

**Enrolled
Senate Bill 967**

Sponsored by COMMITTEE ON BUSINESS, TRANSPORTATION AND ECONOMIC DEVELOPMENT

CHAPTER

AN ACT

Relating to rates of public utilities; creating new provisions; amending ORS 757.210 and 757.511; repealing ORS 757.267 and 757.268; and declaring an emergency.

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

SECTION 1. (1) When establishing schedules and rates under ORS 757.210 for an electricity or natural gas utility, the Public Utility Commission shall act to balance the interests of the customers of the utility and the utility's investors by setting fair, just and reasonable rates that include amounts for income taxes. Subject to subsections (2) and (3) of this section, amounts for income taxes included in rates are fair, just and reasonable if the rates include current and deferred income taxes and other related tax items that are based on estimated revenues derived from the regulated operations of the utility.

(2) During ratemaking proceedings conducted pursuant to ORS 757.210, the Public Utility Commission must ensure that the income taxes included in the electricity or natural gas utility's rates:

(a) Include all expected current and deferred tax balances and tax credits made in providing regulated utility service to the utility's customers in this state;

(b) Include only the current provision for deferred income taxes, accumulated deferred income taxes and other tax related items that are based on revenues, expenses and the rate base included in rates and on the same basis as included in rates;

(c) Reflect all known changes to tax and accounting laws or policy that would affect the calculated taxes;

(d) Are reduced by tax benefits generated by expenditures made in providing regulated utility service to the utility's customers in this state, regardless of whether the taxes are paid by the utility or an affiliated group;

(e) Contain all adjustments necessary in order to ensure compliance with the normalization requirements of federal tax law; and

(f) Reflect other considerations the commission deems relevant to protect the public interest.

(3) During a ratemaking proceeding conducted under ORS 757.210 for an electricity or natural gas utility that pays taxes as part of an affiliated group, the Public Utility Commission may adjust the utility's estimated income tax expense based upon:

(a) Whether the utility's affiliated group has a history of paying federal or state income taxes that are less than the federal or state income taxes the utility would pay to units of government if it were an Oregon-only regulated utility operation;

(b) Whether the corporate structure under which the utility is held affects the taxes paid by the affiliated group; or

(c) Any other considerations the commission deems relevant to protect the public interest.

(4)(a) Because tax information of unregulated nonutility business in an electricity or natural gas utility's affiliated group is commercially sensitive, and public disclosure of such information could provide a commercial advantage to other businesses, the Public Utility Commission may not use the tax information obtained under this section for any purpose other than those described in this section, in ORS 757.511 and as necessary for the implementation and administration of this section and ORS 757.511.

(b) The commission shall adopt rules to implement paragraph (a) of this subsection that:

(A) Identify all documents and tax information that an electricity or natural gas utility must file in its initial filing in a proceeding to change rates that include amounts for income taxes, recognizing that any party may object to providing such documents on the grounds that they are not relevant; and

(B) Determine the procedures under which intervenors in such proceedings may obtain and use documents and tax information to fully participate in the proceeding.

(5) As used in this section, "affiliated group" means a group of corporations of which the public utility is a member and that files a consolidated federal income tax return.

SECTION 2. The Public Utility Commission shall initiate a rulemaking proceeding to adopt rules to implement section 1 (4) of this 2011 Act no later than 30 days after the effective date of this 2011 Act.

SECTION 3. ORS 757.210 is amended to read:

757.210. (1)(a) Whenever any public utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine whether the rate or schedule is fair, just and reasonable. The commission shall conduct the hearing upon written complaint filed by the utility, its customer or customers, or any other proper party within 60 days of the utility's filing; provided that no hearing need be held if the particular rate change is the result of an automatic adjustment clause. At the hearing the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable. The commission may not authorize a rate or schedule of rates that is not fair, just and reasonable.

(b) As used in this subsection, "automatic adjustment clause" means a provision of a rate schedule that provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred, taxes paid to units of government or revenues earned by a utility and that is subject to review by the commission at least once every two years.

(2)(a) Subsection (1) of this section does not apply to rate changes under an approved alternative form of regulation plan, including a resource rate plan under ORS 757.212.

(b) Any alternative form of regulation plan shall include provisions to ensure that the plan operates in the interests of utility customers and the public generally and results in rates that are just and reasonable and may include provisions establishing a reasonable range for rate of return on investment. In approving a plan, the commission shall, at a minimum, consider whether the plan:

(A) Promotes increased efficiencies and cost control;

(B) Is consistent with least-cost resources acquisition policies;

(C) Yields rates that are consistent with those that would be obtained following application of [ORS 757.268] **section 1 of this 2011 Act;**

(D) Is consistent with maintenance of safe, adequate and reliable service; and

(E) Is beneficial to utility customers generally, for example, by minimizing utility rates.

(c) As used in this subsection, "alternative form of regulation plan" means a plan adopted by the commission upon petition by a public utility, after notice and an opportunity for a hearing, that

sets rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-service rate regulation.

(d) Prior to implementing a rate change under an alternative form of regulation plan, the utility shall present a report that demonstrates the calculation of any proposed rate change at a public meeting of the commission.

(3) Except as provided in ORS 757.212, the commission, at any time, may order a utility to appear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this section are in conformity with the plan and are just and reasonable. Except as provided in ORS 757.212, such rates, and the alternative form of regulation plan under which the rates are set, also shall be subject to complaint under ORS 756.500.

(4) Periodically, but not less often than every two years after the implementation of a plan referred to in subsection (2) of this section, the commission shall submit a report to the Legislative Assembly that shows the impact of the plan on rates paid by utility customers.

(5) The commission and staff may consult at any time with, and provide technical assistance to, utilities, their customers, and other interested parties on matters relevant to utility rates and charges. If a hearing is held with respect to a rate change, the commission's decisions shall be based on the record made at the hearing.

SECTION 4. ORS 757.511 is amended to read:

757.511. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility which provides heat, light or power without first securing from the Public Utility Commission, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015 (1), (2) or (3).

(2) Notice must be given to the commission of an application under this section at least 60 days before the application is filed with the commission. The notice must indicate whether the transaction is a transaction described in ORS 757.814 (1). If the transaction is a transaction as described in ORS 757.814 (1), the commission shall give notice to cities and counties as required by ORS 757.814 (1).

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

- (a) The applicant's identity and financial ability;
- (b) The background of the key personnel associated with the applicant;
- (c) The source and amounts of funds or other consideration to be used in the acquisition;
- (d) The applicant's compliance with federal law in carrying out the acquisition;
- (e) Whether the applicant or the key personnel associated with the applicant have violated any state or federal statutes regulating the activities of public utilities;
- (f) All documents relating to the transaction giving rise to the application;
- (g) The applicant's experience in operating public utilities providing heat, light or power;
- (h) The applicant's plan for operating the public utility;
- (i) How the acquisition will serve the public utility's customers in the public interest; and
- (j) Such other information as the commission may require by rule.

(4)(a) The commission promptly shall examine and investigate each application received pursuant to this section. Except as provided in subsection (5) of this section, the commission shall issue an order disposing of the application within 19 business days of its receipt. If the commission determines that approval of the application will serve the public utility's customers **and is** in the public interest, the commission shall issue an order granting the application. The commission may condition an order authorizing the acquisition upon the applicant's satisfactory performance or adherence to specific requirements. The commission otherwise shall issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest.

(b) In reviewing an application received pursuant to this section for an electricity or natural gas utility, the Public Utility Commission must consider the effect of the acquisition

or merger on the amount of income taxes paid by the utility or its affiliated group and make any necessary adjustments to the rates of the utility, including the establishment of a balancing account to track income tax expense, to ensure that the acquisition or merger serves the utility's customers and is in the public interest.

(5) The commission may postpone issuance of an order disposing of an application under this section if notice has been given to cities and counties under ORS 757.814 (1). In no event may the commission postpone issuance of an order disposing of the application for more than 90 days under the provisions of this subsection.

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

SECTION 5. ORS 757.267 and 757.268 are repealed.

SECTION 6. The Public Utility Commission shall complete pending review of tax reports for calendar year 2009 under the provisions of ORS 757.267 and 757.268 as they existed immediately prior to the effective date of this 2011 Act, with resulting rate adjustments becoming effective June 1, 2011, and expiring May 31, 2012.

SECTION 7. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate April 20, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 12, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State