

Chapter 757

1999 EDITION

Utility Regulation Generally

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**Note:** The name of the Department of Human Resources has been changed to the Department of Human Services and the title of the Director of Human Resources to the Director of Human Services. The name and title changes become operative on July 1, 2000. See sections 10 and 11, chapter 421, Oregon Laws 1999. References to the department and the director in this chapter use the name and the title that become operative on July 1, 2000.

## 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. "Public utility" includes a privately owned water utility that provides wastewater services to the public inside the boundaries of a city, either directly or through an affiliate, regardless of the number of customers receiving wastewater services.

(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 water utility serving less than 300 customers at an average annual residential rate of \$18 per month or less that provides adequate and nondiscriminatory service and that does not provide wastewater services.

(F) 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.

(G) Notwithstanding subparagraph (F) 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.

(H) 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.

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

(2) Nothing in subsection (1)(b)(C)(iv) 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 s.2; 1967 c.241 s.1; 1967 c.314 s.1; 1971 c.655 s.64a; 1973 c.726 s.1; 1979 c.62 s.1; 1981 c.360 s.1; 1981 c.749 s.21; 1983 c.118 s.1; 1983 c.799 s.7; 1985 c.550 s.1; 1985 c.633 s.7; 1985 c.779 s.1; 1987 c.447 s.96; 1987 c.900 s.3; 1989 c.5 s.2; 1989 c.999 ss.1,2; 1991 c.294 s.1; 1995 c.267 s.1; 1999 c.330 s.2; 1999 c.491 s.1; 1999 c.865 s.21]

### **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)(F) 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 contracts 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 ss.4a,4c]

**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)(F) 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 ss.4b,4d]

**757.010** [Repealed by 1971 c.655 s.250]

**757.015 “Affiliated interest” defined.** 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 s.65; 1989 c.17 s.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 s.66]

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

**757.030** [Repealed by 1971 c.655 s.250]

**757.035 Adoption of safety 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 apparatus 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 s.1; 1971 c.655 s.68; 1975 c.658 s.1; 1977 c.346 s.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 to enter into agreements with the Secretary of Transportation of the United States of America under provisions of the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979 and to assume responsibility for and to 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 the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979 and the regulations thereunder and provide such information as is required thereunder to 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 s.3]

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

**757.045** [Amended by 1967 c.394 s.1; repealed by 1971 c.781 s.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 s.67]

**757.055** [Repealed by 1971 c.655 s.250]

**757.056 Information on energy conservation to be furnished by certain utilities.** (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 s.2; 1977 c.887 s.11]

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

**757.061 Water utility exemption from certain financial regulations; conditions; maximum rates established by commission.** (1) ORS 757.105 to 757.110, 757.135, 757.140, 757.205 to 757.220, 757.400 to 757.460 and 757.480 to 757.495 do not apply to a water utility serving fewer than 500 customers unless:

(a) Twenty percent or more of the customers of the water utility file a petition with the Public Utility Commission requesting that the water utility not be exempt from regulation under the statutes set forth in this subsection; and

(b) A rate charged by the water utility for water service exceeds maximum rates established by the commission under subsection (2) of this section.

(2) The commission shall adopt rules establishing maximum rates for water utilities serving fewer than 500 customers for the purpose of determining whether such utilities are subject to regulation under the statutes set forth in subsection (1) of this section.

(3) Not less than 60 days before a water utility serving fewer than 500 customers increases any rate to exceed any maximum rate prescribed under subsection (2) of this section, it shall provide written notice to all of its customers advising the customers of their right to file a petition under subsection (1)(a) of this section. The commission shall adopt rules prescribing the content of the written notice.

(4) Notwithstanding subsection (1) of this section, ORS 757.105 to 757.110, 757.135, 757.140, 757.205 to 757.220, 757.400 to 757.460 and 757.480 to 757.495 shall apply to a privately owned water utility that provides wastewater services to the public inside the boundaries of a city, either directly or through an affiliate, regardless of the number of customers receiving wastewater services. [1989 c.403 s.2; 1999 c.330 s.1]

**757.065** [Renumbered 756.370]

**757.070** [Renumbered 756.375]

**757.075** [Repealed by 1971 c.655 s.250]

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

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

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

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

## BUDGET, ACCOUNTS AND REPORTS OF UTILITIES

**757.105 Filing of budget; 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 November 1 of each year 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 s.1; 1971 c.655 s.82]

**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 s.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 vacated and set aside in a suit brought and prosecuted as provided in ORS 756.580 to 756.610 or modified or set aside by the commission.

(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 vacated or set aside in a suit brought and prosecuted as provided in ORS 756.580 to 756.610 or modified or set aside by the commission. [Amended by 1971 c.655 s.84]

**757.115** [Amended by 1971 c.655 s.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 s.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 s.86]

**757.130** [Repealed by 1971 c.655 s.250]

**757.135 Closing accounts and filing balance sheet; auditing accounts.** (1) The accounts shall be closed annually on December 31 and a balance sheet of that date promptly taken therefrom. On or before April 1 following, such balance sheet, together with such other information as the Public Utility Commission shall prescribe, verified by an officer of the public utility, shall be filed with the commission.

(2) 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 s.4]

**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 s.87; 1989 c.956 s.2]

**Note:** The amendments to 757.140 by section 1, chapter 259, Oregon Laws 1999, were referred to the people by referendum petition for their approval or rejection at the regular general election to be held throughout this state on November 7, 2000. 757.140, as amended by section 1, chapter 259, Oregon Laws 1999, is set forth for the user's convenience.

**757.140.** (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) Notwithstanding ORS 757.355, in the following cases the commission may allow in rates, directly or indirectly, the return of and a return on amounts on the utility's books of account which the commission finds represent undepreciated investment in utility property that 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.

**757.145** [Repealed by 1971 c.655 s.250]

**757.150** [Repealed by 1971 c.655 s.250]

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

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

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

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

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

**757.180** [Amended by 1971 c.655 s.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 s.70]

**757.210 Hearing to establish new schedules; alternative regulation plan.** (1) 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 the propriety and reasonableness of such rate or schedule. The commission shall conduct such a 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 such 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 just and reasonable. The term "automatic adjustment clause" means a provision of a rate schedule which provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred or revenues earned by a utility and which 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.

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

(D) 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) 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. 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 s.70a; 1981 c.715 s.1; 1985 c.550 s.2; 1987 c.447 s.97; 1987 c.613 s.1; 1989 c.5 ss.3,23; 1995 c.785 s.1]

**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 s.2; 1991 c.964 s.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 s.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 s.71; 1985 c.550 s.3; 1991 c.67 s.204]

**757.230 Control of commission over classification of services and forms of schedules.** (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 s.72; 1977 c.682 s.1; 1987 c.900 s.1]

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

**757.240 Filing schedules in places where utility consumers make payments.** (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 s.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 s.74]

**757.247 Tariff schedules for energy conservation.** The Public Utility Commission may authorize a public utility to file and place into effect tariff schedules establishing rates or charges for energy conservation measures, services or payments provided to individual property owners or customers. Application of the schedule shall be subject to agreement between the public utility and the property owner or customer receiving service at the time the conservation measures, services or payments are initially provided. The schedule may include provisions for the payment of the rates or charges over a period of time and for the application of the payment obligation to successive property owners or customers at the premises where the conservation measures or services were installed or performed or with respect to which the conservation payments were made. The 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 under the applicable provisions of ORS 183.325 to 183.400 other methods by which the public utility shall notify property owners or customers of any such payment obligation. [1991 c.268 s.2]

**757.250 Standards and appliances for measuring service.** (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 s.75]

**757.255 Testing of measuring appliances.** (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 s.76]

**757.259 Amounts includable in rate schedule; deferral; limit in effect on rates by amortization.** (1) In addition to powers otherwise vested in the Public Utility Commission, and subject to the limitations contained in subsection (6) of this section, under amortization schedules set by the commission, a rate or rate schedule may reflect the following:

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

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

(2) Upon application of a utility or ratepayer or upon the commission's own motion and after public notice and opportunity for comment, 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) 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) 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) of this section are not subject to subsections (4) and (6) of this section, but are subject to such limitations and requirements as the commission may prescribe.

(4) 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 to change rates and upon review of the utility's earnings at the time of application to amortize the deferral.

(5) Amounts that have accrued in deferred accounts with commission authorization before July 10, 1987, also may be reflected in rates. However, in order to continue to use such accounts the public utility shall apply for authorization of the commission under subsection (2) of this section.

(6) In any one year, the overall average rate impact of the amortizations authorized under this section shall not exceed three percent of the utility's gross revenues for the preceding calendar year.

(7) The provisions of this section shall not apply to a telecommunications utility. [1987 c.563 s.2; 1989 c.18 s.1; 1989 c.956 s.1; 1993 c.175 s.1; 1999 c.865 s.31]

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

**757.262 Rates to encourage acquisition of cost-effective conservation resources.** (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 s.3; 1999 c.944 s.3]

**757.265** [Repealed by 1971 c.655 s.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 s.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.

## 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 s.2; 1989 c.5 s.4; 1999 c.832 s.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 s.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 attachment 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 s.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 s.3; 1989 c.5 s.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 s.4; 1987 c.414 s.164; 1999 c.832 s.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 s.5; 1983 c.251 s.1; 1987 c.414 s.165; 1989 c.5 s.6; 1999 c.832 s.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 s.6; 1989 c.5 s.7; 1999 c.832 s.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 s.7; 1987 c.414 s.166; 1989 c.5 s.8; 1999 c.832 s.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 s.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 s.9; 1987 c.414 s.167]

**Note:** Section 9, chapter 832, Oregon Laws 1999, provides:

**Sec. 9.** (1) The Public Utility Commission shall establish a task force consisting of utility pole owners and utility pole users to advise the commission on policies and regulations for accommodating changes in the utility industries while maintaining safe and efficient utility poles, attachment installation practices and rights of way.

(2) In addition to the duties described in subsection (1) of this section, the task force shall:

(a) Develop and submit to the commission proposed rules for determining appropriate sanctions for unauthorized attachments; and

(b) Develop and submit to the commission proposed criteria for certifying compliance with laws regulating pole attachments.

(3) The commission shall adopt rules for certifying a licensee's compliance with laws regulating pole attachments and establishing appropriate sanctions for unauthorized pole attachments. [1999 c.832 s.9]

## NET METERING FACILITIES

**757.300 Net metering facility allowed to connect to public utility; conditions for connecting and measuring energy; 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) Uses solar, wind, fuel cell or hydroelectric power to generate electricity;

(B) Has a generating capacity of not more than 25 kilowatts;

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

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

(E) 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, 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) Notwithstanding subsections (2) to (7) 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 s.2]

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

## ILLEGAL PRACTICES

**757.310 Unjust discrimination in charges for service.** (1) Except as provided in ORS 757.315, no public utility or any agent or officer thereof shall, directly or indirectly, by any device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it than:

(a) That prescribed in the public schedules or tariffs then in force or established; or

(b) It charges, demands, collects or receives from any other person for a like and contemporaneous service under substantially similar circumstances. A difference in rates or charges based upon a difference in classification pursuant to ORS 757.230 shall not constitute a violation of this paragraph. A difference in rates or charges for a service provided pursuant to ORS 757.516 shall not constitute a violation of this paragraph.

(2) Any public utility violating this section is guilty of unjust discrimination. [Amended by 1971 c.655 s.78; 1987 c.900 s.2; 1993 c.485 s.3]

**757.315 Transactions not constituting unjust discrimination.** (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. [Amended by 1971 c.655 s.79]

**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 s.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 s.81]

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

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

**757.345** [Repealed by 1971 c.655 s.250]

**757.350** [Repealed by 1971 c.655 s.250]

**757.355 Costs of property not presently providing utility service excluded from rate base.** No public utility shall, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates which are derived from a rate base which includes within it any construction, building, installation or real or personal property not presently used for providing utility service to the customer. [1979 c.3 s.2]

## ISSUANCE OF SECURITIES

**757.400 Definition of "stocks."** 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 s.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 s.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) 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, except as otherwise permitted by subsection (4) of this section:

(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; and

(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 s.1; 1995 c.539 s.4]

**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 s.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 s.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.** (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 commission 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 collectable 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 s.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 investments 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 conservation 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 s.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 s.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 s.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 shall enter 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 it. If, after such investigation, the commission determines that it is fair and reasonable and not contrary to the public interest, the commission shall enter findings and 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 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 shall 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 loan 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 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 by suit brought and prosecuted, as provided in ORS 756.580 to 756.610, and the public utility, or any other person or corporation affected by any such findings and order, may bring and prosecute such suit. [Formerly 757.170; 1989 c.956 s.7]

**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 s.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 s.2]

**757.510** [Repealed by 1971 c.655 s.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) 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.

(3) The commission promptly shall examine and investigate each application received pursuant to this section and 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 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.

(4) 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 s.3]

**757.515** [Amended by 1971 c.655 s.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 s.2]

**757.520** [Repealed by 1971 c.655 s.250]

**757.525** [Repealed by 1971 c.655 s.250]

**757.530** [Repealed by 1971 c.655 s.250]

**757.535** [Repealed by 1971 c.655 s.250]

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

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

## OREGON UTILITY NOTIFICATION CENTER

**757.542 Definitions.** 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 s.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 s.250]

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

**757.547 Oregon Utility Notification Center; board; member qualifications; terms; meetings.** (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 s.2; 1999 c.451 s.2]

**Note:** See note under 757.542.

**757.550** [Repealed by 1971 c.655 s.250]

**757.551** [1987 c.599 s.3; repealed by 1995 c.691 s.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 183.310 to 183.550 to become effective July 1, 1997, 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 chapters 240, 276, 279, 282, 283, 291, 292 and 293 shall 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 s.3; 1999 c.451 s.3]

**Note:** See note under 757.542.

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

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

**757.557 Underground utility facility operators required to subscribe to center; liability for damage from excavation for nonsubscribers; exemption.** (1) On or before July 1, 1997, every operator of underground facilities shall subscribe to the Oregon Utility Notification Center.

(2) On and after July 1, 1997, 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) After July 1, 1997, 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 s.4]

**Note:** See note under 757.542.

**757.560** [Repealed by 1971 c.655 s.250]

**757.561** [1987 c.599 s.4; repealed by 1995 c.691 s.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 s.5]

**Note:** See note under 757.542.

**757.565** [Repealed by 1971 c.655 s.250]

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

**757.570** [Repealed by 1971 c.655 s.250]

**757.571** [1987 c.599 ss.7,8; repealed by 1995 c.691 s.8]

**757.575** [Repealed by 1971 c.655 s.250]

**757.580** [Repealed by 1971 c.655 s.250]

**757.585** [Repealed by 1971 c.655 s.250]

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

**757.595** [Repealed by 1971 c.655 s.250]

## DIRECT ACCESS REGULATION

**757.600 Definitions for ORS 757.600 to 757.687.** As used in ORS 757.600 to 757.687, 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 made prior to the date the electric company offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. “Economic utility investment” does not include costs or expenses disallowed by the commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(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) "Office of Energy" means the Office of Energy created under ORS 469.030.

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

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

(25) "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.

(26) "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.

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

(28) "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.

(29) "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.

(30) "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.

(31) "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.

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

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

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

(35) "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.

(36) "Uneconomic utility investment" means all investments made by an electric company prior to the date the electric company offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and 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 s.1]

**Note:** Section 2, chapter 865, Oregon Laws 1999, provides:

**Sec. 2.** (1) All retail electricity consumers of an electric company, other than residential electricity consumers, shall be allowed direct access not later than October 1, 2001.

(2) The Public Utility Commission shall report to the Legislative Assembly not later than January 1, 2003, on whether residential electricity consumers would benefit from direct access to electricity services. The report shall address, at a minimum, issues of market development for residential and small-farm consumers and the impact of

direct access on residential and small-farm consumers' access to benefits from the federal Columbia River power system.

(3) Residential electricity consumers shall be allowed to purchase electricity from among a portfolio of rate options as described in section 4 of this 1999 Act [757.603], not later than October 1, 2001.

(4) Sections 1 to 20 and 22 to 29 [221.655 and 757.600 to 757.691] and the amendments to ORS 192.502, 221.450, 225.270, 225.450, 225.460, 225.470, 225.490, 261.235, 261.240, 261.245, 261.255, 757.005 and 757.259 by sections 21 and 30 to 41 of this 1999 Act 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 s.2]

**Note:** Section 18, chapter 865, Oregon Laws 1999, provides:

**Sec. 18.** (1) Sections 2, 3 (1) to (7) and (9), 4, 6, 11 and 29 of this 1999 Act shall not become operative until the Public Utility Commission determines by order, made following notice and public comment, that implementation of sections 2 and 6 [757.646] of this 1999 Act will not have a material adverse impact on the ability of an electric company to access cost-based power from the Bonneville Power Administration pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Public Law 96-501), on behalf of the company's residential and small-farm consumers.

(2) The commission shall make an initial determination under subsection (1) of this section not later than May 1, 2001. If the commission determines that implementation of section 2 or 6 of this 1999 Act will have a material adverse impact on the ability of an electric company to access cost-based power from the Bonneville Power Administration on behalf of the electric company's residential and small-farm consumers, or if the commission is unable to make a determination, the commission may make second and subsequent determinations, following notice and public comment, that implementation of sections 2 and 6 will not have such adverse impact.

(3) If the commission is unable to make a determination under this section by January 1, 2003, the commission shall make a report to the Seventy-second Legislative Assembly detailing the reasons the commission is unable to make a determination.

(4) In addition to subsections (1) to (3) of this section, sections 2, 3 (1) to (7) and (9), 4, 6, 11 and 29 of this 1999 Act shall not become operative until the commission:

(a) Has approved a rate or schedule of rates for an electric company that provides the electric company the opportunity to recover all costs prudently incurred in the acquisition, development, operation and maintenance of investments, systems and procedures, including arrangements with third parties, necessary to comply with sections 1 to 20 and 29 of this 1999 Act [221.655 and 757.600 to 757.667], or authorizes the deferral of costs for later recovery in rates; and

(b) Following investigation and review of the electric company's investments, systems and procedures, including arrangements with third parties, necessary to comply with sections 1 to 20 and 29 of this 1999 Act, certifies that allowing sections 2, 3 (1) to (7) and (9), 4, 6, 11 and 29 of this 1999 Act to become operative will neither diminish the electric company's ability to comply with its statutory or contractual obligations to maintain the safety and reliability of its transmission facilities and distribution system and other infrastructure and equipment used to deliver electricity, nor impair its ability to attract capital for future investments in such transmission facilities, distribution system or other infrastructure and equipment. [1999 c.865 s.18]

**757.603 Electric company required to provide cost-of-service rate option and portfolio option to certain electricity consumers.** (1) Not later than October 1, 2001, an electric company shall provide residential electricity consumers and small commercial electricity consumers, as defined by the Public Utility Commission, that are connected to the electric company's distribution system with a cost-of-service rate option. The commission may require, by order made following a public hearing, an electric company to provide a cost-of-service rate option to other electricity consumers.

(2) Not later than October 1, 2001, 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 s.4]

**Note:** See second note under 757.600.

**757.605** [1961 c.691 s.2; 1971 c.655 s.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 s.8]

**757.610** [1961 c.691 s.18; renumbered 758.405]

**757.611** [Formerly 758.050; renumbered 165.480]

**757.612 Requirements for public purpose expenditures.** (1) There is established an annual public purpose expenditure standard for electric companies 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 offers direct access to its retail electricity consumers, except residential electricity consumers, the electric company shall collect a public purpose charge from all of the retail electricity consumers located within its service area for a period of 10 years. 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 or 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 October 1, 2001, the electric company 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.

(b) Subject to paragraph (e) of this subsection, funds collected by an electric company through public purpose

charges shall be allocated as follows:

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

(B) Nineteen percent for the above-market costs of new renewable energy resources.

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

(D) Five percent shall be transferred to the Housing and Community Services Department Revolving Account created under ORS 456.574 and used for the purpose of providing grants as described in ORS 458.625 (2). Moneys deposited in the account under this subparagraph are continuously appropriated to the Housing and Community Services Department for the purposes of ORS 458.625 (2). Interest on moneys deposited in the account under this subparagraph shall accrue to the account.

(c) The costs of administering subsections (1) to (6) of this section for an electric company shall be paid out of the funds collected through public purpose charges. The commission may require that an electric company 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 and may require an electric company 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 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, 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.

(e)(A) The first 10 percent of the funds collected annually by an electric company under subsection (2) of this section shall be distributed to education service districts, as described in ORS 334.010, that are located in the service territory of the electric company. The funds shall be distributed to individual education service districts according to the weighted average daily membership (ADMw) of the education service 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 education service districts that are only partially located in the service territory of the electric company.

(B) An education service district that receives funds under this paragraph shall use the funds first to pay for energy audits for school districts located within the education service district. An education service district shall not expend additional funds received under this paragraph on a school district facility until an energy audit has been completed for that school district. To the extent practicable, an education service district shall coordinate with the Office of Energy and incorporate federal funding in complying with this paragraph. Following completion of an energy audit for an individual school district, the education service 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 district within the education service district, the education service 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 establish a different public purpose charge than the public purpose charge otherwise described in subsection (2) of this section for an individual retail electricity consumer or any class of retail electricity consumers located within the service area of an electric company, provided that 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 its total cost of electricity services.

(g) The commission shall remove from the rates of each electric company any costs for public purposes described in subsection (1) of this section that are included in rates. A rate adjustment under this paragraph shall be effective on the date that the electric company begins collecting public purpose charges.

(4) An electric company that satisfies its obligations under this section shall have no further obligation to invest in conservation, new market transformation, new renewable energy resources or new low-income weatherization and is not subject to ORS 469.631 to 469.645 and 758.505 to 758.555.

(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 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 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 energy resources.

(b) To obtain a credit under this subsection, a retail electricity consumer shall file with the Office 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 Office 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 Office 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 Office 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 Office 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 Office 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, beginning on the date direct access is offered under section 2 (1), chapter 865, Oregon Laws 1999, an electric company shall collect funds for low-income electric bill payment assistance in an amount determined under paragraph (b) of this subsection.

(b) The total amount collected for low-income electric bill payment assistance under this section shall be \$10 million. The commission shall determine each electric company's proportionate share of the total amount. The commission shall determine the amount to be collected from a retail electricity consumer, except that a retail electricity consumer shall not 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 Revolving Account created under ORS 456.574. Moneys deposited in the account under this paragraph are continuously appropriated to the Housing and Community Services Department for the purpose of funding low-income electric bill payment assistance. Interest earned on moneys deposited in the account under this paragraph shall accrue to the account. 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 account under this paragraph shall be expended solely for low-income electric bill payment assistance. Funds collected from an electric company shall be expended in the service area of the electric company from which the funds are collected.

(d) The Housing and Community Services Department, in consultation with the federal Advisory Committee on Energy, 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, including programs that effectively reduce service disconnections and related costs to retail electricity consumers and



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

(e) Notwithstanding ORS 293.140, interest on moneys deposited in the Housing and Community Services Department Revolving Account under this subsection shall accrue to the account and may be used to provide heating 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 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) In addition to all other charges provided in this section, for the period from January 1, 2000, to the date direct access is offered under section 2 (1), chapter 865, Oregon Laws 1999, an electric company shall collect from its retail electricity consumers an electric bill payment assistance charge. A retail electricity consumer shall not be required to pay more than \$500 per month per site for low-income electric bill payment assistance under this subsection. The statewide total amount collected under this subsection shall equal \$5 million per year, prorated for any fraction of a year. The commission shall determine each electric company's proportionate share of the statewide total amount. Moneys collected under this subsection shall be deposited in the Housing and Community Services Department Revolving Account created under ORS 456.574 and expended for low-income electric bill payment assistance in the manner provided in subsection (7)(d) of this section.

(9) 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. [1999 c.865 s.3]

**Note:** See second note under 757.600.

**757.615** [1961 c.691 ss.3,11; part renumbered 757.652; 1971 c.655 s.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 Office 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 Office of Energy 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 Office of Energy 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 s.3a]

**757.620** [1961 c.691 s.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 s.4a]

**757.625** [1961 c.691 s.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 s.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 s.11]

**Note:** See second note under 757.600.

**757.630** [1961 c.691 s.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 section 2, chapter 865, Oregon Laws 1999. [1999 c.865 s.7]

**757.635** [1961 c.691 s.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 s.10]

**757.640** [1961 c.691 s.8; renumbered 758.435]

**757.641** [Formerly 758.110; renumbered 165.850]

**757.642 Unbundling electricity assets; records.** (1) Not later than October 1, 2001, 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 s.5]

**757.645** [1961 c.691 s.9; renumbered 758.440]

**757.646 Commission policies to eliminate barriers to competitive retail market structures, to provide incentives for divestiture and to establish code of conduct for electric companies.** (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 may provide incentives for divestiture to unaffiliated persons of the generation assets of an electric company, or the structural separation of such assets. The commission shall ensure that divestiture does not deprive consumers of the benefit of the utility's or the region's low-cost resources, independent of the power supplier.

(3) 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.

(4) 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 s.6]

**Note:** See second note under 757.600.

**757.649 Certification of electricity service suppliers; safety standards for distribution systems; billing requirements.** (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 s.14]

**757.650** [1961 c.691 s.10; renumbered 758.445]

**757.652** [Formerly part of 757.615; 1965 c.242 s.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 s.12]

**757.655** [1961 c.691 s.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 s.13]

**757.659 Commission rules; contents.** According to the applicable provisions of ORS 183.310 to 183.550 and

756.060, 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) Policies for the divestiture or structural separation of generating assets and power supply contracts owned or controlled by electric companies, consistent with the provisions of ORS 757.646.
  - (6) Requirements for each electric company to offer a portfolio of rate options under ORS 757.603.
  - (7) 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.
  - (8) Requirements for market structure described in ORS 757.646.
  - (9) Requirements for public purpose charges and credits under ORS 757.612.
  - (10) Requirements for meters, metering services, billing and collection services, and customer response functions.
- [1999 c.865 s.15]

**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 s.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 s.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 s.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 s.17]

**Note:** Section 42, chapter 865, Oregon Laws 1999, provides:

**Sec. 42.** The Public Utility Commission shall report to the Seventy-first Legislative Assembly on the implementation of sections 1 to 20 of this 1999 Act [ORS 757.600 to 757.667]. [1999 c.865 s.42]

**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 s.22]

**757.670** [1961 c.691 s.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 s.23]

**757.675** [1961 c.691 s.12; 1971 c.655 s.99; renumbered 758.465]

**757.676 Consumer-owned utility authorized to offer direct 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 (36), 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 s.24]

**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 s.25]

**757.680** [1961 c.691 s.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 consumer-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 s.26]

**757.685** [1961 c.691 s.16; 1965 c.242 s.2; 1971 c.655 s.99a; renumbered 758.475]

**757.687 Consumer-owned utility offering direct access; public purpose charge.** (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 for a period of 10 years. 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 Office 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 October 1, 2001, a consumer-owned utility whose territory abuts the greatest percentage of the site of an aluminum 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 Office of Energy 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 Office of Energy 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 Office 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 Office of Energy 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 Office of Energy 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 the later of October 1, 2001, or the date direct access is offered under section 2 (1), chapter 865, Oregon Laws 1999, 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 s.27]

**757.690** [1961 c.691 s.17; repealed by 1967 c.164 s.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 s.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 s.2; 1975 c.606 s.10; 1979 c.355 s.1]

**757.720 Factors to be considered in approving plan; authority to establish plan; consultation with Office 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 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.533, 469.990, 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. Where 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 administrator of the Office of Energy before approving a plan. [1973 c.309 s.3; 1975 c.606 s.11]

**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 s.4]

## 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 s.2; 1983 c.326 s.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 s.3; 1983 c.326 s.2]

**757.760 Requirements for notice of termination of service; payment schedules.** 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 premise to another within the utility's service area shall not be considered a discontinuation of service. [1979 c.868 s.4; 1983 c.326 s.3]

## 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.

(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 s.2]

**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 ss.3,4,5,6]

**757.810** [1985 c.550 s.5; renumbered 759.015 in 1989]

**757.815** [1985 c.550 s.6; 1987 c.447 s.72; renumbered 759.020 in 1989]

**757.820** [1985 c.550 s.6a; 1987 c.302 s.1; renumbered 759.025 in 1989]

**757.825** [1985 c.550 s.7; 1987 c.447 s.73; 1987 c.613 s.2; 1989 c.5 ss.9,23; 1989 c.378 s.1; 1989 c.543 s.1; renumbered 759.030 in 1989]

**757.835** [1985 c.389 s.3; 1987 c.447 s.74; renumbered 759.230 in 1989]

**757.840** [1987 c.1 ss.1,2,3; 1989 c.5 s.10; renumbered 759.235 in 1989]

**757.850** [1987 c.613 s.4; 1989 c.5 s.11; 1989 c.378 s.2; 1989 c.543 s.2; renumbered 759.195 in 1989]

**757.860** [1987 c.302 s.3; 1989 c.5 s.12; renumbered 759.225 in 1989]

**757.870** [1987 c.388 s.2; 1989 c.5 s.13; 1989 c.574 s.6; renumbered 759.040 in 1989]

## 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 violating ORS 757.310 commits a Class A violation and upon conviction the court shall impose a fine of not less than \$100. Violation of ORS 757.310 by an officer or agent of a public utility is punishable, upon conviction, by a fine of not less than \$50 nor more than \$100 for each offense.

(3) Any person violating ORS 757.325 shall, upon conviction, forfeit and pay to the State Treasurer not less than \$100 and not more than \$10,000 for each offense. Violation of ORS 757.325 by any agent or officer of any public utility or person is punishable, upon conviction, by a fine of not less than \$100 and not more than \$1,000 for each offense.

(4) Violation of ORS 757.330 is a Class A violation.

(5) Violation of ORS 757.445 is punishable, upon conviction, by a fine of not less than \$500 nor more than \$20,000 for each offense.

(6) Violation of ORS 757.450 is a felony and is punishable, upon conviction, by a fine of not less than \$1,000 nor more than \$20,000, or by imprisonment in the custody of the Department of Corrections for not less than one nor more than five years, or both. [Amended by 1971 c.655 s.95; 1979 c.990 s.428; 1987 c.320 s.245; 1999 c.1051 s.224]

**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 s.4; 1991 c.199 s.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 s.7]