

# Chapter 758

2013 EDITION

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**RIGHTS OF WAY****758.010 Authority to construct lines and facilities; requirements and conditions.**

(1) Except within cities, any person or corporation has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or over any lands belonging to the state, free of charge, and over lands of private individuals, as provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable stream.

(2) A county governing body and the Department of Transportation have authority to designate the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and facilities described in this section may be located, and subject to ORS 758.025 may order the location of any such line, fixture or facility to be changed when such governing body or department deems it expedient. Any line, fixture or facility erected or remaining in a different location upon such road than that designated in any order of the governing body or department is a public nuisance and may be abated accordingly.

(3) The state officer, agency, board or commission having jurisdiction over any land belonging to the state with respect to which the right and privilege granted under subsection (1) of this section is exercised may impose reasonable requirements for the location, construction, operation and maintenance of the lines, fixtures and facilities on such land. The person or corporation exercising such right and privilege over any land belonging to the state shall pay the current market value for the existing forest products that are damaged or destroyed in exercising such right and privilege. Such right and privilege of any person or corporation is conditioned upon compliance with the requirements imposed by this subsection. [Amended by 1955 c.123 §1; 1971 c.655 §100; 1981 c.153 §76; 2001 c.664 §§3,6; 2009 c.444 §4]

**758.012 Notice of intent to build transmission line to consumer-owned utilities and public utilities; exemptions.**

(1) As used in this section:

(a) "Public utility" has the meaning given that term in ORS 757.005.

(b) "Transmission line" means a linear utility facility by which a utility provider transmits or transfers electricity from a point of origin or generation or between transfer stations.

(2) A person who applies for a permit with the Energy Facility Siting Council or

with a county to build a transmission line must notify each people's utility district organized under ORS chapter 261, municipal utility organized under ORS chapter 225, electric cooperative organized under ORS chapter 62 and public utility in whose service territory the transmission line will be constructed of the intent to receive approval for the construction of the transmission line unless the person is:

(a) 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; or

(b) A public utility. [2013 c.235 §2]

**758.013 Operator of electric power line to provide Public Utility Commission with safety information; availability of information to public utilities.**

(1) Each person who is subject to the Public Utility Commission's authority under ORS 757.035 and who engages in the operation of an electric power line as described in ORS 757.035 must provide the commission with the following information before January 2 of each even-numbered year:

(a) The name and contact information of the person that is responsible for the operation and maintenance of the electric power line, and for ensuring that the electric power line is safe, on an ongoing basis; and

(b) The name and contact information of the person who is responsible for responding to conditions that present an imminent threat to the safety of employees, customers and the public.

(2) In the event that the contact information described in subsection (1) of this section changes or that ownership of the electric power line changes, the person who engages in the operation of the electric power line must notify the commission of the change as soon as practicable, but no later than within 90 days.

(3) If the person described in subsection (1) of this section is not the public utility, as defined in ORS 757.005, in whose service territory the electric power line is located, the commission shall make the information provided to the commission under subsection (1) of this section available to the public utility in whose service territory the electric power line is located. [2013 c.235 §3]

**758.015 Certificate of public convenience and necessity.**

(1) When any person, as defined in ORS 758.400, providing electric utility service, as defined in ORS 758.400, or any transmission company, proposes to construct an overhead transmission line which will necessitate a condemnation of land or an interest therein, it shall petition the Pub-

lic Utility Commission for a certificate of public convenience and necessity setting forth a detailed description and the purpose of the proposed transmission line, the estimated cost, the route to be followed, the availability of alternate routes, a description of other transmission lines connecting the same areas, and such other information in such form as the commission may reasonably require in determining the public convenience and necessity.

(2) The commission shall give notice and hold a public hearing on such petition. The commission, in addition to considering facts presented at such hearing, shall make the commission's own investigation to determine the necessity, safety, practicability and justification in the public interest for the proposed transmission line and shall enter an order accordingly. Except for petitions for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission line, the order shall be subject to review as in other cases. Orders on petitions for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission line are subject to judicial review in the same manner as an order in a contested case as set forth in ORS 758.017. In any proceeding for condemnation, a certified copy of such order shall be conclusive evidence that the transmission line for which the land is required is a public use and necessary for public convenience.

(3) This section shall not apply to construction of transmission lines in connection with a project for which a permit or license is otherwise obtained pursuant to state or federal law.

(4) As used in this section and ORS 758.020, "transmission company" means a person or entity that owns or operates high voltage transmission lines and is subject to the jurisdiction of the Federal Energy Regulatory Commission. "Transmission company" does not include a cooperative organized under ORS chapter 62. [1961 c.691 §19; 2001 c.913 §6; 2013 c.335 §1]

**758.017 Appeal of grant or denial of certificate of public convenience and necessity for transmission lines subject to Energy Facility Siting Council approval; review vested in Supreme Court.** (1) Any party to a contested case hearing related to the application for a certificate of public convenience and necessity under ORS 758.015 for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission line may appeal the Public Utility Commission's grant or denial

of the application. Issues on appeal shall be limited to those raised by the parties to the contested case hearing before the commission.

(2) Jurisdiction for judicial review of the commission's approval or rejection of an application for a certificate of public convenience and necessity under subsection (1) of this section is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days after the date of service of the commission's final order. Date of service shall be the date on which the commission delivered or mailed the final order in accordance with ORS 183.470.

(3) The filing of a petition for judicial review may not stay the order, except that a party to the contested case hearing may apply to the Supreme Court for a stay upon a showing that there is a colorable claim of error and that the petitioner will suffer irreparable injury.

(4) If the Supreme Court grants a stay pursuant to subsection (3) of this section, the court:

(a) Shall require the petitioner requesting the stay to give an undertaking in the amount of \$5,000.

(b) May grant the stay in whole or in part.

(c) May impose other reasonable conditions on the stay.

(5) The review by the Supreme Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Supreme Court shall give priority on its docket to a petition for review under this section and render a decision within six months of the filing of the petition for review.

(6) The following periods of delay shall be excluded from the six-month period within which the court must render a decision under subsection (5) of this section:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months.

(7) No period of delay resulting from a continuance granted by the Supreme Court under subsection (6)(b) of this section shall be excluded from the six-month period unless

the court sets forth, in the record, either orally or in writing, the court's reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months. The factors the court shall consider in determining whether to grant a continuance under subsection (6)(b) of this section are:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, because of the number of parties involved or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the six-month period.

(8) No continuance under subsection (6)(b) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party. [2013 c.335 §3]

**758.020 Joint occupancy of poles.** (1) The county court, board of county commissioners or the Department of Transportation, when designating the location where poles or other aboveground facilities described in ORS 758.010 may be placed on a road or highway which fronts on the ocean or on a river or other body of water and the water frontage of the highway is being developed or maintained for its scenic or recreational value, may require all lines to occupy the opposite side of the right of way, if such joint occupancy can be maintained without undue impairment of service or damage to public life and property.

(2) If the owners of such lines are unable to agree on the terms and conditions of joint occupancy, such department, court or board shall request the Public Utility Commission to determine the practicability of such joint occupancy and the effect thereof upon adequate and safe service by the prospective joint occupants, the location of the lines, and, if found to be practicable, to fix and prescribe the terms and conditions pursuant to which joint occupancy shall be accomplished. Before making or entering an order, such commission shall hold a hearing and make findings in accordance with ORS 756.500 to 756.610. The order of the commission is subject to judicial review as an order in a contested case in the manner provided by ORS 756.610. In fixing terms and conditions pursuant to which joint occupancy shall be accomplished, the Public Utility Commission shall require the installation by each occupant of standards, devices and

equipment reasonably necessary to protect the equipment of the other occupants from damage and the public from injury arising from such joint occupancy.

(3) The right of any public utility, telecommunications utility or transmission company to construct, maintain and operate on a public highway poles or fixtures is contingent on compliance with reasonable requirements established by the Department of Transportation, county courts, boards of county commissioners or the Public Utility Commission under authority of this section and ORS 758.010. Such rights are likewise contingent and conditioned on all facilities, equipment and installations being constructed and maintained in strict conformance with modern and approved standards. [Amended by 1971 c.655 §102; 1987 c.447 §98; 2001 c.913 §7; 2005 c.638 §11]

**758.025 Relocation of utilities in highway right of way; required consultation; recovery of costs.** (1) As used in this section:

(a) "Highway" has the meaning given that term in ORS 801.305 (1) but does not include highways located on property owned by the Port of Portland that is subject to federal relocation regulations authorized under 49 U.S.C. 47107, as in effect on January 1, 2010.

(b) "Public body" has the meaning given that term in ORS 174.109.

(c) "Utility" means a public utility, as defined in ORS 757.005, or a telecommunications utility or competitive telecommunications provider, as those terms are defined in ORS 759.005.

(2) If a public body plans a project that would require utilities to relocate their utility facilities that are located in the highway right of way, the public body shall notify affected utilities of the project in writing as soon as is practicable.

(3) During the planning and design phase of a project, the public body shall coordinate with the affected utilities to discuss the project's scope and schedule. At a minimum, the discussion must include a description of the plans, goals and objectives of the proposed project and options to minimize or eliminate costs to the public body and the utilities. The public body is not required to avoid or minimize costs to the utilities in a way that materially affects the project's scope, costs or schedule. Failure of the affected utilities to respond or participate in the coordination or discussion does not affect the ability of the public body to proceed with design and construction of the project.

(4) A public body having jurisdiction over a highway may not prohibit a utility from

seeking reimbursement from private parties or customers for costs under this section in any permit application, license application or other written agreement authorizing the utility to relocate the facilities.

(5)(a) Notwithstanding any other provision of ORS chapter 759, a telecommunications utility that is not subject to rate-of-return regulation, including a utility regulated under ORS 759.255 may, after participating in the process described in subsection (3) of this section, request authorization from the Public Utility Commission to recover from customers prudent costs incurred for the relocation of facilities required by a public body that are not otherwise paid or reimbursed from another source. Recoverable relocation costs are the nonfacility costs incurred in the relocation plus the undepreciated value of the facilities replaced, including the cost of placing such facilities underground if underground placement is required by the public body or other provision of law. The commission may authorize the recovery of relocation costs that the commission determines to be substantial and beyond the normal course of business.

(b) The commission shall:

(A) Verify the relocation costs for which the utility requests recovery;

(B) Determine the allocation of costs between interstate and intrastate services, geographic areas, customers and services; and

(C) Prescribe the method of cost recovery.

(c) In determining the level of cost recovery and the allocation of costs, the commission shall consider:

(A) The overall impact on the utility; and

(B) Other relevant factors identified by the commission.

(d) Relocation costs may be recovered for a reasonable period of time subject to approval by the commission and not to exceed the depreciable life of the facilities. [2009 c.444 §2]

758.030 [Renumbered 271.440]

**758.035 Commission's power to enforce joint use of facilities.** (1) Every public utility, telecommunications utility, person, association or corporation having conduits, subways, street railway tracks, poles or other equipment on, over or under any street or highway shall for a reasonable compensation permit the use of the same by any public utility or telecommunications utility whenever public convenience or necessity requires such use and such use will not result in irreparable injury to the owner or other users of such equipment nor in any

substantial detriment to the service to be rendered by such owners or other users.

(2) In case of failure to agree upon such use or the conditions or compensation for such use, any public utility, telecommunications utility, person, association or corporation interested may apply to the Public Utility Commission, and if after investigation the commission ascertains that public convenience or necessity requires such use and that it would not result in irreparable injury to the owner or other users of such equipment, the commission shall by order direct that such use be permitted and prescribe reasonable conditions and compensation for such joint use.

(3) The use so ordered shall be permitted and the prescribed conditions and compensation shall be the lawful conditions and compensation to be observed, followed and paid. The order of the commission is subject to judicial review as an order in a contested case in the manner provided by ORS 756.610. The order may be modified by the commission upon application of any interested party or upon the commission's own motion. All public utilities and telecommunications utilities shall afford all reasonable facilities and make all necessary regulations for the interchange of business, or traffic carried or their product between them, when ordered by the commission so to do. [Formerly 757.040; 1987 c.447 §99; 2005 c.638 §12]

758.040 [Renumbered 757.606]

758.050 [Renumbered 757.611]

758.060 [Amended by 1971 c.743 §426; renumbered 757.616]

758.070 [Renumbered 757.621]

758.080 [Renumbered 757.626]

758.090 [Renumbered 757.631]

758.100 [Renumbered 757.636]

758.110 [Renumbered 757.641]

## UNDERGROUND ELECTRIC AND COMMUNICATIONS FACILITIES

**758.210 Policy.** The legislature finds that in many areas of this state landowners, utilities and public authorities desire to convert existing overhead electric and communication facilities to underground facilities by means of special assessment proceedings. The legislature declares that a public purpose will be served and that the public welfare will be promoted by providing a procedure to accomplish such conversion by special assessment proceedings and that it is in the public interest for such conversion to be accomplished as provided in ORS 758.210 to 758.270. [1969 c.385 §1]

**758.215 Definitions for ORS 758.210 to 758.270.** As used in ORS 758.210 to 758.270, unless the context requires otherwise:

(1) “Convert,” “converting” or “conversion” means the removal of overhead electric or communication facilities and the replacement thereof with underground electric or communication facilities at the same or different locations.

(2) “Electric or communication facilities” means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances, and all related facilities required for the acceptance of electric or communication services; however:

(a) “Electric facilities” does not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 35,000 volts.

(b) “Communication facilities” does not include facilities used or intended to be used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones.

(c) “Electric or communication facilities” does not include any electric or communication facilities owned or used by or provided for a railroad or pipeline and located upon or above the right of way of the railroad or pipeline.

(3) “Landowner” or “owner” means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment roll in the office of the county assessor.

(4) “Overhead electric or communication facilities” means electric or communication facilities located above the surface of the ground.

(5) “Public authority” means a city or county.

(6) “Public lands and right of way” includes rights of way for streets, roads and highways and all land or interests in land owned by a public authority.

(7) “Underground assessment district” or “district” means an assessment district created as provided by ORS 758.210 to 758.270.

(8) “Underground electric or communication facilities” means electric or communication facilities located below the surface of the ground exclusive of those facilities such as substations, transformers, pull boxes, service terminals, pedestal terminals, splice closures, apparatus cabinets and similar facilities which normally are above the sur-

face in areas where utility facilities are underground in accordance with standard underground practices.

(9) “Utility” means any electric or communication utility described by ORS 757.005 or any telecommunications utility described by ORS 759.005, 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 consumers. [1969 c.385 §2; 1971 c.360 §1; 1987 c.447 §100]

**758.220 Authority for conversion to underground facilities; formation of assessment district.** (1) A public authority shall have the power to require the conversion of overhead electric or communication facilities to underground facilities; to provide and receive funds to pay for such conversion; and to assess the whole or any part of the cost thereof against the real property included in the underground assessment district specially benefited by such conversion.

(2) An underground assessment district shall include an area having a frontage of not less than 400 feet upon a public street, road or highway along which overhead electric or communication facilities are located.

(3) An underground assessment district:

(a) Created by a city, may include area along city streets, county roads and state highways or any part thereof located within the district.

(b) Created by a county, may include areas along county roads, state highways or any part thereof located within the district. [1969 c.385 §3]

**758.225 Petition, ordinance or resolution for conversion; contents; filing.** (1) A proceeding for conversion may be initiated:

(a) By a petition signed by not less than 60 percent of the landowners within the proposed assessment district who own not less than 60 percent of the land area within the district; or

(b) By an ordinance or resolution of a public authority declaring its intention to order a conversion.

(2) A petition shall:

(a) Describe the proposed boundaries of the assessment district;

(b) Generally describe the proposed conversion; and

(c) Request that a proceeding for such conversion be taken pursuant to ORS 758.210 to 758.270.

(3) The petition shall be filed with the city recorder, county clerk or other person designated by the public authority to receive

the petition and to verify the signatures. If the petition is signed by the requisite number of qualified signers, the official so designated shall execute a certificate of sufficiency and present the petition and certificate to the governing body of the city or to the county court or board of county commissioners, as the case may be. [1969 c.385 §4]

**758.230 Assessment procedure; objections to conversion.** (1) Upon presentation of the petition and certificate of sufficiency, or upon adoption of an ordinance or resolution, the public authority shall proceed in the manner provided by ORS 223.389.

(2) Unless the charter of a county provides otherwise, a county shall declare a proposed conversion abandoned if, after notice as provided by ORS 223.389, objections to the conversion are received by a county court or board of county commissioners signed by more than 50 percent of the landowners within the proposed assessment district who own more than 50 percent of land within the district. If a proposed conversion is abandoned because of objections, no new proceeding for the conversion shall be undertaken within a period of one year thereafter. [1969 c.385 §5]

**758.235 Applicability of local improvement laws; issuance of bonds.** Unless otherwise provided by ORS 758.210 to 758.270, the provisions relating to the procedure for local improvements in cities, as set forth in ORS 223.205, 223.210 to 223.295, 223.387 to 223.399, 223.401, 223.405 to 223.485, 223.505 to 223.595, 223.610, 223.615 to 223.650 and 223.770, apply to proceedings for a conversion by a city or county under ORS 758.210 to 758.270. In a proceeding conducted by a county, where the statutes referred to in this section refer to officials of cities, the corresponding officials of the county shall perform the required functions, unless otherwise provided by order of the county court or board of county commissioners. Cities and counties may, as provided by ORS 223.205 and 223.210 to 223.295, issue improvement bonds in the total amount of the valid applications received to pay assessments in installments. [1969 c.385 §6; 1995 c.333 §20]

**758.240 Contract with utility for conversion.** (1) When a public authority in accordance with ORS 758.230 determines that a conversion shall be made, it may contract with the utilities supplying electric or communication service within the underground assessment district to perform the conversion. A contract shall provide:

(a) A description of the electric and communication facilities to be converted;

(b) That plans and specifications for such conversion shall be supplied or approved by the affected utility;

(c) The time and manner in which underground electric and communication facilities will be installed and overhead electric and communication facilities will be removed;

(d) The estimated cost of converting overhead facilities located on public lands and right of way to underground facilities;

(e) The estimated cost of converting related utility service facilities located on privately owned lots and parcels;

(f) The time and manner of making payments and the source of funds for such payments; and

(g) That upon completion of the work of conversion, the utility performing the conversion shall have legal title to the electric or communication facilities, which shall thereafter constitute a part of a system of the utility and be used, operated, maintained and managed by it as part of its system.

(2) Upon approval and execution of the conversion contracts by the utilities and public authority, the public authority shall direct the utilities owning overhead electric or communication facilities within the district to convert such facilities as required by the contract. [1969 c.385 §7]

**758.245 Payment of costs for conversion; removal of overhead facilities.** Upon completion of the conversion of the overhead electric or communication facilities on public lands and right of way to underground, the affected utility shall file a verified statement of the costs of such conversion with the public authority. The public authority shall adopt an ordinance assessing the whole or any part of the cost of the conversion against the real property in the underground assessment district specifically benefited and shall promptly thereafter mail to each landowner a statement of the amount of such costs assessed to the property of the landowner. With the statement the public authority shall mail to each landowner a notice stating that:

(1) Service from the underground facilities is available;

(2) The landowner has 90 days after the date of the mailing of such notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on the lot or parcel to underground service facilities; and

(3) After the 90-day period following the date of the mailing of the notice, the public authority will order the utilities to disconnect and remove all overhead electric and communication facilities providing service to

any structure or improvement within the area. [1969 c.385 §8]

**758.250 Conversion of facilities on private lands; procedure; payment of costs.**

(1) Any conversion of electric or communication service facilities, including service connections, located on a privately owned lot or parcel shall be made at the expense of the landowner by the utility owning the facility. The conversion shall be made in accordance with applicable safety rules, codes, regulations, tariffs or ordinances. The utility shall not be required to convert service lines on property, other than public lands and right of way, until the landowner furnishes to the utility a permit or easement authorizing the utility and its employees, agents and contractors to enter upon real property of the landowner for the purpose of performing conversion work thereon.

(2) Upon completion of the conversion of overhead electric or communication service facilities on privately owned lots and parcels within a district, the utility shall file with the public authority a verified statement of the costs of the conversion of such service facilities of each landowner in the district. Promptly thereafter the public authority shall mail to each landowner a copy of such verified statement. [1969 c.385 §9]

**758.255 Discontinuance of utility service for noncompliance with conversion provisions.** If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or easement referred to in ORS 758.250 or if such an owner fails to convert to underground service facilities within 90 days after the mailing to the owner of the notice provided by ORS 758.245, the public authority shall order the utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to such structure or improvement. [1969 c.385 §10]

**758.260 Competitive bidding for utility conversion.** To the extent that the contract between the utility and the public authority provides that all or any part of the conversion work shall be performed by the utility, any statute or charter provision requiring competitive bidding and the award of a contract to the lowest responsible bidder does not apply. [1969 c.385 §11]

**758.265 Overhead facilities in assessment district after conversion.** Once converted, no overhead electric or communication facilities shall be installed, maintained or operated in any underground

assessment district except as authorized by ORS 758.210 to 758.270. [1969 c.385 §12]

**758.270 Effect of ORS 758.210 to 758.270 on existing laws and rights.** ORS 758.210 to 758.270 are supplemental and cumulative of existing rights, laws, charters, ordinances and franchises and shall not abrogate or modify any franchise granted to a utility by any local government or abrogate or modify in any way existing rights, laws, charters or ordinances of any local government. [1969 c.385 §13]

**LIABILITY OF ELECTRIC UTILITY FOR PRUNING AND REMOVING VEGETATION**

**758.280 Definitions for ORS 758.280 to 758.286.** For the purposes of ORS 758.280 to 758.286:

(1) "Electric facilities" means lines, conduits, ducts, poles, wires, pipes, conductors, cables, crossarms, receivers, transmitters, transformers, instruments, machines, appliances and all other devices and apparatuses used, operated, owned or controlled by an electric utility for the purposes of manufacturing, transforming, transmitting, distributing, selling or furnishing electricity.

(2) "Electric utility" has the meaning given that term in ORS 758.505.

(3) "Vegetation" means trees, shrubs, vines and all other plants. [2001 c.420 §1]

**Note:** 758.280 to 758.286 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 758 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**758.282 Immunity of electric utility for pruning or removing vegetation in certain cases.**

(1) An electric utility is immune from any civil liability for pruning or removing vegetation that is growing on property on which electric facilities are located, or growing on property that is adjacent to property on which electric facilities are located, if the pruning or removal is consistent with policies of the Public Utility Commission relating to the pruning or removal of vegetation, or is consistent with a local ordinance or resolution applicable to the property that relates to the pruning or removal of vegetation, and:

(a) The vegetation has come in contact with or caused damage to electric facilities; or

(b) Pruning or removing the vegetation is necessary to protect life or property or to restore electric service.

(2) ORS 105.810 and 105.815 do not apply to any claim against an electric utility based on the pruning or removal of vegetation growing on property on which electric facilities

ties are located, or growing on property that is adjacent to property on which electric facilities are located. [2001 c.420 §2]

**Note:** See note under 758.280.

**758.284 Immunity of electric utility for pruning or removing vegetation in other cases; notice to property owner.** (1) An electric utility is immune from any civil liability for pruning or removing vegetation that is growing on property on which electric facilities are located, or growing on property that is adjacent to property on which electric facilities are located, if the pruning or removal is consistent with policies of the Public Utility Commission relating to the pruning or removal of vegetation, or is consistent with a local ordinance or resolution applicable to the property that relates to the pruning or removal of vegetation, and any of the following apply:

(a) The vegetation to be pruned or removed is hanging over electric facilities or growing in such close proximity to overhead electric facilities that the vegetation constitutes an electrical hazard under any electrical safety code adopted by the Public Utility Commission or constitutes a danger under state or federal health and safety codes to a person working on the facilities or with access to the facilities.

(b) The vegetation to be removed is diseased, dead or dying or is close enough to electric facilities that pruning or removal of the vegetation is necessary to avoid contact between the vegetation and electric facilities. A determination under this paragraph must be made by a qualified forester or arborist if a local ordinance or resolution requires that such determinations be made by a qualified forester or arborist.

(c) The vegetation is of such size, condition and proximity to electric facilities that the vegetation can reasonably be expected to cause damage to electric facilities in the future. A determination under this paragraph must be made by a qualified forester or arborist if a local ordinance or resolution requires that such determinations be made by a qualified forester or arborist.

(2) The limitation on liability provided by this section does not apply unless the electric utility has provided notice to owners of the property where the vegetation is located. Notice may be provided by posting a flyer in a conspicuous location on the property where the vegetation is located. The flyer must:

(a) Indicate that the electric utility intends to prune or remove vegetation on the property;

(b) Include a brief statement of the nature of the work to be performed and the reason the work is needed;

(c) Include an estimate of the time period during which the work will occur; and

(d) Provide information on how the electric utility can be contacted.

(3) The limitation on liability provided by this section does not apply unless the pruning or removal complies with rules adopted by the Public Utility Commission relating to pruning or removal. In adopting rules, the commission shall give consideration to the American National Standard for Tree Care Operations adopted by the American National Standards Institute. [2001 c.420 §3]

**Note:** See note under 758.280.

**758.286 Immunity not applicable to liability for cost of abating fires.** The immunities provided by ORS 758.280 to 758.284 do not affect any liability that an electric utility may have for the costs of abating fires under ORS 477.064 to 477.120. [2001 c.420 §4]

**Note:** See note under 758.280.

## WATER UTILITIES

**758.300 Definitions for ORS 758.300 to 758.320.** As used in ORS 758.300 to 758.320:

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

(2) "Community water supply system" means a water source and distribution system, whether publicly or privately owned, that serves more than three residences or other users to whom water is provided for public consumption, including but not limited to schools, farm labor camps, industrial establishments, recreational facilities, restaurants, motels, mobile home parks or group care homes.

(3) "Water utility" means any corporation, company, individual or 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 water, 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. "Water utility" does not include a municipal corporation. [1999 c.695 §1]

**Note:** 758.300 to 758.320 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 758 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**758.302 Application for exclusive service territory.** (1) A water utility may apply to the Public Utility Commission for an order designating an exclusive service territory for the water utility. The commission may designate as an exclusive service territory any area that on the date of application is being served in an adequate manner by the

applicant and is not being served by any other water provider.

(2) In addition to the area described in subsection (1) of this section, a private water utility may apply for inclusion in an exclusive service territory designated for the private water utility any area adjacent to the area described in subsection (1) of this section if:

(a) The applicant plans to extend service to the adjacent area in the six months immediately following the date of the application;

(b) The adjacent area is not being served by any other water provider; and

(c) The applicant demonstrates that it is more economical and feasible to provide services to the adjacent area by an extension of the applicant's existing facilities than by an extension of the facilities of another water provider or community water supply system.

(3) An application under this section shall be made on forms provided by the commission and shall contain all information required by commission rule.

(4) Within 30 days after the filing of an application under this section, the commission shall give notice of the filing:

(a) By publication at least once weekly for two consecutive weeks in a newspaper or newspapers of general circulation in the area described in the application; and

(b) By written notice of the application to all other water providers in the areas adjacent to the area described in the application.

(5) The commission may, on its own motion, hold a hearing on the application. The commission shall hold a hearing on the application if a customer of the water utility requests a hearing on the application within 30 days after the final publication of notice in the manner required by subsection (4) of this section. If a hearing is scheduled, the commission shall give notice of the time and place of the hearing in the manner provided by subsection (4) of this section for notice of the filing of an application. If the hearing is held by reason of a customer's request, the commission shall give notice of the hearing within 30 days after the request is received by the commission. The hearing shall be held at a place within or conveniently accessible to the area described in the application.

(6) The commission may make such investigations relating to an application under this section as the commission deems proper, including physical examination and evaluation of the facilities and systems of the applicant, estimates of their operating costs

and revenues, and studies of such other information as the commission deems relevant.

(7) The commission shall enter an order granting or denying an application for an exclusive service territory under this section. The order must contain findings of fact supporting the order. The commission may grant an application subject to such conditions and limitations as the commission deems appropriate.

(8) ORS 756.500 to 756.610 govern the conduct of hearings under this section and any appeal of the commission's order.

(9) If the commission considers competing applications under subsection (2) of this section to extend exclusive service to the same area, there is a disputable presumption that applicants have an equal ability to extend, improve, enlarge, build, operate and maintain existing or proposed facilities. [1999 c.695 §2; 2003 c.202 §4]

**Note:** See note under 758.300.

### **758.305 Exclusive service territories.**

(1) Designated service territories of a water utility approved by the Public Utility Commission shall be exclusive. A water utility or community water supply system shall not provide water utility service within the designated exclusive service territory of another water utility without the express approval of the commission.

(2) A water utility shall serve only customers within its designated exclusive service territory and shall serve all applicants for service within its designated territory. The water utility may refuse service only as provided by commission rule.

(3) Upon petition by the water utility for an order, or by the commission on its own motion, a designated service territory may be expanded to include unserved areas. In reviewing a petition, the commission shall consider at least the current ability of the water utility to serve the expanded area, the demand for service in the expanded area, the impact on existing customers and the availability of alternative service. The commission may take other factors into consideration as prescribed by commission rule. Notice and hearing of the proposed expansion shall be given as provided in ORS 758.302.

(4) Upon petition by the water utility or a customer of the utility for an order, or by the commission on its own motion, a designated exclusive service territory may be decreased upon a showing that the water utility is not providing adequate service to its customers or does not have the capacity to serve the designated area. Notice of the proposed decrease of service territory shall be given as provided in ORS 758.302. [1999 c.695 §6]

**Note:** See note under 758.300.

**758.310 Assignment or transfer of rights in exclusive service territory; approval of commission.** (1) The rights acquired by the designation of an exclusive service territory may be assigned or transferred only with the approval of the Public Utility Commission after a finding that the assignment or transfer is in the public interest. However, a hearing is not required if at least 75 percent of the affected customers agree to the proposed assignment or transfer.

(2) An order designating an exclusive service territory shall not be construed to confer any property right. However, upon the death of an applicant under an approved designation, the executor or administrator shall continue operating the water utility for the purpose of transferring such rights for a period not to exceed two years from the date of death.

(3) The territory served by a water utility under an order of the commission designating exclusive service territory shall not be altered solely as the result of a change in ownership or form of ownership. [1999 c.695 §5]

**Note:** See note under 758.300.

**758.315 Water utility service provided by persons not designated by commission; remedy.** In the event a designated exclusive service territory is served by a person not authorized by the Public Utility Commission, the commission or the water utility designated by the commission to serve the area may file an action for injunctive relief in the circuit court for any county where some or all of the designated service territory is located. The action shall proceed as in an action not triable by right to a jury. Any party to the action may appeal to the Court of Appeals from the trial court's order. An injunction ordered under this section shall be in addition to any other remedy provided by law. [1999 c.695 §7]

**Note:** See note under 758.300.

**758.320 Application of ORS 758.300 to 758.320 to cities; effect on certain voluntary associations; existing franchise; exception.** (1) The provisions of ORS 758.300 to 758.320 shall not be construed to restrict the powers granted to cities to issue franchises or to restrict the powers of condemnation of a municipality.

(2) The provisions of ORS 758.300 to 758.320 shall not be construed to restrict the formation of homeowners associations pursuant to ORS chapter 94, cooperatives pursuant to ORS chapter 62 or districts pursuant to ORS chapter 198 within the designated exclusive service territory of a water utility. A homeowners association, cooperative or district may petition the Public Utility Com-

mission for an order excluding the association, cooperative or district from the exclusive service territory of a water utility. Upon a showing by the association, cooperative or district that exclusion is not detrimental to the public interest, the commission may issue an order excluding the association, cooperative or district from the exclusive service territory of a water utility.

(3) The commission shall recognize the service territories of a water utility that has an existing franchise on October 23, 1999, with a municipality as exclusive service territories. Upon application as provided in ORS 758.302, any such water utility may request an order from the commission to designate exclusive service territories in addition to those identified in the franchise agreement if the water utility is providing adequate and exclusive service to areas outside the areas identified in the franchise agreement.

(4) A district, as defined in ORS 198.010, that provides water utility service shall be exempt from the requirements of ORS 758.302. However, upon request of the commission, the district shall provide to the commission a map of its service territory and shall in all other respects comply with the requirements of ORS 758.300 to 758.320. [1999 c.695 §8; 2003 c.202 §6]

**Note:** See note under 758.300.

### **ELECTRIC AND GAS UTILITIES; ALLOCATION OF TERRITORIES AND CUSTOMERS**

**758.400 Definitions for ORS 758.015 and 758.400 to 758.475.** As used in ORS 758.015 and 758.400 to 758.475 unless the context requires otherwise:

(1) "Allocated territory" means an area with boundaries established by a contract between persons furnishing a similar utility service and approved by the Public Utility Commission or established by an order of the commission approving an application for the allocation of territory.

(2) "Person" includes individuals, firms, partnerships, corporations, associations, cooperatives and municipalities, or their agent, lessee, trustee or referee.

(3) "Utility service" means service provided by any equipment, plant or facility for the distribution of electricity to users or the distribution of natural or manufactured gas to consumers through a connected and inter-related distribution system. "Utility service" does not include service provided through or by the use of any equipment, plant or facilities for the production or transmission of electricity or gas which pass through or over but are not used to provide service in or do not terminate in an area allocated to another

person providing a similar utility service. [Formerly 757.605; 1979 c.62 §2; 1985 c.550 §8; 1987 c.447 §101; 1999 c.59 §232]

**758.405 Purpose of ORS 758.400 to 758.475.** The elimination and future prevention of duplication of utility facilities is a matter of statewide concern; and in order to promote the efficient and economic use and development and the safety of operation of utility services while providing adequate and reasonable service to all territories and customers affected thereby, it is necessary to regulate in the manner provided in ORS 758.400 to 758.475 all persons and entities providing utility services. [Formerly 757.610]

**758.410 Contracts for allocation of territories and customers; transfer of facilities.** (1) Any person providing a utility service may contract with any other person providing a similar utility service for the purpose of allocating territories and customers between the parties and designating which territories and customers are to be served by which of said contracting parties; and the territories and customers so allocated and designated may include all or any portion of the territories and customers which are being served by either or both of the parties at the time the contract is entered into, or which could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto.

(2) Any such contracting parties may also contract in writing for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of the allocation agreed upon pursuant to subsection (1) of this section. Any sale, exchange, transfer or lease of equipment, plant or facilities made pursuant to this subsection by any person which is a "public utility" as defined in ORS 757.005 is also subject to the approval of the Public Utility Commission to the extent required by ORS chapter 757.

(3) The commission may approve a contract entered into under this section that authorizes Coos County to construct a natural gas pipeline into allocated territory in Coos County and that contains terms for the allocation of industrial customers in Coos County between the county and the other party to the contract. The contract need not specify the territory in which industrial customers subject to the allocation are located. The commission may approve the provisions of a contract under this subsection that govern allocation of industrial customers only if the commission determines that the provisions promote the purposes specified in ORS 758.405. The commission shall actively supervise the implementation of any contract entered into pursuant to this subsection to

ensure that the contract continues to promote the purposes specified in ORS 758.405. A contract entered into under this subsection is not subject to ORS 758.420 (2). [Formerly 757.615; 2003 c.32 §1]

**758.415 Enforceability of contract approved by commission; conditions for approval.** Notwithstanding any other provisions of law, a contract entered into pursuant to ORS 758.410, when approved by the Public Utility Commission as provided in ORS 758.420 to 758.475, shall be valid and enforceable; provided, that the commission shall approve such a contract only if the commission finds, after a hearing as provided in ORS 758.420 to 758.475, that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby. [Formerly 757.620]

**758.420 Filing of contract; hearing on contract; notice.** (1) A contract entered into pursuant to ORS 758.410 shall be promptly filed with the Public Utility Commission, and the commission shall, within 30 days after such filing, give notice of such filing. If the commission chooses or if any customer or customers request a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone or in person. The commission shall give notice of such hearing within 30 days of the customer's request which notice shall set the date and place of hearing on the question as to whether or not such contract will be approved. The hearing shall be held at a place within or conveniently accessible to the territories affected by the contract.

(2) The commission shall publish notice of the filing in a newspaper or newspapers of general circulation in each of the territories affected by the contract. Each such notice shall be published at least once weekly for two successive weeks. [Formerly 757.625; 1985 c.633 §3]

**758.425 Order of commission on contract.** (1) On the basis of the applicant's filing or, if there is a hearing, on the record made at the hearing held pursuant to ORS 758.420, the Public Utility Commission shall enter an order either approving or disapproving the contract as filed, together with any appropriate findings of the facts supporting such order.

(2) An order of the commission under this section is subject to judicial review as an order in a contested case in the manner provided by ORS 756.610.

(3) If the commission approves a contract and a petition for judicial review is not filed, the contract shall be deemed to be valid and enforceable for all purposes from the date on which the right to file a petition for judicial review expires. [Formerly 757.630; 1985 c.633 §4; 2005 c.638 §13]

**758.430 Amendment of contract; approval of commission.** Any contract that has been approved as provided in ORS 758.400 to 758.475 may be subsequently amended by the parties thereto, but any such amendatory agreement shall be filed with the Public Utility Commission and shall thereafter be approved or disapproved by the commission in the manner provided in ORS 758.420 and 758.425. However, no hearing is required if all affected customers approve the amendatory agreement. An amendatory agreement may be enforced in the manner provided in ORS 758.465. [Formerly 757.635; 1983 c.540 §5]

**758.435 Application for allocation of territory; hearing; notice.** (1) Any person providing a utility service in a territory that is not served by another person providing a similar utility service may make application to the Public Utility Commission for an order allocating such territory to it. The application may include any adjacent area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person.

(2) The commission shall within 30 days after the filing of such application give notice of the filing. If the commission chooses, or if a customer requests a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone or in person. The commission shall give notice of the hearing within 30 days of the request which notice shall set the date and place of hearing. The hearing shall be held at a place within or conveniently accessible to the territory covered by the application. Notice of the filing shall be by publication in a newspaper or newspapers of general circulation in the territory covered by the application and shall be published at least once weekly for two successive weeks. Written notice of the filing shall be given to providers of similar utility service in adjacent territory.

(3) Territory within the limits of a city, as fixed on May 31, 1961, shall not be deemed to be served exclusively by any person, if such city is, on such date, served by more than one person having necessary municipal or franchise authority to serve within the entire city. [Formerly 757.640; 1985 c.633 §1]

**758.440 Order of commission on application.** (1) On the basis of the application, or, if there is a hearing, on the record made at the hearing held pursuant to ORS 758.435, the Public Utility Commission shall enter an order either approving or disapproving the application as filed, or as amended, together with findings of the facts supporting such order.

(2) The commission, before approving an application for the allocation of territory, shall find that the applicant is exclusively serving the territory covered by the application and in the case of an adjacent unserved area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person. [Formerly 757.645; 1985 c.633 §2]

**758.445 Judicial review of order on application.** An order of the Public Utility Commission under ORS 758.440 is subject to judicial review as an order in a contested case in the manner provided by ORS 756.610. If a petition for judicial review is not filed within the specified time, the order shall thereafter be valid and enforceable for the purposes herein specified from the date on which the right to file a petition for judicial review expires. [Formerly 757.650; 2005 c.638 §14]

**758.450 Contract required for allocation of territory; prohibited activities; exceptions; third party financing.** (1) Territory served by more than one person providing similar utility service may only become an allocated territory by a contract approved by the Public Utility Commission.

(2) Except as provided in subsection (4) of this section, no other person shall offer, construct or extend utility service in or into an allocated territory.

(3) Except as provided in subsection (4) of this section, during the pendency of an application for an allocation of exclusively served territory, no person other than applicant shall offer, construct or extend utility service in or into the territory applied for; nor shall any person, without the express consent of the commission, offer, construct or extend utility service in or into any unserved territory which is the subject of a filing pending before the commission under ORS 758.420 or 758.435.

(4) The provisions of ORS 758.400 to 758.475 do not apply to any corporation, company, individual or association of individuals providing heat, light or power:

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

(b) 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;

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

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

(5) Nothing in subsection (4) 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. [Formerly 757.652; 1981 c.360 §2; 1985 c.779 §2]

**758.455 Investigation by commission respecting contracts or applications; hearing procedure.** (1) The Public Utility Commission may make such investigations respecting a contract or an application for the allocation of territory as the commission deems proper including the physical examinations and evaluations of the facilities and systems of the parties to the contract, estimates of their operating costs and revenues and studies of such other information as the commission deems pertinent.

(2) Insofar as applicable and consistent herewith, the provisions of ORS 756.500 to 756.610 shall govern the conduct of hearings.

(3) In considering competing applications to serve the same territory, there shall be a disputable presumption that applicants have an equal ability to extend, improve, enlarge, build, operate and maintain existing or proposed facilities. [Formerly 757.655]

**758.460 Assignment or transfer of rights acquired by allocation; approval of commission.** (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the Public Utility Commission after a finding that such assignment or transfer is not contrary to the public interest. However, no hearing is required if all affected customers agree to the proposed assignment or transfer.

(2) No approved contract or order approving an allocation of territory shall be construed to confer any property right; providing, however, upon the death of an individual who is a party to an approved contract or the applicant under an approved order, the executor or administrator shall continue the operation thereunder for the purpose of transferring such rights for a period of not to exceed two years from the date of death.

(3) In the event the property of a person serving an allocated territory is condemned, no value shall be claimed or awarded by reason of the contract or order making such allocation. [Formerly 757.670; 1983 c.540 §6]

**758.465 Enforcement procedure.** In the event a contract approved by the Public Utility Commission is breached or in the event an allocated territory is served by a person not authorized by such contract, or order of the commission, the aggrieved person or the commission may file an action in the circuit court for any county in which is located some or all of the allocated territory allegedly involved in said breach or invasion, for an injunction against said alleged breach or invasion. The trial of such action shall proceed as in an action not triable by right to a jury. Any party may appeal to the Court of Appeals from the court's judgment, as in other equity cases. The remedy provided in this section shall be in addition to any other remedy provided by law. [Formerly 757.675; 1979 c.284 §198; 2003 c.576 §561]

**758.470 Application to cities, municipalities and cooperatives of ORS 758.400 to 758.475.** (1) ORS 758.015 and 758.400 to 758.475 shall not be construed or applied to restrict the powers granted to cities to issue franchises, or to restrict the exercise of the power of condemnation by a municipality; and when a municipality has condemned or otherwise acquired another person's equipment, plant or facilities for rendering utility service, it shall acquire all of the rights of the person whose property is condemned to serve the territory served by the acquired properties.

(2) ORS 758.015 and 758.400 to 758.475 shall not be construed to restrict the right of a municipality to provide utility service for street lights, fire alarm systems, airports, buildings and other municipal installations regardless of their location.

(3) ORS 758.015 and 758.400 to 758.475 shall not be construed to confer upon the Public Utility Commission any regulatory authority over rates, service or financing of cooperatives or municipalities. [Formerly 757.680]

**758.475 Fees.** Except in cases under ORS 758.430 and 758.460 where no hearing is required, to cover the costs of administering ORS 758.015 and 758.400 to 758.475 the Public Utility Commission is required to receive fees before filing any contract, application, petition, complaint, protest, appearance, motion, answer or other pleading and for holding any hearing. All fees shall be collected in accordance with the following schedule:

(1) Filing application for allocated territory under ORS 758.435 by a person having annual gross revenue derived from within the state for the calendar year 1960:

(a) In excess of \$5 million or more, a fee of two-tenths of one mill of such revenue but in no event shall such fee exceed, \$10,000.

(b) In excess of \$100,000 but less than \$5 million, \$100.

(c) Less than \$100,000, \$50.

(2) Filing a contract or application under ORS 758.015 or 758.420, \$100.

(3) Filing petition or complaint, \$25.

(4) Filing protest, appearance, motion, answer or other pleading, \$10.

(5) Filing an application for allocated territory under ORS 758.435 subsequent to an original allocation and payment of fee under subsection (1) of this section, \$100. [Formerly 757.685; 1983 c.540 §7]

### TROJAN NUCLEAR PLANT

**758.480 Assumption of obligations arising out of Trojan Nuclear Plant.** (1) As used in this section:

(a) "Agreement" means the agreement dated October 5, 1970, and titled "Agreement for Construction, Ownership and Operation of the Trojan Nuclear Plant," as amended.

(b) "Allocated territory" has the meaning given that term in ORS 758.400.

(c) "Person" means:

(A) A person as defined in ORS 174.100;

(B) A person as defined in ORS 758.400;

(C) A public body as defined in ORS 174.109; or

(D) Any combination of entities described in subparagraphs (A), (B) and (C) of this paragraph.

(d) "Trojan obligations" means all of the obligations and liabilities of the Portland General Electric Company to pay amounts that are due or that may become due under the agreement or that are due or that may become due as a result of a requirement imposed by a federal, state or local governmental body, agency or instrumentality.

(e) "Utility service" has the meaning given that term in ORS 758.400.

(2) Any person acquiring all or a portion of any allocated territory of the Portland General Electric Company, or acquiring the right to provide utility service within the allocated territory of the Portland General Electric Company, shall assume a share of Trojan obligations that is proportionate to the total amount of allocated territory or the percentage of retail customer load for which the person has acquired the right to provide utility service, whichever is greater.

(3) The assumption of Trojan obligations described in this section shall occur without regard to whether the acquisition described in subsection (2) of this section occurs through market transactions or condemnation proceedings or by any other means.

(4) Any person assuming a share of Trojan obligations shall pay all required or necessary amounts, when due, into any de-commissioning or other fund established, required or approved by any federal, state or local governmental body, agency or instrumentality for the purpose of meeting Trojan obligations. A person making payments into a fund described in this subsection may use the person's share of the fund for the purpose of meeting the person's Trojan obligations, subject to any limitation imposed by a federal, state or local governmental body, agency or instrumentality.

(5) The obligations imposed by subsection (2) of this section do not apply to any person acquiring allocated territory or customers of the Portland General Electric Company when:

(a) The acquisition occurs pursuant to the terms of a contract allocating territory that has been approved by the Public Utility Commission under ORS 758.400 to 758.475 and that is in effect on July 22, 2005; or

(b) The acquisition comprises less than one percent of the total allocated territory of the Portland General Electric Company or less than one-tenth of one percent of the total retail customer load of the Portland General Electric Company at the time of acquisition, whichever is greater. [2005 c.630 §1]

**Note:** 758.480 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 758 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**758.500** [1979 c.730 §2; 1981 c.714 §1; repealed by 1981 c.714 §5 and by 1983 c.799 §9]

### COGENERATION AND SMALL POWER PRODUCTION FACILITIES

**758.505 Definitions for ORS 758.505 to 758.555.** As used in ORS 758.505 to 758.555:

(1) "Avoided cost" means the incremental cost to an electric utility of electric energy or energy and capacity that the utility would generate itself or purchase from another source but for the purchase from a qualifying facility.

(2) "Cogeneration facility" means a facility that:

(a) Produces, through the sequential use of energy, electric energy and useful thermal energy including but not limited to heat or steam, used for industrial, commercial, heating or cooling purposes; and

(b) Is more than 50 percent owned by a person who is not an electric utility, an electric holding company, an affiliated interest or any combination thereof.

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

(4) “Electric utility” means a nonregulated utility or a public utility.

(5) “Index rate” means the lowest avoided cost approved by the commission for a generating utility for the purchase of energy or energy and capacity of similar characteristics including online date, duration of obligation and quality and degree of reliability.

(6) “Nonregulated utility” means an entity providing retail electric utility service to Oregon consumers that is a people’s utility district organized under ORS chapter 261, a municipal utility operating under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

(7) “Public utility” means a utility regulated by the commission under ORS chapter 757, that provides electric power to consumers.

(8) “Qualifying facility” means a cogeneration facility or a small power production facility.

(9) “Small power production facility” means a facility that:

(a) Produces energy primarily by the use of biomass, waste, solar energy, wind power, water power, geothermal energy or any combination thereof;

(b) Is more than 50 percent owned by a person who is not an electric utility, an electric utility holding company, an affiliated interest or any combination thereof; and

(c) Has a power production capacity that, together with any other small power production facility located at the same site and owned by the same person, is not greater than 80 megawatts. [1983 c.799 §1]

**758.510** [1979 c.730 §3; 1981 c.714 §2; repealed by 1981 c.714 §7 and by 1983 c.799 §9]

**758.515 Legislative findings.** The Legislative Assembly finds and declares that:

(1) The State of Oregon has abundant renewable resources.

(2) It is the goal of Oregon to:

(a) Promote the development of a diverse array of permanently sustainable energy resources using the public and private sectors to the highest degree possible; and

(b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest.

(3) It is, therefore, the policy of the State of Oregon to:

(a) Increase the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon’s citizens; and

(b) Create a settled and uniform institutional climate for the qualifying facilities in Oregon. [1983 c.799 §2]

**758.520** [1979 c.730 §4; 1981 c.714 §3; repealed by 1981 c.714 §9 and by 1983 c.799 §9]

**758.525 Avoided cost schedules; filing; requirement to purchase energy from qualifying facilities.** (1) At least once every two years each electric utility shall prepare, publish and file with the Public Utility Commission a schedule of avoided costs equaling the utility’s forecasted incremental cost of electric resources over at least the next 20 years. Prices contained in the schedules filed by public utilities shall be reviewed and approved by the commission.

(2) An electric utility shall offer to purchase energy or energy and capacity whether delivered directly or indirectly from a qualifying facility. Except as provided in subsection (3) of this section, the price for such a purchase shall not be less than the utility’s avoided costs. At the option of the qualifying facility, exercised before beginning delivery of the energy or energy and capacity, such prices may be based on:

(a) The avoided costs calculated at the time of delivery; or

(b) The projected avoided costs calculated at the time the legal obligation to purchase the energy or energy and capacity is incurred.

(3) Nothing contained in ORS 543.610, 757.005 and 758.505 to 758.555 shall be construed to require an electric utility to pay full avoided-cost prices for a purchase from a qualifying facility on which construction began before November 8, 1978, but the price for a purchase from such a facility shall be sufficient to encourage production of energy or energy and capacity.

(4) The rates of an electric utility for the sale of electricity shall not discriminate against qualifying facilities. [1983 c.799 §3]

**758.530** [1979 c.730 §5; 1981 c.714 §4; repealed by 1981 c.714 §11 and by 1983 c.799 §9]

**758.535 Criteria for qualifying facility; terms and conditions of energy sale.** (1) The Public Utility Commission shall establish minimum criteria that a cogeneration facility or small power production facility must meet to qualify as a qualifying facility under ORS 543.610, 757.005 and 758.505 to 758.555.

(2) The terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall:

(a) Be established by rule by the commission if the purchase is by a public utility;

(b) Be adopted by an electric cooperative or people’s utility district according to the

applicable provision of ORS chapter 62 or 261; and

(c) Be established by a municipal utility according to the requirements of the municipality's charter and ordinance.

(3) The rules or policies adopted under subsection (2) of this section also shall:

(a) Establish safety and operating requirements necessary to adequately protect all systems, facilities and equipment of the electric utility and qualifying facility;

(b) Be consistent with applicable standards required by the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617); and

(c) Be made available to the public at the commission's office. [1983 c.799 §4]

**758.540** [1979 c.730 §6; repealed by 1981 c.714 §13]

**758.545 Electric utility required to make good faith effort to transmit energy; remedy.** (1) If an electric utility fails to make a good faith effort to comply with a request from a qualifying facility to transmit energy or energy and capacity produced by the qualifying facility to another electric utility or to the Bonneville Power Administration, the electric utility shall purchase the qualifying facility's energy or energy and capacity at a price which is the higher of:

(a) The electric utility's avoided cost; or

(b) The index rate.

(2) As used in this section, "good faith effort" shall be demonstrated by the electric utility's publication of a generally applicable, reasonable policy of the electric utility to allow a qualifying facility to use the electric

utility's transmission facilities on a cost-related basis. [1983 c.799 §5]

**758.550** [1979 c.730 §7; repealed by 1983 c.799 §9]

**758.552 Ownership of renewable energy certificates for energy generated by qualifying facility.** (1) For contracts executed pursuant to the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) and in effect prior to November 30, 2005, renewable energy certificates created pursuant to a system established by the State Department of Energy under ORS 469A.130, for generation during the term of such a contract, are owned by the owner of a qualifying facility, unless the owner has transferred a certificate in a contract between the owner and another person.

(2) Subsection (1) of this section applies to qualifying facilities that:

(a) Are located in this state;

(b) Are certified as qualifying small power production facilities or qualifying cogeneration facilities under the Federal Power Act (16 U.S.C. 796) as in effect on June 7, 2011; and

(c) Produce electricity that is priced under ORS 758.525. [2011 c.248 §2]

**758.555 Effect of energy sales on qualifying facility.** A qualifying facility shall not become a public utility within the meaning of ORS 757.005 on account of sales made under ORS 543.610, 757.005 and 758.505 to 758.555. [1983 c.799 §6]

**758.990** [Renumbered 757.992]