

# House Bill 2137

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Energy and Environment)

## 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**.

Redefines scope of Public Utility Commission's general duties and powers.

Establishes, for purposes of public utilities that provide electric power to consumers in this state, processes related to purchase of energy or energy and capacity from qualifying facilities and standards for purchase of energy or energy and capacity from qualifying facilities.

Expands types of organizations that may seek assistance to participate in proceedings of commission involving public utilities that provide electricity or natural gas.

## A BILL FOR AN ACT

1  
2 Relating to utilities; creating new provisions; and amending ORS 756.040, 756.062, 756.534, 757.072,  
3 758.505 and 758.525.

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

## GENERAL DUTIES AND POWERS

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7  
8 **SECTION 1.** ORS 756.040 is amended to read:

9 756.040. (1) *[In addition to the powers and duties now or hereafter transferred to or vested in the*  
10 *Public Utility Commission,]* The **Public Utility** Commission shall represent the customers of any  
11 public utility or telecommunications utility, and the public generally, in all controversies respecting  
12 rates, valuations, service and all matters *[of]* **over** which the commission has jurisdiction. *[In respect*  
13 *thereof]* The commission shall *[make use of the jurisdiction and powers of the office to protect such*  
14 *customers,]* **protect the customers of any public utility or telecommunications utility**, and the  
15 public generally, from unjust and unreasonable exactions and practices *[and to obtain for them]*, **and**  
16 **shall obtain for the customers of any public utility or telecommunications utility, and for the**  
17 **public generally**, adequate service at fair and reasonable rates. The commission shall balance the  
18 interests of the *[utility]* investor **in a public utility or telecommunications utility** and the con-  
19 sumer **of the services of the public utility or telecommunications utility** in establishing fair and  
20 reasonable rates. Rates are fair and reasonable for the purposes of this subsection if the rates pro-  
21 vide adequate revenue both for operating expenses of the public utility or telecommunications utility  
22 and for capital costs of the **public utility or telecommunications** utility, with a return to the eq-  
23 uity holder that is:

24 (a) Commensurate with the return on investments in other enterprises having corresponding  
25 risks; and

26 (b) Sufficient to ensure confidence in the financial integrity of the **public utility or telecom-**  
27 **munications** utility, allowing the **public utility or telecommunications** utility to maintain its  
28 credit and attract capital.

**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 (a) Produces, through the sequential use of energy, electric energy and [*useful*] thermal energy,  
 2 including [*but not limited to*] heat or steam, used for industrial, commercial, heating or cooling pur-  
 3 poses; and

4 (b) Is more than 50 percent owned by a person who is not an electric utility, an electric utility  
 5 holding company[,] or an affiliated interest **of an electric utility or an electric utility holding**  
 6 **company**, or any combination [*thereof.*] **of electric utility, electric utility holding company or**  
 7 **affiliated interest of an electric utility or an electric utility holding company.**

8 [(3) "*Commission*" means the Public Utility Commission.]

9 [(4) (3) "Electric utility" means a nonregulated utility or a public utility.

10 [(5) (4) "Index rate" means the lowest avoided cost approved by the **Public Utility** Commission  
 11 for a generating utility for the purchase of energy or energy and capacity of similar  
 12 characteristics, including online date, duration of obligation and quality and degree of reliability.

13 [(6) (5) "Nonregulated utility" means an entity [*providing retail electric utility service to Oregon*  
 14 *consumers*] **that provides electric power to consumers in this state** that is a people's utility  
 15 district organized under ORS chapter 261, a municipal utility operating under ORS chapter 225 or  
 16 an electric cooperative organized under ORS chapter 62.

17 [(7) (6) "Public utility" means a utility regulated by the commission under ORS chapter 757,  
 18 that provides electric power to consumers **in this state.**

19 [(8) (7) "Qualifying facility" means a cogeneration facility or a small power production facility.

20 (8) "**Renewable energy certificate**" means the certificates established under ORS 469A.130  
 21 **that are associated with the generation of electricity through the use of renewable energy**  
 22 **resources.**

23 (9) "**Renewable energy resource**" has the meaning given that term in ORS 469A.005.

24 (10) "**Resource deficient**" means that a public utility is deficient with respect to a par-  
 25 **ticular resource in the electric load of the public utility.**

26 [(9) (11) "Small power production facility" means a facility that:

27 (a) Produces energy primarily by the use of biomass, waste, solar energy, wind power, water  
 28 power[,] or geothermal energy or any combination [*thereof;*] **of biomass, waste, solar energy, wind**  
 29 **power, water power or geothermal energy;**

30 (b) Is more than 50 percent owned by a person who is not an electric utility, an electric utility  
 31 holding company[,] or an affiliated interest **of an electric utility or an electric utility holding**  
 32 **company**, or any combination [*thereof; and*] **of electric utility, electric utility holding company**  
 33 **or affiliated interest of an electric utility or an electric utility holding company; and**

34 (c) Has a power production capacity that, together with any other small power production fa-  
 35 cility located at the same site and owned by the same person, is not greater than 80 megawatts.

36 **SECTION 5.** ORS 758.525 is amended to read:

37 758.525. [(1)] (1)(a) At least once every two years each electric utility shall prepare, publish and  
 38 file with the Public Utility Commission a schedule of avoided costs equaling the **electric** utility's  
 39 forecasted incremental cost of electric resources over [*at least*] the next 20 years **or over a period**  
 40 **of time exceeding the next 20 years.**

41 **(b) Schedules filed by public utilities must comply with section 7 of this 2017 Act.**

42 (c) [*Prices contained in the*] Schedules filed by public utilities [*shall*] **must** be reviewed and ap-  
 43 proved by the commission.

44 **(d) Schedules filed by public utilities that adjust avoided costs may not take effect until:**

45 **(A) One hundred twenty days after the date on which the public utility files the schedule;**

1       **(B) One hundred twenty days after the date on which the public utility serves notice of**  
 2 **filing the schedule on each qualifying facility that will be affected by the adjustment; and**

3       **(C) Thirty days after the date on which the commission approves the schedule.**

4       [(2)] **(2)(a) Subject to section 7 of this 2017 Act, an electric utility shall offer to purchase**  
 5 **energy or energy and capacity, whether delivered directly or indirectly, from a qualifying facility.**

6       **(b) At the time that a public utility makes an offer to purchase energy or energy and**  
 7 **capacity, the public utility, as part of a legal obligation to purchase the energy or energy and**  
 8 **capacity, must:**

9       **(A) Offer the qualifying facility the option of delivering energy or energy and capacity for**  
 10 **a term that is not less than 20 years;**

11       **(B) Except as required by subparagraph (D) of this paragraph, offer the qualifying facility**  
 12 **the option of delivering the energy or energy and capacity in exchange for fixed price pay-**  
 13 **ments over the term of the legal obligation that reflect the avoided cost to the public utility**  
 14 **as forecasted on the date on which the legal obligation to purchase the energy or energy and**  
 15 **capacity is incurred;**

16       **(C) Except as required by subparagraph (D) of this paragraph, offer the qualifying facility**  
 17 **the option of delivering the energy or energy and capacity in exchange for leveled payments**  
 18 **over the term of legal obligation that reflect the avoided cost to the public utility as fore-**  
 19 **casted on the date on which the legal obligation to purchase the energy or energy and ca-**  
 20 **capacity is incurred; and**

21       **(D) Agree to provide payment to the qualifying facility equal to the full avoided costs of**  
 22 **the renewable energy resource for the duration of any period of time that the qualifying fa-**  
 23 **ility delivers to the public utility renewable energy certificates.**

24       (c) Except as provided in subsection (3) of this section, the price [*for such a*] **of the purchase**  
 25 **[shall] of energy or energy and capacity from a qualifying facility may** not be less than the  
 26 utility's avoided costs. At the option of the qualifying facility, exercised before [*beginning*] delivery  
 27 of the energy or energy and capacity, such prices may be based on:

28       [(a)] **(A) The avoided costs calculated at the time of delivery; or**

29       [(b)] **(B) The projected avoided costs calculated at the time the legal obligation to purchase the**  
 30 **energy or energy and capacity is incurred.**

31       (3) Nothing contained in ORS 543.610, 757.005 and 758.505 to 758.555 shall be construed to re-  
 32 quire an electric utility to pay full avoided-cost prices for a purchase from a qualifying facility on  
 33 which construction began before November 8, 1978, but the price for a purchase from such a facility  
 34 shall be sufficient to encourage production of energy or energy and capacity.

35       (4) The rates of an electric utility for the sale of electricity [*shall*] **may** not discriminate against  
 36 qualifying facilities.

37       **SECTION 6. Section 7 of this 2017 Act is added to and made a part of ORS 758.505 to**  
 38 **758.555.**

39       **SECTION 7. (1) For the purpose of purchasing energy or energy and capacity from a**  
 40 **qualifying facility that delivers both energy, or energy and capacity, and renewable energy**  
 41 **certificates to the public utility, a public utility is resource deficient with respect to**  
 42 **renewable energy resources, and, if the public utility has a legal obligation to purchase the**  
 43 **energy or energy and capacity from the qualifying facility, the public utility must pay the**  
 44 **qualifying facility the full avoided costs of the next avoidable renewable energy resource not**  
 45 **later than the beginning of any year in which the public utility acquires or submits to the**

1 **Public Utility Commission a plan to acquire an aggregate amount of renewable energy cer-**  
 2 **tificates, whether bundled or unbundled, the acquisition of which requires the production of**  
 3 **100 megawatt hours of electricity.**

4 **(2) For the purpose of purchasing energy or energy and capacity from a qualifying facility**  
 5 **that is a small-scale renewable energy project as described in ORS 469A.210, and that delivers**  
 6 **both energy, or energy and capacity, and renewable energy certificates to the public utility,**  
 7 **a public utility is resource deficient with respect to renewable energy resources used by**  
 8 **small-scale renewable energy projects to generate electricity, and, if the public utility has a**  
 9 **legal obligation to purchase the energy or energy and capacity from the qualifying facility,**  
 10 **the public utility must pay the qualifying facility the full avoided costs of constructing a**  
 11 **small-scale renewable energy project, or the full avoided costs of purchasing the energy, or**  
 12 **the energy and capacity, and renewable energy certificates from a small-scale renewable**  
 13 **energy project, not later than the beginning of any year in which the public utility does not**  
 14 **procure for that year an amount of energy that is proportional to the amount of energy that**  
 15 **the public utility must procure by the year during which the public utility must comply with**  
 16 **an energy procurement requirement under ORS 469A.210.**

17 **(3) For the purpose of purchasing energy or energy and capacity from a qualifying facility**  
 18 **that delivers energy, or energy and capacity, and that does not deliver renewable energy**  
 19 **certificates to the public utility, a public utility is resource deficient with respect to**  
 20 **nonrenewable energy resources, and, if the public utility has a legal obligation to purchase**  
 21 **the energy or energy and capacity from the qualifying facility, the public utility must pay the**  
 22 **qualifying facility the full avoided costs of the next avoidable nonrenewable energy resource**  
 23 **not later than the beginning of any year in which the public utility submits to the commis-**  
 24 **sion a plan forecasting a deficiency in the electrical capacity of the public utility of 100**  
 25 **megawatts of electricity.**

26 **(4) If a public utility is resource sufficient at the time that the public utility issues a**  
 27 **request for proposals for the procurement of an energy resource, or at the time that the**  
 28 **public utility undertakes a major energy resource acquisition, then the public utility is re-**  
 29 **source deficient for the energy resource sought or acquired for not less than one year after**  
 30 **the energy resource has been procured or acquired.**

31  
 32 **INTERVENOR FUNDING**

33  
 34 **SECTION 8.** ORS 757.072 is amended to read:

35 757.072. (1) A public utility providing electricity or natural gas may enter into a written agree-  
 36 ment with an organization that represents broad customer interests, **or the public generally for**  
 37 **purposes specified in ORS 756.040 (2)**, in regulatory proceedings conducted by the Public Utility  
 38 Commission relating to public utilities that provide electricity or natural gas. The agreement shall  
 39 govern the manner in which financial assistance may be provided to the organization. The agree-  
 40 ment may provide for financial assistance to other organizations found by the commission to be  
 41 qualified under subsection (2) of this section. More than one public utility or organization may join  
 42 in a single agreement. Any agreement entered into under this section must be approved by the  
 43 commission before any financial assistance is provided under the agreement.

44 (2) Financial assistance under an agreement entered into under this section may be provided  
 45 only to organizations that represent broad customer interests, **or the public generally for pur-**

1 **poses specified in ORS 756.040 (2)**, in regulatory proceedings before the commission relating to  
2 public utilities that provide electricity or natural gas. The commission by rule shall establish  
3 [*such*] qualifications as the commission deems appropriate for determining which organizations are  
4 eligible for financial assistance under an agreement entered into under this section.

5 (3) In administering an agreement entered into under this section, the commission by rule or  
6 order may determine:

7 (a) The amount of financial assistance that may be provided to any organization;

8 (b) The manner in which the financial assistance will be distributed;

9 (c) The manner in which the financial assistance will be recovered in the rates of the public  
10 utility under subsection (4) of this section; and

11 (d) Other matters necessary to administer the agreement.

12 (4) The commission shall allow a public utility that provides financial assistance under this  
13 section to recover the amounts so provided in rates. The commission shall allow a public utility to  
14 defer inclusion of those amounts in rates as provided in ORS 757.259 if the public utility so elects.  
15 An agreement under this section may not provide for payment of any amounts to the commission.

16  
17 **MISCELLANEOUS**

18  
19 **SECTION 9. Section 7 of this 2017 Act and the amendments to ORS 758.525 by section 5**  
20 **of this 2017 Act apply to legal obligations to purchase energy or energy and capacity that are**  
21 **entered into or renewed on after the effective date of this 2017 Act.**

22 **SECTION 10. The unit captions used in this 2017 Act are provided only for the conven-**  
23 **ience of the reader and do not become part of the statutory law of this state or express any**  
24 **legislative intent in the enactment of this 2017 Act.**