

Requested by Representative HELM

**PROPOSED AMENDMENTS TO
HOUSE BILL 3180**

1 On page 1 of the printed bill, line 2, after “469A.005,” delete the rest of
2 the line and insert “469A.052,”.

3 In line 3, delete “469A.147,”.

4 In line 4, delete “757.612,”.

5 Delete lines 6 through 32 and delete pages 2 through 35 and insert:
6

7 **“RENEWABLE PORTFOLIO STANDARDS**
8 **“(Acceleration for large utilities;**
9 **“legacy carbon-free electricity treatment)**

10

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

12 **“469A.005. As used in ORS 469A.005 to 469A.210:**

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

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

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

21 **“(A) Gives consideration for the service territory rights and the cost of**

1 the facility, plant or equipment acquired and for depreciation, fair market
2 value, reproduction cost and any other relevant factor; and

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

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

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

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

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

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

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

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

29 “(6) ‘Consumer-owned utility’ means a municipal electric utility, a
30 people’s utility district organized under ORS chapter 261 that sells electricity

1 or an electric cooperative organized under ORS chapter 62.

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

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

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

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

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

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

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

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

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

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

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

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

29 **“[(11)] (12) ‘Qualifying electricity’ means electricity described in ORS**
30 **469A.010.**

1 “[~~(12)~~] (13) ‘Renewable energy source’ means a source of electricity de-
2 scribed in ORS 469A.025 (2)(g) or (7).

3 “[~~(13)~~] (14) ‘Retail electricity consumer’ means a retail electricity con-
4 sumer, as defined in ORS 757.600, that is located in Oregon.

5 “[~~(14)~~] (15) ‘Unbundled renewable energy certificate’ means a renewable
6 energy certificate for qualifying electricity that is acquired by an electric
7 utility or electricity service supplier by trade, purchase or other transfer
8 without acquiring the electricity that is associated with the renewable en-
9 ergy certificate.

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

11 “469A.052. (1) The large utility renewable portfolio standard imposes the
12 following requirements on an electric utility that makes sales of electricity
13 to retail electricity consumers in an amount that equals three percent or
14 more of all electricity sold to retail electricity consumers:

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

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

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

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

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

30 “[~~(f)~~ *At least 35 percent of the electricity sold by an electric company to*

1 *retail electricity consumers in each of the calendar years 2030, 2031, 2032, 2033*
2 *and 2034 must be qualifying electricity;]*

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

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

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

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

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

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

1 three-year period during which the electric utility makes sales of electricity
2 to retail electricity consumers in amounts that average three percent or more
3 of all electricity sold to retail electricity consumers.

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

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

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

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

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

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

27 “469A.060. (1) Electric utilities are not required to comply with the
28 renewable portfolio standards described in ORS 469A.052 and 469A.055 to the
29 extent that:

30 “(a) Compliance with the standard would require the electric utility to

1 acquire electricity in excess of the electric utility's projected load require-
2 ments in any calendar year; and

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

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

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

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

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

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

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

11 “(A) The stored electricity is:

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

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

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

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

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

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

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

28 “[3] (5) A consumer-owned utility is not required to comply with a
29 renewable portfolio standard to the extent that compliance would require the
30 consumer-owned utility to reduce the consumer-owned utility’s purchases of

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

8

9

“(Generally)”

10

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

12 “469A.100. (1) Electric utilities are not required to comply with a
13 renewable portfolio standard during a compliance year to the extent that the
14 incremental cost of compliance, the cost of unbundled renewable energy
15 certificates and the cost of alternative compliance payments under ORS
16 469A.180 exceeds four percent of the electric utility's annual revenue re-
17 quirement for the compliance year.

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

23 “(3) The annual revenue requirement for an electric utility shall be cal-
24 culated based only on the operations of the electric utility relating to elec-
25 tricity. The annual revenue requirement does not include any amount
26 expended by the electric utility for energy efficiency programs for customers
27 of the electric utility or for low income energy assistance, the incremental
28 cost of compliance with a renewable portfolio standard, the cost of unbun-
29 dled renewable energy certificates or the cost of alternative compliance
30 payments under ORS 469A.180. The annual revenue requirement does include:

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

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

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

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

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

19 “(c) Transmission and substation costs;

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

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

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

28 “(5) For the purposes of this section, the governing body of a consumer-
29 owned utility may include in the incremental cost of compliance with a
30 renewable portfolio standard all expenses associated with research, develop-

1 ment and demonstration projects related to the generation of qualifying
2 electricity by the consumer-owned utility.

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

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

16 “469A.120. (1) Except as provided in ORS 469A.180 (5) **and 469A.200**, all
17 prudently incurred costs associated with complying with ORS 469A.005 to
18 469A.210 are recoverable in the rates of an electric company, including
19 interconnection costs, **power purchase costs, energy storage costs**, costs
20 associated with using physical or financial assets to integrate, firm or shape
21 renewable energy sources on a firm annual basis to meet retail electricity
22 needs, above-market costs and other costs associated with transmission and
23 delivery of qualifying electricity to retail electricity consumers.

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

30 “(b) Notwithstanding any other provision of law, upon the request of any

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

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

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

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

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

2 “469A.170. (1) Each electric utility and electricity service supplier that is
3 subject to a renewable portfolio standard shall make an annual compliance
4 report for the purpose of detailing compliance, or failure to comply, with the
5 renewable portfolio standard applicable in the compliance year. An electric
6 company or electricity service supplier shall make the report to the Public
7 Utility Commission. A consumer-owned utility shall make the report to the
8 members or customers of the utility.

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

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

18 “(A) Bundled renewable energy certificates;

19 “(B) Unbundled renewable energy certificates;

20 “(C) Banked renewable energy certificates; and

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

22 “(b) The timing of electricity purchases.

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

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

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

30 “(f) Good faith forecasting differences associated with the projected

1 number of retail electricity consumers served and the availability of elec-
2 tricity from renewable energy sources.

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

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

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

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

10 “469A.200. (1) If an electric company or electricity service supplier that
11 is subject to a renewable portfolio standard under ORS 469A.005 to 469A.210
12 fails to comply with the standard in the manner provided by ORS 469A.005
13 to 469A.210, the Public Utility Commission [*may*] **shall** impose a penalty
14 against the company or supplier in an amount determined by the commission
15 **to be sufficient to deter noncompliance.**

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

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

24

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

26

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

29 **“SECTION 9.** (1) As used in this section, ‘renewable energy certif-
30 **icates’ means bundled renewable energy certificates and unbundled**

1 **renewable energy certificates.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **“(E) Reduced reliance on long-distance transmission;**

1 “(F) Investment in communities and households in this state that
2 are least able to afford technologies that improve the reliability of
3 electricity service; or

4 “(G) Other local resiliency augmenting benefits for retail electricity
5 consumers as may be identified by rule by the State Department of
6 Energy, in consultation with the Public Utility Commission;

7 “(b) Contributes to a reduction in or avoidance of emissions of any
8 air contaminant or water contaminant in this state other than a
9 greenhouse gas; or

10 “(c) Contributes to an improvement in the health of natural and
11 working lands in this state.

12 “(5) There is a rebuttable presumption that an electricity generat-
13 ing or storage facility provides direct energy resiliency or environ-
14 mental benefits in this state for purposes of this section if the facility:

15 “(a) Is directly interconnected in this state to the electrical grid of
16 an electric utility serving retail electricity consumers;

17 “(b) Is directly interconnected to the Bonneville Power Adminis-
18 tration contiguous transmission grid serving this state;

19 “(c) Is used to comply with the requirements of ORS 469A.210;

20 “(d) Is a community solar project from which electricity is procured
21 pursuant to the program adopted under ORS 757.386;

22 “(e) Is a solar energy resource connected behind the meter of a re-
23 tail electricity consumer that includes battery storage capable of pro-
24 viding temporary electric power in the event of a power outage; or

25 “(f) Relies on transmission facilities to transmit electricity for no
26 more than 50 miles to reach the contiguous border of this state from
27 an adjoining state in order to serve retail electricity consumers.

28 “SECTION 10. (1) The Public Utility Commission may not cause to
29 delay, due to the pendency of any rulemaking or other proceeding
30 necessary to implement one or more provisions of section 9 of this 2021

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

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

10

11 “COMMUNITY-BASED RENEWABLE ENERGY

12

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

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

16 “469A.210. (1) As used in this section:

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

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

21 “[~~(1)~~] (2) The Legislative Assembly finds that community-based renewable
22 energy projects, including but not limited to marine renewable energy re-
23 sources that are either developed in accordance with the Territorial Sea Plan
24 adopted pursuant to ORS 196.471 or located on structures adjacent to the
25 coastal shorelands, are an essential element of this state’s energy future.

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

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

7 **“(A) By 2030, five percent; and**

8 **“(B) by 2035, 10 percent.**

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

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

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

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

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

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

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

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

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

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

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

13 **“[(3)] (5) Regardless of the facility’s nameplate capacity, any single facil-**
14 **ity described in subsection [(2)(b)] (3)(b)(B) of this section may be used to**
15 **comply with the requirement specified in subsection [(2)] (3) of this section**
16 **for up to 20 megawatts of capacity.**

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

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

29
30 **“INTEGRATED CLEAN ENERGY IMPLEMENTATION PLANNING**

1 **“SECTION 14. ORS 469A.075 is repealed.**

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

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

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

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

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

9 **“(b) ‘Electric company’ has the meaning given that term in ORS**
10 **757.600.**

11 **“(c) ‘Qualifying electricity’ has the meaning given that term in ORS**
12 **469A.005.**

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

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

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

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

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

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

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

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

29 **“(b) Annual targets for the development, acquisition and use of**
30 **transmission and grid interconnection capacity necessary to comply**

1 with the clean energy standards applicable to the electric company,
2 which must consider approaches for meeting the clean energy stan-
3 dards that reduce new or major transmission line construction and
4 must consider:

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

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

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

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

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

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

26 “(e) An assessment and 10-year forecast of the availability, includ-
27 ing the likely and achievable rates of development of, the regional
28 generation and transmission capacity that the electric company in-
29 tends to rely on to provide and deliver electricity to its retail elec-
30 tricity consumers, which must include:

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

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

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

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

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

25 “(g) A forecast of distributed energy resources, including those re-
26 lated to transportation electrification, that may be installed by the
27 electric company or the electric company’s retail electricity consum-
28 ers, and an assessment of the effects of those distributed energy re-
29 sources on the electric company’s load, operations and compliance
30 obligations under the clean energy standards applicable to the electric

1 **company.**

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

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

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

17 **“(A) Transmission needs;**

18 **“(B) Timely generation and storage interconnection by third party**
19 **facility developers;**

20 **“(C) Regional transmission planning and policy development; and**

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

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

26 **“(A) Mitigating energy costs for low-income and historically disad-**
27 **vantaged retail electricity consumers; and**

28 **“(B) High-impact opportunities to mitigate utility peak capacity**
29 **needs, exposures to reliability risks, and other costs and timeline risks**
30 **associated with complying with the clean energy standards applicable**

1 to the electric company.

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

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

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

14 “(A) Establishing requirements for the content of implementation
15 plans;

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

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

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

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

28 “(A) Be conducted as part of the integrated resource planning de-
29 scribed in paragraph (a)(C) of this subsection; and

30 “(B) Be used in setting avoided-cost rates pursuant to ORS 758.525

1 and other ratemaking activities relative to utility load service and re-
2 liability assurance planning.

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

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

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

22

23 “CLEAN ENERGY STORAGE

24

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

27 “SECTION 20. (1) As used in this section, ‘energy storage system’
28 means a technology that is capable of retaining energy, storing the
29 energy for a period of time and delivering the energy after storage.

30 “(2) The Public Utility Commission may not prohibit, or treat as a

1 **retail purchase or sale, the wholesale purchase of electricity for**
2 **wholesale resale by an energy storage system.**

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

6

7

“UTILITY REGULATION GENERALLY

8

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

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

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

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

28 **“(2) In addition to the duties and powers described in subsection (1)**
29 **of this section, the commission shall serve the public interest by:**

30 **“(a) When deciding or deliberating toward a decision, protecting the**

1 **customers of any public utility or telecommunications utility, and the**
2 **public generally, with respect to:**

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

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

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

13 **“(c) Allowing and fostering broad participation in the regulatory**
14 **process; and**

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

19 “[2] (3) The commission is vested with power and jurisdiction to super-
20 vise and regulate every public utility and telecommunications utility in this
21 state, and to do all things necessary and convenient in the exercise of such
22 power and jurisdiction.

23 “[3] (4) The commission may participate in any proceeding before any
24 public officer, commission or body of the United States or any state for the
25 purpose of representing the public generally and the customers of the ser-
26 vices of any public utility or telecommunications utility operating or pro-
27 viding service to or within this state.

28 “[4] (5) The commission may make joint investigations, hold joint
29 hearings within or without this state and issue concurrent orders in con-
30 junction or concurrence with any official, board, commission or agency of

1 any state or of the United States.

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

3 “756.060. (1) The Public Utility Commission may adopt and amend rea-
4 sonable and proper rules and regulations relative to all statutes administered
5 by the commission and may adopt and publish reasonable and proper rules
6 to govern proceedings and to regulate the mode and manner of all investi-
7 gations and hearings of public utilities and telecommunications utilities and
8 other parties before the commission.

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

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

14 “756.185. (1)(a) Any public utility which does, or causes or permits to be
15 done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 **or**
16 **regulations adopted pursuant to ORS chapter 756, 757 or 758,** or omits
17 to do any act, matter or thing required to be done by such statutes **or reg-**
18 **ulations,** is liable to the person injured thereby in the amount of damages
19 sustained in consequence of such violation.

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

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

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

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

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

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

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

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

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

18 **“[(4)] (5) This section does not apply with respect to the liability of any**
19 **public utility for personal injury or property damage.**

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

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

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

25 **“(b) ‘Electric company’ has the meaning given that term in ORS**
26 **757.600.**

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

29 **“(a) To facilitate investments in generation, storage, transmission**
30 **and distribution facilities and other transmission system and grid up-**

1 grades necessary to ensure compliance with, and mitigate the risks
2 of compliance with, clean energy standards; and

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

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

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

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

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

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

29 “(B) Pay a performance incentive on specific power purchase
30 agreements applicable to compliance with the clean energy standards

1 applicable to the electric company if the power purchase agreements:

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

4 “(ii) Result in an exceedance of the requirements of section 9 of this
5 2021 Act.

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

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

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

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

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

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

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

29 “(D) One percent for a new facility that will be constructed using
30 labor that is cumulatively paid, on average, no less than the prevailing

1 rate of wage for an hour's work in the same trade or occupation in the
2 locality where the labor is performed;

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

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

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

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

16 “(A) Provided for in contracts;

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

20 “(C) Fulfilled by the in-service date of the facility subject to the
21 contracts.

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

29

30 “COGENERATION AND SMALL POWER PRODUCTION FACILITIES

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

2 “758.515. The Legislative Assembly finds and declares that:

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

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

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

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

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

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

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

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

19 “758.525. (1) At least once every two years each electric utility shall pre-
20 pare, publish and file with the Public Utility Commission a schedule of
21 avoided costs equaling the utility’s forecasted incremental cost of electric
22 resources over at least the next [20] **35** years. Prices contained in the
23 schedules filed by public utilities shall be reviewed and approved by the
24 commission.

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

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

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

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

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

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

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

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

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

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

25 “[(3)] (4) Nothing contained in ORS 543.610, 757.005 and 758.505 to 758.555
26 shall be construed to require an electric utility to pay full avoided-cost
27 prices for a purchase from a qualifying facility on which construction began
28 before November 8, 1978, but the price for a purchase from such a facility
29 shall be sufficient to encourage production of energy or energy and capacity.

30 “[(4)] (5) The rates of an electric utility for the sale of electricity shall

1 not discriminate against qualifying facilities.

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

3 “758.535. (1) The Public Utility Commission shall establish minimum cri-
4 teria that a cogeneration facility or small power production facility must
5 meet to qualify as a qualifying facility under ORS 543.610, 757.005 and
6 758.505 to 758.555.

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

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

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

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

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

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

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

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

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

29 **“(a) Facilitate and encourage the investment in and the financing**
30 **and construction of qualifying facilities;**

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

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

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

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

12 **“(A) Must provide fixed pricing availability for a term of up to 25**
13 **years;**

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

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

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

28 **“(E) May not require provision of financial security by the devel-**
29 **oper of the proposed qualifying facility, unless:**

30 **“(i) The proposed qualifying facility has a design capacity of greater**

1 **than 40 megawatts alternating current;**

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

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

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

14 **“(B) Any financial security required under paragraph (b)(E) of this**
15 **subsection:**

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

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

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

28 **“(7) A public utility shall act in good faith and with fair dealing in**
29 **providing, executing and carrying out agreements for the purchase of**
30 **energy or energy and capacity from a qualifying facility and regarding**

1 all related interconnection studies and processes. A public utility may
2 not:

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

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

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

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

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

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

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

28

29 “CONFORMING AMENDMENTS

30

1 **SECTION 31.** ORS 756.534 is amended to read:

2 “756.534. Except as provided in ORS 756.040 [(4)] (5), the hearing may be
3 held at any place designated by the Public Utility Commission within this
4 state, or different parts of the hearing may be held at different places in this
5 state, as shall be designated by the commission. The hearing may be contin-
6 ued from time to time and place to place as ordered and fixed by the com-
7 mission.

8 **SECTION 32.** ORS 756.062 is amended to read:

9 “756.062. (1) A substantial compliance with the requirements of the laws
10 administered by the Public Utility Commission is sufficient to give effect to
11 all the rules, orders, acts and regulations of the commission and they shall
12 not be declared inoperative, illegal or void for any omission of a technical
13 nature in respect thereto.

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

18

19

“CAPTIONS

20

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

25
