

Enrolled
House Bill 3696

Sponsored by COMMITTEE ON ADVANCING E-GOVERNMENT

CHAPTER

AN ACT

Relating to utility regulation; creating new provisions; amending ORS 757.210, 757.800, 758.015, 758.020, 772.205 and 772.210; and declaring an emergency.

Whereas the western United States is experiencing a shortage of electrical generating capacity, and as a result consumers in Oregon are faced with the prospect of significant increases in the cost of electricity; and

Whereas wholesale power markets in the western United States are reflecting extreme price volatility, and there is substantial uncertainty with respect to the level of wholesale electricity prices in the future; and

Whereas there is considerable uncertainty about the extent to which electric companies will be called upon to supply electricity to Oregon consumers at cost-based rates; and

Whereas the current regulation of electric companies and electric services may not sufficiently promote the development of new electric generating resources; and

Whereas in the current economic and regulatory environment, electric companies face substantial risk in respect to the construction or acquisition of new electric generating resources; and

Whereas the Public Utility Commission has the unique expertise to understand and lead changes in the regulation of electric companies that are necessary to further the purpose of this 2001 Act for the benefit of Oregon consumers; now, therefore,

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

SECTION 1. Section 2 of this 2001 Act is added to and made a part of ORS 757.205 to 757.220.

SECTION 2. (1) For purposes of this section:

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

(b) "Site" means:

(A) Buildings or other related structures that are interconnected by facilities owned by a single public utility customer and that are served through a single electric meter; or

(B) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

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

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

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

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

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

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

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

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

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

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

(b) The allocation of power available from the generating plant or power purchase or sales agreement among different classes of the public utility's customers;

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

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

(8) If the commission approves a resource rate plan, the commission may not thereafter review the costs and rates specific to the resource rate plan or other obligations of the public utility under the plan, or consider any complaint under ORS 756.500 seeking review of the costs and rates specific to the resource rate plan or other obligations of the public utility

under the plan, except for the purpose of determining whether the public utility is in compliance with the plan and has established rates in accordance with the plan.

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

(10) The commission may not vacate or amend an order approving a resource rate plan unless the public utility operating under the plan approves the vacation or amendment.

(11) Notwithstanding ORS 756.580, any appeal of a commission order disapproving or approving a resource rate plan must be pursuant to the provisions of ORS 183.482.

SECTION 3. ORS 757.210 is amended to read:

757.210. (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, **including a resource rate plan under section 2 of this 2001 Act.**

(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) **Except as provided in section 2 of this 2001 Act,** the commission, at any time, may order a utility to appear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this section are in conformity with the plan and are just and reasonable. **Except as provided in section 2 of this 2001 Act,** 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.

SECTION 4. The Public Utility Commission may not approve resource rate plans under section 2 of this 2001 Act for generation resources or power purchase or sales agreements that have been included in rates of the public utility before the effective date of this 2001 Act.

SECTION 5. ORS 757.800 is amended to read:

757.800. As used in this section and ORS 757.805, unless the context requires otherwise:

(1) "Authorized person" means:

(a) An employee of a utility which produces, transmits or delivers electricity.

(b) An employee of a utility which provides and whose work relates to communication services or state, county or municipal agencies which have authorized circuit construction on or near the poles or structures of a utility.

(c) An employee or agent of an industrial plant whose work relates to the electric system of the industrial plant.

(d) An employee of a cable television or communication services company or an employee of a contractor of a cable television or communication services company if specifically authorized by the owners of the poles to make cable television or communication services attachments.

(e) An employee or agent of state, county or municipal agencies which have or whose work relates to overhead electric lines or circuit construction or conductors on poles or structures of any type.

(f) An employee of a transmission company as defined in ORS 758.015.

(2) "High voltage" means voltage in excess of 600 volts measured between conductors or between a conductor and the ground.

(3) "Overhead line" means all bare or insulated electric conductors installed above ground.

(4) "Person" or "business entity" means those parties who contract to perform any function or activity upon any land, building, highway or other premises.

(5) "Utility" means any electric or communication utility described by ORS 757.005, any plant owned or operated by a municipality, any person furnishing community antenna television service to the public and any cooperative corporation or people's utility district engaged in furnishing electric or communication service to customers.

(6) "Proximity" means within 10 feet or such greater distance as may be prescribed by rule adopted pursuant to ORS chapter 654.

SECTION 6. ORS 758.015 is amended to read:

758.015. (1) When any person, as defined in ORS 758.400, providing electric utility service, as defined in ORS 758.400, **or any transmission company**, proposes to construct an overhead transmission line which will necessitate a condemnation of land or an interest therein, it shall petition the Public Utility Commission for a certificate of public convenience and necessity setting forth a detailed description and the purpose of the proposed transmission line, the estimated cost, the route to be followed, the availability of alternate routes, a description of other transmission lines connecting the same areas, and such other information in such form as the commission may reasonably require in determining the public convenience and necessity.

(2) The commission shall give notice and hold a public hearing on such petition. The commission, in addition to considering facts presented at such hearing, shall make the commission's own investigation to determine the necessity, safety, practicability and justification in the public interest for the proposed transmission line and shall enter an order accordingly. The order shall be subject to review as in other cases. In any proceeding for condemnation, a certified copy of such order shall be conclusive evidence that the transmission line for which the land is required is a public use and necessary for public convenience.

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

(4) As used in this section and ORS 758.020, "transmission company" means a person or entity that owns or operates high voltage transmission lines and is subject to the jurisdiction

of the Federal Energy Regulatory Commission. "Transmission company" does not include a cooperative organized under ORS chapter 62.

SECTION 7. ORS 758.020 is amended to read:

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

(2) If the owners of such lines are unable to agree on the terms and conditions of joint occupancy, such department, court or board shall request the Public Utility Commission to determine the practicability of such joint occupancy and the effect thereof upon adequate and safe service by the prospective joint occupants, the location of the lines, and, if found to be practicable, to fix and prescribe the terms and conditions pursuant to which joint occupancy shall be accomplished. Before making or entering an order, such commission shall hold a hearing and make findings in accordance with ORS 756.500 to 756.610, subject to review as provided in ORS 756.580 to 756.610. In fixing terms and conditions pursuant to which joint occupancy shall be accomplished, the Public Utility Commission shall require the installation by each occupant of standards, devices and equipment reasonably necessary to protect the equipment of the other occupants from damage and the public from injury arising from such joint occupancy.

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

SECTION 8. ORS 772.205 is amended to read:

772.205. As used in ORS 772.210 and 772.215, unless the context requires otherwise:

(1) "Electrical cooperative association" means a cooperative association which is subject to a tax on gross revenue derived from the use or operation of transmission and distribution lines pursuant to ORS 308.805 to 308.820.

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

(3) "Service facilities" include any line, wire, pipe, conduit, main, pump, pole, tower, fixture, structure, shop, office or building for any use or purpose reasonably necessary and incident to the conduct of the business of a public utility.

(4) "Transmission company" has the meaning given that term in ORS 758.015.

SECTION 9. ORS 772.210 is amended to read:

772.210. (1) Any public utility, [or] electrical cooperative association **or transmission company** may:

(a) Enter upon lands within this state for the purpose of examining, locating and surveying the line thereof and also other lands necessary and convenient for the purpose of construction of service facilities, doing no unnecessary damage thereby.

(b) Condemn such lands not exceeding 100 feet in width for its lines (including poles, towers, wires, supports and necessary equipment therefor) and in addition thereto, other lands necessary and convenient for the purpose of construction of service facilities; and if the lands are covered by trees which are liable to fall and constitute a hazard to its wire or line, any public utility **or transmission company** organized for the purpose of building, maintaining and operating a line of poles and wires for the transmission of electricity for lighting or power purposes, may condemn such trees for a width not exceeding 300 feet, as may be necessary or convenient for such purpose.

(2) Notwithstanding subsection (1) of this section, any public utility, [or] electrical cooperative association **or transmission company** may, when necessary or convenient for transmission lines (including poles, towers, wires, supports and necessary equipment therefor) designed for voltages in excess of 330,000 volts, condemn land not to exceed 300 feet in width. In addition, if the lands are covered by trees which are liable to fall and constitute a hazard to its wire or line, such public utility **or transmission company** may condemn such trees for a width not exceeding 100 feet on either side of the condemned land, as may be necessary or convenient for such purpose.

(3) Notwithstanding subsection (1) of this section, a water or gas public utility may condemn such lands, not exceeding 50 feet in width, as may be necessary or convenient for purposes of constructing, laying, maintaining and operating its lines, including necessary equipment therefor.

(4) The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber, and diminution in value to remaining timber caused by increased harvesting costs.

SECTION 10. 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 June 4, 2001

Repassed by House July 4, 2001

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Chief Clerk of House

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Speaker of House

Passed by Senate July 3, 2001

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President of Senate

Received by Governor:

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

Approved:

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

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Governor

Filed in Office of Secretary of State:

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

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Secretary of State