

# DRAFT

## SUMMARY

Prohibits electric company from including in its rates cost of electric generation resource or energy storage resource that is capable of generating electricity or storing electricity for not less than five years and has generating or storage capacity of 50 megawatts or more unless electric company must acquire resource to maintain reliability of electrical company's electrical system.

Requires electric company to use competitive bidding process when procuring electricity from electric generation resource or energy storage resource that is capable of generating electricity or storing electricity for not less than five years and has generating or storage capacity of 50 megawatts.

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to utilities; creating new provisions; amending ORS 59.025, 757.600,  
3 757.646 and 757.676; and prescribing an effective date.

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

5 **SECTION 1.** ORS 757.600 is amended to read:

6 757.600. As used in ORS 757.600 to 757.689, unless the context requires  
7 otherwise:

8 (1) "Aggregate" means combining retail electricity consumers into a buy-  
9 ing group for the purchase of electricity and related services.

10 (2) "Ancillary services" means services necessary or incidental to the  
11 transmission and delivery of electricity from generating facilities to retail  
12 electricity consumers, including but not limited to scheduling, load shaping,  
13 reactive power, voltage control and energy balancing services.

14 (3) "Commission" means the Public Utility Commission.

1 (4) “Consumer-owned utility” means a municipal electric utility, a  
2 people’s utility district or an electric cooperative.

3 (5) “Default supplier” means an electricity service supplier or electric  
4 company that has a legal obligation to provide electricity services to a con-  
5 sumer, as determined by the commission.

6 (6) “Direct access” means the ability of a retail electricity consumer to  
7 purchase electricity and certain ancillary services, as determined by the  
8 commission for an electric company or the governing body of a consumer-  
9 owned utility, directly from an entity other than the distribution utility.

10 (7) “Direct service industrial consumer” means an end user of electricity  
11 that obtains electricity directly from the transmission grid and not through  
12 a distribution utility.

13 (8) “Distribution” means the delivery of electricity to retail electricity  
14 consumers through a distribution system consisting of local area power  
15 poles, transformers, conductors, meters, substations and other equipment.

16 (9) “Distribution utility” means an electric utility that owns and operates  
17 a distribution system connecting the transmission grid to the retail elec-  
18 tricity consumer.

19 (10) “Economic utility investment” means all electric company invest-  
20 ments, including plants and equipment and contractual or other legal obli-  
21 gations, properly dedicated to generation or conservation, that were prudent  
22 at the time the obligations were assumed but the full benefits of which are  
23 no longer available to consumers as a direct result of ORS 757.600 to 757.667,  
24 absent transition credits. “Economic utility investment” does not include  
25 costs or expenses disallowed by the commission in a prudence review or  
26 other proceeding, to the extent of such disallowance, and does not include  
27 fines or penalties authorized and imposed under state or federal law.

28 (11) “Electric company” means an entity engaged in the business of dis-  
29 tributing electricity to retail electricity consumers in this state, but does not  
30 include a consumer-owned utility.

31 (12) “Electric cooperative” means an electric cooperative corporation or-

1 ganized under ORS chapter 62 or under the laws of another state if the ser-  
2 vice territory of the electric cooperative includes a portion of this state.

3 (13) “Electric utility” means an electric company or consumer-owned  
4 utility that is engaged in the business of distributing electricity to retail  
5 electricity consumers in this state.

6 (14) “Electricity” means electric energy, measured in kilowatt-hours, or  
7 electric capacity, measured in kilowatts, or both.

8 (15) “Electricity services” means electricity distribution, transmission,  
9 generation or generation-related services.

10 (16) “Electricity service supplier” means a person or entity that offers to  
11 sell electricity services available pursuant to direct access to more than one  
12 retail electricity consumer. “Electricity service supplier” does not include  
13 an electric utility selling electricity to retail electricity consumers in its own  
14 service territory.

15 (17) “Governing body” means the board of directors or the commissioners  
16 of an electric cooperative or people’s utility district, or the council or board  
17 of a city with respect to a municipal electric utility.

18 (18) “Load” means the amount of electricity delivered to or required by  
19 a retail electricity consumer at a specific point of delivery.

20 (19) “Low-income weatherization” means repairs, weatherization and in-  
21 stallation of energy efficient appliances and fixtures for low-income resi-  
22 dences for the purpose of enhancing energy efficiency.

23 **(20) “Major resource” means an electric generation resource or an**  
24 **energy storage resource that an electric company acquires, or for**  
25 **which an electric company contracts, to generate or store electricity**  
26 **for not less than five years and that:**

27 **(a) If a single resource, has a generating or storage capacity of 50**  
28 **megawatts or more; or**

29 **(b) If multiple resources:**

30 **(A) Has an aggregate generating or storage capacity of 50 mega-**  
31 **watts or more; and**

1       **(B) Meets criteria for aggregating generating or storage capacity**  
2 **as prescribed by the commission by rule or order, provided that the**  
3 **burden of proof is on an electric utility to demonstrate that multiple**  
4 **resources should not be aggregated in any proceeding determining**  
5 **whether multiple resources are a major resource.**

6       [(20)] **(21)** “Municipal electric utility” means an electric distribution  
7 utility owned and operated by or on behalf of a city.

8       [(21)] **(22)** “New renewable energy resource” means a renewable energy  
9 resource project, or a new addition to an existing renewable energy resource  
10 project, or the electricity produced by the project, that is not in operation  
11 on July 23, 1999. “New renewable energy resource” does not include any  
12 portion of a renewable energy resource project under contract to the  
13 Bonneville Power Administration on or before July 23, 1999.

14       [(22)] **(23)** “One average megawatt” means 8,760,000 kilowatt-hours of  
15 electricity per year.

16       [(23)] **(24)** “People’s utility district” has the meaning given that term in  
17 ORS 261.010.

18       [(24)] **(25)** “Portfolio access” means the ability of a retail electricity con-  
19 sumer to choose from a set of product and pricing options for electricity  
20 determined by the governing board of a consumer-owned utility and may in-  
21 clude product and pricing options offered by the utility or by an electricity  
22 service supplier.

23       [(25)] **(26)** “Power generation company” means a company engaged in the  
24 production and sale of electricity to wholesale customers, including but not  
25 limited to independent power producers, affiliated generation companies,  
26 municipal and state authorities, provided the company is not regulated by  
27 the commission.

28       [(26)] **(27)** “Qualifying expenditures” means those expenditures for energy  
29 conservation measures that have a simple payback period of not less than  
30 one year and not more than 10 years, and expenditures for the above-market  
31 costs of new renewable energy resources, provided that the State Department

1 of Energy by rule may establish a limit on the maximum above-market cost  
2 for renewable energy that is allowed as a credit.

3 [(27)] **(28)** “Renewable energy resources” means:

4 (a) Electricity generation facilities fueled by wind, waste, solar or  
5 geothermal power or by low-emission nontoxic biomass based on solid or-  
6 ganic fuels from wood, forest and field residues.

7 (b) Dedicated energy crops available on a renewable basis.

8 (c) Landfill gas and digester gas.

9 (d) Hydroelectric facilities located outside protected areas as defined by  
10 federal law in effect on July 23, 1999.

11 [(28)] **(29)** “Residential electricity consumer” means an electricity con-  
12 sumer who resides at a dwelling primarily used for residential purposes.  
13 “Residential electricity consumer” does not include retail electricity con-  
14 sumers in a dwelling typically used for residency periods of less than 30 days,  
15 including hotels, motels, camps, lodges and clubs. As used in this subsection,  
16 “dwelling” includes but is not limited to single family dwellings, separately  
17 metered apartments, adult foster homes, manufactured dwellings, recre-  
18 ational vehicles and floating homes.

19 [(29)] **(30)** “Retail electricity consumer” means the end user of electricity  
20 for specific purposes such as heating, lighting or operating equipment, and  
21 includes all end users of electricity served through the distribution system  
22 of an electric utility on or after July 23, 1999, whether or not each end user  
23 purchases the electricity from the electric utility.

24 [(30)] **(31)** “Site” means a single contiguous area of land containing  
25 buildings or other structures that are separated by not more than 1,000 feet,  
26 or buildings and related structures that are interconnected by facilities  
27 owned by a single retail electricity consumer and that are served through a  
28 single electric meter.

29 [(31)] **(32)** “Transition charge” means a charge or fee that recovers all or  
30 a portion of an uneconomic utility investment.

31 [(32)] **(33)** “Transition credit” means a credit that returns to consumers

1 all or a portion of the benefits from an economic utility investment.

2 [(33)] (34) “Transmission facility” means the plant and equipment used to  
3 transmit electricity in interstate commerce.

4 [(34)] (35) “Undue market power” means the unfair or improper exercise  
5 of influence to increase or decrease the availability or price of a service or  
6 product in a manner inconsistent with competitive markets.

7 [(35)] (36) “Uneconomic utility investment” means all electric company  
8 investments, including plants and equipment and contractual or other legal  
9 obligations, properly dedicated to generation, conservation and workforce  
10 commitments, that were prudent at the time the obligations were assumed  
11 but the full costs of which are no longer recoverable as a direct result of  
12 ORS 757.600 to 757.667, absent transition charges. “Uneconomic utility in-  
13 vestment” does not include costs or expenses disallowed by the commission  
14 in a prudence review or other proceeding, to the extent of such disallowance,  
15 and does not include fines or penalties as authorized by state or federal law.

16 **SECTION 2.** ORS 757.646 is amended to read:

17 757.646. (1) The duties, functions and powers of the Public Utility Com-  
18 mission [*shall*] include developing policies to eliminate barriers to the de-  
19 velopment of a competitive retail **and wholesale** market structure[. *The*  
20 *policies shall*] **for electricity. Policies developed pursuant to this sec-**  
21 **tion must** be designed to mitigate the vertical and horizontal **retail and**  
22 **wholesale** market power of incumbent electric companies, prohibit prefer-  
23 ential treatment, or the appearance of [*such*] **preferential** treatment, of  
24 generation or market affiliates and determine [*the*] **which** electricity services  
25 **are** likely to be competitive. The commission may require an electric com-  
26 pany acting as an electricity service supplier [*do so*] **to act as an electricity**  
27 **service supplier** through an affiliate.

28 (2) The commission shall establish by rule a code of conduct for electric  
29 companies and [*their*] **electric company** affiliates to protect **retail elec-**  
30 **tricity consumers** against **wholesale and retail** market abuses and anti-  
31 competitive practices. The code shall, at a minimum:

1 (a) Require an electric company and [*any*] **an affiliate of the electric**  
2 **company** that shares the same name and logo **as the electric company** to  
3 disclose to all consumers the relationship between the company and **the af-**  
4 **filiate** and to clarify that the affiliate is not the same as the electric com-  
5 pany and that in order to receive service from the **electric** company a  
6 consumer does not have to purchase the services of the affiliate;

7 (b) Prohibit preferential access by an electric company affiliate to confi-  
8 dential consumer information;

9 (c) Prohibit cross-subsidization between competitive operations and regu-  
10 lated operations, including the use of electric company personnel and other  
11 resources;

12 (d) Prohibit joint marketing activities and exclusive referral arrange-  
13 ments between an electric company and [*its*] affiliates **of the electric com-**  
14 **pany**;

15 (e) Provide the commission with all necessary access to books and re-  
16 cords;

17 (f) Require electric companies to make regular compliance filings; and

18 (g) Require fair treatment of all competitors by a distribution utility.

19 **(3) The commission shall establish by rule competitive bidding re-**  
20 **quirements to protect retail electricity consumers against wholesale**  
21 **and retail market abuses and anticompetitive practices and to ensure**  
22 **the diverse ownership of resources that generate electricity. The rules**  
23 **shall, at a minimum:**

24 **(a) Prohibit an electric company from including in its rates the cost**  
25 **of a major resource unless the electric company must acquire the**  
26 **major resource to maintain the reliability of the electrical company's**  
27 **electrical system and that reliability cannot be maintained by procur-**  
28 **ing electricity from a major resource that is not owned by the electric**  
29 **company, by increasing the capacity of a major resource that is owned**  
30 **by the electric company or through an unusual below-market oppor-**  
31 **tunity, as identified by the commission by rule or order;**

1       **(b) Require an electric company to use a competitive bidding pro-**  
2 **cess when procuring electricity from a major resource to be included**  
3 **in its rates; and**

4       **(c) Allow, through wholesale power purchase or sales agreements**  
5 **or tolling agreements, for the transfer of ownership of renewable en-**  
6 **ergy certificates established under ORS 469A.130 to an electric com-**  
7 **pany without the transfer of ownership of the major resource**  
8 **associated with the renewable energy certificates to the electric com-**  
9 **pany.**

10       [(3)] (4) An electric company shall provide the commission access to all  
11 books and records necessary for the commission to monitor the electric  
12 company and [*its affiliate relationships.*] **the affiliates of the electric**  
13 **company.** The commission shall require an electric company biannually to  
14 file a report detailing compliance with this subsection.

15       **SECTION 3.** ORS 757.676 is amended to read:

16       757.676. The governing body of a consumer-owned utility is authorized to  
17 determine whether and under what terms and conditions it will offer its re-  
18 tail electricity consumers direct access, portfolio access or other forms of  
19 access to electric service suppliers. In making such determination, the gov-  
20 erning body of a consumer-owned utility shall consider such factors as it  
21 deems appropriate. A consumer-owned utility shall have sole authority to  
22 determine:

23       (1) The quality and nature of electric service, including but not limited  
24 to different product and pricing options, which shall be made available to its  
25 retail electricity consumers.

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

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

30       (4) Notwithstanding ORS 757.600 (10) and [(35)] **(36)**, what constitutes an  
31 economic or uneconomic utility investment, the value of such investments



1 and, in the case of uneconomic utility investments, the manner and means  
2 of mitigating such investments.

3 (5) Whether and on what basis a transition charge will be adopted, as-  
4 sessed and collected from a retail electricity consumer located within the  
5 utility's service territory, including but not limited to a nonbypassable dis-  
6 tribution charge, the amount and period of recovery for the charges, the al-  
7 location of the charges among retail electricity consumers located within the  
8 utility's service territory and the method of collecting such charges including  
9 but not limited to whether to impose a nonbypassable distribution charge.

10 (6) The manner of collecting stranded distribution charges, systems bene-  
11 fit charges, franchise fees, taxes and payments made in lieu of taxes from  
12 retail electricity consumers located within the utility's service territory for  
13 electric power transactions using transmission facilities, whether or not such  
14 transactions use distribution facilities. The governing body may assign  
15 charges on the basis of usage, demand or any combination or method it finds  
16 appropriate. Charges need not be assigned to specific facilities.

17 (7) The collection from retail electricity consumers located within the  
18 utility's service territory through rates, fees or charges, including the impo-  
19 sition of a nonbypassable distribution charge, in amounts sufficient to re-  
20 cover 100 percent of stranded costs imposed by, or incurred pursuant to the  
21 purchase of cost-based electric power from, the Bonneville Power Adminis-  
22 tration. Such stranded cost charges may include the difference in cost asso-  
23 ciated with purchasing electric power from the Bonneville Power  
24 Administration and the cost of purchasing a like and similar amount of  
25 electric power at market prices.

26 (8) The establishment of technical capability requirements, financial re-  
27 sponsibility requirements and other protections for retail electricity con-  
28 sumers located within the utility's service territory and the consumer-owned  
29 utility in dealings with electric service suppliers.

30 (9) Access to or use of the utility's transmission facilities or distribution  
31 system by retail electricity consumers or electric service suppliers.

1 (10) The utility's qualification standards for energy service suppliers in  
2 addition to any certification standards established by the Public Utility  
3 Commission, provided that the qualification standards are uniformly applied  
4 to electricity service providers in a nondiscriminatory manner.

5 **SECTION 4.** ORS 59.025 is amended to read:

6 59.025. The following securities are exempt from ORS 59.049 and 59.055:

7 (1)(a) A security issued or guaranteed by the United States or a state, or  
8 by a political subdivision, agency or other instrumentality of the United  
9 States or a state.

10 (b) Any other security offered in connection with or as part of a security  
11 described in paragraph (a) of this subsection, if the security cannot be sev-  
12 ered and sold separately from the security in paragraph (a) of this sub-  
13 section.

14 (2) A security issued or guaranteed by a foreign government with which  
15 the United States is at the time of the sale maintaining diplomatic relations,  
16 or by a state, province or political subdivision of the foreign government that  
17 has the power of taxation or assessment, if the foreign government, state,  
18 province or political subdivision recognizes the security as a valid obli-  
19 gation.

20 (3) A security that represents an interest in or a direct obligation of, or  
21 is guaranteed by, a national bank, a federal savings and loan association, a  
22 federal credit union, a federal land bank or joint stock land bank or a na-  
23 tional farm loan association.

24 (4) Any of the following securities:

25 (a) A security that, at the time the security is issued, is listed or approved  
26 for listing on the New York Stock Exchange, the American Stock Exchange,  
27 the Midwest Stock Exchange, the Pacific Stock Exchange or any other ex-  
28 change that the Director of the Department of Consumer and Business Ser-  
29 vices recognizes by rule;

30 (b) A security that the NASDAQ Stock Market, NASDAQ Options Market  
31 or NASDAQ OMX Futures Exchange has designated or approved for desig-

1 nation at the time the security was issued;

2 (c) Any other security issued by a person or entity that issues a security  
3 listed or designated under paragraph (a) or (b) of this subsection, if the other  
4 security is of senior or substantially equal rank to the listed or designated  
5 security;

6 (d) A security issuable under rights or warrants listed or approved under  
7 paragraph (a), (b) or (c) of this subsection; or

8 (e) A warrant or right to purchase or subscribe to any security described  
9 in paragraph (a), (b), (c) or (d) of this subsection.

10 (5) A security that maintains a rating that the director approves in a re-  
11 cognized securities manual.

12 (6) A security that represents an interest in or a direct obligation of, and  
13 that has been or will be issued by, a bank, trust company, savings and loan  
14 association or credit union and that is subject to the examination, super-  
15 vision and control of a regulatory agency of this state.

16 (7) Commercial paper issued, given or acquired in a bona fide way in the  
17 ordinary course of legitimate business, trade or commerce, if the commercial  
18 paper is not made the subject of a public offering.

19 (8) A security, the issuance of which the Public Utility Commission  
20 supervises, regulates or controls, if the Public Utility Commission supervises,  
21 regulates or controls the person or entity that issues the security.

22 (9) Stock or membership certificates that an agricultural cooperative  
23 corporation or irrigation association issues, if the agricultural cooperative  
24 corporation or irrigation association issues the stock or membership certif-  
25 icate as evidence of membership in the cooperative or association, as a  
26 patronage dividend or as evidence of a member's or a patron's respective  
27 interests in reserves or patronage dividends. This exemption does not apply  
28 to a cooperative or association that expects to engage in or is engaged in  
29 producing, processing or marketing forest products.

30 (10) Stock or membership certificates that a fishing cooperative corpo-  
31 ration issues to members of the fishing cooperative corporation either for the

1 purpose of showing membership or for the purpose of showing the members'  
2 respective interests in reserves or patronage dividends. For purposes of this  
3 subsection, a fishing cooperative corporation is an association of persons  
4 engaged commercially in harvesting, marketing or processing products of  
5 aquatic life from fresh and salt water, that is formed or operated under ORS  
6 chapter 62 with the purpose of commercially harvesting, marketing or pro-  
7 cessing such products or engaging in group bargaining with respect to the  
8 sale of such products.

9 (11) Stock or membership certificates issued by an association of con-  
10 sumers that is formed or operated under ORS chapter 62 with the purpose  
11 of providing groceries to the association's members, if the association issues  
12 the stock or certificates to members either for the purpose of showing mem-  
13 bership in the association or for the purpose of showing the members' re-  
14 spective interests in patronage dividends or reserves. For purposes of the  
15 exemption under this subsection:

16 (a) The price of stock or a membership certificate may not exceed \$300.

17 (b) The benefits must be limited to discounts on purchases or patronage  
18 dividends, or any combination of discounts and dividends.

19 (c) The association may issue only one stock or membership certificate  
20 to an individual.

21 (12) Subject to conditions that the director adopts by rule, stock or  
22 membership certificates that a renewable energy cooperative corporation is-  
23 sues to members of the cooperative corporation, if the cooperative corpo-  
24 ration issues the stock or certificates to members either to show membership  
25 in the cooperative corporation or to show the members' respective interests  
26 in or entitlement to assets, reserves or dividends. For the purpose of this  
27 subsection, a renewable energy cooperative corporation is an association of  
28 persons that is organized as a cooperative corporation under ORS chapter  
29 62 with the purpose of developing and operating facilities to generate elec-  
30 tricity from renewable energy resources, as defined in ORS 757.600 [(27)(a),  
31 (c) and (d)] **(28)(a), (c) and (d)**, or from a type of energy listed in ORS

1 469A.025 (1)(c).

2 (13) Any security issued in connection with an employee stock purchase,  
3 savings, pension, profit sharing or similar employee benefit plan, provided  
4 that:

5 (a) The plan meets the requirements for qualification under section 401  
6 of the Internal Revenue Code of 1986; and

7 (b) The terms of the plan are fair, just and equitable to employees under  
8 rules of the director.

9 (14) Any security issued by a person that is:

10 (a) Organized and operated exclusively for a religious, educational, be-  
11 nevolent, fraternal, charitable or reformatory purpose and not for pecuniary  
12 profit;

13 (b) Organized or constituted so that the person's net earnings do not inure  
14 to the benefit of any person, private stockholder, or individual; and

15 (c) Designated by rule of the director.

16 (15) Any other security the director exempts by rule.

17 **SECTION 5. The amendments to ORS 757.646 by section 2 of this**  
18 **2017 Act, and rules adopted pursuant to ORS 757.646, as amended by**  
19 **section 2 of this 2017 Act, apply to the acquisition of major resources**  
20 **occurring on or after the operative date specified in section 6 of this**  
21 **2017 Act.**

22 **SECTION 6. (1) The amendments to ORS 59.025, 757.600, 757.646 and**  
23 **757.676 by sections 1 to 4 of this 2017 Act become operative on January**  
24 **1, 2018.**

25 **(2) The Public Utility Commission may take any action before the**  
26 **operative date specified in subsection (1) of this section that is neces-**  
27 **sary to enable the commission to exercise, on and after the operative**  
28 **date specified in subsection (1) of this section, all the duties, powers**  
29 **and functions conferred on the commission by the amendments to**  
30 **ORS 59.025, 757.600, 757.646 and 757.676 by sections 1 to 4 of this 2017**  
31 **Act.**

1        **SECTION 7. This 2017 Act takes effect on the 91st day after the date**  
2        **on which the 2017 regular session of the Seventy-ninth Legislative**  
3        **Assembly adjourns sine die.**

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