

Enrolled
House Bill 3633

Sponsored by Representative CLOSE; Representative PATRIDGE (at the request of Albany Chamber of Commerce)

CHAPTER

AN ACT

Relating to restructuring by electric power industry; amending ORS 757.603, 757.612, 757.642 and 757.687 and section 2, chapter 865, Oregon Laws 1999; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2, chapter 865, Oregon Laws 1999, is amended to read:

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.*] **beginning on March 1, 2002. Retail electricity consumers shall not be allowed direct access before that date.**

(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, not later than October 1, 2001.*] **ORS 757.603 not later than March 1, 2002.**

(4) [*Sections 1 to 20 and 22 to 29 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*] **ORS 757.600 to 757.691** do not apply to an electric company providing electricity services to fewer than 25,000 consumers in this state unless the electric company offers direct access to any of its retail electricity consumers in this state or offers to sell electricity services available under direct access to more than one retail electricity consumer of another electric utility.

SECTION 2. ORS 757.603 is amended to read:

757.603. [(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.]

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

(b) The Public Utility Commission by order may waive the requirement of paragraph (a) of this subsection for any retail electricity consumer other than residential electricity con-

sumers and small commercial electricity consumers. A waiver under this paragraph may not take effect before July 1, 2003. Before ordering a waiver under this paragraph, the commission shall conduct such studies as the commission deems necessary and provide notice and opportunity for public comment and hearings. The commission may order a waiver under this paragraph if the commission finds, based on an evidentiary record developed through public comment and hearings, that a market exists in which retail electricity consumers subject to the waiver are able to:

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

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

(C) Obtain reliable supplies of electricity; and

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

(2) [Not later than October 1, 2001] **Not later than March 1, 2002**, each electric company shall provide each residential electricity consumer that is connected to its distribution system a portfolio of rate options. The portfolio shall include at least the following options:

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

(b) A market-based rate.

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

(b) The commission may prohibit or otherwise limit the use of a cost-of-service rate by retail electricity consumers who have been served through direct access, and may limit switching among portfolio options and the cost-of-service rate by residential electricity consumers.

SECTION 3. ORS 757.612 is amended to read:

757.612. (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] **March 1, 2002**, 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]*

October 1, 2001, 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] **to October 1, 2001, 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.

SECTION 4. ORS 757.642 is amended to read:

757.642. (1) [Not later than October 1, 2001] **Not later than March 1, 2002,** an electric company shall unbundle the costs of electricity services into power generation, transmission, distribution and retail services.

(2) Every electric company shall maintain separate accounting records for each component of electricity service provided by the electric company to retail electricity consumers. Accounts shall be maintained according to regulations issued by the Federal Energy Regulatory Commission.

(3) Unless required to provide a different accounting under federal requirements, each electric company shall, to a reasonable level of detail, separately identify and account for its costs of:

- (a) Generation;
- (b) Transmission services;
- (c) Distribution services;
- (d) Ancillary services;
- (e) Consumer service charges levied on retail electricity consumers, including but not limited to metering and billing;
- (f) Investment in public purposes; and
- (g) State and local taxes paid by retail electricity consumers.

(4) An electric company shall separately identify and account for the costs of any additional components as the Public Utility Commission may require.

SECTION 5. ORS 757.687 is amended to read:

757.687. (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 con-

nection 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] **March 1, 2002**, 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] **March 1, 2002**, a consumer-owned utility shall have in operation a bill assistance program for households that qualify for federal low-income energy assistance in the consumer-owned utility's service area. A consumer-owned utility shall report annually to the Housing and Community Services Department detailing the utility's program and program expenditures.

(12) A consumer-owned utility may require an electricity service supplier to provide information necessary to ensure compliance with this section. The consumer-owned utility shall ensure the privacy and protection of any proprietary information provided.

SECTION 6. This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect on its passage.

Passed by House May 24, 2001

Received by Governor:

Repassed by House July 1, 2001

.....M.,....., 2001

Approved:

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Chief Clerk of House

.....M.,....., 2001

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Speaker of House

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Governor

Passed by Senate June 22, 2001

Filed in Office of Secretary of State:

.....M.,....., 2001

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President of Senate

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Secretary of State