

# Senate Bill 967

Sponsored by COMMITTEE ON BUSINESS, TRANSPORTATION AND ECONOMIC DEVELOPMENT

## SUMMARY

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

Repeals existing statutes governing adjustment of public utility rates to account for taxes paid by electricity and natural gas utilities. Requires Public Utility Commission to consider taxes paid by electricity and natural gas utilities when conducting ratemaking proceeding. Allows commission to adjust rates for electricity or natural gas utility that is part of affiliated group. Requires commission to balance confidentiality of tax documents for affiliated group in ratemaking proceeding with need for information in such documents by commission and intervenors. Allows commission to consider taxes paid when approving merger or acquisition of electricity or natural gas utility.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to rates of public utilities; creating new provisions; amending ORS 757.210 and 757.511;  
3 repealing ORS 757.267 and 757.268; and declaring an emergency.

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

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

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

15 **(a) Include all expected current and deferred tax balances and tax credits made in pro-**  
16 **viding regulated utility service to the utility's customers in this state;**

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

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

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

25 **(e) Contain all adjustments necessary in order to ensure compliance with the normal-**  
26 **ization requirements of federal tax law; and**

27 **(f) Reflect other considerations the commission deems relevant to protect the public in-**  
28 **terest.**

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

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

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

9       **(c) Any other considerations the commission deems relevant to protect the public inter-**  
 10 **est.**

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

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

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

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

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

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

29       **SECTION 3. ORS 757.210 is amended to read:**

30       757.210. (1)(a) Whenever any public utility files with the Public Utility Commission any rate or  
 31 schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing  
 32 rate or schedule of rates, the commission may, either upon written complaint or upon the  
 33 commission's own initiative, after reasonable notice, conduct a hearing to determine whether the  
 34 rate or schedule is fair, just and reasonable. The commission shall conduct the hearing upon written  
 35 complaint filed by the utility, its customer or customers, or any other proper party within 60 days  
 36 of the utility's filing; provided that no hearing need be held if the particular rate change is the re-  
 37 sult of an automatic adjustment clause. At the hearing the utility shall bear the burden of showing  
 38 that the rate or schedule of rates proposed to be established or increased or changed is fair, just  
 39 and reasonable. The commission may not authorize a rate or schedule of rates that is not fair, just  
 40 and reasonable.

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

45       (2)(a) Subsection (1) of this section does not apply to rate changes under an approved alternative

1 form of regulation plan, including a resource rate plan under ORS 757.212.

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

6 (A) Promotes increased efficiencies and cost control;

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

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

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

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

12 (c) As used in this subsection, “alternative form of regulation plan” means a plan adopted by the  
13 commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets  
14 rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-  
15 service rate regulation.

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

19 (3) Except as provided in ORS 757.212, the commission, at any time, may order a utility to ap-  
20 pear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this  
21 section are in conformity with the plan and are just and reasonable. Except as provided in ORS  
22 757.212, such rates, and the alternative form of regulation plan under which the rates are set, also  
23 shall be subject to complaint under ORS 756.500.

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

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

31 **SECTION 4.** ORS 757.511 is amended to read:

32 757.511. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial  
33 influence over the policies and actions of a public utility which provides heat, light or power with-  
34 out first securing from the Public Utility Commission, upon application, an order authorizing such  
35 acquisition if such person is, or by such acquisition would become, an affiliated interest with such  
36 public utility as defined in ORS 757.015 (1), (2) or (3).

37 (2) Notice must be given to the commission of an application under this section at least 60 days  
38 before the application is filed with the commission. The notice must indicate whether the transaction  
39 is a transaction described in ORS 757.814 (1). If the transaction is a transaction as described in ORS  
40 757.814 (1), the commission shall give notice to cities and counties as required by ORS 757.814 (1).

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

43 (a) The applicant’s identity and financial ability;

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

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

- 1 (d) The applicant's compliance with federal law in carrying out the acquisition;
- 2 (e) Whether the applicant or the key personnel associated with the applicant have violated any
- 3 state or federal statutes regulating the activities of public utilities;
- 4 (f) All documents relating to the transaction giving rise to the application;
- 5 (g) The applicant's experience in operating public utilities providing heat, light or power;
- 6 (h) The applicant's plan for operating the public utility;
- 7 (i) How the acquisition will serve the public utility's customers in the public interest; and
- 8 (j) Such other information as the commission may require by rule.

9 (4)(a) The commission promptly shall examine and investigate each application received pursu-  
 10 ant to this section. Except as provided in subsection (5) of this section, the commission shall issue  
 11 an order disposing of the application within 19 business days of its receipt. If the commission de-  
 12 termines that approval of the application will serve the public utility's customers **and is** in the  
 13 public interest, the commission shall issue an order granting the application. The commission may  
 14 condition an order authorizing the acquisition upon the applicant's satisfactory performance or ad-  
 15 herence to specific requirements. The commission otherwise shall issue an order denying the appli-  
 16 cation. The applicant shall bear the burden of showing that granting the application is in the public  
 17 interest.

18 **(b) In reviewing an application received pursuant to this section for an electricity or**  
 19 **natural gas utility, the Public Utility Commission must consider the effect of the acquisition**  
 20 **or merger on the amount of income taxes paid by the utility or its affiliated group and make**  
 21 **any necessary adjustments to the rates of the utility, including the establishment of a bal-**  
 22 **ancing account to track income tax expense, to ensure that the acquisition or merger serves**  
 23 **the utility's customers and is in the public interest.**

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

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

30 **SECTION 5. ORS 757.267 and 757.268 are repealed.**

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

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