment or adoption of a resolution authorizing the execution of the financing agreement. The board may also delegate entering into a financing agreement or any other instrument authorized by law. This delegated authority shall be exercised subject to applicable requirements of law and any limitations and criteria as may be set forth in the resolution authorizing the execution of a financing agreement or in Oregon Community Power bylaws. [2007 c.807 §36; 2009 c.538 §14]

Note: See note under 757.812.

757.942 Powers of Oregon Community Power relating to financing agreements. Oregon Community Power may:

(1) Enter into agreements with third parties to hold financing agreement proceeds, payments and reserves as security for lenders, and to issue certificates of participation in the right to receive payments due from Oregon Community Power under a financing agreement. Amounts so held shall be invested at the direction of the board of directors of Oregon Community Power. Interest earned on any investments held as security for a financing agreement may, at the option of the board, be credited to the accounts held by the third party and applied in payment of sums due under a financing agreement.

(2) Enter into credit enhancement agreements for financing agreements or certificates of participation, provided that any credit enhancement agreements shall be payable solely from funds specifically pledged, budgeted for or otherwise made available by Oregon Community Power and amounts received from the exercise of property rights granted under the financing agreements.

(3) Use financing agreements to finance the costs of acquiring or refinancing real or personal property, either tangible or intangible, plus the costs of reserves and credit enhancements and the costs associated with obtaining the financing.

(4) Grant security interests in property to trustees or lenders.

(5) Make pledges for the benefit of trustees and lenders.

(6) Purchase fire and extended coverage or other casualty insurance for property that is acquired or refinanced with proceeds of a financing agreement, assign the proceeds thereof to a lender or trustee to the extent of their interest, and covenant to maintain any insurance while the financing agreement is unpaid, as long as available funds are sufficient to purchase the insurance. [2007 c.807 §37]

Note: See note under 757.812.

757.945 Consultation with State Treasurer. Oregon Community Power may consult with and obtain advice from the State Treasurer on proposed or executed financing agreements. The State Treasurer may recover from Oregon Community Power any costs incurred by the State Treasurer in providing consultation and advice. [2007 c.807 §38]

Note: See note under 757.812.

(Revenue Bonds)

757.950 Authorization to issue and sell revenue bonds. (1) Oregon Community Power may issue and sell revenue bonds as provided in ORS chapter 287A. However, ORS 287A.150 does not apply to revenue bonds issued by Oregon Community Power. Revenue bonds issued by Oregon Community Power are not a general obligation of Oregon Community Power and may not be a charge upon any revenues or property of Oregon Community Power that is not specifically pledged thereto. Any obligation of any kind incurred by Oregon Community Power under this section is not, and may not be considered, an indebtedness of the State of Oregon.

(2) Revenue bonds or other financing agreements issued by Oregon Community Power under this section are bonds or obligations of a political subdivision of the State of Oregon for the purposes of all laws of this state. [2007 c.807 §39; 2009 c.538 §15]

Note: See note under 757.812.

(City Rights of Way)

757.954 City's authority to control, and collect charges for, use of rights of way. ORS 757.812 to 757.950 do not diminish, or authorize the adoption of rules that diminish, the authority of a city to control the use of the city's rights of way or to collect license fees, privilege taxes, rent or other charges for the use of the rights of way of the city. [2007 c.807 §42]

Note: See note under 757.812.

PENALTIES

757.990 Penalties. (1) Any person or municipality, or their agents, lessees, trustees or receivers, who omits, fails or refuses to do any act required by ORS 757.035, or fails to comply with any orders, rules or regulations of the Public Utility Commission made in pursuance of ORS 757.035, shall forfeit and pay into the State Treasury a sum of not less than $100, nor more than $10,000 for each such offense.

(2) Any public utility, or an officer or agent of a public utility, violating ORS 757.310 commits a Class A violation.

(3) Violation of ORS 757.325 is a Class A violation if committed by an individual. Violation of ORS 757.325 is a specific fine violation if committed by a person other than an individual and is subject to a fine of not more than $10,000.

(4) Violation of ORS 757.330 is a Class A violation.

(5) Violation of ORS 757.445 is a specific fine violation subject to a fine of not more than $20,000 for each offense.

(6) Violation of ORS 757.450 is a Class C felony. [Amended by 1971 c.655 §95; 1979 c.990 §428; 1987 c.320 §245; 1999 c.1051 §224; 2011 c.597 §93]

757.991 Civil penalty for noncompliance with gas regulations. Any person or municipality, or their agents, lessees, trustees or receivers, engaged in the management, operation, ownership or control of facilities for the transmission or distribution of gas by pipeline, or facilities for the storage or treatment of gas to be transmitted or distributed by pipeline, who fails to do any act required by ORS 757.039, or fails to comply with any orders, rules or regulations of the Public Utility Commission made in pursuance of ORS 757.039, shall forfeit and pay into the State Treasury a civil penalty not to exceed $10,000 for each such failure for each day such failure persists, except that the maximum civil penalty shall not exceed $500,000 for any related series of failures. [1969 c.372 §4; 1991 c.199 §1]

757.992 [Formerly 758.990; renumbered 165.990]

757.993 Penalty for violation of utility excavation notification provisions. (1) Except as provided in subsection (2) of this section and in addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than $1,000 for the first violation and not more than $5,000 for each subsequent violation.

(2) In addition to all other penalties provided by law, every person who intentionally

violates or who intentionally procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than $5,000 for the first violation and not more than $10,000 for each subsequent violation.

(3) Each violation of any rule of the Oregon Utility Notification Center shall be a separate offense. In the case of a continuing violation, each day that the violation continues shall constitute a separate violation.

(4) Penalties under this section shall not be imposed except by order following complaint as provided in ORS 756.500 to 756.610. A complaint must be filed within two years following the date of the violation.

(5) The Public Utility Commission may reduce any penalty provided in this section on such terms as the commission considers proper if:

(a) The defendant admits to the violation or violations alleged in the complaint and makes a timely request for reduction of the penalty; or

(b) The defendant submits to the commission a written request for reduction of the penalty within 15 days from the date of the penalty order.

(6) If the amount of the penalty is not paid to the commission, the Attorney General, at the request of the commission, shall bring an action in the name of the State of Oregon in the Circuit Court for Marion County to recover the penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the commission.

(7) Notwithstanding any other provision of law, the commission shall pay penalties recovered under this section to the Oregon Utility Notification Center.

(8) The commission shall not seek penalties under this section except in response to a complaint alleging a violation of a rule or rules adopted by the Oregon Utility Notification Center. The commission may investigate any such complaint, and the commission shall have sole discretion to seek penalties under this section. [1995 c.691 §7]

757.994 Civil penalty for violation of statute, rule or order related to water utilities. (1) In addition to all other penalties provided by law, a person who violates any statute, rule or order of the Public Utility Commission related to water utilities is subject to a civil penalty of not more than $500 for each violation. The commission may require that penalties imposed under this section be used for the benefit of the customers of water utilities affected by the violation.

(2) Notwithstanding ORS 183.745 (7)(d), 183.315 (6) and 756.500 to 756.610, civil penalties under this section must be imposed by the commission as provided in ORS 183.745. [2003 c.202 §3]

Note: 757.994 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.