

Chapter 757

Utility Regulation Generally

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CASE CITATIONS: *McPherson v. Pac. Power & Light Co.*, (1956) 207 Or 433, 296 P2d 932; *Portland Gen. Elec. Co. v. United States*, (1960) 189 F Supp 290.

LAW REVIEW CITATIONS: 1 WLJ 203.

757.005

NOTES OF DECISIONS

1. In general

An owner who devotes his property to a use in which the public has an interest must submit to regulation for the common good. *City of Woodburn v. Pub. Serv. Comm.*, (1916) 82 Or 114, 161 P 391, Ann Cas 1917E, 996, LRA 1917C, 98; *Central Ore. Irr. Co. v. Pub. Serv. Comm.*, (1921) 101 Or 442, 196 P 832, 15 ALR 1216.

The state had power to create a commission to exercise its regulatory power over public utilities. *Portland R.R., Light & Power Co. v. Portland*, (1914) 210 Fed 667.

Exemption of municipally owned or operated utilities was not violative of U.S. Const., Am. 14. *Yamhill Elec. Co. v. City of McMinnville*, (1929) 130 Or 309, 274 P 118, 280 P 504.

2. Application to particular concerns

A private corporation furnishing water to purchasers of its land only in accordance with the purchase contracts is not within the statute. *Central Ore. Irr. Co. v. Pub. Serv. Comm.*, (1921) 101 Or 442, 196 P 832, 15 ALR 1216; *De Pauw Univ. v. Pub. Serv. Comm.*, (1917) 247 Fed 183; *De Pauw Univ. v. Pub. Serv. Comm.*, (1918) 253 Fed 848.

Assuming that the chapter applies to irrigation companies, it is applicable only to those that engage in the furnishing of water to all who may apply for it. *De Pauw Univ. v. Pub. Serv. Comm.*, (1917) 247 Fed 183.

An appropriator of water for "general rental, sale and disposition for purposes of irrigation, etc.," is not necessarily a public utility. *De Pauw Univ. v. Pub. Serv. Comm.*, (1918) 253 Fed 848.

The fact that private corporation was authorized by its charter to engage in the business of a public utility does not ipso facto make it such. *Id.*

3. Municipally owned utilities

The legislature undoubtedly intended that the rates of a municipally owned utility should be regulated by the municipality itself. *Gates v. Pub. Serv. Comm.*, (1917) 86 Or 442, 167 P 791, 168 P 939.

A water works plant was municipally owned, where it appeared that the city purchased the right of way and paid \$12,000 for its construction, though, as an additional consideration, it gave the constructor the right to operate the plant for a period of 20 years. *Id.*

The exemption of municipally owned or operated utilities from state regulation extends to utilities rendering services several miles beyond the city limits. *Yamhill Elec. Co. v.*

City of McMinnville, (1929) 130 Or 309, 274 P 118, 280 P 504.

FURTHER CITATIONS: *Portland v. Pub. Serv. Comm.*, (1918) 89 Or 325, 173 P 1178; *City of Hillsboro v. Pub. Serv. Comm.*, (1920) 97 Or 320, 187 P 617, 192 P 390; *Jory v. Martin*, (1936) 153 Or 278, 56 P2d 1093; *California-Ore. Power Co. v. City of Grants Pass*, (1913) 203 Fed 173.

ATTY. GEN. OPINIONS: Company furnishing water for domestic purposes to purchasers of certain realty as a public utility, 1924-26, p 510; jurisdiction of commissioner over mutual utilities, 1930-32, p 565; scope of term "public utilities corporation," 1932-34, p 137; mutual water company as a public utility, 1932-34, p 496; *Portland Electric Power Company* as a public utility, 1934-36, p 396; *American District Telegraph Company* as a public utility, 1934-36, p 411; distribution of electric energy by a corporation to its members as public utilities business, 1936-38, p 277; cooperative telephone line as subject to Federal Communications Act or the commissioner's rules, 1940-42, p 197; *Bonneville power project* as subject to Oregon law, 1940-42, p 515; whether or not a corporation distributing electrical energy is to be classed as a public utility as depending on whether it holds itself out as willing to serve the public, 1944-46, p 329; whether a privately owned and operated airport is a public utility, 1944-46, p 442; what constitutes a "public utility," 1950-52, p 145; exceptions to licensing law for electrical installations, 1954-56, p 195; approval of stock issue pursuant to stock option agreement between public utility and employes, prior to 1961 amendment, 1960-62, p 108; authority for municipal utility transmission line over a river, 1962-64, p 24; telephone cooperative as a public utility, 1966-68, p 188.

LAW REVIEW CITATIONS: 25 OLR 159; 47 OLR 20.

757.015

CASE CITATIONS: *Oregon Tel. Co. v. Pub. Util. Commr.*, (1971) 5 Or App 231, 483 P2d 822.

757.020

NOTES OF DECISIONS

The public is entitled to a reasonable service and the utility to fair compensation. *City of Hillsboro v. Pub. Serv. Comm.*, (1920) 97 Or 320, 187 P 617, 192 P 390.

Construction of a substation for electricity had reasonable relation to the furtherance of public interests. *Holt v. Salem*, (1951) 192 Or 200, 234 P2d 564.

FURTHER CITATIONS: *McPherson v. Pac. Power & Light Co.*, (1956) 207 Or 433, 296 P2d 932.

757.035

NOTES OF DECISIONS

Order which adopted the National Electrical Safety Code

of Bureau of Standards, including future amendments, was an unconstitutional delegation of legislative authority and void. *Hillman v. No. Wasco County P.U.D.*, (1958) 213 Or 264, 323 P2d 664.

Public Utility Commissioner has authority to adopt particular edition of the National Electrical Safety Code as standard (*dicta*). *Id.*

ATTY. GEN. OPINIONS: Section as conflicting with electric code, 1938-40, p 157.

LAW REVIEW CITATIONS: 1 WLJ 148, 152.

757.105

NOTES OF DECISIONS

Where the commissioner orders payments to be stopped which were made by a telephone subsidiary to the parent company for necessary services furnished by the parent, basing the order on disapproval of the method of contracting rather than the expenditures themselves, such order exceeded statutory authority. *Pacific Tel. & Tel. Co. v. Flagg*, (1950) 189 Or 370, 220 P2d 522.

FURTHER CITATIONS: *Oregon Tel. Co. v. Pub. Util. Commr.*, (1971) 5 Or App 231, 483 P2d 822.

757.120

NOTES OF DECISIONS

Under former similar statute factors to be taken into consideration in determining the value of a utility included the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates, and the sum required to meet operating expenses. *Pacific Tel. & Tel. Co. v. Wallace*, (1938) 158 Or 210, 75 P2d 942.

Property that was neither used nor useful to the public service could not properly be included in the valuation. *Id.*

Separations of property valued had to be on the basis of use. *Pacific Tel. & Tel. Co. v. Hill*, (1961) 229 Or 437, 365 P2d 1021, 367 P2d 790.

FURTHER CITATIONS: *City of Woodburn v. Pub. Serv. Comm.*, (1916) 82 Or 114, 161 P 391, Ann Cas 1917E, 996, LRA 1917C, 98; *Oregon Tel. Co. v. Pub. Util. Commr.*, (1971) 5 Or App 231, 483 P2d 822.

ATTY. GEN. OPINIONS: Valuation by commissioner of property acquired by public utility issuing bonds therefor, 1942-44, p 83.

757.135

ATTY. GEN. OPINIONS: Duty of foreign utility corporation that had sold its Oregon operative properties to file balance sheet, 1926-28, p 513.

757.140

NOTES OF DECISIONS

There is no conflict between requirements of the Oregon Public Utility Commissioner and Federal Power Commissioner for rate regulatory purposes on the one hand and Internal Revenue Code and Treasury regulations on the other hand as to useful lives of a utility's properties. *Portland Gen. Elec. Co. v. United States*, (1960) 189 F Supp 290.

757.205

NOTES OF DECISIONS

A city cannot by ordinance change the rates fixed in the schedule. *California-Ore. Power Co. v. City of Grants Pass*, (1913) 203 Fed 173.

ATTY. GEN. OPINIONS: Whether the Bonneville Power project is subject to state regulation, 1940-42, p 515.

757.210

NOTES OF DECISIONS

In establishing rates, property jointly used must be allocated on the basis of use. *Pacific Tel. & Tel. Co. v. Hill*, (1961) 229 Or 437, 365 P2d 1021, 367 P2d 790.

The commissioner may use any formula supported by findings in the separation of property serving more than one use. *Id.*

There was no basis in the record for determination that use of interstate service was more valuable than use of intrastate service. *Id.*

FURTHER CITATIONS: *McPherson v. Pac. Power & Light Co.*, (1956) 207 Or 433, 296 P2d 932.

ATTY. GEN. OPINIONS: Right of utility to establish new rate schedule or to increase existing schedule, 1926-28, p 531.

LAW REVIEW CITATIONS: 1 WLJ 209, 210, 211.

757.215

CASE CITATIONS: *McPherson v. Pac. Power & Light Co.*, (1956) 207 Or 433, 296 P2d 932.

ATTY. GEN. OPINIONS: Reduction of rates when utility company is being undersold in a certain locality by a competitor, 1948-50, p 245.

LAW REVIEW CITATIONS: 1 WLJ 209.

757.220

CASE CITATIONS: *McPherson v. Pac Power & Light Co.*, (1956) 207 Or 433, 296 P2d 932; *Pacific Tel. & Tel. Co. v. Hill*, (1961) 229 Or 437, 365 P2d 1021, 367 P2d 790.

LAW REVIEW CITATIONS: 1 WLJ 209.

757.225

NOTES OF DECISIONS

The fact that a city council has prescribed a rate other than the scheduled one does not authorize the utility to vary its charge. *California-Ore. Power Co. v. City of Grants Pass*, (1913) 203 Fed 173.

Where rates are in excess of the lawfully filed schedule of rates, the patron must seek redress by proceeding directly in the courts. *McPherson v. Pac. Power & Light*, (1956) 207 Or 433, 296 P2d 932.

FURTHER CITATIONS: *Portland R.R., Light & Power Co. v. Portland*, (1914) 210 Fed 667.

757.230

NOTES OF DECISIONS

Two letters specifying rates filed with the commissioner fulfilled the requirements of a valid schedule and order.

McPherson v. Pac. Power & Light, (1956) 207 Or 433, 296 P2d 932.

757.235

NOTES OF DECISIONS

This section did not require the commissioner to hold a hearing before ordering an emergency rate adjustment. McPherson v. Pac. Power & Light, (1956) 207 Or 433, 296 P2d 932.

FURTHER CITATIONS: Petition of Portland Elec. Power Co., (1943) 97 F Supp 877.

757.240

CASE CITATIONS: McPherson v. Pac. Power & Light Co., (1956) 207 Or 433, 296 P2d 932.

LAW REVIEW CITATIONS: 1 WLJ 213.

757.255

ATTY. GEN. OPINIONS: Effect upon this section of 1931 amendment of OC 61-261 [ORS 221.420], 1930-32, p 647.

757.260

ATTY. GEN. OPINIONS: Examination of income tax returns in possession of State Tax Commission by the commissioner or a complainant, 1956-58, p 91.

757.310

CASE CITATIONS: McPherson v. Pac. Power & Light Co., (1956) 207 Or 433, 296 P2d 932.

ATTY. GEN. OPINIONS: Jurisdiction of Federal Communications Commission in matter of merger of telegraph companies and of messages originating in a state and sent to points outside, or originating in points outside and received in the state, 1942-44, p 325; reduction of rates when utility company is being undersold in a certain locality by a competitor, 1948-50, p 245.

757.315

NOTES OF DECISIONS

This section did not prevent the commission from permitting a utility to make a charge for hydrant service, though the franchise provided that such service shall be free. City of Hillsboro v. Pub. Serv. Comm., (1920) 97 Or 320, 187 P 617, 192 P 390.

757.325

ATTY. GEN. OPINIONS: Reduction of rates when utility

company is being undersold in a certain locality by a competitor, 1948-50, p 245.

757.405

ATTY. GEN. OPINIONS: Approval of stock issue pursuant to stock option agreement between public utility and employes, prior to 1961 amendment, 1960-62, p 108.

757.410

ATTY. GEN. OPINIONS: Approval of stock issue pursuant to stock option agreement between public utility and employes, prior to 1961 amendment, 1960-62, p 108.

757.415

ATTY. GEN. OPINIONS: Valuation of property to utility issuing bonds for acquisition thereof, 1942-44, p 83; approval of stock issue pursuant to stock option agreement between public utility and employes, prior to 1961 amendment, 1960-62, p 108.

757.420

ATTY. GEN. OPINIONS: Approval of stock issue pursuant to stock option agreement between public utility and employes, prior to 1961 amendment, 1960-62, p 108.

LAW REVIEW CITATIONS: 1 WLJ 208.

757.430

ATTY. GEN. OPINIONS: Exclusive jurisdiction of Federal Communications Commission in the matter of merger of telegraph companies, and as to interstate messages, and exclusive jurisdiction of State Public Utility Commissioner over intrastate messages, 1942-44, p 325.

757.495

CASE CITATIONS: Oregon Tel. Co. v. Pub. Util. Commr., (1971) 5 Or App 231, 483 P2d 822.

757.606

CASE CITATIONS: Frazier v. W. Union Tel. Co., (1904) 45 Or 414, 78 P 330, 67 LRA 319; McLeod v. Pac. Tel. Co., (1908) 52 Or 22, 94 P 568, 95 P 1009, 15 LRA(NS) 810.

757.990

ATTY. GEN. OPINIONS: Examination of income tax returns in possession of State Tax Commission by commissioner or complainant, 1956-58, p 91.