

House Bill 3485

Sponsored by COMMITTEE ON ELECTIONS AND RULES (at the request of Oregon Mutual Utility Development, Inc.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes Public Utility Commission to issue qualified rate order requiring utility to collect charges from customers, revenues of which are used to fund utility acquisition costs. Prohibits modification of qualified rate order or impairment of value of intangible acquisition property.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to mutual utilities; creating new provisions; amending ORS 756.040, 757.005, 757.417 and
3 757.511; and declaring an emergency.

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

5 **SECTION 1.** ORS 757.417 is amended to read:

6 757.417. (1) ORS 757.415 does not apply to the issuance, renewal or assumption of liability on
7 any evidence of indebtedness when such issuance, renewal or assumption is for the purpose of ac-
8 quiring specific real or personal property, if the aggregate principal amount thereof, together with
9 all other then outstanding evidences of indebtedness issued, renewed or assumed under this section,
10 does not exceed whichever is the greater of the following amounts:

11 [(1)] (a) The amount of \$75,000.

12 [(2)] (b) The amount of one-half of one percent of the sum of:

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

15 [(b)] (B) The capital and surplus as then stated on the books of account of the public utility.

16 (2) **ORS 757.415 does not apply to the issuance of acquisition bonds. The issuance of ac-**
17 **quisition bonds shall be governed by sections 3 to 11 of this 2005 Act.**

18 **SECTION 2.** Sections 3 to 11 of this 2005 Act are added to and made a part of ORS
19 **chapter 757.**

20 **SECTION 3.** As used in sections 3 to 11 of this 2005 Act:

21 (1) **"Acquisition bonds" means the following, if secured by or payable from intangible**
22 **acquisition property, and issued by or on behalf of an issuing utility pursuant to a qualified**
23 **rate order:**

24 (a) **Bonds;**

25 (b) **Debentures;**

26 (c) **Notes;**

27 (d) **Certificates of participation;**

28 (e) **Certificates of beneficial interest; or**

29 (f) **Other evidences of indebtedness, evidences of ownership or securities.**

30 (2) **"Assignee" means any corporation, partnership, limited liability company, association,**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 public authority, trust, financing vehicle or other entity to which a utility assigns, sells or
2 transfers, other than as security, all or a portion of its interest in or right to intangible ac-
3 quisition property or to which a direct assignee or any subsequent assignee of an issuing
4 utility assigns, sells or transfers, other than as security, all or a portion of its interest in
5 or right to intangible acquisition property.

6 (3) "Customer" means a retail electric customer.

7 (4) "Financing party" means a holder of acquisition bonds, including a trustee, collateral
8 agent, escrow agent or other entity acting for the benefit of a holder of acquisition bonds.

9 (5) "Intangible acquisition charges" means amounts authorized by a qualified rate order
10 to be imposed on all customer bills and collected through nonbypassable rates by the issuing
11 utility or by any other entity that provides electric service to a person that was a retail
12 electric customer of the issuing utility on or after the effective date of this 2005 Act and that
13 continues to receive electric service in territory that was the service territory of the issuing
14 utility on the effective date of this 2005 Act. "Intangible acquisition charges" includes
15 charges to recover federal and state taxes, if the charges to recover federal and state taxes
16 are approved in a qualified rate order.

17 (6) "Intangible acquisition property" means the property right that is described in section
18 7 of this 2005 Act.

19 (7) "Issuing utility" means the Portland General Electric Company or the assignees,
20 successors or subsequent assignees or successors of the Portland General Electric Company.

21 (8) "Nonbypassable rates" means separately stated charges that are imposed on the is-
22 suing utility's customer bills, that are payable by customers as a condition of service and
23 that recover the issuing utility's qualified acquisition costs.

24 (9) "Qualified acquisition costs" means:

25 (a) Intangible acquisition costs and other costs of an issuing utility that are approved by
26 the Public Utility Commission in a qualified rate order for recovery through intangible ac-
27 quisition charges pursuant to a qualified rate order issued by the commission under section
28 5 of this 2005 Act;

29 (b) Costs of refinancing, acquiring or retiring existing debt or equity capital of the issuing
30 utility or its holding company parent, including accrued interest and acquisition or redemp-
31 tion premiums, if any, costs of defeasance, associated federal and state tax liabilities,
32 transaction costs and other related fees, costs and charges incurred as a result of the issu-
33 ance of acquisition bonds or the assignment, sale or other transfer of intangible acquisition
34 property;

35 (c) Costs incurred to issue, service or refinance the acquisition bonds, including accrued
36 interest and acquisition or redemption premiums, if any, and other related fees, costs and
37 charges, or costs incurred to assign, sell or otherwise transfer intangible acquisition prop-
38 erty; and

39 (d) Development and transaction costs incurred by or on behalf of the issuing utility as
40 requested in the issuing utility's application for a qualified rate order and as approved in the
41 qualified rate order.

42 (10) "Qualified rate order" means an order issued by the commission under section 5 of
43 this 2005 Act that authorizes the imposition and collection of intangible acquisition charges.

44 (11) "Retail electric customer" means a direct purchaser of electricity from an issuing
45 utility, but does not include a purchaser for resale.

1 **SECTION 4. (1) An issuing utility may apply to the Public Utility Commission for a**
 2 **qualified rate order to recover or finance some or all of the qualified acquisition costs of the**
 3 **issuing utility. If the commission issues a qualified rate order and acquisition bonds are is-**
 4 **ssued pursuant to the qualified rate order, the issuing utility shall impose on the customer**
 5 **bills of the issuing utility and shall collect through nonbypassable rates the intangible ac-**
 6 **quisition charges approved in the qualified rate order.**

7 **(2) Acquisition bonds may not have a final maturity of longer than 30 years and may not**
 8 **constitute an obligation against the credit of the issuing utility or against any assets of the**
 9 **issuing utility, other than intangible acquisition property that is specified in the qualified**
 10 **rate order.**

11 **SECTION 5. (1) Notwithstanding any other provision of law, the Public Utility Commis-**
 12 **sion may issue qualified rate orders in accordance with the provisions of this section to fa-**
 13 **facilitate the recovery or financing of qualified acquisition costs of an issuing utility.**

14 **(2) The commission shall issue a qualified rate order only upon the application of an is-**
 15 **suing utility.**

16 **(3) Each application for a qualified rate order shall contain a complete accounting of the**
 17 **portion of the issuing utility's acquisition and other costs to be covered by the qualified rate**
 18 **order, a description of all additional costs to be included as qualified acquisition costs, de-**
 19 **tailed information regarding the issuing utility's proposal for the sale of intangible acqui-**
 20 **sition property or the issuance of acquisition bonds and information regarding the issuing**
 21 **utility's planned use of the proceeds from the sale or issuance. All information may be in-**
 22 **corporated by reference into any other filing with the commission in which the information**
 23 **is contained.**

24 **(4)(a) The commission shall review an application for a qualified rate order upon request**
 25 **of the issuing utility. The commission shall issue a qualified rate order that applies only to**
 26 **the portion of the intangible acquisition costs and other costs for which the issuing utility**
 27 **requests designation as qualified acquisition costs.**

28 **(b) The qualified rate order shall specify the amount of qualified acquisition costs that**
 29 **would be just and reasonable to recover from ratepayers and shall include findings that the**
 30 **issuance of acquisition bonds is a net benefit to present and future retail electric customers.**
 31 **Upon those determinations, the commission shall issue a qualified rate order:**

32 **(A) Approving the issuance of acquisition bonds for the amount of qualified acquisition**
 33 **costs that the commission finds would be just and reasonable to recover from ratepayers;**

34 **(B) Establishing the intangible acquisition charges with respect to the qualified acqui-**
 35 **sition costs;**

36 **(C) Setting the nonbypassable rates to recover the intangible acquisition charges; and**

37 **(D) Authorizing the assignment, sale or transfer of intangible acquisition property.**

38 **(c) The commission shall complete its review of the application and issue a qualified rate**
 39 **order within 120 days after the issuing utility files an application for a qualified rate order.**

40 **(d) Any portion of the issuing utility's acquisition and other costs not included as quali-**
 41 **fied acquisition costs in the qualified rate order shall be eligible for consideration in subse-**
 42 **quent applications by the issuing utility.**

43 **(5)(a) A qualified rate order shall expire four years after the date of issuance unless,**
 44 **within the four-year period, acquisition bonds are issued or intangible acquisition property**
 45 **is assigned, sold or otherwise transferred.**

1 (b) The issuing utility may apply for an extension or renewal of a qualified rate order.

2 (6) After the issuance of a qualified rate order, the issuing utility shall retain sole dis-
 3 cretion regarding whether to assign, sell or otherwise transfer intangible acquisition prop-
 4 erty or whether to cause acquisition bonds to be issued, including but not limited to the
 5 discretion to defer or postpone the assignment, sale or transfer of the intangible acquisition
 6 property, or the issuance of the acquisition bonds.

7 (7) The qualified rate order shall afford flexibility in establishing the terms and conditions
 8 of the acquisition bonds, including but not limited to repayment schedules, interest rates and
 9 other financing costs. The qualified rate order shall specify that amounts collected from
 10 customers in partial payment of customer bills will be allocated first to intangible acquisition
 11 charges and then to other charges.

12 (8)(a) Notwithstanding any other provision of law and subject to any conditions that the
 13 commission may require in a qualified rate order, all or a portion of the interest of an issuing
 14 utility in intangible acquisition property may be assigned, sold or otherwise transferred to
 15 one or more assignees and may be pledged or assigned as security by an issuing utility or
 16 assignee to or for the benefit of a financing party.

17 (b) To the extent that any interest in intangible acquisition property is assigned, sold or
 18 transferred or is pledged or assigned as security, the commission shall authorize the issuing
 19 utility to impose and collect the intangible acquisition charges for the benefit and account
 20 of the assignee or financing party and to account for and remit the intangible acquisition
 21 charges to or for the account of the assignee or financing party.

22 (c) If the qualified rate order so provides:

23 (A) The obligations of the issuing utility shall be binding upon the issuing utility, its
 24 successors and assigns; and

25 (B) Obligations described in subparagraph (A) of this paragraph shall be undertaken and
 26 performed by the issuing utility and any other entity that provides electric service to a per-
 27 son that was a retail electric customer of the issuing utility on or after the effective date
 28 of this 2005 Act and that continues to receive electric service in territory that was the ser-
 29 vice territory of the issuing utility on the effective date of this 2005 Act.

30 (9) The commission shall include in a qualified rate order a procedure for the expeditious
 31 approval by the commission of periodic adjustments to the intangible acquisition charges
 32 that are the subject of the qualified rate order. Adjustments made pursuant to this proce-
 33 dure shall be for the purpose of ensuring the recovery of revenues sufficient to provide for
 34 the payment of all principal, interest, acquisition or redemption premiums, if any, and other
 35 fees, costs and charges related to acquisition bonds approved by the commission as part of
 36 or in conjunction with a qualified rate order. The commission shall determine whether the
 37 adjustments are required and, if required, approve the adjustments within 60 days of each
 38 anniversary of the intervals provided for in the qualified rate order or in the application of
 39 the issuing utility for the determination.

40 (10) A qualified rate order shall include a provision that states the effect, if any, of any
 41 subsequent refinancing of acquisition bonds on the rates authorized in the qualified rate or-
 42 der.

43 **SECTION 6.** (1) Notwithstanding any other provision of law, the qualified rate order and
 44 the intangible acquisition charges authorized to be imposed and collected under the qualified
 45 rate order shall be irrevocable, and the Public Utility Commission may not, by rescinding,

1 altering or amending the qualified rate order or in any other manner:

2 (a) Revalue or revise for ratemaking purposes the qualified acquisition costs or the costs
3 of providing, recovering, financing or refinancing the qualified acquisition costs;

4 (b) Determine that the intangible acquisition charges or rates are unjust or unreason-
5 able; or

6 (c) Reduce or impair in any way the value of intangible acquisition property either di-
7 rectly or indirectly by taking intangible acquisition charges into account when setting other
8 rates for the issuing utility. The amount of revenue arising with respect to the rates of the
9 issuing utility may not be subject to reduction, impairment, postponement or termination
10 by any subsequent action of the commission.

11 (2) Notwithstanding any other provision of law, the State of Oregon pledges to and agrees
12 with the holders of any acquisition bonds and with any assignee or financing party who may
13 enter into contracts with an issuing utility under sections 3 to 11 of this 2005 Act, that the
14 State of Oregon may not limit, alter or in any way impair or reduce the value of intangible
15 acquisition property or intangible acquisition charges approved by a qualified rate order un-
16 til:

17 (a) The acquisition bonds together with the interest on the acquisition bonds are fully
18 paid and discharged; or

19 (b) The contracts described in this subsection are fully performed on the part of the is-
20 suing utility.

21 (3) Notwithstanding subsection (2) of this section and subject to other requirements of
22 law, nothing contained in this section shall preclude a limitation or alteration otherwise
23 prohibited by subsection (2) of this section if adequate compensation is made by law for the
24 full protection of:

25 (a) Acquisition bondholders;

26 (b) Any assignee or financing party that contracts with the issuing utility in a contract
27 described in subsection (2) of this section; and

28 (c) The authority to collect intangible acquisition charges as provided in a qualified rate
29 order.

30 (4) The State of Oregon hereby authorizes the inclusion of the pledge and agreement de-
31 scribed in subsections (2) and (3) of this section as a legend on acquisition bonds issued
32 pursuant to sections 3 to 11 of this 2005 Act.

33 **SECTION 7.** (1) A property right that constitutes intangible acquisition property exists
34 if an issuing utility or assignee has qualified acquisition costs for which a qualified rate order
35 authorizes the imposition and collection of intangible acquisition charges.

36 (2) The property right that constitutes intangible acquisition property consists of the
37 irrevocable right of the issuing utility or an assignee to receive through intangible acqui-
38 sition charges amounts sufficient to recover all of the issuing utility's qualified acquisition
39 costs, including but not limited to all rights, titles and interest of the issuing utility or
40 assignee in the qualified rate order and in all revenues collected or collectible, collections,
41 claims, payments, moneys or proceeds of or arising from intangible acquisition charges im-
42 posed pursuant to a qualified rate order.

43 **SECTION 8.** (1) The granting, perfection and enforcement of security interests in intan-
44 gible acquisition property to secure acquisition bonds is governed by sections 3 to 11 of this
45 2005 Act and is not subject to ORS chapter 79.

1 **(2)(a) For purposes of the Uniform Commercial Code, intangible acquisition property or**
2 **any right, title or interest of an issuing utility or assignee described in section 7 of this 2005**
3 **Act, whether before or after the issuance of the qualified rate order, does not constitute**
4 **accounts or general intangibles.**

5 **(b) Any right, title or interest that pertains to a qualified rate order and that is described**
6 **in paragraph (a) of this subsection, including the associated intangible acquisition property**
7 **and any revenues collected or collectible, collections, claims, payments, moneys or proceeds**
8 **of or arising from intangible acquisition charges pursuant to a qualified rate order, may not**
9 **be deemed proceeds of any right or interest other than in a qualified rate order and in the**
10 **intangible acquisition property that exists as a result of the qualified rate order.**

11 **(3) A valid and enforceable security interest in intangible acquisition property attaches**
12 **automatically from the time of the issuance of acquisition bonds issued to finance qualified**
13 **acquisition costs, as specified in a qualified rate order, to which the intangible acquisition**
14 **property relates. The security interest shall be deemed a valid and enforceable security in-**
15 **terest in the intangible acquisition property securing the acquisition bonds and shall be**
16 **continuously perfected if, within 10 days after the date of issuance, a filing of a Uniform**
17 **Commercial Code Article I financing statement has been made by or on behalf of the fi-**
18 **ancing party with the Secretary of State. The financing statement shall show the issuing**
19 **utility, or the assignee by or on whose behalf the acquisition bonds are issued, as the debtor.**
20 **The financing statement shall identify the intangible acquisition property. Any description**
21 **of the intangible acquisition property shall be sufficient if the description refers to the ap-**
22 **plicable qualified rate order. Any filing in respect of acquisition bonds takes precedence over**
23 **any other filing.**

24 **(4) A security interest perfected as provided in this section is enforceable against the**
25 **issuing utility or assignee and all third parties, including judicial lien creditors. A security**
26 **interest perfected as provided in this section is subject only to the rights of any third parties**
27 **holding security interests in the intangible acquisition property previously perfected in the**
28 **manner described in this section, if value has been given by the purchasers of associated**
29 **acquisition bonds. A perfected lien in intangible acquisition property is a continuously per-**
30 **fected security interest in all revenues and proceeds arising with respect to the associated**
31 **intangible acquisition property, whether or not any revenues have accrued. Intangible ac-**
32 **quisition property constitutes property for the purposes of securing acquisition bonds**
33 **whether or not revenues related to intangible acquisition property have accrued. The lien**
34 **created under this section ranks prior to any other lien, including any judicial lien, that**
35 **subsequently attaches to the intangible acquisition property, the intangible acquisition**
36 **charges, the qualified rate order or any rights created thereby or any proceeds thereof.**

37 **(5) The relative priority of a security interest created under this section is not defeated**
38 **or adversely affected by changes to the qualified rate order or to the intangible acquisition**
39 **charges payable by any customer or by the commingling of revenues arising with respect to**
40 **intangible acquisition property with other funds of the issuing utility or the assignee.**

41 **(6) If a default occurs under approved acquisition bonds, the holders of the bonds or their**
42 **authorized representatives, as secured parties, may foreclose or otherwise enforce the lien**
43 **in the intangible acquisition property securing the acquisition bonds, subject to the rights**
44 **of any third parties holding prior security interests in the intangible acquisition property**
45 **perfected in the manner provided in this section. Upon application by the holders or their**

1 representatives, without limiting their other remedies, the Public Utility Commission shall
 2 order the sequestration and payment to the holders or their representatives of revenues
 3 arising with respect to the intangible acquisition property pledged to the holders. Any com-
 4 mission order shall remain in full force and effect notwithstanding any bankruptcy, reor-
 5 ganization or other insolvency proceedings with respect to the issuing utility or assignee.

6 **SECTION 9.** (1) Unless otherwise expressly provided in the documentation governing the
 7 transfer of intangible acquisition property, the documentation governing a transfer of in-
 8 tangible acquisition property by an issuing utility to an assignee shall expressly state that
 9 the transfer constitutes a sale or other absolute transfer of all of the transferor's rights,
 10 title and interest, as in a true sale, and not as a pledge or other financing of the intangible
 11 acquisition property, other than for federal and state income tax purposes.

12 (2) A grant to holders of acquisition bonds of a preferred right to the intangible acquisi-
 13 tion property, or the provision by the issuing utility of any credit enhancement with respect
 14 to acquisition bonds, may not impair or negate the characterization of any transfer as a true
 15 sale or other absolute transfer, other than for federal and state income tax purposes.

16 (3) A transfer of intangible acquisition property shall be deemed perfected as against
 17 third persons, including any judicial lien creditors, when:

18 (a) The Public Utility Commission has issued the qualified rate order creating intangible
 19 acquisition property; and

20 (b) A sale or transfer of the intangible acquisition property in writing has been executed
 21 and delivered to the assignee.

22 **SECTION 10.** (1) Nothing in sections 3 to 11 of this 2005 Act entitles any person to bring
 23 an action against a customer for nonpayment of intangible acquisition charges, other than
 24 the issuing utility, its successor or any other entity that provides electric service to a person
 25 that was a retail electric customer of the issuing utility on or after the effective date of this
 26 2005 Act and that continues to receive electric service in territory that was the service ter-
 27 ritory of the issuing utility on the effective date of this 2005 Act.

28 (2) The Public Utility Commission has exclusive jurisdiction over any dispute arising out
 29 of the obligations of an issuing utility, its successor or any other entity that provides electric
 30 service to a customer to impose and collect intangible acquisition charges.

31 **SECTION 11.** Any successor to the issuing utility, whether pursuant to any bankruptcy,
 32 reorganization or other insolvency proceeding or pursuant to any merger, sale or transfer,
 33 by operation of law or otherwise, shall perform and satisfy all obligations of the issuing
 34 utility pursuant to this section in the same manner and to the same extent as the issuing
 35 utility, including but not limited to collecting and paying to the assignee or pledgee, as the
 36 case may be, revenue arising with respect to the intangible acquisition property assigned,
 37 sold, transferred, or pledged to secure acquisition bonds.

38 **SECTION 12.** ORS 756.040 is amended to read:

39 756.040. (1) In addition to the powers and duties now or hereafter transferred to or vested in the
 40 Public Utility Commission, the commission shall represent the customers of any public utility or
 41 telecommunications utility and the public generally in all controversies respecting rates, valuations,
 42 service and all matters of which the commission has jurisdiction. In respect thereof the commission
 43 shall make use of the jurisdiction and powers of the office to protect such customers, and the public
 44 generally, from unjust and unreasonable exactions and practices and to obtain for them adequate
 45 service at fair and reasonable rates. The commission shall balance the interests of the utility in-

1 vestor and the consumer in establishing fair and reasonable rates. Rates are fair and reasonable for
 2 the purposes of this subsection if the rates provide adequate revenue both for operating expenses
 3 of the public utility or telecommunications utility and for capital costs of the utility, with a return
 4 to the equity holder that is:

5 (a) Commensurate with the return on investments in other enterprises having corresponding
 6 risks; and

7 (b) Sufficient to ensure confidence in the financial integrity of the utility, allowing the utility
 8 to maintain its credit and attract capital.

9 (2) The commission is vested with power and jurisdiction to supervise and regulate every public
 10 utility and telecommunications utility in this state, and to do all things necessary and convenient
 11 in the exercise of such power and jurisdiction.

12 (3) The commission may participate in any proceeding before any public officer, commission or
 13 body of the United States or any state for the purpose of representing the public generally and the
 14 customers of the services of any public utility or telecommunications utility operating or providing
 15 service to or within this state.

16 (4) The commission may make joint investigations, hold joint hearings within or without this
 17 state and issue concurrent orders in conjunction or concurrence with any official, board, commission
 18 or agency of any state or of the United States.

19 **(5) The commission may take any action or undertake any task necessary or convenient**
 20 **to ensure reasonable rates and conditions of ownership for equity holders of a public utility**
 21 **that is a mutual benefit corporation formed under ORS chapter 65.**

22 **SECTION 13.** ORS 757.005 is amended to read:

23 757.005. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection,
 24 “public utility” means:

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

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

33 **(C) Any mutual benefit corporation formed under ORS chapter 65 whose customers own**
 34 **all of the equity of the corporation and that owns, operates, manages or controls all or a part**
 35 **of any plant or equipment in this state for the production, transmission, delivery or fur-**
 36 **nishing of heat, light, water or power, directly or indirectly to or for the public.**

37 (b) As used in this chapter, “public utility” does not include:

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

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

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

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

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

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

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

6 (D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to
7 758.555.

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

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

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

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

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

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

22 (2) Nothing in subsection (1)(b)(C) of this section shall prohibit third party financing of acqui-
23 sition or development by a utility customer of energy resources to meet the heat, light or power re-
24 quirements of that customer.

25 **SECTION 14.** ORS 757.511 is amended to read:

26 757.511. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial
27 influence over the policies and actions of a public utility *[which]* **that** provides heat, light or power
28 without first securing from the Public Utility Commission, upon application, an order authorizing
29 such acquisition if such person is **a mutual benefit corporation formed under ORS chapter 65**
30 **or is**, or by *[such]* **the** acquisition would become, an affiliated interest with such public utility as
31 defined in ORS 757.015 (1), (2) or (3).

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

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

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

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

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

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

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

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

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

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

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

45 (3) The commission promptly shall examine and investigate each application received pursuant

1 to this section and shall issue an order disposing of the application within 19 business days of its
2 receipt. If the commission determines that approval of the application will serve the public utility's
3 customers in the public interest, the commission shall issue an order granting the application. The
4 commission may condition an order authorizing the acquisition upon the applicant's satisfactory
5 performance or adherence to specific requirements. The commission otherwise shall issue an order
6 denying the application. The applicant shall bear the burden of showing that granting the applica-
7 tion is in the public interest.

8 (4) Nothing in this section shall prohibit dissemination by any party of information concerning
9 the acquisition so long as such dissemination is not otherwise in conflict with state or federal law.

10 **SECTION 15. This 2005 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
12 **on its passage.**

13 _____