

Requested by Representative HELM

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2021**

1 In line 2 of the printed bill, after the semicolon delete the rest of the line  
2 and insert “creating new provisions; amending ORS 469A.005, 469A.052,  
3 469A.060, 469A.100, 469A.120, 469A.170, 469A.200, 469A.210, 756.040, 756.060,  
4 756.062, 756.185, 756.534, 758.515, 758.525 and 758.535; and repealing ORS  
5 469A.075.”.

6 Delete lines 4 through 11 and insert:

7

8 **“RENEWABLE PORTFOLIO STANDARDS**

9 **“(Acceleration for large utilities;**

10 **“legacy carbon-free electricity treatment)**

11

12 **“SECTION 1.** ORS 469A.005 is amended to read:

13 “469A.005. As used in ORS 469A.005 to 469A.210:

14 “(1) ‘Acquires service territory’ does not include an acquisition by a city  
15 of a facility, plant, equipment or service territory within the boundaries of  
16 the city, pursuant to ORS 225.020 or city charter, if the city:

17 “(a) Already owns, controls or operates an electric light and power system  
18 for supplying electricity to the inhabitants of the city and for general mu-  
19 nicipal purposes;

20 “(b) Provides fair, just and reasonable compensation to the electric com-  
21 pany whose service territory is acquired that:

1 “(A) Gives consideration for the service territory rights and the cost of  
2 the facility, plant or equipment acquired and for depreciation, fair market  
3 value, reproduction cost and any other relevant factor; and

4 “(B) Is based on the present value of the service territory rights and the  
5 facility, plant and equipment acquired, including the value of poles, wires,  
6 transformers and similar and related appliances necessarily required to pro-  
7 vide electric service; and

8 “(c) Pays any stranded costs obligation established pursuant to ORS  
9 757.483.

10 “(2) ‘Banked renewable energy certificate’ means a bundled or unbundled  
11 renewable energy certificate that is not used by an electric utility or elec-  
12 tricity service supplier to comply with a renewable portfolio standard in a  
13 calendar year, and that is carried forward for the purpose of compliance with  
14 a renewable portfolio standard in a subsequent year.

15 “(3) ‘BPA electricity’ means electricity provided by the Bonneville Power  
16 Administration, including electricity generated by the Federal Columbia  
17 River Power System hydroelectric projects and electricity acquired by the  
18 Bonneville Power Administration by contract.

19 “(4) ‘Bundled renewable energy certificate’ means a renewable energy  
20 certificate for qualifying electricity that is acquired:

21 “(a) By an electric utility or electricity service supplier by a trade, pur-  
22 chase or other transfer of electricity that includes the renewable energy  
23 certificate that was issued for the electricity; or

24 “(b) By an electric utility by generation of the electricity for which the  
25 renewable energy certificate was issued.

26 “(5) ‘Compliance year’ means the calendar year for which the electric  
27 utility or electricity service supplier seeks to establish compliance with the  
28 renewable portfolio standard applicable to the electric utility or electricity  
29 service supplier in the compliance report submitted under ORS 469A.170.

30 “(6) ‘Consumer-owned utility’ means a municipal electric utility, a

1 people’s utility district organized under ORS chapter 261 that sells electricity  
2 or an electric cooperative organized under ORS chapter 62.

3 “(7) ‘Distribution utility’ has the meaning given that term in ORS 757.600.

4 “(8) ‘Electric company’ has the meaning given that term in ORS 757.600.

5 “(9) ‘Electric utility’ has the meaning given that term in ORS 757.600.

6 “(10) ‘Electricity service supplier’ has the meaning given that term in  
7 ORS 757.600.

8 “(11)(a) **‘Legacy carbon-free electricity’ includes electricity, other  
9 than electricity described in ORS 469A.060 (2), that:**

10 **“(A) Is generated by a hydroelectric facility or a nuclear facility  
11 that:**

12 **“(i) Became operational before the effective date of this 2021 Act;  
13 and**

14 **“(ii) Was being used to serve the load of an electric utility on or  
15 before the effective date of this 2021 Act; and**

16 **“(B) Does not otherwise constitute qualifying electricity.**

17 **“(b) ‘Legacy carbon-free electricity’ does not include the amount  
18 of electricity generated by a facility described in paragraph (a) of this  
19 subsection that is in excess of the amount of electricity generated by  
20 that facility that was historically used to serve the load of an electric  
21 utility, calculated based on the lesser of:**

22 **“(A) The three-year average amount of electricity generated by that  
23 facility and used to serve the load of a utility based on the three most  
24 recent years prior to the compliance year in which the electric utility  
25 seeks to establish compliance with the renewable portfolio standard;  
26 or**

27 **“(B) The three-year average amount of electricity generated by that  
28 facility and used to serve the load of a utility based on the three most  
29 recent years prior to the effective date of this 2021 Act.**

30 **“[(11)] (12) ‘Qualifying electricity’ means electricity described in ORS**

1 469A.010.

2 “[~~(12)~~] **(13)** ‘Renewable energy source’ means a source of electricity de-  
3 scribed in ORS 469A.025 **(2)(g) or (7)**.

4 “[~~(13)~~] **(14)** ‘Retail electricity consumer’ means a retail electricity con-  
5 sumer, as defined in ORS 757.600, that is located in Oregon.

6 “[~~(14)~~] **(15)** ‘Unbundled renewable energy certificate’ means a renewable  
7 energy certificate for qualifying electricity that is acquired by an electric  
8 utility or electricity service supplier by trade, purchase or other transfer  
9 without acquiring the electricity that is associated with the renewable en-  
10 ergy certificate.

11 **“SECTION 2.** ORS 469A.052 is amended to read:

12 “469A.052. (1) The large utility renewable portfolio standard imposes the  
13 following requirements on an electric utility that makes sales of electricity  
14 to retail electricity consumers in an amount that equals three percent or  
15 more of all electricity sold to retail electricity consumers:

16 “(a) At least five percent of the electricity sold by the electric utility to  
17 retail electricity consumers in each of the calendar years 2011, 2012, 2013 and  
18 2014 must be qualifying electricity;

19 “(b) At least 15 percent of the electricity sold by the electric utility to  
20 retail electricity consumers in each of the calendar years 2015, 2016, 2017,  
21 2018 and 2019 must be qualifying electricity;

22 “(c) At least 20 percent of the electricity sold by the electric utility to  
23 retail electricity consumers in each of the calendar years [2020, 2021, 2022,  
24 2023 and 2024] **2020 and 2021** must be qualifying electricity;

25 “[~~(d)~~ *At least 25 percent of the electricity sold by a consumer-owned utility*  
26 *to retail electricity consumers in the calendar year 2025 and subsequent cal-*  
27 *endar years must be qualifying electricity;*]

28 “[~~(e)~~ *At least 27 percent of the electricity sold by an electric company to*  
29 *retail electricity consumers in each of the calendar years 2025, 2026, 2027, 2028*  
30 *and 2029 must be qualifying electricity;*]

1       “(f) At least 35 percent of the electricity sold by an electric company to  
2 retail electricity consumers in each of the calendar years 2030, 2031, 2032, 2033  
3 and 2034 must be qualifying electricity;]

4       “(g) At least 45 percent of the electricity sold by an electric company to  
5 retail electricity consumers in each of the calendar years 2035, 2036, 2037, 2038  
6 and 2039 must be qualifying electricity; and]

7       “(h) At least 50 percent of the electricity sold by an electric company to  
8 retail electricity consumers in the calendar year 2040 and subsequent calendar  
9 years must be qualifying electricity.]

10       **“(d) At least 23 percent of the electricity sold by an electric utility  
11 to retail electricity consumers in the calendar year 2022 must be  
12 qualifying electricity;**

13       **“(e) In 2023 and in each following calendar year before 2036, the  
14 share of qualifying electricity sold by an electric utility to retail elec-  
15 tricity consumers must increase by a constant amount such that by  
16 2035, at least 90 percent of electricity sold by the electric utility to re-  
17 tail electricity consumers is qualifying electricity; and**

18       **“(f) In 2036 and each following calendar year before 2051, the share  
19 of qualifying electricity sold by an electric utility to retail electricity  
20 consumers must increase by a constant amount such that in 2050 and  
21 subsequent calendar years, 100 percent of electricity sold by the elec-  
22 tric utility to retail electricity consumers is qualifying electricity.**

23       “(2) If, on June 6, 2007, an electric utility makes sales of electricity to  
24 retail electricity consumers in an amount that equals less than three percent  
25 of all electricity sold to retail electricity consumers, but in any three con-  
26 secutive calendar years thereafter makes sales of electricity to retail elec-  
27 tricity consumers in amounts that average three percent or more of all  
28 electricity sold to retail electricity consumers, the electric utility is subject  
29 to the renewable portfolio standard described in subsection (3) of this sec-  
30 tion. The electric utility becomes subject to the renewable portfolio standard

1 described in subsection (3) of this section in the calendar year following the  
2 three-year period during which the electric utility makes sales of electricity  
3 to retail electricity consumers in amounts that average three percent or more  
4 of all electricity sold to retail electricity consumers.

5 “(3) An electric utility described in subsection (2) of this section must  
6 comply with the following renewable portfolio standard:

7 “(a) Beginning in the fourth calendar year after the calendar year in  
8 which the electric utility becomes subject to the renewable portfolio stand-  
9 ard described in this subsection, at least five percent of the electricity sold  
10 by the electric utility to retail electricity consumers in a calendar year must  
11 be qualifying electricity;

12 “(b) Beginning in the 10th calendar year after the calendar year in which  
13 the electric utility becomes subject to the renewable portfolio standard de-  
14 scribed in this subsection, at least 15 percent of the electricity sold by the  
15 electric utility to retail electricity consumers in a calendar year must be  
16 qualifying electricity;

17 “(c) Beginning in the 15th calendar year after the calendar year in which  
18 the electric utility becomes subject to the renewable portfolio standard de-  
19 scribed in this subsection, at least 20 percent of the electricity sold by the  
20 electric utility to retail electricity consumers in a calendar year must be  
21 qualifying electricity; and

22 “(d) Beginning in the 20th calendar year after the calendar year in which  
23 the electric utility becomes subject to the renewable portfolio standard de-  
24 scribed in this subsection, at least 25 percent of the electricity sold by the  
25 electric utility to retail electricity consumers in a calendar year must be  
26 qualifying electricity.

27 **“SECTION 3.** ORS 469A.060 is amended to read:

28 “469A.060. (1) Electric utilities are not required to comply with the  
29 renewable portfolio standards described in ORS 469A.052 and 469A.055 to the  
30 extent that:

1 “(a) Compliance with the standard would require the electric utility to  
2 acquire electricity in excess of the electric utility’s projected load require-  
3 ments in any calendar year; and

4 “(b) Acquiring the additional electricity would require the electric utility  
5 to substitute qualifying electricity for electricity derived from an energy  
6 source other than coal, natural gas or petroleum.

7 “(2)(a) Electric utilities are not required to comply with a renewable  
8 portfolio standard to the extent that compliance would require the electric  
9 utility to substitute qualifying electricity for electricity available to the  
10 electric utility under contracts for electricity from dams that are owned by  
11 Washington public utility districts and that are located between the Grand  
12 Coulee Dam and the Columbia River’s junction with the Snake River. The  
13 provisions of this subsection apply only to contracts entered into before June  
14 6, 2007, and to renewal or replacement contracts for contracts entered into  
15 before June 6, 2007.

16 “(b) If a contract described in paragraph (a) of this subsection expires and  
17 is not renewed or replaced, the electric utility must comply, in the calendar  
18 year following the expiration of the contract, with the renewable portfolio  
19 standard applicable to the electric utility.

20 **“(3)(a) Electric utilities are not required to comply with a renewable**  
21 **portfolio standard to the extent that compliance would require the**  
22 **electric utility to substitute qualifying electricity for legacy carbon-**  
23 **free electricity that is available to the utility by ownership or contract.**  
24 **The provisions of this subsection applicable to contracts apply only to**  
25 **contracts entered into before the effective date of this 2021 Act and to**  
26 **renewal or replacement contracts for contracts entered into before the**  
27 **effective date of this 2021 Act.**

28 **“(b) If a contract described in paragraph (a) of this subsection ex-**  
29 **pires and is not renewed or replaced, or if a legacy carbon-free elec-**  
30 **tricity generating facility is retired or removed from service to retail**

1 electricity consumers, beginning in the calendar year following the  
2 expiration, retirement or removal, the electric utility's obligation to  
3 comply with the renewable portfolio standard applicable to the electric  
4 utility may no longer be reduced by the amount of legacy carbon-free  
5 electricity that was available to the electric utility prior to the expi-  
6 ration, retirement or removal.

7 “(4)(a) Subject to paragraphs (b) and (c) of this subsection, electric  
8 utilities are not required to comply with a renewable portfolio stand-  
9 ard to the extent that compliance would require the electric utility to  
10 substitute qualifying electricity for electricity available to the utility  
11 from an electricity storage facility if:

12 “(A) The stored electricity is:

13 “(i) Electricity that was generated from a renewable energy source;  
14 or

15 “(ii) Legacy carbon-free electricity; and

16 “(B) The output of the original source of energy is not also used to  
17 comply with a renewable portfolio standard.

18 “(b) Stored electricity that was legacy carbon-free electricity may  
19 not be used by an electric utility to offset more than two percent of  
20 the renewable portfolio standard applicable to the electric utility in a  
21 compliance year.

22 “(c) In order to account for the round-trip efficiency losses in the  
23 charging and discharging of storage technologies, the amount of elec-  
24 tricity available to the utility from an electricity storage facility for  
25 purposes of this subsection shall be calculated by determining the av-  
26 erage of:

27 “(A) The output of the original source of energy; and

28 “(B) The output of the electricity storage facility.

29 “[3] (5) A consumer-owned utility is not required to comply with a  
30 renewable portfolio standard to the extent that compliance would require the



1 consumer-owned utility to reduce the consumer-owned utility’s purchases of  
2 the lowest priced electricity from the Bonneville Power Administration pur-  
3 suant to section 5 of the Pacific Northwest Electric Power Planning and  
4 Conservation Act of 1980, P.L. 96-501, as in effect on June 6, 2007. The ex-  
5 emption provided by this subsection applies only to firm commitments for  
6 BPA electricity that the Bonneville Power Administration has assured will  
7 be available to a consumer-owned utility to meet agreed portions of the  
8 consumer-owned utility’s load requirements for a defined period of time.

9

10

**“(Generally)”**

11

12 **“SECTION 4.** ORS 469A.100 is amended to read:

13 “469A.100. (1) Electric utilities are not required to comply with a  
14 renewable portfolio standard during a compliance year to the extent that the  
15 incremental cost of compliance, the cost of unbundled renewable energy  
16 certificates and the cost of alternative compliance payments under ORS  
17 469A.180 exceeds four percent of the electric utility’s annual revenue re-  
18 quirement for the compliance year.

19 “(2) For each electric company, the Public Utility Commission shall es-  
20 tablish the annual revenue requirement for a compliance year no later than  
21 January 1 of the compliance year. For each consumer-owned utility, the  
22 governing body of the consumer-owned utility shall establish the annual  
23 revenue requirement for a compliance year.

24 “(3) The annual revenue requirement for an electric utility shall be cal-  
25 culated based only on the operations of the electric utility relating to elec-  
26 tricity. The annual revenue requirement does not include any amount  
27 expended by the electric utility for energy efficiency programs for customers  
28 of the electric utility or for low income energy assistance, the incremental  
29 cost of compliance with a renewable portfolio standard, the cost of unbun-  
30 dled renewable energy certificates or the cost of alternative compliance

1 payments under ORS 469A.180. The annual revenue requirement does include:

2 “(a) The operating expenses of the electric utility during the compliance  
3 year, including depreciation and taxes; and

4 “(b) For electric companies, an amount equal to the total rate base of the  
5 electric company for the compliance year multiplied by the rate of return  
6 established by the commission for debt and equity of the electric company.

7 “(4) For the purposes of this section, the incremental cost of compliance  
8 with a renewable portfolio standard is the difference between the levelized  
9 annual delivered cost of the qualifying electricity and **what** the levelized  
10 annual delivered cost of an equivalent amount of [*reasonably available elec-*  
11 *tricity that is not qualifying electricity*] **qualifying electricity would have**  
12 **been if the applicable renewable portfolio standard for the compliance**  
13 **year pursuant to ORS 469A.005 to 469A.210 (2019 Edition) had continued**  
14 **to be in effect.** For the purpose of this subsection, the commission or the  
15 governing body of a consumer-owned utility shall use the net present value  
16 of delivered cost, including:

17 “(a) Capital, operating and maintenance costs of generating facilities;

18 “(b) Financing costs attributable to capital, operating and maintenance  
19 expenditures for generating facilities;

20 “(c) Transmission and substation costs;

21 “(d) Load following and ancillary services costs; [*and*]

22 “(e) **Costs associated with compliance with all applicable local,**  
23 **state, regional or federal laws other than the renewable portfolio**  
24 **standard, including but not limited to laws relating to emissions pric-**  
25 **ing, the social cost of carbon, resilience or reliability; and**

26 “[*e*] (f) Costs associated with using other assets, physical or financial,  
27 to integrate, firm or shape renewable energy sources on a firm annual basis  
28 to meet retail electricity needs.

29 “(5) For the purposes of this section, the governing body of a consumer-  
30 owned utility may include in the incremental cost of compliance with a

1 renewable portfolio standard all expenses associated with research, develop-  
2 ment and demonstration projects related to the generation of qualifying  
3 electricity by the consumer-owned utility.

4 “(6) The commission shall establish limits on the incremental cost of  
5 compliance with the renewable portfolio standard for electricity service  
6 suppliers under ORS 469A.065 that are the equivalent of the cost limits ap-  
7 plicable to the electric companies that serve the territories in which the  
8 electricity service supplier sells electricity to retail electricity consumers. If  
9 an electricity service supplier sells electricity in territories served by more  
10 than one electric company, the commission may provide for an aggregate cost  
11 limit based on the amount of electricity sold by the electricity service sup-  
12 plier in each territory. Pursuant to ORS 757.676, a consumer-owned utility  
13 may establish limits on the cost of compliance with the renewable portfolio  
14 standard for electricity service suppliers that sell electricity in the territory  
15 served by the consumer-owned utility.

16 **“SECTION 5.** ORS 469A.120 is amended to read:

17 “469A.120. (1) Except as provided in ORS 469A.180 (5) **and 469A.200**, all  
18 prudently incurred costs associated with complying with ORS 469A.005 to  
19 469A.210 are recoverable in the rates of an electric company, including  
20 interconnection costs, **power purchase costs, energy storage costs**, costs  
21 associated with using physical or financial assets to integrate, firm or shape  
22 renewable energy sources on a firm annual basis to meet retail electricity  
23 needs, above-market costs and other costs associated with transmission and  
24 delivery of qualifying electricity to retail electricity consumers.

25 “(2)(a) The Public Utility Commission shall establish an automatic ad-  
26 justment clause as defined in ORS 757.210 or another method that allows  
27 timely recovery of costs prudently incurred by an electric company to con-  
28 struct or otherwise acquire facilities that generate electricity from renewable  
29 energy sources, costs related to associated electricity transmission and costs  
30 related to associated energy storage.

1       “(b) Notwithstanding any other provision of law, upon the request of any  
2 interested person the commission shall conduct a proceeding to establish the  
3 terms of the automatic adjustment clause or other method for timely recov-  
4 ery of costs. The commission shall provide parties to the proceeding with the  
5 procedural rights described in ORS 756.500 to 756.610, including but not  
6 limited to the opportunity to develop an evidentiary record, conduct discov-  
7 ery, introduce evidence, conduct cross-examination and submit written briefs  
8 and oral argument. The commission shall issue a written order with findings  
9 on the evidentiary record developed in the proceeding.

10       “(3)(a) An electric company must file with the commission for approval  
11 of a proposed rate change to recover costs under the terms of an automatic  
12 adjustment clause or other method for timely recovery of costs established  
13 under subsection (2) of this section. As part of an electric company’s request  
14 for approval under this subsection, the electric company may specify the date  
15 or the dates on which the electric company will begin to include in the  
16 electric company’s rates, in full or in part, the costs recoverable under sub-  
17 section (2) of this section. The commission may accept or reject the date or  
18 dates specified by the electric company.

19       “(b) Notwithstanding any other provision of law, upon the request of any  
20 interested person the commission shall conduct a proceeding to determine  
21 whether to approve a proposed change in rates under the automatic adjust-  
22 ment clause or other method for timely recovery of costs. The commission  
23 shall provide parties to the proceeding with the procedural rights described  
24 in ORS 756.500 to 756.610, including but not limited to the opportunity to  
25 develop an evidentiary record, conduct discovery, introduce evidence, con-  
26 duct cross-examination and submit written briefs and oral argument. The  
27 commission shall issue a written order with findings on the evidentiary re-  
28 cord developed in the proceeding.

29       “(c) A filing made under this subsection is subject to the commission’s  
30 authority under ORS 757.215 to suspend a rate, or schedule of rates, for in-

1 vestigation.

2 **“SECTION 6.** ORS 469A.170 is amended to read:

3 “469A.170. (1) Each electric utility and electricity service supplier that is  
4 subject to a renewable portfolio standard shall make an annual compliance  
5 report for the purpose of detailing compliance, or failure to comply, with the  
6 renewable portfolio standard applicable in the compliance year. An electric  
7 company or electricity service supplier shall make the report to the Public  
8 Utility Commission. A consumer-owned utility shall make the report to the  
9 members or customers of the utility.

10 “(2) The commission shall review each compliance report filed under this  
11 section by an electric company or electricity service supplier for the pur-  
12 poses of determining whether the company or supplier has complied with the  
13 renewable portfolio standard applicable to the company or supplier and the  
14 manner in which the company or supplier has complied. In reviewing the  
15 reports, the commission shall consider:

16 “(a) The relative amounts of renewable energy certificates and other  
17 payments used by the company or supplier to meet the applicable renewable  
18 portfolio standard, including:

19 “(A) Bundled renewable energy certificates;

20 “(B) Unbundled renewable energy certificates;

21 “(C) Banked renewable energy certificates; and

22 “(D) Alternative compliance payments under ORS 469A.180.

23 “(b) The timing of electricity purchases.

24 “(c) The market prices for electricity purchases and unbundled renewable  
25 energy certificates.

26 “(d) Whether the actions taken by the company or supplier are contrib-  
27 uting to long term development of generating capacity using renewable en-  
28 ergy sources.

29 “(e) The effect of the actions taken by the company or supplier on the  
30 rates payable by retail electricity consumers.

1 “(f) Good faith forecasting differences associated with the projected  
2 number of retail electricity consumers served and the availability of elec-  
3 tricity from renewable energy sources.

4 “(g) For electric companies, consistency with the implementation plan  
5 filed under [ORS 469A.075] **section 16 of this 2021 Act**, as acknowledged  
6 by the commission.

7 “(h) Any other factors deemed reasonable by the commission.

8 “(3) The commission by rule may establish requirements for compliance  
9 reports submitted by an electric company or electricity service supplier.

10 **“SECTION 7.** ORS 469A.200 is amended to read:

11 “469A.200. **(1)** If an electric company or electricity service supplier that  
12 is subject to a renewable portfolio standard under ORS 469A.005 to 469A.210  
13 fails to comply with the standard in the manner provided by ORS 469A.005  
14 to 469A.210, the Public Utility Commission [*may*] **shall** impose a penalty  
15 against the company or supplier in an amount determined by the commission  
16 **to be sufficient to deter noncompliance.**

17 “**(2)** A penalty under this section is in addition to any alternative com-  
18 pliance payment required or elected under ORS 469A.180 **and may not be**  
19 **recovered in the rates of an electric company.** Moneys paid for penalties  
20 under this section shall be transmitted by the commission to the nongov-  
21 ernmental entity receiving moneys under ORS 757.612 (3)(d) and may be used  
22 only for the purposes specified in ORS 757.612 (1).

23 “**(3) The commission shall adopt by rule standards and procedures**  
24 **for imposing penalties under this section.**

25

26 “**(Direct energy resiliency or environmental benefits)**

27

28 **“SECTION 8.** Section 9 of this 2021 Act is added to and made a part  
29 **of ORS 469A.005 to 469A.210.**

30 **“SECTION 9.** (1) As used in this section, ‘renewable energy certif-

1 **icates’ means bundled renewable energy certificates and unbundled**  
2 **renewable energy certificates.**

3 **“(2)(a) The Legislative Assembly declares that the State of Oregon**  
4 **has a substantial state interest in:**

5 **“(A) Creating a more resilient supply of electricity used to serve**  
6 **retail electricity consumers; and**

7 **“(B) Ensuring that efforts to reduce the greenhouse gas emissions**  
8 **attributable to this state provide direct environmental benefits in this**  
9 **state.**

10 **“(b) The Legislative Assembly further finds and declares that:**

11 **“(A) Locating low-emissions and no-emissions electricity generating**  
12 **and storage facilities close to retail electricity consumers served with**  
13 **the electricity generated or stored by those facilities:**

14 **“(i) Increases resilience without causing the harmful side effects**  
15 **of emissions emitted from electricity generating facilities;**

16 **“(ii) Reduces the costs and delays associated with constructing ad-**  
17 **ditional transmission capacity to connect remote electricity generating**  
18 **and storage facilities; and**

19 **“(iii) Reduces the wildfire-related resiliency risks to the electricity**  
20 **grid that increase with the remoteness of electricity generating and**  
21 **storage facilities; and**

22 **“(B) Replacing electricity generating facilities that utilize petro-**  
23 **leum, natural gas or coal as an energy source with electricity gener-**  
24 **ating and storage facilities that utilize renewable energy sources can**  
25 **result in the reduction or avoidance of emissions of air contaminants**  
26 **other than greenhouse gases and can provide particular benefits to**  
27 **historically disadvantaged communities that have been traditionally**  
28 **and disproportionately burdened with the health, financial and other**  
29 **adverse impacts associated with air contaminants other than**  
30 **greenhouse gases emitted from electricity generating facilities and**

1 other waste products from power generation.

2 “(3) In pursuit of the substantial state interests set forth in sub-  
3 section (2)(a) of this section and in addition to the requirements of  
4 ORS 469A.135:

5 “(a) Out of the renewable energy certificates used by an electric  
6 utility to meet the renewable portfolio standard applicable to that  
7 electric utility in a compliance year, 50 percent of the renewable en-  
8 ergy certificates that were issued for electricity generated by a facility  
9 constructed on or after the effective date of this 2021 Act must be for  
10 electricity generated by a facility that provides direct energy resiliency  
11 or environmental benefits in this state; and

12 “(b) Out of the electricity available to an electric utility from an  
13 electricity storage facility and used by the electric utility to offset the  
14 renewable portfolio standard in a compliance year under ORS 469A.060  
15 (4), 50 percent of the stored electricity must be from an electricity  
16 storage facility constructed on or after the effective date of this 2021  
17 Act that provides direct energy resiliency or environmental benefits  
18 in this state.

19 “(4) For the purposes of this section, an electricity generating or  
20 storage facility provides direct energy resiliency or environmental  
21 benefits in this state if the facility:

22 “(a) Provides direct local resiliency benefits to retail electricity  
23 consumers through one or more of the following:

24 “(A) Increased reliability in parts of this state that typically expe-  
25 rience more frequent or longer service disruptions or that are more  
26 likely to be impacted by a catastrophic event;

27 “(B) Greater penetration of electricity generating and storage re-  
28 sources in remote communities;

29 “(C) Reduced exposure to the costs of service disruptions;

30 “(D) Modernization to the electrical grid in this state;



1       **“(E) Reduced reliance on long-distance transmission;**  
2       **“(F) Investment in communities and households in this state that**  
3 **are least able to afford technologies that improve the reliability of**  
4 **electricity service; or**  
5       **“(G) Other local resiliency augmenting benefits for retail electricity**  
6 **consumers as may be identified by rule by the State Department of**  
7 **Energy, in consultation with the Public Utility Commission;**  
8       **“(b) Contributes to a reduction in or avoidance of emissions of any**  
9 **air contaminant or water contaminant in this state other than a**  
10 **greenhouse gas; or**  
11       **“(c) Contributes to an improvement in the health of natural and**  
12 **working lands in this state.**  
13       **“(5) There is a rebuttable presumption that an electricity generat-**  
14 **ing or storage facility provides direct energy resiliency or environ-**  
15 **mental benefits in this state for purposes of this section if the facility:**  
16       **“(a) Is directly interconnected in this state to the electrical grid of**  
17 **an electric utility serving retail electricity consumers;**  
18       **“(b) Is directly interconnected to the Bonneville Power Adminis-**  
19 **tration contiguous transmission grid serving this state;**  
20       **“(c) Is used to comply with the requirements of ORS 469A.210;**  
21       **“(d) Is a community solar project from which electricity is procured**  
22 **pursuant to the program adopted under ORS 757.386;**  
23       **“(e) Is a solar energy resource connected behind the meter of a re-**  
24 **tail electricity consumer that includes battery storage capable of pro-**  
25 **viding temporary electric power in the event of a power outage; or**  
26       **“(f) Relies on transmission facilities to transmit electricity for no**  
27 **more than 50 miles to reach the contiguous border of this state from**  
28 **an adjoining state in order to serve retail electricity consumers.**  
29       **“SECTION 10. (1) The Public Utility Commission may not cause to**  
30 **delay, due to the pendency of any rulemaking or other proceeding**

1 necessary to implement one or more provisions of section 9 of this 2021  
2 Act, any procurement or request for proposals that will result in the  
3 procurement by an electric utility of electricity from a facility that  
4 meets the statutory criteria set forth in section 9 (5) of this 2021 Act.

5 “(2) The enactment of section 9 of this 2021 Act is not intended to  
6 modify, delay or alter the timeline for any procurement or request for  
7 proposals initiated on, before or after the effective date of this 2021  
8 Act for which rulemaking is not necessary to determine whether the  
9 procurement or request for proposals will count toward compliance by  
10 an electric utility with section 9 of this 2021 Act.

11  
12 **“COMMUNITY-BASED RENEWABLE ENERGY**

13  
14 **“SECTION 11. ORS 469A.210 is added to and made a part of ORS**  
15 **chapter 757.**

16 **“SECTION 12. ORS 469A.210 is amended to read:**

17 **“469A.210. (1) As used in this section:**

18 **“(a) ‘Electric company’ has the meaning given that term in ORS**  
19 **757.600.**

20 **“(b) ‘Retail electricity consumer’ has the meaning given that term**  
21 **in ORS 757.600.**

22 **“[(1)] (2) The Legislative Assembly finds that community-based renewable**  
23 **energy projects, including but not limited to marine renewable energy re-**  
24 **sources that are either developed in accordance with the Territorial Sea Plan**  
25 **adopted pursuant to ORS 196.471 or located on structures adjacent to the**  
26 **coastal shorelands, are an essential element of this state’s energy future.**

27 **“[(2) For purposes related to the findings in subsection (1) of this section,**  
28 **by the year 2025, at least eight percent of the aggregate electrical capacity of**  
29 **all electric companies that make sales of electricity to 25,000 or more retail**  
30 **electricity consumers in this state must be composed of electricity generated by**

1 *one or both of the following sources:]*

2 **“(3)(a) For purposes related to the findings in subsection (2) of this**  
3 **section, by the following years the following percentages of electricity**  
4 **sold in this state by each electric company that makes sales of elec-**  
5 **tricity to 25,000 or more retail electricity consumers in this state must**  
6 **be composed of electricity generated by one or more of the sources**  
7 **described in paragraph (b) of this subsection:**

8 **“(A) By 2030, five percent; and**

9 **“(B) by 2035, 10 percent.**

10 **“(b) An electric company may comply with paragraph (a) of this**  
11 **subsection through sales of electricity composed of electricity gener-**  
12 **ated by:**

13 **“[(a)] (A) Small-scale renewable energy projects with a generating ca-**  
14 **capacity of 20 megawatts or less, or that are interconnected with the**  
15 **transmission system owned or managed by the electric company at a**  
16 **voltage of 115 kilovolts or less, and that generate electricity utilizing a**  
17 **type of energy described in ORS 469A.025; [or]**

18 **“[(b)] (B) Facilities that generate electricity using biomass that also**  
19 **generate thermal energy for a secondary purpose[.]; or**

20 **“(C) Small power production facilities as defined in ORS 758.505 that**  
21 **generate electricity utilizing a type of energy listed in ORS 469A.025**  
22 **and that:**

23 **“(i) Are located, with the consent of the relevant tribal government**  
24 **as defined in ORS 181A.680, within the boundaries of an Indian reser-**  
25 **vation or land held in trust by the United States for the benefit of a**  
26 **federally recognized Oregon Indian tribe; or**

27 **“(ii) Have executed a community benefits agreement with a local**  
28 **government as defined in ORS 174.116, a school district as defined in**  
29 **ORS 332.002, a local environmental or habitat conservation organiza-**  
30 **tion or another entity that exists for the public benefit as identified**

1 by rule by the Public Utility Commission.

2 “(4)(a) Out of the facilities described in subsection (3) of this section  
3 that generate electricity used to meet the requirements of subsection  
4 (3) of this section, at least 25 percent must be:

5 “(A) Located in the electric company’s service territory;

6 “(B) Directly interconnected with the transmission system owned  
7 or managed by the electric company; or

8 “(C) If not directly interconnected with the transmission system  
9 owned or managed by the electric company, designated as a network  
10 resource.

11 “(b) An electric company must cooperate with the efforts of a fa-  
12 cility described in subsection (2) of this section to be designated as a  
13 network resource.

14 “[3] (5) Regardless of the facility’s nameplate capacity, any single facil-  
15 ity described in subsection [(2)(b)] (3)(b)(B) of this section may be used to  
16 comply with the requirement specified in subsection [(2)] (3) of this section  
17 for up to 20 megawatts of capacity.

18 “SECTION 13. (1) The Public Utility Commission may not cause to  
19 delay, due to the pendency of any rulemaking or other proceeding  
20 necessary to implement one or more provisions of ORS 469A.210, any  
21 procurement or request for proposals that will result in the procure-  
22 ment by an electric company of electricity generated from a facility  
23 described in ORS 469A.210 (3)(b)(A), (B) or (C)(i).

24 “(2) The amendments to ORS 469A.210 by section 12 of this 2021 Act  
25 are not intended to modify, delay or alter the timeline for any pro-  
26 curement or request for proposals initiated on, before or after the ef-  
27 fective date of this 2021 Act for which rulemaking is not necessary to  
28 determine whether the procurement or request for proposals will  
29 count toward compliance by an electric company with ORS 469A.210.

30

1 **“INTEGRATED CLEAN ENERGY IMPLEMENTATION PLANNING**

2  
3 **“SECTION 14. ORS 469A.075 is repealed.**

4 **“SECTION 15. Section 16 of this 2021 Act is added to and made a**  
5 **part of ORS chapter 757.**

6 **“SECTION 16. (1) As used in this section:**

7 **“(a) ‘Clean energy standards’ means:**

8 **“(A) The renewable portfolio standards described in ORS 469A.052**  
9 **and 469A.055; and**

10 **“(B) The standard set forth in ORS 469A.210.**

11 **“(b) ‘Electric company’ has the meaning given that term in ORS**  
12 **757.600.**

13 **“(c) ‘Qualifying electricity’ has the meaning given that term in ORS**  
14 **469A.005.**

15 **“(d) ‘Renewable energy certificates’ means bundled renewable en-**  
16 **ergy certificates as that term is defined in ORS 469A.005 and unbundled**  
17 **renewable energy certificates as that term is defined in ORS 469A.005.**

18 **“(e) ‘Retail electricity consumer’ has the meaning given that term**  
19 **in ORS 757.600.**

20 **“(f) ‘Transportation electrification’ has the meaning given that**  
21 **term in ORS 757.357.**

22 **“(2) An electric company shall develop an integrated, clean energy**  
23 **implementation plan for meeting the requirements of all clean energy**  
24 **standards applicable to the electric company and file the implementa-**  
25 **tion plan with the Public Utility Commission. Implementation plans**  
26 **must be revised and updated at least once every two years.**

27 **“(3) At a minimum, an implementation plan must contain:**

28 **“(a) Annual targets for acquisition and use of, as applicable:**

29 **“(A) Qualifying electricity; and**

30 **“(B) Electricity generated by sources described in ORS 469A.210 (3).**

1       **“(b) Annual targets for the development, acquisition and use of**  
2 **transmission and grid interconnection capacity necessary to comply**  
3 **with the clean energy standards applicable to the electric company,**  
4 **which must consider approaches for meeting the clean energy stan-**  
5 **dards that reduce new or major transmission line construction and**  
6 **must consider:**

7       **“(A) The status, schedule, cost and timeline risks associated with**  
8 **development and construction of new transmission capacity; and**

9       **“(B) Sourcing of qualifying electricity that is geographically located**  
10 **in a manner that beneficially utilizes existing grid infrastructure and**  
11 **reduces or diversifies costs or risks, or that improves grid resiliency.**

12       **“(c) The estimated cost of meeting the annual targets described in**  
13 **paragraphs (a) and (b) of this subsection, including the cost of trans-**  
14 **mission, the cost of firming, shaping and integrating qualifying elec-**  
15 **tricity, the cost of alternative compliance payments under ORS**  
16 **469A.180 and the cost of acquiring renewable energy certificates.**

17       **“(d) An identification of any need to develop new, or to expand or**  
18 **upgrade existing, bulk transmission and distribution facilities and an**  
19 **assessment of the timeline to develop, expand or upgrade those facili-**  
20 **ties, including an evaluation and identification of:**

21       **“(A) Grid facilities and other solutions that may beneficially miti-**  
22 **gate the status, schedule, cost and timeline risks related to developing**  
23 **new transmission capacity; and**

24       **“(B) The planning, construction, financing and coordination with**  
25 **Bonneville Power Administration, and coordination with other re-**  
26 **gional transmission owners, as is necessary to meet the requirements**  
27 **of ORS 469A.005 to 469A.210.**

28       **“(e) An assessment and 10-year forecast of the availability, includ-**  
29 **ing the likely and achievable rates of development of, the regional**  
30 **generation and transmission capacity that the electric company in-**

1 tends to rely on to provide and deliver electricity to its retail elec-  
2 tricity consumers, which must include:

3 “(A) An analysis of the status, schedule, cost and timeline risks  
4 related to developing new transmission capacity and any other related  
5 solutions that are being evaluated, planned or in development; and

6 “(B) An analysis of how the implementation of the laws of other  
7 states or the federal government relating to clean energy, including  
8 planned or prospective regional generating facility removals, re-  
9 strictions or retirements in compliance with those laws and the asso-  
10 ciated costs and other impacts of the removals, restrictions or  
11 retirements, may affect the electric company’s ability to adequately  
12 and timely procure energy or energy and capacity as necessary to  
13 comply with the clean energy standards applicable to the electric  
14 company.

15 “(f) An identification of the generating and storage resources, by  
16 individual resource where applicable and generally in all cases by cat-  
17 egories of resources and ownership types, that may be acquired to  
18 meet the clean energy standards applicable to the electric company,  
19 and an evaluation of how each identified resource, and the potential  
20 geographic location of the resource, is expected to simultaneously  
21 contribute to the electric company meeting its obligations under:

22 “(A) The applicable clean energy standards; and

23 “(B) The mandatory and enforceable reliability standards of the  
24 North American Electric Reliability Corporation or its successor or-  
25 ganization, or any other reliability standards as the commission may  
26 require.

27 “(g) A forecast of distributed energy resources, including those re-  
28 lated to transportation electrification, that may be installed by the  
29 electric company or the electric company’s retail electricity consum-  
30 ers, and an assessment of the effects of those distributed energy re-

1 sources on the electric company's load, operations and compliance  
2 obligations under the clean energy standards applicable to the electric  
3 company.

4 “(h) An identification of the potential cost-effective demand re-  
5 sponse and load management programs that may be acquired, imple-  
6 mented or supported by the electric company.

7 “(i) A quantification of the probabilities, during time increments  
8 of no longer than five years, of risks including blackouts, market  
9 shortfall events, wildfire, facility retirements, facility limitations re-  
10 lated to environmental standards, regional load growth and regional  
11 capacity availability, a discussion of the cost exposures related to the  
12 risks based on the quantification, and a description of the associated  
13 risk management and risk mitigation plans.

14 “(j) An identification and status of additional staffing and other  
15 resources necessary for the electric company, the commission or af-  
16 fected stakeholders to facilitate and ensure compliance with the clean  
17 energy standards applicable to the electric company, including addi-  
18 tional staffing and other resources necessary to specifically address:

19 “(A) Transmission needs;

20 “(B) Timely generation and storage interconnection by third party  
21 facility developers;

22 “(C) Regional transmission planning and policy development; and

23 “(D) Modeling of generation and transmission solution scenarios,  
24 including scenarios for the development or installation of distributed  
25 energy and capacity resources.

26 “(k) An identification of energy efficiency opportunities and a plan  
27 for addressing the opportunities in a manner that prioritizes:

28 “(A) Mitigating energy costs for low-income and historically disad-  
29 vantaged retail electricity consumers; and

30 “(B) High-impact opportunities to mitigate utility peak capacity



1 needs, exposures to reliability risks, and other costs and timeline risks  
2 associated with complying with the clean energy standards applicable  
3 to the electric company.

4 “(L) An evaluation of the options, ability, costs and risk mitigation  
5 benefits to exceeding each of the clean energy standards applicable to  
6 the electric company, including as compared to the societal costs and  
7 risks of noncompliance such as public health risks and the environ-  
8 mental impacts of climate change, particularly for economically or  
9 environmentally vulnerable communities.

10 “(4) The commission shall acknowledge or reject an implementation  
11 plan no later than six months after the implementation plan is filed  
12 with the commission. The commission may acknowledge or reject the  
13 implementation plan subject to conditions specified by the commis-  
14 sion.

15 “(5)(a) The commission shall adopt rules:

16 “(A) Establishing requirements for the content of implementation  
17 plans;

18 “(B) Establishing the procedure for acknowledgment of implemen-  
19 tation plans under this section, including provisions for public com-  
20 ment;

21 “(C) Providing for the integration of an implementation plan with  
22 the integrated resource planning guidelines established by the com-  
23 mission for the purpose of planning for the least-cost, least-risk ac-  
24 quisition of resources; and

25 “(D) Providing for the evaluation of competitive bidding processes  
26 that allow for diverse ownership of renewable energy sources that  
27 generate qualifying electricity.

28 “(b) Rules adopted under this subsection shall require the  
29 quantification required under subsection (3)(i) of this section to:

30 “(A) Be conducted as part of the integrated resource planning de-

1 scribed in paragraph (a)(C) of this subsection; and

2 “(B) Be used in setting avoided-cost rates pursuant to ORS 758.525  
3 and other ratemaking activities relative to utility load service and re-  
4 liability assurance planning.

5 “(6) An implementation plan filed under this section may include  
6 procedures that will be used by the electric company to determine  
7 whether the costs of constructing a facility that generates electricity  
8 from a renewable energy source, or the costs of acquiring bundled or  
9 unbundled renewable energy certificates, are consistent with the  
10 renewable portfolio standards of the commission relating to least-cost,  
11 least-risk planning for acquisition of resources.

12 “SECTION 17. An electric company shall first file an implementa-  
13 tion plan as required under section 16 of this 2021 Act no later than  
14 the date that the next implementation plan required after the effective  
15 date of this 2021 Act would have been due under ORS 469A.075 (2019  
16 Edition).

17 “SECTION 18. The repeal of ORS 459A.075 by section 14 of this 2021  
18 Act and the enactment of section 16 of this 2021 Act are not intended  
19 to modify, delay or alter the timeline for any procurement or request  
20 for proposals initiated by an electric company on, before or after the  
21 effective date of this 2021 Act for the acquisition and use of qualifying  
22 electricity as defined in ORS 469A.005 or electricity generated by  
23 sources described in ORS 469A.210 (3)(b)(A), (B) or (C)(i).

24

25 “CLEAN ENERGY STORAGE

26

27 “SECTION 19. Section 20 of this 2021 Act is added to and made a  
28 part of ORS chapter 757.

29 “SECTION 20. (1) As used in this section, ‘energy storage system’  
30 means a technology that is capable of retaining energy, storing the

1 **energy for a period of time and delivering the energy after storage.**

2 **“(2) The Public Utility Commission may not prohibit, or treat as a**  
3 **retail purchase or sale, the wholesale purchase of electricity for**  
4 **wholesale resale by an energy storage system.**

5 **“(3) A transmission facility shall facilitate the wholesale purchase**  
6 **of electricity for wholesale resale by an energy storage system, subject**  
7 **to reasonable pass-through expenses.**

8

9 **“UTILITY REGULATION GENERALLY**

10

11 **“SECTION 21. ORS 756.040 is amended to read:**

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

26 **“(a) Commensurate with the return on investments in other enterprises**  
27 **having corresponding risks; and**

28 **“(b) Sufficient to ensure confidence in the financial integrity of the util-**  
29 **ity, allowing the utility to maintain its credit and attract capital.**

30 **“(2) In addition to the duties and powers described in subsection (1)**

1 **of this section, the commission shall serve the public interest by:**

2 **“(a) When deciding or deliberating toward a decision, protecting the**  
3 **customers of any public utility or telecommunications utility, and the**  
4 **public generally, with respect to:**

5 **“(A) The provision by the public utility or telecommunications**  
6 **utility of safe and reliable services; and**

7 **“(B) The establishment by the public utility or telecommunications**  
8 **utility of safe and reliable infrastructure;**

9 **“(b) Developing and implementing policies and rules that encourage**  
10 **social equity, environmental justice, the enhancement of the environ-**  
11 **ment, greenhouse gas emissions reductions, diversity of the ownership**  
12 **and locations of electricity generation systems, resiliency for emer-**  
13 **gency conditions including wildfire risks and the fulfillment of the**  
14 **state’s energy and climate policies;**

15 **“(c) Allowing and fostering broad participation in the regulatory**  
16 **process; and**

17 **“(d) Protecting the 10 percent of residential ratepayers with the**  
18 **lowest incomes from cost increases associated with the consequences**  
19 **of state policies related to the issues described in paragraph (b) of this**  
20 **subsection.**

21 **“[(2)] (3) The commission is vested with power and jurisdiction to super-**  
22 **wise and regulate every public utility and telecommunications utility in this**  
23 **state, and to do all things necessary and convenient in the exercise of such**  
24 **power and jurisdiction.**

25 **“[(3)] (4) The commission may participate in any proceeding before any**  
26 **public officer, commission or body of the United States or any state for the**  
27 **purpose of representing the public generally and the customers of the ser-**  
28 **vices of any public utility or telecommunications utility operating or pro-**  
29 **viding service to or within this state.**

30 **“[(4)] (5) The commission may make joint investigations, hold joint**

1 hearings within or without this state and issue concurrent orders in con-  
2 junction or concurrence with any official, board, commission or agency of  
3 any state or of the United States.

4 **“SECTION 22.** ORS 756.060 is amended to read:

5 “756.060. (1) The Public Utility Commission may adopt and amend rea-  
6 sonable and proper rules and regulations relative to all statutes administered  
7 by the commission and may adopt and publish reasonable and proper rules  
8 to govern proceedings and to regulate the mode and manner of all investi-  
9 gations and hearings of public utilities and telecommunications utilities and  
10 other parties before the commission.

11 **“(2) In addition to the grounds for review set forth in ORS 183.400**  
12 **(4), on judicial review of the validity of a rule adopted under this sec-**  
13 **tion, the Court of Appeals shall declare the rule invalid if it finds the**  
14 **rule to be arbitrary and capricious.**

15 **“SECTION 23.** ORS 756.185 is amended to read:

16 “756.185. (1)(a) Any public utility which does, or causes or permits to be  
17 done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 **or**  
18 **regulations adopted pursuant to ORS chapter 756, 757 or 758,** or omits  
19 to do any act, matter or thing required to be done by such statutes **or reg-**  
20 **ulations,** is liable to the person injured thereby in the amount of damages  
21 sustained in consequence of such violation.

22 **“(b) If the party seeking damages alleges and proves that the wrong or**  
23 **omission as described in paragraph (a) of this subsection** was the result  
24 of gross negligence or willful misconduct, the public utility is liable to the  
25 person injured [*thereby*] **by the wrong or omission** in treble the amount of  
26 damages sustained in consequence of the violation.

27 **“(c) If the wrong or omission as described in paragraph (a) of this**  
28 **subsection was a violation of any of the following, the public utility**  
29 **is liable to the person injured by the wrong or omission in treble the**  
30 **amount of damages sustained in consequence of the violation:**

1       **“(A) ORS 758.505 to 758.555 or the federal Public Utility Regulatory**  
2 **Policies Act of 1978 (P.L. 95-617);**

3       **“(B) A contract entered into pursuant to ORS 758.505 to 758.555 or**  
4 **the federal Public Utility Regulatory Policies Act of 1978 (P.L. 95-617);**  
5 **or**

6       **“(C) A legally enforceable obligation for the purchase by a public**  
7 **utility of energy or energy and capacity from a qualifying facility, as**  
8 **defined in ORS 758.505.**

9       **“(d) Except as provided in subsection (2) of this section, the court may**  
10 **award reasonable attorney fees to the prevailing party in an action under**  
11 **this section.**

12       **“(2) The court may not award attorney fees to a prevailing defendant**  
13 **under the provisions of subsection (1) of this section if the action under this**  
14 **section is maintained as a class action pursuant to ORCP 32.**

15       **“(3) Any recovery under this section does not affect recovery by the state**  
16 **of the penalty, forfeiture or fine prescribed for such violation.**

17       **“(4) Damages and attorney fees paid by a public utility to a pre-**  
18 **vailing party in an action under this section may not be recovered in**  
19 **the rates of the public utility.**

20       **“[(4)] (5) This section does not apply with respect to the liability of any**  
21 **public utility for personal injury or property damage.**

22       **“SECTION 24. Section 25 of this 2021 Act is added to and made a**  
23 **part of ORS chapter 757.**

24       **“SECTION 25. (1) As used in this section:**

25       **“(a) ‘Clean energy standards’ has the meaning given that term in**  
26 **section 16 of this 2021 Act.**

27       **“(b) ‘Electric company’ has the meaning given that term in ORS**  
28 **757.600.**

29       **“(2) The Legislative Assembly declares that it is the purpose of this**  
30 **section:**

1       “(a) To facilitate investments in generation, storage, transmission  
2 and distribution facilities and other transmission system and grid up-  
3 grades necessary to ensure compliance with, and mitigate the risks  
4 of compliance with, clean energy standards; and

5       “(b) To equalize the financial incentives for electric companies to  
6 fulfill requirements related to load service, reliability and clean energy  
7 standards through procurements from independently owned facilities  
8 and the financial incentives to meet such requirements through de-  
9 velopment of electric company-owned assets.

10       “(3) In furtherance of the purposes set forth in subsection (2) of this  
11 section, the Public Utility Commission shall establish one or more  
12 performance-based ratemaking mechanisms or other rules to  
13 incentivize electric companies to:

14       “(a) Earn an annual margin of profit on power purchase agreements  
15 for the purchase of energy or energy and capacity that is at a rate  
16 determined by the commission not to exceed the rate of return allowed  
17 on assets owned by an electric company; and

18       “(b) Acquire electricity storage facilities that are, at a minimum,  
19 charged at least 90 percent by legacy carbon-free electricity or quali-  
20 fying electricity as those terms are defined in ORS 469A.005.

21       “(4)(a) In addition to the performance-based ratemaking mech-  
22 anisms described in subsection (3) of this section, the commission shall  
23 adopt a performance-based ratemaking mechanism that allows for an  
24 electric company to:

25       “(A) Receive one or more graduated performance incentives, or to  
26 be subject to one or more graduated performance disincentives, in the  
27 form of an increased or decreased overall rate of return, respectively,  
28 for overperforming or underperforming relative to the one or more of  
29 the clean energy standards applicable to the electric company in a  
30 calendar year; and

1       **“(B) Pay a performance incentive on specific power purchase**  
2 **agreements applicable to compliance with the clean energy standards**  
3 **applicable to the electric company if the power purchase agreements:**

4       **“(i) Include social benefit provisions that may include, but need not**  
5 **be limited to, workforce diversity requirements; or**

6       **“(ii) Result in an exceedance of the requirements of section 9 of this**  
7 **2021 Act.**

8       **“(b) Performance incentives granted to an electric company under**  
9 **paragraph (a)(A) of this subsection may not:**

10       **“(A) Apply to exceedance by more than 15 percent of the renewable**  
11 **portfolio standard applicable to the electric company in a calendar**  
12 **year; or**

13       **“(B) Cumulatively result in more than a five percent increase or**  
14 **decrease in an electric company’s authorized overall rate of return for**  
15 **any calendar year.**

16       **“(5)(a) Subject to paragraph (b) of this subsection, an electric**  
17 **company shall offer, in all competitive procurement contracts, stand-**  
18 **ard contracts and rates, to purchase energy or energy and capacity at**  
19 **price premiums of up to the following percentages of the purchase**  
20 **price:**

21       **“(A) One percent for a new facility constructed pursuant to con-**  
22 **tracts that require the facility to be constructed by a workforce that**  
23 **exceeds the minority demographic composition of the state;**

24       **“(B) One percent for a facility that will contribute to the electric**  
25 **company overperforming relative to the renewable portfolio standard**  
26 **applicable to the electric company in one or more calendar years under**  
27 **ORS 469A.005 to 469A.210;**

28       **“(C) Two percent for a new facility constructed using building ma-**  
29 **terials of which at least five percent are produced or manufactured in**  
30 **Oregon;**



1       **“(D) One percent for a new facility that will be constructed using**  
2 **labor that is cumulatively paid, on average, no less than the prevailing**  
3 **rate of wage for an hour’s work in the same trade or occupation in the**  
4 **locality where the labor is performed;**

5       **“(E) One percent for a new facility constructed pursuant to con-**  
6 **tracts that require the contractor of the facility to employ apprentices**  
7 **to perform 10 percent of the work hours that workers in**  
8 **apprenticeable occupations perform on the facility; and**

9       **“(F) One percent for a solar photovoltaic power generation facility**  
10 **that donates photovoltaic solar panels comprising not less than 0.25**  
11 **percent of the DC nameplate capacity of the facility to distributed**  
12 **generation programs and installers in order to offset the construction**  
13 **costs of distributed generation solar projects sited in the Oregon ser-**  
14 **vice territory of the electric company.**

15       **“(b) The total price premium available under this subsection may**  
16 **not exceed five percent of the relevant contract or rate.**

17       **“(c) Price premiums under this subsection shall be:**

18       **“(A) Provided for in contracts;**

19       **“(B) Based on the pledges and representations in contracts of the**  
20 **counterparties to the electric company at the time of the legal obli-**  
21 **gation to purchase the energy or energy and capacity is incurred; and**

22       **“(C) Fulfilled by the in-service date of the facility subject to the**  
23 **contracts.**

24       **“(6) The commission may adopt by rule or order procedures and any**  
25 **other provisions as necessary for the implementation and adminis-**  
26 **tration of this section. Rules adopted under this subsection shall re-**  
27 **quire an electric company to offer price premiums for the purposes set**  
28 **forth in subsection (5)(a) of this section in amounts that are no less**  
29 **than one-half of the maximum price premiums set forth in subsection**  
30 **(5)(a) of this subsection.**

1 **“COGENERATION AND SMALL POWER PRODUCTION FACILITIES**

2  
3 **“SECTION 26.** ORS 758.515 is amended to read:

4 “758.515. The Legislative Assembly finds and declares that:

5 “(1) The State of Oregon has abundant renewable resources.

6 “(2) [*It is the goal of Oregon to:*] **The Public Utility Commission shall:**

7 “(a) Promote the development of a diverse array of permanently  
8 sustainable energy resources using the public and private sectors to the  
9 highest degree possible; and

10 “(b) Insure that rates for purchases by an electric utility from, and rates  
11 for sales to, a qualifying facility shall over the term of a contract be just  
12 and reasonable to the electric consumers of the electric utility, the qualify-  
13 ing facility and in the public interest.

14 “(3) It is, therefore, the policy of the State of Oregon to:

15 “(a) Increase the marketability of electric energy produced by qualifying  
16 facilities located throughout the state for the benefit of Oregon’s citizens;  
17 and

18 “(b) Create a settled and uniform institutional climate for the qualifying  
19 facilities in Oregon.

20 **“SECTION 27.** ORS 758.525 is amended to read:

21 “758.525. (1) At least once every two years each electric utility shall pre-  
22 pare, publish and file with the Public Utility Commission a schedule of  
23 avoided costs equaling the utility’s forecasted incremental cost of electric  
24 resources over at least the next [20] **35** years. Prices contained in the  
25 schedules filed by public utilities shall be reviewed and approved by the  
26 commission.

27 “(2) An electric utility shall offer to purchase energy or energy and ca-  
28 pacity whether delivered directly or indirectly from a qualifying facility.  
29 Except as provided in subsection [(3)] **(4)** of this section, the price for such  
30 a purchase shall not be less than the **electric** utility’s avoided costs. At the

1 option of the qualifying facility, exercised before beginning delivery of the  
2 energy or energy and capacity, such prices may be based on:

3 “(a) The avoided costs calculated at the time of delivery; or

4 “(b) The projected avoided costs calculated at the time the legal obli-  
5 gation to purchase the energy or energy and capacity is incurred. **Avoided**  
6 **costs calculated under this paragraph shall:**

7 **“(A) Be available to the qualifying facility at fixed rates for:**

8 **“(i) A term that is at least 25 years; or**

9 **“(ii) If the projected avoided costs are based on energy or energy**  
10 **and capacity resources that would be contracted or financed over a**  
11 **term longer than 25 years, for the contract or finance term that would**  
12 **have applied for the avoided energy or energy and capacity;**

13 **“(B) Not be less than the equivalent cost for a utility-owned facility**  
14 **that is, if applicable, appropriately used as a reference facility;**

15 **“(C) Account for the scarcity of availability and development of**  
16 **generation and transmission given reasonable projections of supply**  
17 **and demand, which must consider the effects of local, state, regional**  
18 **or federal laws relating to clean energy, emissions pricing, the social**  
19 **cost of carbon, resilience or reliability; and**

20 **“(D) Account for penalties under ORS 469A.200 and performance-**  
21 **based ratemaking mechanisms and price premiums under section 25**  
22 **of this 2021 Act.**

23 **“(3) In identifying resource needs through integrated resource**  
24 **planning and in calculating avoided costs, an electric utility shall**  
25 **forecast a reasonable failure rate for qualifying facilities as compared**  
26 **to the total amount contracted.**

27 “[3] (4) Nothing contained in ORS 543.610, 757.005 and 758.505 to 758.555  
28 shall be construed to require an electric utility to pay full avoided-cost  
29 prices for a purchase from a qualifying facility on which construction began  
30 before November 8, 1978, but the price for a purchase from such a facility

1 shall be sufficient to encourage production of energy or energy and capacity.

2 “[4] (5) The rates of an electric utility for the sale of electricity shall  
3 not discriminate against qualifying facilities.

4 **“SECTION 28.** ORS 758.535 is amended to read:

5 “758.535. (1) The Public Utility Commission shall establish minimum cri-  
6 teria that a cogeneration facility or small power production facility must  
7 meet to qualify as a qualifying facility under ORS 543.610, 757.005 and  
8 758.505 to 758.555.

9 **“(2) Except as provided in subsections (4) to (6) of this section,** the  
10 terms and conditions for the purchase of energy or energy and capacity from  
11 a qualifying facility shall:

12 “(a) Be established by rule by the commission if the purchase is by a  
13 public utility;

14 “(b) Be adopted by an electric cooperative or people’s utility district ac-  
15 cording to the applicable provision of ORS chapter 62 or 261; and

16 “(c) Be established by a municipal utility according to the requirements  
17 of the municipality’s charter and ordinance.

18 **“(3) The rules or policies adopted under subsection (2) of this section also**  
19 **shall:**

20 “(a) Establish safety and operating requirements necessary to adequately  
21 protect all systems, facilities and equipment of the electric utility and qual-  
22 ifying facility;

23 “(b) Be consistent with applicable standards required by the Public Util-  
24 ity Regulatory Policies Act of 1978 (P.L. 95-617); and

25 “(c) Be made available to the public at the commission’s office.

26 **“(4) A public utility shall offer, and the commission shall approve,**  
27 **standard avoided-cost rates and simple standard contracts for the**  
28 **purchase of energy or energy and capacity from qualifying facilities**  
29 **with a design capacity of not greater than 80 megawatts alternating**  
30 **current. The rates and contracts must:**

1       “(a) Facilitate and encourage the investment in and the financing  
2 and construction of qualifying facilities;

3       “(b) Facilitate achieving the requirements of ORS 758.515 and suc-  
4 cessful implementation of the clean energy standards as that term is  
5 defined in section 16 of this 2021 Act; and

6       “(c) Be provided in a written form that facilities ease of use,  
7 understanding, completion and implementation by the developer of a  
8 proposed qualifying facility.

9       “(5)(a) A public utility shall offer long-term contracts for the pur-  
10 chase of all the energy or energy and capacity offered from a qualify-  
11 ing facility.

12       “(b) Except as provided in paragraph (c) of this subsection, a long-  
13 term contract described in this paragraph, at a minimum:

14       “(A) Must provide fixed pricing availability for a term of up to 25  
15 years;

16       “(B) Must allow for a proposed cogeneration facility or small power  
17 production facility to downsize the proposed capacity of the facility  
18 without a penalty prior to the in-service date of the facility;

19       “(C) Must allow for a minimum five-year period, from contract ex-  
20 ecution until the facility commences supplying energy or energy and  
21 capacity to the public utility, that may be extended as reasonably  
22 necessary due to interconnection facility or transmission facility  
23 studies or construction, or for other reasons as may be identified by  
24 rule by the commission;

25       “(D) May not impede the ability of a qualifying facility to sell all  
26 the energy or energy and capacity made available for sale to the public  
27 utility based on the location or method of interconnection or trans-  
28 mission service used to deliver the energy or energy and capacity to  
29 the public utility; and

30       “(E) May not require provision of financial security by the devel-

1 oper of the proposed qualifying facility, unless:

2 “(i) The proposed qualifying facility has a design capacity of greater  
3 than 40 megawatts alternating current;

4 “(ii) The developer of the proposed qualifying facility is seeking a  
5 schedule extension that is not related to interconnection; and

6 “(iii) The developer of the proposed qualifying facility is seeking  
7 additional legally enforceable obligations to address concerns that may  
8 include but not be limited to concerns related to pending available  
9 pricing changes or delays on behalf of the public utility that could  
10 impede the parties’ abilities to successfully or timely secure a mutu-  
11 ally executed power purchase contract.

12 “(c)(A) A long-term contract described in this paragraph may pro-  
13 vide for fixed pricing availability for a term exceeding 25 years if the  
14 resources proposed or constructed by the public utility or procured  
15 through competitive solicitations have longer fixed-pricing terms.

16 “(B) Any financial security required under paragraph (b)(E) of this  
17 subsection:

18 “(i) May not be unduly burdensome, deter investment in the devel-  
19 opment of qualified facilities or exceed the comparable amount of fi-  
20 nancial security required, on average, in the public utility’s  
21 competitive procurements; and

22 “(ii) Must be refundable and released upon confirmation of the vi-  
23 ability of development of the qualifying facility.

24 “(6) A public utility shall provide separate standard pricing sched-  
25 ules offering incremental capacity pricing for storage facilities that  
26 are colocated or otherwise incorporated with qualifying facilities if the  
27 storage facilities charge from the qualifying facility. The standard  
28 pricing schedules required under this subsection must include capacity  
29 price values for each hour of the day in each month of the year.

30 “(7) A public utility shall act in good faith and with fair dealing in

1 providing, executing and carrying out agreements for the purchase of  
2 energy or energy and capacity from a qualifying facility and regarding  
3 all related interconnection studies and processes. A public utility may  
4 not:

5 “(a) Delay or impede contracting requested by the developer of a  
6 qualifying facility;

7 “(b) Condition the provision of draft agreements or the execution  
8 of an agreement on the completion of interconnection studies, any  
9 matter within the public utility’s control or any matter that is solely  
10 specified by the developer of the qualified facility; or

11 “(c) Assert sole authority for the drafting of an agreement de-  
12 scribed in this subsection.

13 “SECTION 29. Section 30 of this 2021 Act is added to and made a  
14 part of ORS 758.505 to 758.555.

15 “SECTION 30. (1) Nothing in ORS 758.505 to 758.555 is intended to  
16 provide the legal basis for assumption by the Public Utility Commis-  
17 sion of subject matter jurisdiction over a dispute between a public  
18 utility and a qualifying facility over an executed contract or an es-  
19 tablished legally enforceable obligation for the qualifying facility to  
20 sell energy or energy and capacity to the public utility.

21 “(2) The commission has subject matter jurisdiction over a com-  
22 plaint brought by a qualifying facility against a public utility in order  
23 to establish the terms and conditions of a legally enforceable obli-  
24 gation for the qualifying facility to sell energy or energy and capacity  
25 to a public utility.

26 “(3) A qualifying facility seeking a judicial declaration, interpreta-  
27 tion or enforcement of a contract or legally enforceable obligation for  
28 the qualifying facility to sell energy or energy and capacity to a public  
29 utility is not required to first seek review by the commission.

30

## “CONFORMING AMENDMENTS

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2  
3     **“SECTION 31. ORS 756.534 is amended to read:**

4         “756.534. Except as provided in ORS 756.040 [(4)] (5), the hearing may be  
5 held at any place designated by the Public Utility Commission within this  
6 state, or different parts of the hearing may be held at different places in this  
7 state, as shall be designated by the commission. The hearing may be contin-  
8 ued from time to time and place to place as ordered and fixed by the com-  
9 mission.

10     **“SECTION 32. ORS 756.062 is amended to read:**

11         “756.062. (1) A substantial compliance with the requirements of the laws  
12 administered by the Public Utility Commission is sufficient to give effect to  
13 all the rules, orders, acts and regulations of the commission and they shall  
14 not be declared inoperative, illegal or void for any omission of a technical  
15 nature in respect thereto.

16         “(2) The provisions of such laws shall be liberally construed in a manner  
17 consistent with the directives of ORS 756.040 (1) **and (2)** to promote the  
18 public welfare, efficient facilities and substantial justice between customers  
19 and public and telecommunications utilities.

## “CAPTIONS

20  
21  
22  
23     **“SECTION 33. The unit captions used in this 2021 Act are provided**  
24 **only for the convenience of the reader and do not become part of the**  
25 **statutory law of this state or express any legislative intent in the**  
26 **enactment of this 2021 Act.”.**  
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