

# A-Engrossed Senate Bill 443

Ordered by the Senate May 21  
Including Senate Amendments dated May 21

Sponsored by Senator DECKERT; Representative BERGER

## 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.

*[Establishes Oregon Community Power. Directs Oregon Community Power to enter into negotiations and acquire assets of Portland General Electric Company. Authorizes State Treasurer, at request of Oregon Community Power, to issue revenue bonds and directs Oregon Community Power to expend bond proceeds to acquire assets of Portland General Electric Company.]*

*[Creates funds and continuously appropriates moneys to Oregon Community Power for purposes of acquisition, debt service and operation of electric utility. Limits expenditures of bond proceeds and debt service moneys. Appropriates moneys from General Fund to Oregon Community Power for purpose of negotiating acquisition.]*

**Sets conditions and process for establishing public corporation to negotiate for purchase of investor-owned utility if purchase of controlling interest in utility is proposed. Specifies conditions would include agreement of utility, Public Utility Commission and local governments in service area.**

**Permits cities and counties in service area to form acquisition review committees upon notification of proposed purchase of 50 percent or more of voting shares of utility. Establishes Oregon Community Power Utility Acquisition Fund and continuously appropriates moneys in fund to Public Utility Commission for purpose of transferring moneys to acquisition review committees to fund preliminary activities and negotiations. Specifies that cities and counties representing two-thirds of customers of utility must agree to negotiate for purchase and, if negotiations with utility are successful, to approve decision to apply to Public Utility Commission for acquisition of utility.**

**Requires Governor to activate public corporation, Oregon Community Power, if Public Utility Commission and regulatory agencies in other states served by utility approve public acquisition.**

**Provides for nominations and Governor appointment of Oregon Community Power board of directors. Specifies duties, functions and powers of board. Establishes duties, functions and powers of Oregon Community Power as public corporation, including authority to establish rates and to issue and sell revenue bonds. Gives Citizens' Utility Board of Governors standing to intervene in or obtain judicial review of proceedings affecting interests of utility customers.**

**Limits use of eminent domain to acquire incumbent utility unless utility consents to its use. Establishes provisions relating to taxation, direct access, electricity service suppliers, financing agreements and public purpose charges.**

Declares emergency, effective on passage.

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## A BILL FOR AN ACT

Relating to electric utilities; creating new provisions; amending 221.420, 221.450, 287.025, 757.511 and 757.612; appropriating money; and declaring an emergency.

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

## OREGON COMMUNITY POWER

### (Definitions)

### **SECTION 1. As used in sections 1, 2 and 3 to 39 of this 2007 Act:**

**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 (1) "Board" means the board of directors of Oregon Community Power.

2 (2) "Incumbent utility" means an investor-owned utility that is the subject of a trans-  
3 action described in section 2 of this 2007 Act.

4 (3) "Investor-owned utility" means a utility that sells electricity and that is operated by  
5 a corporation with shareholders.

6 (4) "Rate" has the meaning given that term in ORS 756.010.

7 (5) "Service" has the meaning given that term in ORS 756.010.

8 (6) "Service territory" means the geographic area within which a utility provides elec-  
9 tricity to customers.

10  
11 (Acquisition Review Committee)

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13 **SECTION 2. Creation of acquisition review committee.** (1)(a) Except as provided in sub-  
14 section (9) of this section, the Public Utility Commission shall give notice to the cities and  
15 counties specified in paragraph (b) of this subsection whenever the commission receives no-  
16 tice of a proposed transaction under ORS 757.511 (2):

17 (A) Relating to an investor-owned utility for which approval of the Public Utility Com-  
18 mission is required under ORS chapter 757; and

19 (B) Involving the sale of 50 percent or more of the voting shares of the utility to a person  
20 that is not an affiliated interest with the utility as defined in ORS 757.015.

21 (b) Notice under subsection (1) of this section shall be given to a city or county if the  
22 investor-owned utility that is the subject of the proposed transaction has service territory  
23 within the boundaries of the city or county.

24 (2) Upon receiving notice under subsection (1) of this section, each city or county may  
25 appoint a member to an acquisition review committee formed to represent the affected cities  
26 and counties. An acquisition review committee must be formed not more than 60 days after  
27 notice is given by the commission under subsection (1) of this section. If an acquisition re-  
28 view committee is not formed within 60 days after notice is given by the commission under  
29 subsection (1) of this section, the commission shall proceed with any application made under  
30 ORS 757.511 for approval of the transaction.

31 (3) An acquisition review committee formed under this section shall consider a proposed  
32 transaction described in subsection (1) of this section for the purpose of determining  
33 whether:

34 (a) Acquisition of the investor-owned utility by Oregon Community Power would be in the  
35 best interests of the customers served by the investor-owned utility; and

36 (b) Acquisition of the utility can be accomplished in a manner that is consistent with the  
37 policy described in section 27 of this 2007 Act.

38 (4) An acquisition review committee created under this section may decide to enter into  
39 negotiations for the acquisition of an investor-owned utility that is the subject of a proposed  
40 transaction described in subsection (1) of this section only by the affirmative vote of mem-  
41 bers of the committee representing counties in which reside not less than two-thirds of the  
42 customers with billing accounts that are served by the incumbent utility, and the affirmative  
43 vote of members of the committee representing cities in which reside not less than two-  
44 thirds of the customers with billing accounts that are served by the incumbent utility. If an  
45 acquisition review committee determines that negotiations should commence, the committee

1 shall:

2 (a) Enter into negotiations with the incumbent utility or persons that have authority to  
3 negotiate the disposition of the incumbent utility or the electric utility assets of the  
4 incumbent utility; and

5 (b) If the negotiations result in an agreement between the committee and the incumbent  
6 utility or persons described in paragraph (a) of this subsection, the committee shall imme-  
7 diately give notice to the commission and file an application with the commission under ORS  
8 757.511 for approval of the transaction.

9 (5) An acquisition review committee created under this section may decide to acquire an  
10 investor-owned utility under subsection (4) of this section only by the affirmative vote of  
11 members of the committee representing counties in which reside not less than two-thirds  
12 of the customers with billing accounts that are served by the incumbent utility, and the af-  
13 firmative vote of members of the committee representing cities in which reside not less than  
14 two-thirds of the customers with billing accounts that are served by the incumbent utility.  
15 An acquisition review committee may vote to acquire an incumbent utility under this sub-  
16 section only after public notice and consultation with groups representing customers of the  
17 incumbent utility.

18 (6) An acquisition review committee must complete negotiations and vote to enter into  
19 an agreement not more than 150 days after notice is given to cities and counties under sub-  
20 section (1) of this section. If the incumbent utility agrees in writing, the committee may  
21 request that the time limitation imposed by this section be extended by 90 days.

22 (7) If the commission approves acquisition of the incumbent utility by Oregon Community  
23 Power, the commission shall inform the Governor and the Governor shall activate Oregon  
24 Community Power by convening an initial Oregon Community Power Board Nominating  
25 Committee under section 7 of this 2007 Act. As soon as the first board of directors of Oregon  
26 Community Power is appointed under section 8 of this 2007 Act, the board shall implement  
27 the agreement and acquire the incumbent utility or the electric utility assets of the  
28 incumbent utility in the name of Oregon Community Power.

29 (8) An acquisition review committee shall give notice to the commission immediately if  
30 the committee proposes to dissolve or decides not to enter into negotiations under subsection  
31 (4) of this section or if negotiations do not result in an agreement.

32 (9) The commission may not give notice to cities and counties under subsection (1) of this  
33 section if a person providing notice of a proposed transaction under ORS 757.511 (2) also  
34 provides to the commission written consent forms signed by persons with authority to act  
35 on behalf of counties in which reside not less than two-thirds of the customers with billing  
36 accounts that are served by the incumbent utility and on behalf of cities in which reside not  
37 less than two-thirds of the customers with billing accounts that are served by the incumbent  
38 utility.

39 (10) An acquisition review committee may enter into an agreement for the acquisition  
40 of an incumbent utility or the electric utility assets of the incumbent utility only if the  
41 committee obtains approval for the acquisition from the appropriate state agencies in all  
42 states in which the incumbent utility serves retail electricity consumers.

43 (11) Notwithstanding any other provision of law, Oregon Community Power is responsible  
44 for and shall pay all costs relating to the acquisition of an incumbent utility, including but  
45 not limited to:

1 (a) The costs of acquiring the electric utility assets of the incumbent utility;

2 (b) The costs of acquiring any necessary generating capacity and transmission capacity  
3 dedicated to serving the customers in the service area that will be acquired, including but  
4 not limited to electricity generating assets and alternate energy generating assets under  
5 construction but not yet in service;

6 (c) Depreciation;

7 (d) Loss of revenue to the incumbent utility; and

8 (e) All electric utility assets necessary to reintegrate the system of the incumbent utility  
9 after detaching the portion of the utility acquired by Oregon Community Power.

10 **SECTION 2a.** ORS 757.511 is amended to read:

11 757.511. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial  
12 influence over the policies and actions of a public utility which provides heat, light or power with-  
13 out first securing from the Public Utility Commission, upon application, an order authorizing such  
14 acquisition if such person is, or by such acquisition would become, an affiliated interest with such  
15 public utility as defined in ORS 757.015 (1), (2) or (3).

16 (2) **Notice must be given to the commission of an application under this section at least**  
17 **60 days before the application is filed with the commission. The notice must indicate whether**  
18 **the transaction is a transaction described in section 2 (1) of this 2007 Act. If the transaction**  
19 **is a transaction as described in section 2 (1) of this 2007 Act, the commission shall give notice**  
20 **to cities and counties as required by section 2 (1) of this 2007 Act.**

21 [(2)] (3) The application required by subsection (1) of this section shall set forth detailed infor-  
22 mation regarding:

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

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

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

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

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

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

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

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

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

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

34 [(3)] (4) The commission promptly shall examine and investigate each application received pur-  
35 suant to this section. [and] **Except as provided in subsection (5) of this section, the commis-**  
36 **sion shall issue an order disposing of the application within 19 business days of its receipt. If the**  
37 **commission determines that approval of the application will serve the public utility's customers in**  
38 **the public interest, the commission shall issue an order granting the application. The commission**  
39 **may condition an order authorizing the acquisition upon the applicant's satisfactory performance or**  
40 **adherence to specific requirements. The commission otherwise shall issue an order denying the ap-**  
41 **plication. The applicant shall bear the burden of showing that granting the application is in the**  
42 **public interest.**

43 (5) **The commission may postpone issuance of an order disposing of an application under**  
44 **this section if notice has been given to cities and counties under section 2 (1) of this 2007**  
45 **Act. In no event may the commission postpone issuance of an order disposing of the appli-**

1 **ation for more than 90 days under the provisions of this subsection.**

2 [(4)] (6) Nothing in this section shall prohibit dissemination by any party of information con-  
3 cerning the acquisition so long as such dissemination is not otherwise in conflict with state or fed-  
4 eral law.

5  
6 **(Oregon Community Power Created)**  
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8 **SECTION 3. Oregon Community Power created.** (1) Oregon Community Power is created  
9 as a public corporation. Oregon Community Power shall exercise and carry out all powers,  
10 rights and privileges that are conferred upon Oregon Community Power under sections 1, 2  
11 and 3 to 39 of this 2007 Act.

12 (2) Oregon Community Power is created as a public corporation in order to carry out  
13 public services in sectors of the economy in which activities or services are also provided  
14 by private enterprise. Oregon Community Power is granted all needed operating flexibility  
15 under sections 1, 2 and 3 to 39 of this 2007 Act in order to ensure the success of Oregon  
16 Community Power while retaining principles of public accountability and oversight.

17 (3) The primary mission of Oregon Community Power is to provide reliable, low-cost  
18 electricity to electricity consumers in the service territory in which Oregon Community  
19 Power undertakes to provide electricity service.

20 **SECTION 4. Laws applicable to Oregon Community Power.** (1) Except as provided in  
21 subsection (2) of this section, the provisions of ORS chapters 35 (other than ORS 35.550 to  
22 35.575), 180, 190, 192 and 244 and ORS 30.260 to 30.460, 200.005 to 200.025, 200.045 to 200.090,  
23 221.450, 236.605 to 236.640, 243.650 to 243.782 (other than ORS 243.696), 297.040, 307.090 and  
24 307.112 apply to Oregon Community Power under the same terms as they apply to any other  
25 subdivision of state government.

26 (2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 238,  
27 238A, 240, 270, 273, 276, 279A, 279B, 279C, 283, 286, 291, 292, 293, 294, 295 and 297 and ORS  
28 35.550 to 35.575, 183.710 to 183.725, 183.745, 183.750, 184.305 to 184.345, 190.430, 190.480, 190.490,  
29 192.105, 200.035, 236.380, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835  
30 to 279.855, 282.010 to 282.150, 287.006, 287.452, 288.150 to 288.165, 288.600, 288.815 and 656.017 (2)  
31 do not apply to Oregon Community Power.

32 (3) Oregon Community Power is not a participating public employer in the Public Em-  
33 ployees Retirement System.

34 (4) Any funds held by or under the control of Oregon Community Power are not public  
35 funds, as defined in ORS 295.005.

36 **SECTION 5. Regulatory authority of Public Utility Commission over Oregon Community**  
37 **Power.** (1) Solely for purposes of determining the authority of the Public Utility Commission  
38 to regulate Oregon Community Power and the activities and operations of Oregon Commu-  
39 nity Power, Oregon Community Power shall be considered a consumer-owned utility, as de-  
40 fined in ORS 757.270, and the commission shall regulate Oregon Community Power as a  
41 consumer-owned utility.

42 (2) In addition to having the authority granted the commission under subsection (1) of  
43 this section, the commission has the authority to:

44 (a) Regulate electricity service suppliers that conduct business with or use the facilities  
45 of Oregon Community Power;

1 (b) Determine a claim by an electricity service supplier that Oregon Community Power  
2 has acted in an anticompetitive manner; and

3 (c) Take action against Oregon Community Power to enforce consumer protection rules  
4 adopted under ORS 757.659 (3) and applicable to direct access consumers.

5 (3) Oregon Community Power may not be required to obtain the approval of the Public  
6 Utility Commission to make an acquisition described in sections 1, 2 and 3 to 39 of this 2007  
7 Act.

8 (4) As used in this section, “direct access” and “electricity service supplier” have the  
9 meanings given those terms in section 28 of this 2007 Act.

10  
11 (Board of Directors)

12  
13 **SECTION 6. Nominating committee.** (1) There is established the Oregon Community  
14 Power Board Nominating Committee. The purpose of the nominating committee is to assist  
15 the Governor in appointing members to the board of directors of Oregon Community Power  
16 under section 8 of this 2007 Act.

17 (2) The nominating committee shall consist of five members, as follows:

18 (a) One member shall be a delegate from the Citizens’ Utility Board and shall represent  
19 the interests of residential electricity consumers.

20 (b) One member shall be a delegate from a qualified organization that represents the in-  
21 terests of primarily commercial electricity consumers.

22 (c) One member shall be a delegate from a qualified organization that represents the in-  
23 terests of primarily industrial electricity consumers.

24 (d) One member shall be a delegate from the League of Oregon Cities and shall represent  
25 the interests of municipalities and their residents.

26 (e) One member shall be a delegate from the Association of Oregon Counties and shall  
27 represent the interests of counties and their residents.

28 (3) Of the members described in subsection (2)(d) and (e) of this section, one shall be  
29 from a local government that is within the service territory of Oregon Community Power  
30 and one shall be from a local government that is outside of the service territory of Oregon  
31 Community Power.

32 (4)(a) In order for the nominating committee to convene, the board of directors of  
33 Oregon Community Power shall prepare a proposed direction to convene as soon as is prac-  
34 ticable following the earlier of the date that a vacancy occurs on the board or the date that  
35 it becomes known that a vacancy on the board will occur within six months.

36 (b) The proposed direction to convene shall state the qualified organizations that are to  
37 provide the delegates described in subsection (2)(b) and (c) of this section. The board shall  
38 send copies of the proposed direction to the Public Utility Commission and to each organ-  
39 ization that served as a qualified organization at a prior convening of the nominating com-  
40 mittee.

41 (c) Within 15 days after receipt of the proposed direction to convene, the commission  
42 shall review the proposed direction. The commission shall afford the opportunity for a hear-  
43 ing if requested by any party. If the proposed direction lists organizations that meet the  
44 qualifications of subsection (2)(b) and (c) of this section, the commission shall approve the  
45 direction. If the proposed direction does not list organizations that are qualified organiza-

1 tions under subsection (2)(b) and (c) of this section, the commission may modify the direction  
2 prior to approval. A determination by the commission may be appealed as a contested case  
3 under ORS chapter 183.

4 (5) The nominating committee shall convene as soon as is practicable after receiving an  
5 approved direction to convene under subsection (4) of this section, and shall forward the first  
6 slate of nominees to the Governor for consideration under section 8 of this 2007 Act no later  
7 than 90 days after the date an approved direction to convene is issued.

8 (6) The nominating committee shall nominate three individuals for each position on the  
9 board to be filled.

10 (7) A nominating committee that has been convened shall remain convened until each  
11 vacant position on the board is filled. The nominating committee shall forward a second  
12 slate of nominees to the Governor if requested by the Governor under section 8 (2) of this  
13 2007 Act.

14 (8) In forwarding nominees to the Governor, the nominating committee shall strive to  
15 select individuals who:

16 (a) Meet the qualifications described in section 8 (6) of this 2007 Act;

17 (b) If appointed, would result in a board of directors that represents the geographic di-  
18 versity of Oregon Community Power's service territory; and

19 (c) Have the ability and experience to fulfill the principal duties of the board under sec-  
20 tion 18 of this 2007 Act.

21 (9) As used in this section, "qualified organization" means a nonprofit organization that  
22 represents a broad class of commercial or industrial customers and that has a substantial  
23 record of representing the class before state agencies or the Legislative Assembly in matters  
24 related to public utility rates, terms and conditions and energy policy issues affecting the  
25 class.

26 **SECTION 7. Initial nominating committee.** (1) Notwithstanding section 6 of this 2007 Act,  
27 the Governor shall convene the initial Oregon Community Power Board Nominating Com-  
28 mittee for the first board of directors of Oregon Community Power on the date the Governor  
29 activates Oregon Community Power under section 2 of this 2007 Act.

30 (2) The nominating committee shall forward the first slate of nominees to the Governor  
31 for consideration under section 8 of this 2007 Act within 30 days following the convening of  
32 the committee by the Governor.

33 (3) If necessary, the nominating committee shall forward a second slate of nominees to  
34 the Governor for consideration within 10 days after the Governor's request for a second slate  
35 of nominees under section 8 (2) of this 2007 Act.

36 (4) For purposes of section 6 (3) of this 2007 Act, the service territory of the incumbent  
37 utility is considered to be the service territory of Oregon Community Power.

38 **SECTION 8. Board of directors.** (1) Oregon Community Power shall be governed by a  
39 board of seven directors appointed by the Governor using the procedure set forth in this  
40 section.

41 (2)(a) Prior to making any appointment to the board, the Governor shall consider the  
42 nominations of the Oregon Community Power Board Nominating Committee.

43 (b) If the Governor reviews an initial slate of nominees made by the nominating com-  
44 mittee and determines not to appoint a nominee, the Governor shall request that the nomi-  
45 nating committee forward a second slate of nominees. If the Governor determines not to

1 appoint a nominee from the second slate of nominees, the Governor may appoint any indi-  
2 vidual the Governor determines meets the qualifications of subsection (6) of this section.

3 (3) Notwithstanding the requirement that the Governor consider the nominations of the  
4 nominating committee prior to making an appointment, the Governor shall appoint an indi-  
5 vidual to be a board member within 120 days following the vacancy of a position on the board.

6 (4) Each appointment shall be subject to confirmation by the Senate in the manner pre-  
7 scribed in ORS 171.562 and 171.565.

8 (5) The term of office for each board member shall be four years. A board member may  
9 be nominated and appointed to successive terms, but within 150 days prior to the expiration  
10 of the term of the member, the board shall issue a proposed direction to convene the nomi-  
11 nating committee under section 6 of this 2007 Act for the purpose of nominating individuals  
12 to fill the board position.

13 (6) A member of the board shall have significant experience or expertise in one or more  
14 of the following areas:

- 15 (a) Business operations;
- 16 (b) Utility management;
- 17 (c) Legal or financial affairs;
- 18 (d) Regional energy issues; or
- 19 (e) Developing public policy.

20 (7) The Governor may remove any member of the board for cause, after notice and public  
21 hearing.

22 **SECTION 9. Initial terms of directors.** (1) Notwithstanding section 8 (5) of this 2007 Act,  
23 the term of office for the first board of directors of Oregon Community Power shall be as  
24 follows:

25 (a) Two members shall be appointed for a term that ends one year following the date the  
26 Governor convenes the board;

27 (b) Two members shall be appointed for a term that ends two years following the date  
28 the Governor convenes the board;

29 (c) Two members shall be appointed for a term that ends three years following the date  
30 the Governor convenes the board; and

31 (d) One member shall be appointed for a term that ends four years following the date the  
32 Governor convenes the board.

33 (2) Consistent with subsection (1) of this section, the Governor shall designate the dura-  
34 tion of the term of office of each member of the first board of directors at the time the  
35 Governor convenes the board.

36 **SECTION 10. Board meetings and procedures.** (1) The board of directors of Oregon  
37 Community Power shall meet at least once each month to conduct the business of the board.

38 (2) A majority of board members shall constitute a quorum.

39 (3) The board shall select one of its members as chairperson.

40 (4) The board shall adopt bylaws establishing rules of procedure for board meetings and  
41 decisions.

42 (5) A member of the board shall be compensated as provided in section 20 (12) of this 2007  
43 Act.

44 (6) The board, not later than April 15 of each year, shall file a report with the Governor  
45 and the Legislative Assembly. The report shall explain the activities and operations of



1 Oregon Community Power for the preceding calendar year, including a summary of the audit  
2 described in section 25 of this 2007 Act.

3  
4 (Acquisition of Incumbent Utility)

5  
6 **SECTION 11. Acquisition of incumbent utility; use of eminent domain.** (1) As soon as  
7 practicable after being appointed, the board of directors of Oregon Community Power shall  
8 implement the agreement entered into by an acquisition review committee under section 2  
9 (4)(b) of this 2007 Act.

10 (2) Notwithstanding section 21 (1) of this 2007 Act, Oregon Community Power may not  
11 use the power of eminent domain to accomplish all or a part of an acquisition described in  
12 subsection (1) of this section unless the incumbent utility or the persons that have the au-  
13 thority to negotiate the disposition of the incumbent utility or the electric utility assets of  
14 the incumbent utility consent to the use of eminent domain for acquisition purposes.

15 **SECTION 12. Funding of preliminary activities and negotiations.** (1) Following a request  
16 by an acquisition review committee under section 14 of this 2007 Act, the Public Utility  
17 Commission shall transfer from the Public Utility Commission Account to the Oregon Com-  
18 munity Power Utility Acquisition Fund established under section 13 of this 2007 Act all  
19 amounts necessary to fund any preliminary activities needed to determine:

20 (a) The appropriateness or desirability of an acquisition described in sections 1, 2 and 3  
21 to 39 of this 2007 Act;

22 (b) The requirements and terms of the acquisition; and

23 (c) Any due diligence activities related to the acquisition and the negotiations for the  
24 acquisition.

25 (2) Notwithstanding any other provision of law, the commission may increase the rates  
26 of an incumbent utility in order to recover the costs incurred in negotiating an acquisition  
27 by an acquisition review committee under section 2 (4) of this 2007 Act.

28 (3) Notwithstanding any other provision of law, the commission may assess a fee on an  
29 incumbent utility in order to fund the transfer described in subsection (1) of this section.

30 **SECTION 13. Oregon Community Power Utility Acquisition Fund.** (1) The Oregon Com-  
31 munity Power Utility Acquisition Fund is established in the State Treasury, separate and  
32 distinct from the General Fund. Interest earned by the Oregon Community Power Utility  
33 Acquisition Fund shall be credited to the Oregon Community Power Utility Acquisition Fund.

34 (2) Moneys in the Oregon Community Power Utility Acquisition Fund are continuously  
35 appropriated to the Public Utility Commission for the purpose of transferring moneys to an  
36 acquisition review committee as described in section 12 of this 2007 Act.

37 **SECTION 14. Request to Public Utility Commission for transfer of funds.** (1) An acqui-  
38 sition review committee created under section 2 of this 2007 Act may request that the Public  
39 Utility Commission transfer moneys appropriated under section 13 of this 2007 Act in order  
40 to fund any preliminary activities the committee undertakes to determine:

41 (a) The appropriateness or desirability of an acquisition described in sections 1, 2 and 3  
42 to 39 of this 2007 Act;

43 (b) The requirements and terms of the acquisition; and

44 (c) Any due diligence activities related to the acquisition and the negotiations for the  
45 acquisition.

1           (2) An acquisition review committee shall submit a budget and plan of operations with a  
2 request under subsection (1) of this section. The commission may approve the transfer only  
3 after notice and public hearing on the request.

4           **SECTION 15. Conduct of business after acquisition.** If Oregon Community Power acquires  
5 an incumbent utility under sections 1, 2 and 3 to 39 of this 2007 Act, all electric utility op-  
6 erations undertaken by Oregon Community Power after the acquisition shall be conducted  
7 under the name of Oregon Community Power.

8           **SECTION 16. Oregon Community Power to be successor in interest to incumbent utility.**  
9 (1) If Oregon Community Power acquires an incumbent utility under sections 1, 2 and 3 to  
10 39 of this 2007 Act, unless otherwise required by the Oregon Constitution, Oregon Commu-  
11 nity Power shall constitute the successor in interest to the incumbent utility as of the date  
12 of the acquisition for all purposes, including but not limited to:

- 13           (a) Allocation of territory and contracts allocating territory;
- 14           (b) City franchise fee agreements; and
- 15           (c) Contracts or obligations of any nature, to the extent the contracts or obligations ap-  
16 ply to a successor in interest to the incumbent utility.

17           (2) Until the board of directors of Oregon Community Power establishes bylaws governing  
18 the procedures for conducting a ratemaking hearing and establishing rates under sections  
19 1, 2 and 3 to 39 of this 2007 Act and under those procedures establishes one or more new  
20 rates or tariffs or establishes one or more changes in rates or tariffs, Oregon Community  
21 Power shall:

- 22           (a) Adopt all existing rate schedules in effect for the incumbent utility on the date of  
23 acquisition;
- 24           (b) Adopt the general rules and regulations of the incumbent utility's tariffs; and
- 25           (c) Maintain Oregon Community Power books and records in accordance with generally  
26 accepted accounting principles and with the uniform system of accounts established by the  
27 Federal Energy Regulatory Commission.

28           (3) If Oregon Community Power acquires an incumbent utility under sections 1, 2 and 3  
29 to 39 of this 2007 Act, Oregon Community Power is subject to all privilege taxes imposed by  
30 municipalities that the incumbent utility was required to pay to municipalities immediately  
31 before the acquisition.

32           **SECTION 17. Equity and assets of incumbent utility held in trust; disclaimer of state**  
33 **interest.** (1) Any equity of the incumbent utility, any electric utility assets of the incumbent  
34 utility or any combination of equity and assets of the incumbent utility that Oregon Com-  
35 munity Power acquires under sections 1, 2 and 3 to 39 of this 2007 Act shall be held in trust  
36 by Oregon Community Power, acting as a trustee, for the exclusive purpose of carrying out  
37 the powers, rights and privileges of Oregon Community Power under sections 1, 2 and 3 to  
38 39 of this 2007 Act for the benefit of the retail electricity consumers of Oregon Community  
39 Power. Notwithstanding any other provision of law, retail electricity consumers of Oregon  
40 Community Power may not pursue any judicial remedy in any court of this state for any  
41 action of Oregon Community Power, except as provided in sections 1, 2 and 3 to 39 of this  
42 2007 Act.

43           (2) The State of Oregon declares that it has no proprietary interest in Oregon Community  
44 Power or in any tangible or intangible property of any form owned or acquired by Oregon  
45 Community Power. The state disclaims any right to reclaim any contributions made to

1 **Oregon Community Power under sections 1, 2 and 3 to 39 of this 2007 Act.**

2 **(3) Except as provided in sections 1, 2 and 3 to 39 of this 2007 Act, Oregon Community**  
3 **Power may not receive any moneys from the State of Oregon other than:**

4 **(a) Electric utility operational revenues;**

5 **(b) Public purpose charge revenues under ORS 757.612;**

6 **(c) Nonrecourse bond proceeds or proceeds from any other nonrecourse borrowing; or**

7 **(d) Loans, grants, payments or other assistance that any local government as defined in**  
8 **ORS 174.116 would be eligible to receive.**

9  
10 **(Duties and Powers of Oregon Community Power)**

11  
12 **SECTION 18. Board duties. The principal duties of the board of directors of Oregon**  
13 **Community Power are to:**

14 **(1) Establish policy and develop consistent positions on core utility issues that promote**  
15 **and implement the primary mission of Oregon Community Power under section 3 of this 2007**  
16 **Act;**

17 **(2) Oversee the investments and operations of Oregon Community Power;**

18 **(3) Take all actions to ensure that revenues and income from electric utility operations**  
19 **are sufficient to satisfy all costs, including principal and interest payments on all outstanding**  
20 **bonds and other debt obligations issued by Oregon Community Power, and to maintain fi-**  
21 **nancial integrity in the operation of Oregon Community Power;**

22 **(4) Make decisions that are in the best interests of the consumers and communities**  
23 **within the service territory of Oregon Community Power and that are consistent with the**  
24 **primary mission of Oregon Community Power; and**

25 **(5) Consider the social, economic and environmental impacts of electricity generation,**  
26 **transmission and distribution in board decision-making.**

27 **SECTION 19. Payments in lieu of property taxes. (1) Oregon Community Power shall**  
28 **make payments in lieu of property taxes on all property that would otherwise be subject to**  
29 **assessment under ORS 308.505 to 308.665 if owned by a taxable owner. Oregon Community**  
30 **Power shall pay to each county in which property of Oregon Community Power is located**  
31 **an amount equal to the ad valorem property taxes that would have been charged by the**  
32 **county if Oregon Community Power property had been assessed to a taxable owner as of**  
33 **January 1 of the assessment year for which payment is being made.**

34 **(2) The Department of Revenue shall determine the assessed value of Oregon Community**  
35 **Power property as if the property were subject to assessment under ORS 308.505 to 308.665,**  
36 **and shall transmit the value information as provided in ORS 308.505 to 308.665 to the appro-**  
37 **propriate county assessor. Oregon Community Power shall comply with property reporting re-**  
38 **quirements under ORS 308.505 to 308.665 as if the property were subject to assessment under**  
39 **ORS 308.505 to 308.665.**

40 **(3) The amount of the in lieu payment to be made to each county under this section shall**  
41 **be determined and certified annually by the county assessor of the county. A notice of the**  
42 **determination and certification shall be mailed to Oregon Community Power not later than**  
43 **October 15. The notice shall contain a statement of the value of the property and a complete**  
44 **explanation of the method used in computing the amount of the in lieu payment due under**  
45 **this section. Not later than November 15, Oregon Community Power shall pay the amount**

1 due to each county under this section, less a discount equivalent to that which is provided  
2 in ORS 311.505. Payment shall be made to the county treasurer. The county treasurer shall  
3 distribute the payment to the taxing districts of the county in accordance with the schedule  
4 of percentages computed under ORS 311.390.

5 **SECTION 20. Powers of Oregon Community Power.** The board of directors of Oregon  
6 Community Power shall establish the policies of Oregon Community Power to be used in the  
7 exercise of the powers enumerated for Oregon Community Power or the board, and may  
8 thereafter modify those policies. The board may delegate the exercise of powers enumerated  
9 for Oregon Community Power to a president, chief executive officer or general manager of  
10 Oregon Community Power. Delegated powers shall be exercised by the delegatee in a manner  
11 that is consistent with the policies established by the board. The powers of Oregon Commu-  
12 nity Power, as exercisable by the board of directors or by a president, chief executive officer  
13 or general manager under policies adopted by the board, are as follows:

14 (1) To acquire and hold, including by lease-purchase agreement, real and other property  
15 necessary or incident to the business of Oregon Community Power, within or outside of, or  
16 partly within or partly outside of, the service territory of Oregon Community Power, and to  
17 sell or dispose of that property.

18 (2) To execute contracts to purchase, sell or lease assets, power, services or property.

19 (3) To execute contracts for the management or operation of any Oregon Community  
20 Power facilities.

21 (4) To issue bonds, notes or otherwise borrow moneys, incur indebtedness or issue, sell  
22 or assume evidence of indebtedness to the extent allowed under the Oregon Constitution.

23 (5) To sue and be sued.

24 (6) To refund and retire any indebtedness that may exist against or be assumed by  
25 Oregon Community Power or that may exist against the revenues of Oregon Community  
26 Power.

27 (7) To build, acquire, own, operate and maintain generation, transmission and distrib-  
28 ution resources that are sufficient to maintain an adequate supply of electricity to the ser-  
29 vice territory.

30 (8) To enter into agreements with local governments or other state agencies or subdi-  
31 visions of state government.

32 (9) To periodically develop least-cost plans at regular intervals. A least-cost plan may be  
33 developed only with public participation. A least-cost plan shall take into consideration eco-  
34 nomic and environmental risks of providing adequate and reliable energy for consumers,  
35 energy efficiency, renewable resources and cogeneration, in order to achieve adequate re-  
36 sources at the least overall cost.

37 (10) To oversee all aspects of Oregon Community Power operations.

38 (11) To hire and fire employees of Oregon Community Power.

39 (12) To make contracts, to set wages, to set salaries and provide compensation for ser-  
40 vices rendered by employees and by board members, to provide for life insurance,  
41 hospitalization, disability, health and welfare and retirement plans for employees and to do  
42 all things necessary and convenient for full exercise of the powers granted in this subsection.  
43 The provision of life insurance, hospitalization, disability, health and welfare and retirement  
44 plans for employees is in addition to any other right or power of Oregon Community Power  
45 to participate in those plans and does not repeal or modify any statutes except those that

1 may be in conflict with the provision of life insurance, hospitalization, disability, health and  
2 welfare and retirement plans.

3 (13) To enter into contracts with the United States Government, with any other state,  
4 municipality or utility district or with any other person, for carrying out any provisions of  
5 sections 1, 2 and 3 to 39 of this 2007 Act.

6 (14) To fix, maintain and collect electric energy rates as prescribed in sections 1, 2 and  
7 3 to 39 of this 2007 Act and to establish and collect charges for any other commodity or  
8 service furnished, developed or sold by Oregon Community Power.

9 (15) To construct works across or along any street or public highway or over any lands  
10 that are the property of this state, or of any city or other subdivision of this state, subject  
11 to any franchise agreement, privilege tax or municipal regulation that would apply to the  
12 works, and to construct works across or along any stream of water or watercourse. Any  
13 works across or along any state highway shall be constructed only with the permission of  
14 the Department of Transportation. Any works across or along any county highway shall be  
15 constructed only with the permission of the county governing body. Any works across or  
16 along any city street shall be constructed only with the permission of the city governing body  
17 and upon compliance with applicable city regulations and payment of any fees called for un-  
18 der applicable franchise agreements, intergovernmental agreements under ORS chapter 190  
19 or contracts providing for payment of these fees. Oregon Community Power shall restore  
20 any street or highway to its former state as near as may be practicable, and may not use  
21 the street or highway in a manner that impairs its usefulness unnecessarily.

22 (16) To enter into franchise agreements with cities and pay fees under negotiated fran-  
23 chise agreements, intergovernmental agreements under ORS chapter 190 and contracts pro-  
24 viding for the payment of such fees, and to pay privilege taxes imposed under ORS 221.450  
25 or other applicable privilege taxes.

26 (17) To exercise the power of eminent domain, as prescribed in section 11 or 21 of this  
27 2007 Act.

28 (18) To adopt bylaws as prescribed in section 26 of this 2007 Act.

29 (19) To make payments in lieu of property taxes as prescribed in section 19 of this 2007  
30 Act.

31 (20) To acquire property, execute contracts or otherwise conduct business with or within  
32 the territory of any state or local government that is outside Oregon, any Indian tribe  
33 wherever located or Canada or any province of Canada.

34 (21) To execute any contract necessary to acquire, hedge or sell fuel or energy in any  
35 form, to manage electric utility operations, to construct, maintain or repair any energy  
36 generation or transmission facilities or equipment, to increase capacity for energy gener-  
37 ation or transmission, to transfer any asset owned by Oregon Community Power or to ac-  
38 quire any asset for use in electric utility operations conducted by Oregon Community Power.

39 (22) To establish any funds or accounts at depository banks or other financial institutions  
40 that are determined to be necessary, useful or convenient for the conduct of business by  
41 Oregon Community Power.

42 (23) To take any other actions necessary or convenient for the proper exercise of the  
43 powers granted to Oregon Community Power by sections 1, 2 and 3 to 39 of this 2007 Act.

44 **SECTION 21. Eminent domain.** (1) Oregon Community Power may exercise the power of  
45 eminent domain for the purpose of acquiring any property, within or outside the service

1 territory of Oregon Community Power, necessary for carrying out the electric utility oper-  
2 ations of Oregon Community Power. Oregon Community Power may use the power of emi-  
3 nent domain to acquire an incumbent utility pursuant to an agreement under section 2 of  
4 this 2007 Act only as provided by section 11 of this 2007 Act.

5 (2) Notwithstanding subsection (1) of this section, eminent domain may not be used:

6 (a) To acquire service territory of another electric utility; or

7 (b) To acquire any property for a purpose that is unrelated to electric utility operations.

8  
9 (Rates)

10  
11 **SECTION 22. Ratemaking.** (1) The board of directors of Oregon Community Power shall  
12 establish rates for the provision of electricity within the service territory of Oregon Com-  
13 munity Power using the procedure set forth under section 23 of this 2007 Act.

14 (2) The board shall establish a rate structure under which rates that apply to a specific  
15 class of customers are designed to recover the costs of providing electricity and related  
16 services to that class of customers.

17 (3) The rates adopted by the board shall be sufficient to accomplish the following pur-  
18 poses:

19 (a) To properly maintain and operate all Oregon Community Power property and facili-  
20 ties;

21 (b) To recover the overall costs of the electric utility operations of Oregon Community  
22 Power;

23 (c) To reflect the income tax exempt status of Oregon Community Power so that the  
24 savings from tax exemption accrue to the benefit of the customers of Oregon Community  
25 Power;

26 (d) To pay all franchise fees, in lieu payments, privilege taxes and other charges and as-  
27 sessments that are properly imposed on Oregon Community Power or the property or facil-  
28 ities of Oregon Community Power;

29 (e) To pay principal and interest on all bonds, warrants or other obligations of any  
30 character in accordance with the terms and provisions of the obligations, including but not  
31 limited to bonds issued by Oregon Community Power for an acquisition described in sections  
32 1, 2 and 3 to 39 of this 2007 Act;

33 (f) To pay any other indebtedness or obligation for which Oregon Community Power may  
34 be obligated to pay;

35 (g) To pay any debt administration costs associated with bonds, warrants, obligations or  
36 other indebtedness described in paragraphs (e) and (f) of this subsection;

37 (h) To fund operating reserves in sufficient amounts to ensure the continued efficient  
38 operation of Oregon Community Power; and

39 (i) To establish and maintain any special funds that Oregon Community Power is obli-  
40 gated to create for the purpose of paying bond issues or other obligations.

41 **SECTION 23. Notice of ratemaking; ratemaking hearings.** (1) Whenever the board of di-  
42 rectors of Oregon Community Power determines to seek a modification in any rate imposed  
43 by the board for electricity service, the board shall give notice of a ratemaking hearing, at  
44 least 30 days in advance, as follows:

45 (a) In newspapers of general circulation that are published in the service territory;

- 1 (b) As a separate insert accompanying billing statements sent to customers;
- 2 (c) To persons that have requested notice of ratemaking action by the board; and
- 3 (d) By publication on the Oregon Community Power website.

4 (2) The notice shall state:

- 5 (a) The date, time and location of the ratemaking hearing of the board;
- 6 (b) The new rates or modifications to existing rates being proposed by the board; and
- 7 (c) Any other information deemed relevant by the board.

8 (3) At the time that the board issues a notice of a ratemaking hearing, the board shall  
9 publish on the Oregon Community Power website or otherwise make available to the public  
10 the underlying utility information upon which the proposed rates are based. The board shall  
11 provide the specific information required by bylaws adopted under section 26 (1) of this 2007  
12 Act.

13 (4)(a) Pursuant to ORS 183.625, the board shall request, and the Office of Administrative  
14 Hearings shall assign, an administrative law judge to conduct the ratemaking hearing. The  
15 ratemaking hearing shall be conducted under ratemaking hearing procedures established by  
16 bylaws adopted under section 26 (2) of this 2007 Act. The hearing shall be conducted in a  
17 manner that allows interested parties to present information and argument and to establish  
18 a record upon which the board may establish or modify rates pursuant to section 22 of this  
19 2007 Act.

20 (b) The administrative law judge shall ensure that the rates established at the  
21 ratemaking hearing are sufficient to accomplish all of the purposes described in section 22  
22 (3) of this 2007 Act.

23 (5) Notwithstanding section 4 of this 2007 Act, a decision by the board to establish or  
24 modify rates may be appealed as a contested case under ORS chapter 183.

25  
26 (Participation by Citizens' Utility Board)

27  
28 **SECTION 24.** (1) Whenever the Citizens' Utility Board of Governors determines that an  
29 Oregon Community Power proceeding may affect the interests of utility consumers, the  
30 Citizens' Utility Board may intervene as of right as an interested party or otherwise partic-  
31 ipate in the proceeding.

32 (2) The Citizens' Utility Board shall have standing to obtain judicial or administrative  
33 review of any action of Oregon Community Power, and may intervene as of right as an in-  
34 terested party or otherwise participate in any proceeding that involves the review or  
35 enforcement of any action by Oregon Community Power, if the Citizens' Utility Board of  
36 Governors determines that the action may affect the interests of utility consumers.

37  
38 (Audits)

39  
40 **SECTION 25.** The board of directors of Oregon Community Power shall cause an inde-  
41 pendent audit to be performed at least annually. The audit shall review and report on the  
42 financial affairs of Oregon Community Power and on any other aspects of Oregon Commu-  
43 nity Power as the board may direct.

44  
45 (Bylaws)

1       **SECTION 26.** The board of directors of Oregon Community Power may adopt bylaws  
2 necessary to administer sections 1, 2 and 3 to 39 of this 2007 Act, including but not limited  
3 to:

4       (1) Bylaws establishing the information the board must make available to the public prior  
5 to conducting a ratemaking hearing.

6       (2) Bylaws establishing procedures for conducting a ratemaking hearing that provide for  
7 substantially the same procedures as set forth in ORS 183.415, 183.425, 183.440 and 183.450.

8       (3) Bylaws to facilitate the implementation of the primary mission of Oregon Community  
9 Power under section 3 of this 2007 Act.

10  
11                               **ELECTRICITY FROM BONNEVILLE POWER ADMINISTRATION**

12  
13       **SECTION 27.** (1) The Legislative Assembly declares that it is the policy of the State of  
14 Oregon to:

15       (a) Ensure that the formation and operation of Oregon Community Power does not di-  
16 rectly or indirectly diminish the amount of federal electric power available for purchase by  
17 consumer-owned utilities to serve their retail electricity consumers;

18       (b) Ensure that the formation and operation of Oregon Community Power does not, di-  
19 rectly or indirectly, increase the lowest cost-based rates charged by the Bonneville Power  
20 Administration to consumer-owned utilities for the purchase of federal electric power above  
21 the level that would most likely have been charged absent the formation and operation of  
22 Oregon Community Power;

23       (c) Preserve the existing exclusive distribution rights of consumer-owned utilities;

24       (d) Ensure the preservation of contract rights currently existing between consumer-  
25 owned utilities and an incumbent utility;

26       (e) Preserve the authority of cities to impose franchise fees and privilege taxes and to  
27 execute contracts with Oregon Community Power; and

28       (f) Ensure that Oregon Community Power has access to benefits from the Bonneville  
29 Power Administration, as mandated by the federal Pacific Northwest Electric Power Plan-  
30 ning and Conservation Act, that are equivalent to the benefits received by the incumbent  
31 utility at the time the utility is acquired by Oregon Community Power.

32       (2) As used in this section, “federal electric power” means electricity generated, distrib-  
33 uted or sold by the Bonneville Power Administration.

34  
35                               **DIRECT ACCESS**

36  
37       **SECTION 28. Definitions.** As used in sections 28 to 33 of this 2007 Act:

38       (1) “Ancillary services” has the meaning given that term in ORS 757.600.

39       (2) “Direct access” means the ability of a retail electricity consumer to purchase elec-  
40 tricity and ancillary services, as determined by the board of directors of Oregon Community  
41 Power, directly from an entity other than Oregon Community Power.

42       (3) “Economic utility investment” means all investments, including plants and equipment  
43 and contractual or other legal obligations, made by Oregon Community Power and properly  
44 dedicated to generation or conservation, the full benefits of which are no longer available to  
45 consumers as a result of electing direct access, absent transition credits.



1 (4) “Electricity,” “electricity services” and “electricity service supplier” have the  
2 meanings given those terms in ORS 757.600.

3 (5) “Nonresidential electricity consumer” means a retail electricity consumer that is not  
4 a residential electricity consumer.

5 (6) “Portfolio access” means the ability of a retail electricity consumer to choose from  
6 a set of product and pricing options for electricity determined by the board and may include  
7 product and pricing options offered by Oregon Community Power or by an electricity service  
8 supplier.

9 (7) “Retail electricity consumer” means the end user of electricity for specific purposes  
10 that is served through the distribution system of Oregon Community Power, whether or not  
11 the end user purchases the electricity from Oregon Community Power.

12 (8) “Transition charge” and “transition credit” have the meanings given those terms in  
13 ORS 757.600.

14 (9) “Uneconomic utility investment” means all investments, including plants and equip-  
15 ment and contractual or other legal obligations, made by Oregon Community Power and  
16 properly dedicated to generation, conservation and workforce commitments, the full costs  
17 of which are no longer recoverable as a result of direct access, absent transition charges.

18 **SECTION 29. Oregon Community Power required to allow direct access.** (1) Oregon  
19 Community Power shall allow nonresidential electricity consumers direct access.

20 (2) Unless the board of directors of Oregon Community Power determines otherwise,  
21 Oregon Community Power shall provide all retail electricity consumers of Oregon Commu-  
22 nity Power with a regulated, cost-of-service rate option.

23 (3)(a) Oregon Community Power shall supply default electricity service to a nonresiden-  
24 tial electricity consumer in an emergency.

25 (b) The board shall establish reasonable terms and conditions for providing default ser-  
26 vice to a nonresidential electricity consumer in circumstances in which the consumer is re-  
27 ceiving electricity services through direct access and elects instead to receive electricity  
28 services through the default service.

29 (4)(a) Oregon Community Power shall permit retail electricity consumers that are eligible  
30 for direct access to voluntarily aggregate their electricity loads.

31 (b) A retail electricity consumer that is eligible for direct access may voluntarily aggre-  
32 gate its electricity load with the electricity load of any other retail electricity consumer that  
33 is eligible for direct access.

34 **SECTION 30. Rights of electricity service suppliers.** (1) Every electricity service supplier  
35 is authorized to use the distribution facilities of Oregon Community Power on a  
36 nondiscriminatory basis.

37 (2) Oregon Community Power shall provide:

38 (a) Electricity service suppliers and retail electricity consumers access to the Oregon  
39 Community Power transmission facilities and distribution system that is comparable to that  
40 provided for Oregon Community Power’s own use; and

41 (b) Electricity service suppliers and retail electricity consumers timely access to infor-  
42 mation about the Oregon Community Power transmission facilities and distribution system,  
43 metering and loads comparable to that provided to Oregon Community Power’s own nondis-  
44 tribution divisions, affiliates and related parties.

45 (3) Oregon Community Power shall allow any electricity service supplier that has been

1 certified by the Public Utility Commission to provide direct access to nonresidential elec-  
2 tricity consumers.

3 **SECTION 31. Transition credits and charges.** (1) Each retail electricity consumer of  
4 Oregon Community Power shall receive a transition credit or pay a transition charge as de-  
5 termined under this section.

6 (2) The total of all transition credits or transition charges shall equal the net value of  
7 all economic utility investments and all uneconomic utility investments of Oregon Commu-  
8 nity Power.

9 (3) The board of directors of Oregon Community Power shall adopt one of the following  
10 methods to establish the net value described under subsection (2) of this section and all  
11 procedures connected with the adopted method:

12 (a) Auction;

13 (b) Administrative valuation; or

14 (c) Ongoing valuation.

15 (4) The transition credit or transition charge that applies to a retail electricity consumer  
16 under this section may change to reflect the duration of the service option chosen by the  
17 consumer, but may not be changed because of the electricity service supplier chosen by the  
18 consumer.

19 **SECTION 32. Portfolio access to electricity service providers.** The board of directors of  
20 Oregon Community Power shall determine whether and under what conditions Oregon Com-  
21 munity Power will offer retail electricity consumers portfolio access to electricity service  
22 suppliers. The board shall have sole authority to determine:

23 (1) The quality and nature of electricity services, including but not limited to different  
24 product and pricing options, that will be made available to its retail electricity consumers.

25 (2) The extent to which products and services will be unbundled and the rates, tariffs,  
26 terms and conditions on which they may be offered.

27 (3) Whether one or more pilot programs for direct access, portfolio access or other forms  
28 of access to alternative suppliers will be offered.

29 (4) The degree to which provision of portfolio access necessitates modification of transi-  
30 tion credits, transition charges and the net value described in section 31 (2) of this 2007 Act  
31 on which transition credits or transition charges are based.

32 (5) The establishment of technical capability requirements, financial responsibility re-  
33 quirements and other protections for retail electricity consumers located within the Oregon  
34 Community Power service territory in dealings with electricity service suppliers.

35 (6) Access to or use of the Oregon Community Power transmission facilities or distrib-  
36 ution system by retail electricity consumers or electricity service suppliers.

37 (7) Oregon Community Power's qualification standards for electricity service suppliers in  
38 addition to any certification standards established by the Public Utility Commission, provided  
39 that the qualification standards are uniformly applied to electricity service suppliers in a  
40 nondiscriminatory manner.

41  
42 **CONSUMER-OWNED UTILITIES**  
43

44 **SECTION 33. Distribution rights; service territories.** (1) Notwithstanding any other pro-  
45 vision of law, a consumer-owned utility has exclusive distribution rights, to the extent the

1 distribution rights are provided by law other than sections 1, 2 and 3 to 39 of this 2007 Act,  
2 and exclusive responsibility for the performance and oversight of:

3 (a) The utility's distribution system, including the acquisition, construction, financing,  
4 operation and maintenance of distribution facilities; and

5 (b) Metering, billing, collection and consumer response functions related to the distrib-  
6 ution of electricity to retail electricity consumers located within the utility's service terri-  
7 tory.

8 (2) Sections 1, 2 and 3 to 39 of this 2007 Act do not:

9 (a) Diminish or enlarge the rights of any person under ORS 758.400 to 758.475; or

10 (b) Affect the administration or enforcement of ORS 758.400 to 758.475.

11  
12 **FINANCING AGREEMENTS**

13  
14 **SECTION 34.** As used in sections 34 to 38 of this 2007 Act:

15 (1) "Credit enhancement agreement" means any agreement or contractual relationship  
16 between Oregon Community Power and any bank, trust company, insurance company, surety  
17 bonding company, pension fund or other financial institution providing additional credit on  
18 or security for a financing agreement or certificates of participation authorized by sections  
19 34 to 38 of this 2007 Act.

20 (2) "Financing agreement" means a bond, installment sale agreement, loan agreement,  
21 note, note agreement, short-term promissory note, commercial paper, line of credit or simi-  
22 lar obligation or any other agreement to finance real or personal property, tangible or in-  
23 tangible, that is or will be owned and operated by Oregon Community Power, to otherwise  
24 borrow money, or to refinance previously executed financing agreements.

25 **SECTION 35.** (1) Oregon Community Power may enter into financing agreements in ac-  
26 cordance with sections 34 to 38 of this 2007 Act upon such terms as the board of directors  
27 of Oregon Community Power determines to be necessary or desirable. Amounts payable by  
28 Oregon Community Power under a financing agreement shall be limited to funds specifically  
29 pledged, budgeted for or otherwise made available by Oregon Community Power. If there are  
30 insufficient available funds to pay amounts due under a financing agreement, the lender may  
31 exercise any property rights that Oregon Community Power has granted to the lender in the  
32 financing agreement against the property that was purchased with the proceeds of the fi-  
33 nancing agreement, and may apply the amounts so received toward payments scheduled to  
34 be made by Oregon Community Power under the financing agreement.

35 (2) Oregon Community Power may enter into a financing agreement only following  
36 adoption by the board of directors of a resolution authorizing the execution of the financing  
37 agreement or a series of similar financing agreements.

38 (3) Any obligation of any kind incurred by Oregon Community Power shall state on its  
39 face that it is solely an obligation of Oregon Community Power.

40 **SECTION 36.** The board of directors of Oregon Community Power may delegate to any  
41 board member, or to the chief executive officer, president, general manager or chief financial  
42 officer of Oregon Community Power, the authority to determine maturity dates, principal  
43 amounts, redemption provisions, interest rates or methods for determining variable or ad-  
44 justable interest rates, denominations, methods of sale, agreements for the exchange of in-  
45 terest rates as an issuer under ORS 287.025 and other terms and conditions of a financing

1 agreement that are not appropriately determined at the time of enactment or adoption of a  
2 resolution authorizing the execution of the financing agreement. The board may also delegate  
3 entering into a financing agreement or any other instrument authorized by law. This deleg-  
4 ated authority shall be exercised subject to applicable requirements of law and any limita-  
5 tions and criteria as may be set forth in the resolution authorizing the execution of a  
6 financing agreement or in Oregon Community Power bylaws.

7 **SECTION 37.** Oregon Community Power may:

8 (1) Enter into agreements with third parties to hold financing agreement proceeds, pay-  
9 ments and reserves as security for lenders, and to issue certificates of participation in the  
10 right to receive payments due from Oregon Community Power under a financing agreement.  
11 Amounts so held shall be invested at the direction of the board of directors of Oregon Com-  
12 munity Power. Interest earned on any investments held as security for a financing agree-  
13 ment may, at the option of the board, be credited to the accounts held by the third party and  
14 applied in payment of sums due under a financing agreement.

15 (2) Enter into credit enhancement agreements for financing agreements or certificates  
16 of participation, provided that any credit enhancement agreements shall be payable solely  
17 from funds specifically pledged, budgeted for or otherwise made available by Oregon Com-  
18 munity Power and amounts received from the exercise of property rights granted under the  
19 financing agreements.

20 (3) Use financing agreements to finance the costs of acquiring or refinancing real or  
21 personal property, either tangible or intangible, plus the costs of reserves and credit en-  
22 hancements and the costs associated with obtaining the financing.

23 (4) Grant security interests in property to trustees or lenders.

24 (5) Make pledges for the benefit of trustees and lenders.

25 (6) Purchase fire and extended coverage or other casualty insurance for property that is  
26 acquired or refinanced with proceeds of a financing agreement, assign the proceeds thereof  
27 to a lender or trustee to the extent of their interest, and covenant to maintain any insurance  
28 while the financing agreement is unpaid, as long as available funds are sufficient to purchase  
29 the insurance.

30 **SECTION 38.** Oregon Community Power may consult with and obtain advice from the  
31 State Treasurer on proposed or executed financing agreements. The State Treasurer may  
32 recover from Oregon Community Power any costs incurred by the State Treasurer in pro-  
33 viding consultation and advice.

34  
35 **REVENUE BONDS**

36  
37 **SECTION 39.** (1) Oregon Community Power may issue and sell revenue bonds in accord-  
38 ance with the provisions of the Uniform Revenue Bond Act under ORS 288.805 to 288.945.  
39 However, ORS 288.815 does not apply to revenue bonds issued by Oregon Community Power.  
40 Revenue bonds issued by Oregon Community Power may not be a general obligation of  
41 Oregon Community Power and may not be a charge upon any revenues or property of Oregon  
42 Community Power that is not specifically pledged thereto. Any obligation of any kind in-  
43 curred by Oregon Community Power under ORS 288.805 to 288.945 is not, and may not be  
44 considered, an indebtedness of the State of Oregon.

45 (2) Revenue bonds or other financing agreements issued by Oregon Community Power

1 pursuant to ORS 288.805 to 288.945 shall be considered to be bonds or obligations of a political  
2 subdivision of the State of Oregon for the purposes of all laws of this state.

3  
4 **MUNICIPAL PRIVILEGE TAX**

5  
6 **SECTION 40.** ORS 221.420 is amended to read:

7 221.420. (1) As used in this section:

8 (a) "Public utility" has the meaning for that term provided in ORS 757.005.

9 (b) "Commission" means the Public Utility Commission of Oregon.

10 (c) "Council" means the common council, city council, commission or any other governing body  
11 of any municipality wherein the property of the public utility is located.

12 (d) "Municipality" means any town, city or other municipal government wherein property of the  
13 public utility is located.

14 (e) "Service" is used in its broadest and most inclusive sense and includes equipment and facil-  
15 ities.

16 (f) "Heating company" means any person furnishing heat but not electricity or natural gas to  
17 its customers.

18 (2) Every city may:

19 (a) Determine by contract or prescribe by ordinance or otherwise, the terms and conditions, in-  
20 cluding payment of charges and fees, upon which any public utility, electric cooperative, people's  
21 utility district or heating company, **or Oregon Community Power**, may be permitted to occupy the  
22 streets, highways or other public property within such city and exclude or eject any public utility  
23 or heating company therefrom.

24 (b) Require any public utility, by ordinance or otherwise, to make such modifications, additions  
25 and extensions to its physical equipment, facilities or plant or service within such city as shall be  
26 reasonable or necessary in the interest of the public, and designate the location and nature of all  
27 additions and extensions, the time within which they must be completed, and all conditions under  
28 which they must be constructed.

29 (c) Fix by contract, prescribe by ordinance, or in any other lawful manner, the rates, charges  
30 or tolls to be paid to, or that may be collected by, any public utility or the quality and character  
31 of each kind of product or service to be furnished or rendered by any public utility furnishing any  
32 product or service within such city. No schedule of rates, charges or tolls, fixed in the manner  
33 provided in this paragraph, shall be so fixed for a longer period than five years. Whenever it is  
34 proposed by any city to enter into any contract, or to enact any ordinance, or other municipal law  
35 or regulation concerning the matters specified in this paragraph, a copy of such proposed contract,  
36 ordinance or other municipal law or resolution shall be filed with the Public Utility Commission of  
37 Oregon before the same may be lawfully signed or enacted, as the case may be, and the commission  
38 shall thereafter have 90 days within which to examine into the terms thereof. If the commission is  
39 of the opinion that in any respect the provisions of the proposed contract, ordinance or other mu-  
40 nicipal law or resolution are not in the public interest, the commission shall file, in writing, with  
41 the clerk or other officer who has the custody of the files and records of the city, the commission's  
42 reasons therefor. If the objections are filed within said period of 90 days, no proposed contract, or-  
43 dinance or other municipal law or regulation shall be valid or go into effect until it has been sub-  
44 mitted to or ratified by the vote of the electors of the city. Unless and until a city exercises its  
45 powers as provided in this paragraph, the commission is vested with all powers with respect to the

1 matters specified in this paragraph. If the schedule of rates, charges and tolls or the quality and  
 2 character of each kind of product or service is fixed by contract, ordinance or other municipal law  
 3 or regulation and in the manner provided in this paragraph, the commission has no power or juris-  
 4 diction to interfere with, modify or change it during the period fixed thereby. Upon the expiration  
 5 of said period such powers shall again be vested in the commission, to be exercised by the commis-  
 6 sion unless and until a new schedule of rates or the quality and character for such service or  
 7 product is fixed or prescribed by contract, ordinance or other municipal law or regulation in the  
 8 manner provided in this paragraph.

9 (d) Provide for a penalty for noncompliance with the provisions of any charter provision, ordi-  
 10 nance or resolution adopted by the city in furtherance of the powers specified in this subsection.

11 **SECTION 41.** ORS 221.450 is amended to read:

12 221.450. Except as provided in ORS 221.655, the city council or other governing body of every  
 13 incorporated city may levy and collect **a privilege tax from Oregon Community Power and from**  
 14 every electric cooperative, people's utility district, privately owned public utility, telecommuni-  
 15 cations carrier as defined in ORS 133.721 or heating company. **The privilege tax may be collected**  
 16 **only if the entity is** operating for a period of 30 days within the city without a franchise from the  
 17 city and actually using the streets, alleys or highways, or all of them, in such city for other than  
 18 travel on such streets or highways[, *a privilege tax*]. **The privilege tax shall be** for the use of those  
 19 public streets, alleys or highways, or all of them, in such city in an amount not exceeding five per-  
 20 cent of the gross revenues of the cooperative, utility, district or company currently earned within  
 21 the boundary of the city. However, the gross revenues earned in interstate commerce or on the  
 22 business of the United States Government shall be exempt from the provisions of this section. The  
 23 privilege tax authorized in this section shall be for each year, or part of each year, such utility,  
 24 cooperative, district or company, **or Oregon Community Power**, operates without a franchise.

25 **SECTION 42.** Sections 1, 2 and 3 to 39 of this 2007 Act do not diminish, or authorize the  
 26 adoption of rules that diminish, the authority of a city to control the use of the city's rights  
 27 of way or to collect license fees, privilege taxes, rent or other charges for the use of the  
 28 rights of way of the city.

#### 31 PUBLIC PURPOSE CHARGE

32 **SECTION 43.** ORS 757.612 is amended to read:

33 757.612. (1) There is established an annual public purpose expenditure standard for electric  
 34 companies **and Oregon Community Power** to fund new cost-effective local energy conservation,  
 35 new market transformation efforts, the above-market costs of new renewable energy resources and  
 36 new low-income weatherization. The public purpose expenditure standard shall be funded by the  
 37 public purpose charge described in subsection (2) of this section.

38 (2)(a) Beginning on the date an electric company **or Oregon Community Power** offers direct  
 39 access to its retail electricity consumers, except residential electricity consumers, the electric  
 40 company **or Oregon Community Power** shall collect a public purpose charge from all of the retail  
 41 electricity consumers located within its service area for a period of 10 years. Except as provided in  
 42 paragraph (b) of this subsection, the public purpose charge shall be equal to three percent of the  
 43 total revenues collected by the electric company, **Oregon Community Power** or **the** electricity  
 44 service supplier from its retail electricity consumers for electricity services, distribution, ancillary  
 45 services, metering and billing, transition charges and other types of costs included in electric rates

1 on July 23, 1999.

2 (b) For an aluminum plant that averages more than 100 average megawatts of electricity use  
3 per year, beginning on March 1, 2002, the electric company **or Oregon Community Power** whose  
4 territory abuts the greatest percentage of the site of the aluminum plant shall collect from the alu-  
5 minum company a public purpose charge equal to one percent of the total revenue from the sale of  
6 electricity services to the aluminum plant from any source.

7 (3)(a) The Public Utility Commission shall establish rules implementing the provisions of this  
8 section relating to electric companies **and Oregon Community Power**.

9 (b) Subject to paragraph (e) of this subsection, funds collected by an electric company **or**  
10 **Oregon Community Power** through public purpose charges shall be allocated as follows:

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

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

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

14 (D) Five percent shall be transferred to the Housing and Community Services Department Re-  
15 volving Account created under ORS 456.574 and used for the purpose of providing grants as de-  
16 scribed in ORS 458.625 (2). Moneys deposited in the account under this subparagraph are  
17 continuously appropriated to the Housing and Community Services Department for the purposes of  
18 ORS 458.625 (2). Interest on moneys deposited in the account under this subparagraph shall accrue  
19 to the account.

20 (c) The costs of administering subsections (1) to (6) of this section for an electric company **or**  
21 **Oregon Community Power** shall be paid out of the funds collected through public purpose charges.  
22 The commission may require that an electric company **or Oregon Community Power** direct funds  
23 collected through public purpose charges to the state agencies responsible for implementing sub-  
24 subsections (1) to (6) of this section in order to pay the costs of administering such responsibilities.

25 (d) The commission shall direct the manner in which public purpose charges are collected and  
26 spent by an electric company **or Oregon Community Power** and may require an electric company  
27 **or Oregon Community Power** to expend funds through competitive bids or other means designed  
28 to encourage competition, except that funds dedicated for low-income weatherization shall be di-  
29 rected to the Housing and Community Services Department as provided in subsection (7) of this  
30 section. The commission may also direct that funds collected by an electric company **or Oregon**  
31 **Community Power** through public purpose charges be paid to a nongovernmental entity for in-  
32 vestment in public purposes described in subsection (1) of this section. Notwithstanding any other  
33 provision of this subsection[.];

34 (A) At least 80 percent of the funds allocated for conservation shall be spent within the service  
35 area of the electric company that collected the funds[.]; **or**

36 (B) **If Oregon Community Power collected the funds, at least 80 percent of the funds al-**  
37 **located for conservation shall be spent within the service area of Oregon Community Power.**

38 (e)(A) The first 10 percent of the funds collected annually by an electric company **or Oregon**  
39 **Community Power** under subsection (2) of this section shall be distributed to education service  
40 districts, as described in ORS 334.010, that are located in the service territory of the electric com-  
41 pany **or Oregon Community Power**. The funds shall be distributed to individual education service  
42 districts according to the weighted average daily membership (ADMw) of the component school  
43 districts of the education service district for the prior fiscal year as calculated under ORS 327.013.  
44 The commission shall establish by rule a methodology for distributing a proportionate share of funds  
45 under this paragraph to education service districts that are only partially located in the service

1 territory of the electric company **or Oregon Community Power.**

2 (B) An education service district that receives funds under this paragraph shall use the funds  
3 first to pay for energy audits for school districts located within the education service district. An  
4 education service district may not expend additional funds received under this paragraph on a  
5 school district facility until an energy audit has been completed for that school district. To the  
6 extent practicable, an education service district shall coordinate with the State Department of En-  
7 ergy and incorporate federal funding in complying with this paragraph. Following completion of an  
8 energy audit for an individual school district, the education service district may expend funds re-  
9 ceived under this paragraph to implement the energy audit. Once an energy audit has been con-  
10 ducted and completely implemented for each school district within the education service district, the  
11 education service district may expend funds received under this paragraph for any of the following  
12 purposes:

13 (i) Conducting energy audits. A school district shall conduct an energy audit prior to expending  
14 funds on any other purpose authorized under this paragraph unless the school district has performed  
15 an energy audit within the three years immediately prior to receiving the funds.

16 (ii) Weatherization and upgrading the energy efficiency of school district facilities.

17 (iii) Energy conservation education programs.

18 (iv) Purchasing electricity from environmentally focused sources and investing in renewable  
19 energy resources.

20 (f) The commission may establish a different public purpose charge than the public purpose  
21 charge otherwise described in subsection (2) of this section for an individual retail electricity con-  
22 sumer or any class of retail electricity consumers located within the service area of an electric  
23 company **or Oregon Community Power**, provided that a retail electricity consumer with a load  
24 greater than one average megawatt is not required to pay a public purpose charge in excess of three  
25 percent of its total cost of electricity services.

26 (g) The commission shall remove from the rates of each electric company any costs for public  
27 purposes described in subsection (1) of this section that are included in rates. A rate adjustment  
28 under this paragraph shall be effective on the date that the electric company begins collecting  
29 public purpose charges. **Oregon Community Power shall adhere to tariffs that were in exist-**  
30 **ence on the date Oregon Community Power acquired an incumbent utility under sections 1,**  
31 **2 and 3 to 39 of this 2007 Act, or the electric utility assets of the investor-owned utility, and**  
32 **that were designed to remove costs for public purposes from the rates.**

33 (4)(a) An electric company that satisfies its obligations under this section shall have no further  
34 obligation to invest in conservation, new market transformation, new renewable energy resources  
35 or new low-income weatherization or to provide a commercial energy conservation services program  
36 and is not subject to ORS 469.631 to 469.645, 469.860 to 469.900 and 758.505 to 758.555.

37 (b) **Oregon Community Power, for any period during which Oregon Community Power**  
38 **collects a public purpose charge under subsection (2) of this section:**

39 (A) **Shall have no other obligation to invest in conservation, new market transformation,**  
40 **new renewable energy resources or new low-income weatherization or to provide a commer-**  
41 **cial energy conservation services program; and**

42 (B) **Is not subject to ORS 469.631 to 469.645, 469.860 to 469.900 and 758.505 to 758.555.**

43 (5)(a) A retail electricity consumer that uses more than one average megawatt of electricity at  
44 any site in the prior year shall receive a credit against public purpose charges billed by an electric  
45 company **or Oregon Community Power** for that site. The amount of the credit shall be equal to



1 the total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent  
 2 of the annual public purpose charges, and the above-market costs of purchases of new renewable  
 3 energy resources incurred by the retail electricity consumer, not to exceed 19 percent of the annual  
 4 public purpose charges, less administration costs incurred under this subsection. The credit may not  
 5 exceed, on an annual basis, the lesser of:

6 (A) The amount of the retail electricity consumer's qualifying expenditures; or

7 (B) The portion of the public purpose charge billed to the retail electricity consumer that is  
 8 dedicated to new energy conservation, new market transformation or the above-market costs of new  
 9 renewable energy resources.

10 (b) To obtain a credit under this subsection, a retail electricity consumer shall file with the  
 11 State Department of Energy a description of the proposed conservation project or new renewable  
 12 energy resource and a declaration that the retail electricity consumer plans to incur the qualifying  
 13 expenditure. The State Department of Energy shall issue a notice of precertification within 30 days  
 14 of receipt of the filing, if such filing is consistent with this subsection. The credit may be taken after  
 15 a retail electricity consumer provides a letter from a certified public accountant to the State De-  
 16 partment of Energy verifying that the precertified qualifying expenditure has been made.

17 (c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that  
 18 are not used in one year may be carried forward for use in subsequent years.

19 (d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at  
 20 any site in the prior year may request that the State Department of Energy hire an independent  
 21 auditor to assess the potential for conservation investments at the site. If the independent auditor  
 22 determines there is no available conservation measure at the site that would have a simple payback  
 23 of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment  
 24 obligation for public purpose charges related to the site. If the independent auditor determines that  
 25 there are potential conservation measures available at the site, the retail electricity consumer shall  
 26 be entitled to a credit against public purpose charges related to the site equal to 54 percent of the  
 27 public purpose charges less the estimated cost of available conservation measures.

28 (B) A retail electricity consumer shall be entitled each year to the credit described in this sub-  
 29 section unless a subsequent independent audit determines that new conservation investment oppor-  
 30 tunities are available. The State Department of Energy may require that a new independent audit  
 31 be performed on the site to determine whether new conservation measures are available, provided  
 32 that the independent audits shall occur no more than once every two years.

33 (C) The retail electricity consumer shall pay the cost of the independent audits described in this  
 34 subsection.

35 (6) Electric utilities and retail electricity consumers shall receive a fair and reasonable credit  
 36 for the public purpose expenditures of their energy suppliers. The State Department of Energy shall  
 37 adopt rules to determine eligible expenditures and the methodology by which such credits are ac-  
 38 counted for and used. The rules also shall adopt methods to account for eligible public purpose  
 39 expenditures made through consortia or collaborative projects.

40 (7)(a) In addition to the public purpose charge provided under subsection (2) of this section, be-  
 41 ginning on October 1, 2001, an electric company **or Oregon Community Power** shall collect funds  
 42 for low-income electric bill payment assistance in an amount determined under paragraph (b) of this  
 43 subsection.

44 (b) The total amount collected for low-income electric bill payment assistance under this section  
 45 shall be \$10 million per year. The commission shall determine each electric company's proportionate

1 share of the total amount **and Oregon Community Power's proportionate share of the total**  
2 **amount**. The commission shall determine the amount to be collected from a retail electricity con-  
3 sumer, except that a retail electricity consumer is not required to pay more than \$500 per month  
4 per site for low-income electric bill payment assistance.

5 (c) Funds collected by the low-income electric bill payment assistance charge shall be paid into  
6 the Housing and Community Services Department Revolving Account created under ORS 456.574.  
7 Moneys deposited in the account under this paragraph are continuously appropriated to the Housing  
8 and Community Services Department for the purpose of funding low-income electric bill payment  
9 assistance. Interest earned on moneys deposited in the account under this paragraph shall accrue  
10 to the account. The department's cost of administering this subsection shall be paid out of funds  
11 collected by the low-income electric bill payment assistance charge. Moneys deposited in the ac-  
12 count under this paragraph shall be expended solely for low-income electric bill payment assistance.  
13 Funds collected from an electric company **or Oregon Community Power** shall be expended in the  
14 service area of the electric company **or Oregon Community Power** from which the funds are col-  
15 lected.

16 (d) The Housing and Community Services Department, in consultation with the federal Advisory  
17 Committee on Energy, shall determine the manner in which funds collected under this subsection  
18 will be allocated by the department to energy assistance program providers for the purpose of pro-  
19 viding low-income bill payment and crisis assistance, including programs that effectively reduce  
20 service disconnections and related costs to retail electricity consumers and electric utilities. Priority  
21 assistance shall be directed to low-income electricity consumers who are in danger of having their  
22 electricity service disconnected.

23 (e) Notwithstanding ORS 293.140, interest on moneys deposited in the Housing and Community  
24 Services Department Revolving Account under this subsection shall accrue to the account and may  
25 be used to provide heating bill payment and crisis assistance to electricity consumers whose primary  
26 source of heat is not electricity.

27 (f) Notwithstanding ORS 757.310, the commission may allow an electric company **or Oregon**  
28 **Community Power** to provide reduced rates or other payment or crisis assistance or low-income  
29 program assistance to a low-income household eligible for assistance under the federal Low Income  
30 Home Energy Assistance Act of 1981, as amended and in effect on July 23, 1999.

31 (8) For purposes of this section, "retail electricity consumers" includes any direct service in-  
32 dustrial consumer that purchases electricity without purchasing distribution services from the elec-  
33 tric utility.

34 **(9) For purposes of this section, amounts collected by Oregon Community Power through**  
35 **public purpose charges are not considered moneys received from electric utility operations.**

36  
37 **REVENUE BOND CONFORMING AMENDMENTS**

38  
39 **SECTION 44.** ORS 287.025 is amended to read:

40 287.025. (1) As used in this section:

41 (a) "Agreement for exchange of interest rates" or "agreement" means a contract, or an option  
42 or forward commitment to enter into a contract, for the exchange of interest rates that provides for:

43 (A) Payments based on levels of or changes in interest rates; or

44 (B) Provisions to hedge payment, rate, spread or similar exposure including, but not limited to,  
45 an interest rate floor or cap or an option, put or call.

1 (b) "Borrowing" means a bond, note, bond anticipation note, commercial paper, certificate of  
2 participation or other agreement made in exercise of the borrowing power of the issuer.

3 (c) "Counterparty" means the entity with which an issuer enters into an agreement for exchange  
4 of interest rates.

5 (d) "Issuer" means a public body as defined in ORS 288.605, [or] Oregon Health and Science  
6 University **or Oregon Community Power**.

7 (e) "Related borrowing" means a borrowing for which the issuer, or the State Treasurer on be-  
8 half of a state issuer, enters into an agreement for exchange of interest rates.

9 (f) "Termination payment" means the amount payable under an agreement for exchange of in-  
10 terest rates by one party to another party as a result of termination, in whole or in part, of the  
11 agreement prior to the expiration of the stated term.

12 (2) If the issuer is a state issuer, including the State of Oregon or an agency, department, board  
13 or commission of the State of Oregon, the State Treasurer may exercise the authority granted by  
14 this section on behalf of the state issuer or the state issuer, with the approval of the State Treas-  
15 urer, may exercise that authority directly.

16 (3) Subject to subsection (2) of this section, an issuer, or the State Treasurer on behalf of a state  
17 issuer, may enter into an agreement for exchange of interest rates for one or more related bor-  
18 rowings that:

19 (a) Exist when the agreement for exchange of interest rates is executed;

20 (b) Are reasonably expected to be executed when regularly scheduled payments are due from the  
21 issuer under the agreement; or

22 (c) Are identified after the agreement for exchange of interest rates is executed and substituted  
23 for a borrowing described in paragraph (a) or (b) of this subsection as a result of prepayment, re-  
24 funding, conversion, ratings changes, redemption, defeasance or other similar event related to one  
25 or more of the borrowings described in paragraph (a) or (b) of this subsection. An agreement may  
26 be made to manage payment, interest rate, spread or similar exposure undertaken in connection with  
27 a related borrowing upon a finding by the issuer, or the State Treasurer on behalf of a state issuer,  
28 that the agreement benefits the issuer.

29 (4) The issuer, or the State Treasurer on behalf of a state issuer, shall include in an agreement  
30 for exchange of interest rates provisions related to payment, term, security, collateralization, ter-  
31 mination, default and remedy that the issuer, or the State Treasurer on behalf of a state issuer,  
32 determines necessary or appropriate upon consideration of the covenants applicable to the related  
33 borrowing and the creditworthiness of the parties.

34 (5) The issuer, or the State Treasurer on behalf of a state issuer, may enter into an agreement  
35 for exchange of interest rates only if:

36 (a) The credit ratings for obligations of the counterparty that are similar to the termination  
37 payment obligations of the counterparty, or the credit ratings for at least one of the guarantors of  
38 the counterparty, are in one of the top three rating categories without gradation by at least two  
39 nationally recognized rating agencies and satisfy any other requirements that may be imposed by  
40 the Oregon Municipal Debt Advisory Commission or the State Treasurer, as applicable, pursuant to  
41 subsection (13) of this section; or

42 (b) The termination payment obligations of the counterparty, or at least one of the guarantors  
43 of the counterparty, with whom the issuer, or the State Treasurer on behalf of a state issuer, enters  
44 the agreement are collateralized by cash or obligations:

45 (A) That are rated in one of the top three rating categories without gradation by at least two

1 nationally recognized rating agencies as determined by the Oregon Municipal Debt Advisory Com-  
2 mission or the State Treasurer, as applicable, pursuant to subsection (13) of this section;

3 (B) That are deposited with the issuer, or the State Treasurer on behalf of a state issuer, or  
4 with an agent of the issuer;

5 (C) That have a market value sufficient to collateralize that portion of the termination payment  
6 obligations of the party under the agreement as determined at the discretion of the issuer, or the  
7 State Treasurer on behalf of a state issuer; and

8 (D) That are revalued at least quarterly.

9 (6) An issuer, or the State Treasurer on behalf of a state issuer, may agree, based on the issuer's  
10 reasonable expectations when the agreement is executed:

11 (a) If the borrowing bears interest at one or more variable rates, to pay sums equal to interest  
12 at one or more fixed rates or one or more different variable rates determined under a formula set  
13 forth in the agreement for exchange of interest rates on an amount not to exceed the outstanding  
14 principal amount of the borrowing when the agreement is entered into or, if the borrowing has not  
15 been issued, the principal amount of the borrowing reasonably anticipated to be outstanding when  
16 payments are required to commence under the agreement in exchange for an agreement for the  
17 issuer, or the State Treasurer on behalf of a state issuer, to be paid sums calculated based on the  
18 same principal amount at a variable rate determined under a formula set forth in the agreement.

19 (b) If the borrowing bears interest at one or more fixed rates, to pay sums calculated based on  
20 one or more variable rates or one or more different fixed rates determined under a formula set forth  
21 in the agreement for exchange of interest rates on an amount not to exceed the outstanding prin-  
22 cipal amount of the borrowing when the agreement is entered into or, if the borrowing has not been  
23 issued, the principal amount of the borrowing reasonably anticipated to be outstanding when pay-  
24 ments are required to commence under the agreement in exchange for an agreement for the issuer,  
25 or the State Treasurer on behalf of a state issuer, to be paid sums calculated based on the same  
26 principal amount at a fixed rate or rates set forth in the agreement.

27 (7) The issuer, or the State Treasurer on behalf of a state issuer, may not enter into an agree-  
28 ment under this section that:

29 (a) Has a term that exceeds the original term of the related borrowing for which the agreement  
30 for exchange of interest rates is made or, in the case of an option or a forward commitment, has a  
31 term that exceeds the reasonably expected term of the related borrowing for which the agreement  
32 is made; or

33 (b) Is for a purpose other than to manage payment, interest rate, spread or similar exposure in  
34 connection with the related borrowing of the issuer.

35 (8) The limitation on interest on an obligation in ORS 286.036, or any other similar limitation,  
36 does not apply to an amount paid under an agreement for exchange of interest rates entered into  
37 under this section.

38 (9) Upon entering into an agreement for exchange of interest rates under this section and con-  
39 tinuing until the agreement is satisfied, terminated or otherwise no longer in effect, as long as no  
40 payment default has occurred, the issuer, or the State Treasurer on behalf of a state issuer, shall  
41 treat the amount or rate of interest on the related borrowing as the amount or rate of interest  
42 payable after giving effect to the agreement for the purpose of calculating:

43 (a) Tax levies, if any, to pay bond debt service; or

44 (b) Other amounts that are based upon the rate of interest of the borrowing.

45 (10) Subject to covenants applicable to a related borrowing and the limitation described in sub-

1 section (12) of this section, payments required under the agreement by the issuer, or the State  
2 Treasurer on behalf of a state issuer, may:

3 (a) Be treated as interest payments on the related borrowing;

4 (b) Be made from revenues or other moneys committed to or legally available to pay the related  
5 borrowing; and

6 (c) Rank in an order of priority of payment relative to the payment of the related borrowing as  
7 the issuer, or the State Treasurer on behalf of a state issuer, determines. In connection with enter-  
8 ing into an agreement, the issuer, or the State Treasurer on behalf of a state issuer, may enter into  
9 an agreement that enhances or supports the credit of the issuer in the agreement or enhances or  
10 supports the liquidity of the agreement.

11 (11) An agreement entered into under this section:

12 (a) Is not a debt or other obligation of the issuer for purposes of any limitation upon the  
13 indebtedness of the issuer.

14 (b) Is subject only to the limitations of this section and is not subject to other limitations ap-  
15 plicable to the related borrowing.

16 (12) A termination payment required to be paid by an issuer under an agreement for exchange  
17 of interest rates may not be paid from taxes that the issuer may levy that are exempt from the  
18 limitations of sections 11 and 11b, Article XI of the Oregon Constitution.

19 (13)(a) The Oregon Municipal Debt Advisory Commission shall promulgate administrative rules  
20 establishing required terms, conditions, annual or periodic reporting requirements and other re-  
21 quirements for an agreement for exchange of interest rates entered into by an issuer other than a  
22 state issuer and may impose additional requirements for agreements for exchange of interest rates  
23 that are executed by issuers other than a state issuer, if the commission determines those require-  
24 ments are desirable to protect the interests of those issuers or citizens of the State of Oregon.

25 (b) The State Treasurer may promulgate administrative rules:

26 (A) Establishing required terms, conditions, annual or periodic reporting requirements and other  
27 requirements for an agreement for exchange of interest rates entered into by a state issuer acting  
28 with the approval of the State Treasurer under subsection (2) of this section;

29 (B) Requiring a party to an agreement, the party's guarantor or the collateral securing the ob-  
30 ligation of a party or the party's guarantor to meet specific credit rating standards or other condi-  
31 tions; or

32 (C) If the State Treasurer determines that conditions and restrictions are necessary or appro-  
33 priate to protect the interests of issuers, requiring the agreement to contain terms and conditions  
34 that are more restrictive than the terms and conditions established in subsection (5) of this section.

35 (14)(a) Before an agreement for exchange of interest rates may be entered into under this sec-  
36 tion, the issuer, or the State Treasurer on behalf of a state issuer, shall determine whether:

37 (A) The agreement for exchange of interest rates is being executed for a permitted purpose and  
38 benefits the issuer; and

39 (B) The requirements of this section have been met.

40 (b) In addition to the determinations required under paragraph (a) of this subsection, an issuer  
41 other than a state issuer shall also determine whether the issuer has complied with the requirements  
42 of the administrative rules promulgated by the Oregon Municipal Debt Advisory Commission under  
43 subsection (13) of this section.

44 (15) An issuer other than a state issuer shall notify the State Treasurer of the execution by the  
45 issuer of an agreement for exchange of interest rates under this section.

MISCELLANEOUS

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**SECTION 45. The unit and section captions used in this 2007 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2007 Act.**

**SECTION 46. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.**

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