Chapter 757

1969 REPLACEMENT PART

Utility Regulation Generally

DEFINITIONS; GENERAL PROVISIONS

757.005 "Public utilities" defined
757.010 "Commissioner," "council," "municipality" and "service" defined
757.015 "Affiliated interest" defined
757.020 Duty of utilities to furnish adequate and safe service at reasonable rates
757.025 Substantial compliance with chapter sufficient to give effect to commissioner's orders; construction of chapter generally
757.030 Effect of chapter on other rights of actions and on common law duties and liabilities; cumulative nature of penalties
757.035 Adoption of safety regulations and enforcement of obedience thereto
757.040 Commissioner's power to enforce joint use of facilities
757.045 Reserve for excess profits; use
757.050 Authority of commissioner to order extension of service to unserved areas
757.055 Valuation of utility property by commissioner
757.065 Foreign express companies to deposit securities or invest in Oregon real estate before doing business in this state
757.070 Withdrawal of deposit or sale of real estate on cessation of business
757.075 Streetcars must have adequate aprons, fenders and guards
757.080 Definitions for ORS 757.085 and 757.090
757.085 Common carrier not to abandon agencies or withdraw agent without approval of commissioner
757.090 Petitioning commissioner for authority to abandon agency or withdraw agent
757.095 Regulation of gas distribution and storage operations; cooperation with federal agencies

BUDGET, ACCOUNTS, REPORTS AND TRANSACTIONS OF UTILITIES

757.105 Filing of budget and commissioner's action on it; pensions as operating expenses
757.107 Supplemental budgets and orders
757.110 Effect of commissioner's budget orders
757.115 Utility's duty to furnish information and deliver papers to commissioner
757.120 Accounts required
757.125 Duty of utility to keep books, records and accounts; commissioner's duty to furnish blanks
757.130 Maintaining office and records in state
757.135 Closing accounts and filing balance sheet; auditing accounts
757.140 Depreciation accounts and fund
757.145 New construction accounts
757.150 Submission of operative data
757.155 Commissioner's approval needed prior to disposal or encumbrance of operative utility property or consolidation with another public utility
757.160 Purchase of property or stocks of one utility by another
757.165 Commissioner's approval needed for certain contracts
757.170 Contracts involving utilities and persons with affiliated interests
757.175 Contracts between certain public utilities
757.180 Failure of utility officer or employe to furnish requested information

RATE SCHEDULES; MEASURING EQUIPMENT

757.205 Filing schedules with commissioner; data filed with schedules
757.210 Hearing to establish new schedules
757.215 Suspension of rates during hearings; order after hearing
757.220 Notice of schedule changes required
757.225 Utilities required to collect for their services in accordance with schedules
757.230 Control of commissioner over classification of services and forms of schedules
757.235 Emergency rate adjustments
757.240 Filing schedules in places where utility consumers make payments
757.245 Establishment of joint rates
757.250 Standards and appliances for measuring products and service
757.255 Testing of measuring appliances
757.260 Right of entry for inspection and tests
757.265 Interest payments due consumers who have paid a sum for use of meters

ILLEGAL PRACTICES

757.305 Special privileges to political patrons
757.310 Unjust discrimination in charges for service
757.315 Transactions not constituting unjust discrimination
757.320 Reducing rates for persons furnishing part of necessary facilities
757.325 Undue preferences and prejudices
757.330 Soliciting or accepting special privileges from utilities
757.335 Right of patron to recover treble damages for wrongs and omissions
757.340 Interference with commissioner's equipment
757.345 Restrictions on utility activities of foreign corporations
757.350 Transfer of stock between utilities

ISSUANCE OF SECURITIES

757.400 Definition of "stocks"
757.405 Commissioner's power to regulate issuance of utility securities
757.410 When issuance of securities is void
757.415 Purposes for which securities and notes may be issued; order required
757.420 Hearings and supplemental orders relating to issuance of securities; joint approval of issuance by interstate utility
757.425 State not obligated following approval of issuance

757.430 Conditional approval of issuance authorized
757.435 Disposal of proceeds from issuance of securities
757.440 Commissioner's approval required before utility may guarantee another's indebtedness
757.445 Wrongful issues or use of proceeds by utility
757.450 Wrongful acts relating to issuance of securities

COMPLAINTS, HEARINGS AND ORDERS

757.505 For what reason and by whom complaints may be made
757.510 Notice of hearing; place where held
757.515 Investigations and hearings on commissioner's own motion
757.520 Separate hearings authorized
757.525 Keeping, filing and evidentiary effect of record of hearing
757.530 Orders issuable by commissioner
757.535 Delivery, effective date and evidentiary effect of orders and copies thereof
757.540 Rescission and amendment of orders
757.545 Operation and effect of orders
757.550 Appointment of examiners to conduct hearings and investigations
757.555 Powers of commissioner or examiner at hearings; duty to obey subpenas or orders of commissioner
757.560 Depositions permitted in investigations
757.565 Suits to set aside orders and findings of commissioner
757.570 Suspending order during suit to set aside order
757.575 Procedure when new evidence is introduced in a suit to set aside order
757.580 Appeals to Supreme Court; stay of order pending appeal
757.585 Burden of proof and other rules of procedure
757.590 Self-incrimination of witnesses
757.595 Fees of witnesses appearing before commissioner

ALLOCATION OF TERRITORIES AND CUSTOMERS

757.605 Definitions for ORS 757.605 to 757.690 and 757.015
757.610 Purpose of ORS 757.605 to 757.690
757.615 Contracts for allocation of territories and customers between suppliers of utility service and for transfer of facilities
757.620 Contract enforceable if approved by commissioner; conditions for approval
757.625 Hearing on contract approval; notice
757.630 Order of commissioner on contract; suit to vacate order
757.635 Amendment of contract; approval of commissioner
757.640 Application, by person providing exclusive utility service, for allocation of territory; hearing; notice
757.645 Order of commissioner on application
757.650 Suit to vacate order on application
757.652 Contract required for allocation of territory; allocated territory exclusive; activity prohibited during pendency of application
757.655 Investigation by commissioner respecting contracts or applications; hearing procedure
757.670 Assignment or transfer of rights acquired by allocation; approval of commissioner
757.675 Enforcement procedure
757.680 Application to cities, municipalities and cooperatives of ORS 757.605 to 757.690 and 758.015
757.685 Fees

PENALTIES

757.990 Penalties
757.991 Civil penalty for noncompliance with gas regulations

CROSS REFERENCES

Assessment of utility's property by Revenue Department, 308.505 to 308.655
Conditions affecting health of employes of common carriers, inspections, 654.105
Corporate excise tax, 317.070
Discrimination by creed, color or national origin prohibited, 30.670
Mass transit system, exemption from public utility regulation, 267.230
Municipal control over private utilities, 221.420, 221.450, 221.470, 221.916
Municipal utilities, Ch. 225
Overhead transmission, certificate of public convenience and necessity, 758.015
People's utility districts, Ch. 261
Political contributions, 260.280
Removal of structures from public property upon expiration of franchise, 221.470
Rural telephone exchanges, optional gross earnings tax, 308.705 to 308.730
Thermal power facilities:
Cities, 225.450 to 225.490
People's utility districts, 261.235 to 261.255
Transportation facilities operated by metropolitan service district exempted from public utility regulation, 268.040
Unclaimed deposits and refunds held by utilities, 98.316, 98.302 to 98.436

757.005

Irrigation district as public utility, 545.102

757.035

Electrical Safety Law, 479.510 to 479.850
Enforcement of safety regulations of commissioner by Workmen's Compensation Board, 654.155

757.050

Irrigation districts furnishing water outside district, 545.102
Municipal utilities furnishing service outside city, 225.030

757.105

Fees to be paid to commissioner by utilities, 756.310 to 756.350

757.135

Secretary or managing agent needed at principal office, 308.650

757.345

Action against person unlawfully exercising franchise, 30.510 to 30.560
Foreign corporation's utility powers, 57.815

757.505

Complaints and hearings before commissioner, 756.505 to 756.610
Interstate rates, procedure when commissioner believes they are excessive or discriminatory, 760.505

DEFINITIONS; GENERAL PROVISIONS

757.005 "Public utilities" defined. (1) As used in this chapter, except as provided in subsection (2) of this section, the term "public utilities" means:

(a) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the conveyance of telegraph or telephone messages, with or without wires, for the transportation of persons or property by street railroads or other street transportation as common carriers, or for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

(b) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with said public utility.

(2) As used in this chapter, the term "public utilities" does not include:

(a) Any plant owned or operated by a municipality.

(b) Any railroad, as defined in ORS 760.005 and 760.010, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same.

(c) Any water system owned by a corporation organized under the Oregon Nonprofit Corporation Law, whose articles of incorporation provide that after the indebtedness of the corporation has been paid the corporation is to tender by gift to a city in the State of Oregon all right, title and interest in and to the water system and any transaction by which a water system is sold to and purchased by such a corporation shall not be subject to this chapter including ORS 757.155.

(d) Any telephone or telegraph corporation not providing intrastate telephone or telegraph service to the public in this state, whether or not such corporation has an office in this state or has an affiliated interest with a public utility as defined in this chapter.

(3) This section does not apply to street transportation in cities of less than 50,000 population.

[Amended by 1953 c.583 §2; 1967 c.241 §1; 1967 c.314 §1]

757.010 "Commissioner," "council," "municipality" and "service" defined. As used in this chapter the term:

(1) "Commissioner" means the Public Utility Commissioner of Oregon.

(2) "Council" means the common council, city council, commission, or any other governing body of any municipality wherein the property of the public utility is located.

(3) "Municipality" means any town, city or other municipal government wherein property of the public utility is located.

(4) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities.

757.015 "Affiliated interest" defined. As used in this chapter, "affiliated interest" with a public utility means:

(1) Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of such public utility.

(2) Every corporation and person in any chain of successive ownership of five percent or more of voting securities of such public utility.

(3) Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public utility or by any person or corporation in any chain of successive ownership of five percent or more of voting securities of such public utility.

(4) Every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of such public utility.

(5) Every corporation which has two or more officers or two or more directors in common with such public utility.

(6) Every corporation or person which the commissioner determines as a matter of fact after investigation and hearing actually is exercising any substantial influence over the policies and actions of such public utility, even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section.

(7) Every person or corporation who or which the commissioner determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated.

757.020 Duty of utilities to furnish adequate and safe service at reasonable rates. Every public utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any heat, light, water or power produced, transmitted, delivered or furnished, or for any telegraph or telephone message conveyed, or for any transportation of persons or property by street railroad, or for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited.

757.025 Substantial compliance with chapter sufficient to give effect to commissioner's orders; construction of chapter generally. (1) A substantial compliance with the requirements of this chapter is sufficient to give effect to all the rules, orders, acts and regulations of the commissioner and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

(2) The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.

757.030 Effect of chapter on other rights of actions and on common law duties and liabilities; cumulative nature of penalties. (1) This chapter does not release or waive any right of action by the state, any municipality thereof or any person for any right, penalty or forfeiture arising under any law of this state or under any law or ordinance of any municipality thereof.

(2) All penalties and forfeiture accruing under this chapter are cumulative and a suit for, and recovery of one, shall not be a bar to the recovery of any other penalty.

(3) The duties and liabilities of public utilities shall be the same as at common law and the remedies against them the same, except where otherwise provided by the Constitution or statutes of this state, and the provisions of this chapter are cumulative thereto.

757.035 Adoption of safety regulations and enforcement of obedience thereto. (1) The commissioner has power, after a hearing had upon his own motion or upon complaint, to require by general or special orders embodying reasonable rules or regulations, every person or municipality, their agents, lessees or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership or control of telegraph, telephone, signal, trolley or power lines within this state, upon the public streets or highways, and also upon all other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every line, plant, system, equipment or apparatus in such manner as to protect and safeguard the health and safety of all employes, passengers, patrons and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commissioner necessary or proper for the protection of the health or safety of all employes, passengers, patrons or the public.

(2) When acting pursuant to subsection (1) of this section, the commissioner shall adopt by rule as the standard of such construction, operation and maintenance the edition of the National Electrical Safety Code approved by the American Standards Association current as of January 1, 1969.
[Amended by 1969 c.530 §1]

757.040 Commissioner's power to enforce joint use of facilities. (1) Every public utility, person, association or corporation having conduits, subways, street railway tracks, poles or other equipment on, over or under any street or highway shall for a reasonable compensation permit the use of the same by any public utility whenever public convenience or necessity requires such use and such use will not result in irreparable injury to the owner or other users

of such equipment nor in any substantial detriment to the service to be rendered by such owners or other users.

(2) In case of failure to agree upon such use or the conditions or compensation for such use, any public utility, person, association or corporation interested may apply to the commissioner, and if after investigation the commissioner ascertains that public convenience or necessity requires such use and that it would not result in irreparable injury to the owner or other users of such equipment, he shall by order direct that such use be permitted and prescribe reasonable conditions and compensation for such joint use.

(3) The use so ordered shall be permitted and the prescribed conditions and compensation shall be the lawful conditions and compensation to be observed, followed and paid, subject to recourse to the courts upon the complaint of any interested party as provided in ORS 757.565 to 757.585, and such statutes so far as applicable shall apply to any suit arising on a complaint so made. Any such order of the commissioner may be from time to time revised by the commissioner upon application of any interested party or upon his own motion. All public utilities shall afford all reasonable facilities and make all necessary regulations for the interchange of business, or traffic carried or their product between them, when ordered by the commissioner so to do.

757.045 Reserve for excess profits; use. If any public utility receives for any year a net utility operating income in excess of a reasonable rate of return upon the value of the utility property actually used and useful for the convenience of the public, the commissioner may order such excess to be placed in a reserve. The use of any of such reserve shall, in the discretion of the commissioner, be applied from time to time for the benefit of the customers in reduction of net investment, in expansion or modernization of service facilities, in establishing and maintaining amortization or contingent funds, or for any other beneficial purpose under the direct supervision and by order of the commissioner.

[Amended by 1967 c.394 §1]

757.050 Authority of commissioner to order extension of service to unserved areas. The commissioner has power to require any public utility, after a public hearing of all parties interested, to extend its line, plant or system into, and to render service to, a locality not already served when the existing public convenience and necessity requires such extension and service. However, no such extension of service shall be required until the public utility has been granted such reasonable franchises over streets within municipalities or county roads as may be necessary for the extension or service, and unless the conditions are such as to reasonably justify the necessary investment by the company in extending its line, plant or system into such locality and furnishing such service.

757.055 Valuation of utility property by commissioner. (1) The commissioner shall value all the property of every public utility actually used and useful for the convenience of the public. In making such valuation the commissioner may avail himself of any information in possession of any state officer or board.

(2) Before any final determination of such value, the commissioner shall, after notice to the public utility, hold a public hearing as to such valuation in accordance with ORS 757.515. Upon final determination, the commissioner shall enter his findings and issue an order fixing such value. Within five days thereafter he shall:

(a) Serve a copy of such order upon the public utility interested;

(b) File a copy of the order with the auditor, recorder or clerk of every municipality in which any part of the plant or equipment of such public utility is located; and

(c) Mail a copy of the order to each party appearing of record in such hearing by intervention or otherwise.

(3) The commissioner may at any time on his own initiative make a revaluation of such property, and may make such revaluation upon the application of the public utility interested, filed not less than six months after the entry of any order fixing valuation. Upon any such revaluation the procedure shall be the same as provided in this section for valuation.

757.060 [Amended by 1955 c.145 §1; repealed by 1961 c.691 §20]

757.065 Foreign express companies to deposit securities or invest in Oregon real estate before doing business in this state. (1) Except as provided in subsection (5) of this section, every foreign corporation or

company before engaging in the express business shall deposit with the State Treasurer the sum of $5,000 in:

(a) Interest-bearing bonds of the United States;

(b) The bonds of the State of Oregon;

(c) Any municipal, school district, irrigation district, port or county bonds issued by authority of law in this state, the market value of which is at or above par;

(d) Bonds or notes secured by a first mortgage upon unencumbered real estate within this state of the value of double the amount loaned thereon; or

(e) Money of the United States.

(2) The deposit shall be safely kept for the benefit and security of persons transacting business with such corporation, and shall be held and considered specially pledged for such security for claims and demands arising out of such business.

(3) Any corporation may change the character of its deposit at any time by depositing other securities of the kinds and description in this section authorized to be deposited.

(4) All interest accruing from the United States or otherwise on such securities shall be paid, as it accrues, to the corporation or association to whom the securities belong, and the State of Oregon shall be held responsible for the safety of all deposits made under this section.

(5) In lieu of the deposit required in subsection (1) of this section, any such foreign corporation or company may make an investment in real estate within this state of the value of not less than $10,000, if such investment is approved by the State Treasurer. The title to such real estate shall remain in the express company and be unimpaired during all the times that the company is taking advantage of this section. The corporation shall pay taxes upon such real estate in the county where it is situated, in the same manner and to the same extent as an individual, and the real estate is liable therefor. Real estate held by any corporation or association pursuant to this subsection may be sold at any time if the corporation or association substitutes other real estate of the value prescribed in this subsection.

757.070 Withdrawal of deposit or sale of real estate on cessation of business. When any corporation or association having made a deposit or investment in real estate under ORS 757.065 desires to cease business in this state and withdraw its capital, it may do so by first giving six months' public notice of such intention by continuous publication in three weekly newspapers published in and of general circulation in the state, and if no claims are filed against such corporation or association within the six months, the deposits may be withdrawn and the real property may be sold.

757.075 Streetcars must have adequate aprons, fenders and guards. (1) Every streetcar run, operated or used on any streetcar line in this state shall be provided with good and substantial aprons, fenders or guards which shall be constructed so as to be firmly attached to the front end of each car and extend out in front of the front platform or front end of such car, not less than two feet, and so arranged that the forward end of such apron, fender or guard shall be not more than three inches above the rails. Such apron, fender or guard shall be built or constructed so that the motorman, or other person in charge of such car can drop the front end of such apron, fender or guard on to the track, so as to prevent any person from being thrown down and run over by or caught beneath or under such car.

(2) Whenever, in the judgment of the mayor and the members of the common council of any city it is deemed for the best interest of the residents and inhabitants of any such city to substitute in lieu of the apron, fender or guard provided in subsection (1) of this section another approved design of apron, fender or guard, the mayor and city council may make the substitution if the reasons for doing so are entered upon the records of the city.

757.080 Definitions for ORS 757.085 and 757.090. As used in ORS 757.085 and 757.090, the following terms have the following meanings:

(1) "Agency" means any place provided by a common carrier for the accommodation of the public in the receipt, delivery, billing or routing of freight, or in the loading or discharge of passengers, at which an agent is provided to serve the public.

(2) "Agent" means the person in charge of the transaction of business with the public at any station or agency.

(3) "Common carrier" means any railroad as defined in ORS 760.005 and 760.010,

and any common carrier by motor vehicle as defined in ORS 767.005 and 767.010.
[1953 c.356 §1; 1961 c.354 §1]

757.085 Common carrier not to abandon agencies or withdraw agent without approval of commissioner. No common carrier shall abandon any of its agencies, or withdraw the agent therefrom, without the prior written authority of the Public Utility Commissioner. If the primary business of the agent or agency is not that of a common carrier, the loss of the use of such agent or agency without the fault of the carrier shall not be considered a violation of this section; provided that the carrier shall give to the commissioner notice of such loss immediately upon being informed thereof and secure another agent or agency within a reasonable period of time.
[1953 c.356 §2; 1961 c.354 §2]

757.090 Petitioning commissioner for authority to abandon agency or withdraw agent. Any common carrier may petition the Public Utility Commissioner for authority to abandon any agency or to withdraw the agent therefrom. Thereupon the Public Utility Commissioner shall fix a time and place for a hearing on such petition. Such hearing shall be held within 60 days from the filing of such petition and shall be held at some convenient place in the county in which such agency is located. Where a common carrier seeks to move the location of its agent or agency from one point within a city to another point within such city the commissioner may approve such move without a hearing.
[1953 c.356 §3; 1961 c.354 §3]

757.095 Regulation of gas distribution and storage operations; cooperation with federal agencies. (1) The commissioner has power, after a hearing had upon his own motion or upon complaint, to require by general or special orders embodying reasonable rules or regulations, every person or municipality, their agents, lessees or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership or control of facilities for the transmission or distribution of gas by pipeline, or facilities for the storage or treatment of gas to be transmitted or distributed by pipeline, upon the public streets or highways, and also upon all other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every pipeline, plant, system, equipment or apparatus in such manner as to protect and safeguard the health and safety of all employes, patrons and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commissioner necessary or proper for the protection of the health or safety of all employes, patrons or the public.

(2) The commissioner is authorized to cooperate with, make certifications to, and to enter into agreements with the Secretary of Transportation of the United States of America under provisions of the Natural Gas Pipeline Safety Act of 1968 and to assume responsibility for and to carry out on behalf of the Secretary of Transportation, safety jurisdiction as to pipeline facilities and transportation of gas in Oregon in any matter not otherwise subject to the jurisdiction of any other agency of this state.

(3) Notwithstanding any other provisions to the contrary, the commissioner shall make public such reports as are required to be made public under the Natural Gas Pipeline Safety Act of 1968 and the regulations thereunder and provide such information as is required thereunder to the Secretary of Transportation.
[1969 c.372 §2]

BUDGET, ACCOUNTS, REPORTS AND TRANSACTIONS OF UTILITIES

757.105 Filing of budget and commissioner's action on it; pensions as operating expenses. (1) The commissioner has the right and power of regulation, restriction and control over the budgets of expenditures of public utilities, as to all items covering:

(a) Proposed payment of salaries of executive officers;

(b) Donations;

(c) Political contributions and political advertising;

(d) Expenditures for pensions or for a trust to provide pensions for employes and officers;

(e) Other expenditures and major contracts for the sale or purchase of equipment; and

(f) Any payment or contemplated payment to any person or corporation having an affiliated interest for service, advice,

auditing, associating, sponsoring, engineering, managing, operating, financing, legal or other services.

(2) On or before November 1 of each year each public utility shall prepare a budget showing the amount of money which, in its judgment, shall be needed during the ensuing year for covering all such activities and expenditures, and file it with the commissioner.

(3) When any such budget has been filed with the commissioner he shall examine into and investigate the same to determine whether each and all of the expenditures are fair and reasonable and not contrary to public interest, and within 60 days thereafter file his finding and order approving or rejecting it or any part thereof.

(4) Proposed expenditures for pensions or for a trust to provide pensions for the employes and officers of such utility whether for future service or past service or both, shall be recognized as an operating expense if the trust fund is irrevocably committed to the payment of pensions or benefits to employes and if such pensions are reasonable and nondiscriminatory. The commissioner may disallow as an operating expense any expenditure for pension purposes in excess of the amount necessary and proper to maintain an actuarially sound retirement plan for the employes of the utility in Oregon.

[Amended by 1957 c.593 §1]

757.107 Supplemental budgets and orders. Adjustment and additions to such budget expenditures may be made from time to time during the year by filing supplementary budgets with the commissioner. The commissioner has 30 days to investigate the same and file his finding and order of approval or rejection to each item or part thereof. Such examination, investigation and determination by the commissioner shall not bar or estop him from later determining whether any or all of the expenditures made under the budget are fair, reasonable and commensurate with the service, material, supplies or equipment received.

757.110 Effect of commissioner's budget orders. (1) Any finding and order made and entered by the commissioner under ORS 757.105 or 757.107, shall have the effect of prohibiting any unapproved or rejected expenditure from being recognized as an operating expense or capital expenditure in any rate valuation proceeding or in any proceeding or hearing unless and until the propriety thereof has been established to the satisfaction of the commissioner. Any such finding and order shall remain in full force and effect, unless and until it is vacated and set aside in a suit brought and prosecuted as provided in ORS 757.565 to 757.585 or modified or set aside by the commissioner.

(2) Nothing in ORS 757.105 or 757.107 prevents the commissioner from at any time making and filing orders rejecting imprudent and unwise expenditures or payments. Such orders when so made shall be in full force and effect, and the public utility shall not have the right to make such expenditures or payments found to be imprudent or unwise until the order has been vacated or set aside in a suit brought and prosecuted as provided in ORS 757.565 to 757.585 or modified or set aside by the commissioner.

(3) The commissioner may prescribe the application and the necessary rules and regulations to place ORS 757.105 and 757.107 in operation.

757.115 Utility's duty to furnish information and deliver papers to commissioner. (1) Every public utility shall furnish to the commissioner all information required by him to carry into effect the provisions of this chapter, ORS 756.040, 756.070 and 756.080, and shall make specific answers to all questions submitted by the commission.

(2) Any public utility receiving from the commissioner any blanks with directions to fill the same, shall cause the blanks to be properly filled out so as to answer fully and correctly each question therein propounded. If a public utility is unable to answer any question, it is a good and sufficient reason for such failure. The answer shall be verified under oath by the president, secretary, superintendent or general manager of such public utility and returned to the commissioner at his office within the period fixed by the commissioner.

(3) Whenever required by the commissioner, every public utility shall deliver to him any or all maps, profiles, contracts, reports of engineers and all documents, books, accounts, papers and records or copies of any or all of the same, with a complete inventory of all its property, in such form as the commissioner may direct.

757.120 Accounts required. (1) Every public utility shall keep and render to the

commissioner, in the manner and form prescribed by him, uniform accounts of all business transacted. All forms of accounts which may be prescribed by the commissioner shall conform as nearly as practicable to similar forms prescribed by federal authority.

(2) Every public utility engaged directly or indirectly in any other business than that of the transportation of persons or property by street railroads or the production, transmission or furnishing of heat, light, water or power or the conveyance of telephone messages shall, if required by the commissioner, keep and render separately to the commissioner, in like manner and form, the accounts of all such other business, in which case all the provisions of this chapter shall apply with like force and effect to the books, accounts, papers and records of such other business.

757.125 Duty of utility to keep books, records and accounts; commissioner's duty to furnish blanks. (1) The commissioner shall prescribe the forms of all books, accounts, papers and records required to be kept, and every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commissioner and to comply with all directions of the commissioner relating to such books, accounts, papers and records.

(2) No public utility shall keep any other books, accounts, papers or records of its public utility business transacted than those prescribed or approved by the commissioner except such as may be required by the laws of the United States.

(3) The commissioner shall cause to be prepared suitable blanks for reports for carrying out the purposes of this chapter, and shall, when necessary, furnish such blanks for reports to each public utility.

757.130 Maintaining office and records in state. Each public utility shall have an office in one of the cities in this state and shall keep in such office all books, accounts, papers and records required by the commissioner to be kept within the state. No books, accounts, papers or records required by the commissioner to be kept within the state shall be at any time removed from the state, except upon such conditions as may be prescribed by the commissioner.

757.135 Closing accounts and filing balance sheet; auditing accounts. (1) The accounts shall be closed annually on December 31 and a balance sheet of that date promptly taken therefrom. On or before April 1 following, such balance sheet, together with such other information as the commissioner shall prescribe, verified by an officer of the public utility, shall be filed with the commissioner.

(2) The commissioner shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commissioner.

757.140 Depreciation accounts and fund. (1) Every public utility shall carry a proper and adequate depreciation account whenever the commissioner after investigation determines that such depreciation account can be reasonably required. The commissioner shall ascertain and determine the proper and adequate rates of depreciation of the several classes of property of each public utility. The rates shall be such as will provide the amounts required over and above the expenses of maintenance, to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to the rates so ascertained and determined by the commission. The commissioner may make changes in such rates of depreciation from time to time as he may find to be necessary.

(2) The commissioner shall prescribe rules, regulations and forms of accounts regarding such depreciation which the public utility is required to carry into effect.

(3) The commissioner shall provide for such depreciation in fixing the rates, tolls and charges to be paid by the public. All moneys thus provided for shall be set aside out of the earnings and carried in a depreciation fund. The moneys in this fund may be expended in replacements, new construction, extensions or additions to the property of such public utility, or invested. If invested, the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this section, and for depreciation.

757.145 New construction accounts. The commissioner shall keep himself informed of all new construction, extensions

and additions to the property of public utilities and shall prescribe the necessary forms, regulations and instructions to the officers and employes of public utilities for the keeping of construction accounts, which shall clearly distinguish all operating expenses and new construction.

757.150 Submission of operative data. Each public utility shall furnish to the commissioner in such form and at such times as he requires, such accounts, reports and information as shall show in itemized detail:

(1) The depreciation per unit;

(2) The salaries and wages separately per unit;

(3) Legal expenses per unit;

(4) Taxes and rentals separately per unit;

(5) The quantity and value of material used per unit;

(6) The receipts from residuals, byproducts, services or other sales separately per unit;

(7) The total and net cost per unit;

(8) The gross and net profit per unit;

(9) The dividends and interest per unit;

(10) The surplus or reserve per unit;

(11) The prices per unit paid by consumers; and

(12) Such other items as the commissioner may prescribe in order to show completely and in detail the entire operation of the public utility in furnishing the unit of its product or service to the public.

757.155 Commissioner's approval needed prior to disposal or encumbrance of operative utility property or consolidation with another public utility. (1) No public utility doing business in Oregon shall, without first obtaining the commissioner's approval of such transaction:

(a) Sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its street railroad, lines, plant, system or other property necessary or useful in the performance of its duties to the public, or any franchise, permit or right to maintain and operate any public utility or public utility property, or perform any service as a public utility; or

(b) By any means whatsoever, directly or indirectly, merge or consolidate any of its street railroad, lines, plant, system or other property whatsoever, or franchise or permit to maintain or operate any public utility property, or perform any service as a public utility, or any part thereof, with any other public utility.

(2) Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commissioner authorizing the same is void.

(3) This section does not prohibit or invalidate the sale, lease or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public.

757.160 Purchase of property or stocks of one utility by another. (1) No public utility shall, directly or indirectly, purchase, acquire or become the owner of any of the property, stock or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit, unless authorized so to do by the commissioner.

(2) Nothing contained in this section prevents the holding of stock lawfully acquired prior to June 8, 1933, or prohibits, upon the surrender or exchange of such stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

(3) Every contract by any public utility for the purchase, acquisition, assignment or transfer to it of any of the stock of any other public utility by or through any person, partnership or corporation without the approval of the commissioner shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract is effective for any purpose.

757.165 Commissioner's approval needed for certain contracts. (1) Before any public utility doing business in this state enters into a contract with another corporation with relation to the construction, operation, maintenance or use of the property of said public utility in Oregon, or the use of the property of the other contracting party, or any part thereof, or for service, advice, engineering, financing, rentals, leasing or for any construction or management charges in respect of any such property, or

for the purchase of property, materials or supplies, the proposed contract shall be filed with the commissioner for his investigation and approval in each of the following cases:

(a) When the public utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations.

(b) When a majority of the voting stock of the public utility is owned or controlled directly or indirectly by the other contracting party.

(c) When a majority of the voting stock of the public utility and a majority of the voting stock of the contracting party are owned or controlled directly or indirectly by a third corporation, or

(d) If any officer or director of any of the corporations specified in paragraphs (a), (b) and (c) of this subsection has any pecuniary interest in any such contract.

(2) When any such proposed contract has been filed with the commissioner he shall promptly investigate it. If, after such investigation, he determines that it is fair and reasonable and not contrary to public interest, he shall so notify the public utility, whereupon the contract may lawfully be entered into. However, the commissioner may review the contract, after giving 10 days' notice to the public utility affected thereby, and make such further orders as may be deemed advisable. If, after such investigation, he determines and so finds that the contract is not fair and reasonable in all its terms and is contrary to public interest, he shall so notify the public utility and it shall be unlawful to enter into the contract unless and until the determination and finding have been vacated and set aside, as provided in ORS 757.565 to 757.585.

(3) In making such investigation the commissioner and his accountants, examiners and agents, appointed by him for the purpose, shall be given free access to all books, books of account, documents, data and records of the public utility as well as of the corporation with which it is proposing to contract, which the commissioner may deem material to the investigation. The failure or refusal of either of the parties to the proposed contract to comply with this subsection is prima facie evidence that such contract is unfair, unreasonable and contrary to public interest, and is sufficient to justify a determination and finding of the commissioner to that effect, which has the same force and effect as any other determination or order of the commissioner, and may only be vacated and set aside as provided in ORS 757.565 to 757.585.

757.170 Contracts involving utilities and persons with affiliated interests. (1) No public utility doing business in this state shall make or contract to make any payment, directly or indirectly, to any person or corporation having an affiliated interest, for service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other services, or enter any charges therefor on its books, which shall be recognized as an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, until the propriety and reasonableness of any such payment, or contract for payment, has been submitted to and approved by the commissioner.

(2) No public utility doing business in this state shall enter into any contract, oral or written, with any person or corporation having an affiliated interest relating to the construction, operation, maintenance, leasing or use of the property of such public utility in Oregon, or the purchase of property, materials or supplies, which shall be recognized as the basis of an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, unless and until such proposed contract has been submitted to and approved by the commissioner.

(3) When any such proposed contract has been submitted to the commissioner he promptly shall examine and investigate it. If, after such investigation, he determines that it is fair and reasonable and not contrary to the public interest, he shall enter his findings and order to this effect and serve a copy thereof upon the public utility, whereupon the contract may lawfully be recognized for the purposes entered into. If, after such investigation, he determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest, he shall enter his findings and order accordingly and serve a copy thereof upon the public utility, and it shall be unlawful to recognize the contract for the purposes specified in this section.

(4) No public utility shall issue notes or loan its funds or give credit on its books or otherwise to any person or corporation having an affiliated interest, either directly or

indirectly, without the approval of the commissioner.

(5) The action of the commissioner with respect to all the matters described in this section when submitted to him, shall be by findings and order to be entered within 90 days after the matter has been submitted to him for consideration, and the findings and order of the commissioner with respect to any of such matters shall be and remain in full force and effect, unless and until set aside by suit brought and prosecuted, as provided in ORS 757.565 to 757.585 and the public utility, or any other person or corporation affected by any such findings and order, may bring and prosecute such suit.

757.175 Contracts between certain public utilities. When any public utility is primarily engaged in another enterprise and is only indirectly engaged in the production, transmission, delivery or furnishing of heat, light, water or power to or for the public by reason of a contract or agreement, express or implied, between itself and another public utility which is directly engaged in such business, the jurisdiction of the commissioner over such public utility extends only to the right to modify, control, rescind, alter or amend any such existing contract or agreement where the interest of the patrons of such public utility directly engaged in such business demands. After November 15, 1935, no such contract or agreement is valid or enforceable until it has been approved by the commissioner as being in the public interest. This section does not apply to street transportation in cities of less than 50,000 population.

757.180 Failure of utility officer or employe to furnish requested information. No officer, agent or employe of any public utility shall:

(1) Fail or refuse to fill out and return any blanks required by this chapter;

(2) Fail or refuse to answer any question therein propounded;

(3) Knowingly or wilfully give a false answer to any such question or evade the answer to any such question where the fact inquired of is within his knowledge;

(4) Upon proper demand, fail or refuse to exhibit to the commissioner or any person authorized to examine the same, any book, paper, account, record or memorandum of such public utility which is in his possession or under his control;

(5) Fail to properly use and keep his system of accounting or any part thereof, as prescribed by the commissioner; or

(6) Refuse to do any act or thing in connection with such system of accounting when so directed by the commissioner or his authorized representative.

RATE SCHEDULES; MEASURING EQUIPMENT

757.205 Filing schedules with commissioner; data filed with schedules. (1) Every public utility shall file with the commissioner, within a time to be fixed by him, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it. The rates, tolls and charges shown on such schedules shall not exceed the rates, tolls and charges in force January 1, 1911.

(2) Every public utility shall file with and as part of every such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service. Every public utility shall also file with the commissioner copies of interstate rate schedules and rules and regulations issued by it or to which it is a party.

(3) Where a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedules shall in like manner be printed and filed with the commissioner.

757.210 Hearing to establish new schedules. Whenever any public utility files with the commissioner any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commissioner may, either upon written complaint or upon its own initiative, after reasonable notice, conduct a hearing to determine the propriety and reasonableness of such rate or schedule. At such hearing the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable.

757.215 Suspension of rates during hearings; order after hearing. (1) The commissioner may, pending such investigation

and determination, order the suspension of the rate or schedule of rates, provided the initial period of suspension shall not extend more than six months beyond the time when such rate or schedule would otherwise go into effect. If the commissioner finds that the investigation will not be completed at the expiration of the initial suspension, he may enter his order further suspending such rate or schedule for not more than three months beyond the last day of the initial suspension.

(2) This section does not prevent the commissioner and the utility from entering into a written stipulation at any time extending any period of suspension.

(3) After full hearing, whether completed before or after such rate or schedule has gone into effect, the commissioner may make such order in reference thereto as would be proper in a proceeding initiated after such rate or schedule has become effective.

757.220 Notice of schedule changes required. No change shall be made in any schedule, including schedules of joint rates, except upon 30 days' notice to the commissioner. All changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof 30 days prior to the time they are to take effect. However, the commissioner, for good cause shown, may allow changes without requiring the 30 days' notice by filing an order specifying the changes to be made and the time when they shall take effect.

757.225 Utilities required to collect for their services in accordance with schedules. No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed schedules, including schedules of joint rates, as may at the time be in force, or demand, collect or receive any rate, toll or charge not specified in such schedule. The rates, tolls and charges named therein are the lawful rates, tolls and charges until they are changed as provided in ORS 757.210 to 757.220.

757.230 Control of commissioner over classification of services and forms of schedules. (1) The commissioner shall provide for a comprehensive classification of service for each public utility, and such classification may take into account the quantity used, the time when used, the purpose for which used, and any other reasonable consideration. Each public utility is required to conform its schedules of rates, tolls and charges to such classification.

(2) The commissioner may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

757.235 Emergency rate adjustments. (1) The commissioner may, when deemed by him necessary to prevent injury to the business or interests of the people or any public utility of this state in case of any emergency to be judged of by the commissioner, temporarily alter, amend or, with the consent of the public utility concerned, suspend any existing rates, schedules and order relating to or affecting any public utility or part of any public utility in this state. Rates so made by the commissioner shall apply to one or more of the public utilities in this state or to any portion thereof as may be directed by the commissioner, and shall take effect at such time and remain in force for such length of time as may be prescribed by the commissioner.

(2) If any existing rate of any public utility or division or department of any public utility in this state is adjusted under the provisions of this section, it shall become effective 30 days thereafter unless, within that time, the commissioner, either on his own initiative or at the written request of any interested party, announces a hearing to determine the propriety and reasonableness of such rate. Notice of such hearing shall be mailed to all incorporated cities within the area to be affected thereby at least 20 days before any such hearing. Such notice shall set forth therein the place of hearing and a brief statement of the purpose therefor. A copy of such notice shall be published at the expense of the commissioner in a newspaper of general circulation within each county, or portion thereof which is affected by such rate adjustment once each week for two consecutive weeks. The hearings shall occur within 10 days from the date of the last publication of the notice. If, after the hearing, the commissioner determines that it is fair and reasonable and not contrary to the public interest, the adjustment shall remain in force for such length of time as may be ordered by the commissioner.

Notice of the adjustment shall be given in the same manner as provided in this subsection for the hearing.

(3) No temporary or emergency rate adjustments other than pursuant to this section shall be authorized for any public utility.

(4) During the time an increased rate is in effect under the provisions of this section, the public utility concerned shall indicate separately in dollars and cents on the face of its statements or bills that portion of the statement or bill which is a surcharge. [Amended by 1953 c.285 §2]

757.240 Filing schedules in places where utility consumers make payments. (1) A copy of so much of all schedules, including schedules of joint rates and charges, as the commissioner deems necessary for the use of the public shall be printed in plain type and kept on file in every station or office of such public utility where payments are made by the consumers or users, open to the public, and in such form and place as to be readily accessible to the public for convenient inspection.

(2) Copies of all new schedules shall be filed in every station and office of such public utility where payments are made by consumers or users 30 days prior to the time the schedules are to take effect, unless the commissioner prescribes a less time.

757.245 Establishment of joint rates. (1) A public utility may establish reasonable through service and joint rates, charges and classifications with other public utilities. Public utilities establishing joint rates and charges shall establish just and reasonable regulations and practices in connection therewith and just, reasonable and equitable divisions thereof as between the public utilities participating therein, which shall not unduly prefer or prejudice any of such participating public utilities, and every unjust and unreasonable rate, charge, classification, regulation, practice and division is prohibited.

(2) The commissioner may, and he shall, whenever deemed by him to be necessary or desirable in the public interest, after full hearing upon complaint, or upon his own initiative without complaint, establish through service, classifications and joint rates or charges, the divisions of such rates or charges and the terms and conditions under which such through service shall be rendered. If any tariff or schedule canceling any through service or joint rate, charge or classification without the consent of all the public utilities parties thereto or authorization by the commissioner is suspended by the commissioner for investigation, the burden of proof is upon the public utilities proposing such cancellation to show that it is consistent with the public interest.

(3) Whenever, after full hearing upon complaint or upon his own initiative without complaint, the commissioner is of opinion that the divisions of joint rates or charges between the public utilities are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the public utilities parties thereto, whether agreed upon by such public utilities or otherwise established, the commissioner shall, by order, prescribe the just, reasonable and equitable divisions thereof to be received by the several public utilities. In cases where the joint rate or charge was established pursuant to the finding or order of the commissioner and the divisions thereto are found by him to have been unjust, unreasonable or inequitable, or unduly preferential or prejudicial, the commissioner may also by order determine what, for the period subsequent to the filing of the complaint or petition or the making of the order of investigation, would have been the just, reasonable and equitable division thereof to be received by the several public utilities and require adjustment to be made in accordance therewith.

(4) In so prescribing and determining the divisions of joint rates and charges, the commissioner shall give due consideration, among other things, to:

(a) The efficiency with which the public utilities concerned are operated;

(b) The amount of revenue to pay their respective operating expenses, taxes and a fair return on their public utility property held for and used in service;

(c) The importance to the public of the services of such public utilities;

(d) Whether any particular participating public utility is an originating, intermediate or delivering utility; and

(e) Any other fact or circumstance which ordinarily would entitle one public utility to a greater or less proportion of the joint rate or charge than another.

757.250 Standards and appliances for measuring products and service. (1) The commissioner shall ascertain and prescribe for each kind of public utility suitable and convenient standard commercial units of product or service. These shall be lawful units for the purposes of this chapter.

(2) The commissioner shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of the product or service rendered by any public utility and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for the measurements, and every public utility is required to carry into effect all orders issued by the commissioner relative thereto.

757.255 Testing of measuring appliances. (1) The commissioner shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility, and may provide by rule that no such appliance shall be installed and used for the measuring of any product or service of any public utility until it has been examined and tested by the commissioner and found to be accurate.

(2) The commissioner shall declare and establish a reasonable fee governing the cost of such examination and test, which shall be paid to the commissioner by the public utility.

(3) The commissioner shall declare and establish reasonable fees for the testing of such appliances on the application of the consumer or user, the fee to be paid by the consumer or user at the time of his request, but to be repaid to the consumer or user by the commissioner and to be paid by the public utility if the appliance is found defective or incorrect to the disadvantage of the consumer or used beyond such reasonable limit as may be prescribed by the commission.

(4) All fees collected under the provisions of this section shall be paid by the commissioner into the State Treasury.

(5) The commissioner may purchase such materials, apparatus and standard measuring instruments for the examination and tests as he deems necessary.

757.260 Right of entry for inspection and tests. The commissioner and his agents, experts, examiners or inspectors may enter upon any premises occupied by any public utility for the purpose of making any inspection, examination or test provided in this chapter and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor.

757.265 Interest payments due consumers who have paid a sum for use of meters. (1) When a public utility or municipality owns or operates any plant which furnishes any meter or other device to a consumer, subscriber or user of this state, who, after May 20, 1917, has paid a sum of money for the use of such device to the public utility or municipality, the public utility or municipality shall pay to such consumer, subscriber or user, on demand, a sum of money annually equivalent to six percent of the amount so paid for the use of such meter or other device.

(2) If the public utility or municipality refuses or fails to pay such sum of money on demand, it is a complete defense in an action brought by such public utility or municipality against the consumer, subscriber or user for services rendered, to allege and prove that such annual sum has not been paid.

(3) This section does not apply to consumers or subscribers using such meter or other device for less than one year.

ILLEGAL PRACTICES

757.305 Special privileges to political patrons. (1) No public utility or municipality constituting a public utility, or their agents or officers, shall offer or give for any purpose to any political committee or any member or employe thereof or to any candidate for or incumbent of any office or position under the Constitution or laws or under any ordinance of any municipality of this state, or to any person at the request, or for the advantage of all or any of them, any pass, reduced rate, frank or any privilege withheld from any person for any transportation, product or service which is or will be produced, transmitted, delivered, furnished or rendered by any public utility, or the conveyance of any telephone message or communication or any free produce or service whatsoever.

(2) No such committee, member, employe, candidate or incumbent shall ask for or accept from any utility, municipality, agent or officer described in subsection (1) of this section, or use in any manner or for any purpose any pass, reduced rate, frank or privilege withheld from any person, for any transportation, product or service which is or will be produced, transmitted, delivered, furnished or rendered by any public utility, or the conveyance of any telephone message or communication.

757.310 Unjust discrimination in charges for service. (1) Except as provided in ORS 757.315, no public utility or any agent or officer thereof shall, directly or indirectly, by any device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it in, or affecting it relating to, the transportation of persons or property by street railroad, the production, transmission, delivery or furnishing of heat, light, water or power, the conveyance of telegraph or telephone messages or for any service in connection therewith than:

(a) That prescribed in the public schedules or tariffs then in force or established; or

(b) It charges, demands, collects or receives from any other person for a like and contemporaneous service under substantially similar circumstances.

(2) Any public utility violating this section is guilty of unjust discrimination.

757.315 Transactions not constituting unjust discrimination. (1) ORS 757.310 does not prohibit the privilege of passes or franks or the exchange thereof with each other for the officers, agents and employes, and their families, of the same or other street railroads, telegraph, telephone and cable lines, and with the officers and employes, and their families, of railroad, express and sleeping car lines, union depots and other common carriers.

(2) This chapter does not prevent telephone, telegraph and cable companies from entering into contracts with common carriers for the exchange of services.

(3) ORS 757.310 does not prevent the transportation of persons or property or the production, transmission, delivery or furnishing of heat, light, water or power, or the conveying of telegraph or telephone messages within this state free or at reduced rates for the United States, the state or any municipality thereof, for charitable purposes, or to employes of any such public utility for their own exclusive use and benefit.

(4) ORS 757.310 does not prevent any public utility from giving free transportation or service, or reduced rates therefor, to:

(a) Its officers, agents, surgeons, physicians, employes and attorneys at law, or members of their families;

(b) Former employes of such public utilities or members of their families where such former employes have become disabled in the service of such public utility or are unable from physical disqualification to continue in the service;

(c) Members of families of deceased employes of such public utility;

(d) Ministers of religion; or

(e) Inmates of hospitals and charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work.

(5) The commissioner may require any public utility to file with him a list, verified under oath of the president, manager, superintendent or secretary of any public utility, of all free or reduced rate privileges granted by a public utility under the provisions of this section.

757.320 Reducing rates for persons furnishing part of necessary facilities. (1) No public utility shall demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the public utility in consideration of the furnishing by such person of any part of the facilities incident thereto.

(2) This section does not prohibit any public utility from renting any facilities incident to the transportation of persons or property by street railroad, or to the production, transmission, delivery or furnishing of heat, light, water or power or the conveyance of telephone messages and paying a reasonable rental therefor.

(3) This section does not require a public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscriber's premises and, unless otherwise ordered by the commissioner, meters and appliances for measurements of any product or service.

757.325 Undue preferences and prejudices. (1) No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(2) Any public utility violating this section is guilty of unjust discrimination.

757.330 Soliciting or accepting special privileges from utilities. No person shall knowingly solicit, accept or receive any rebate, concession or discrimination in respect to any service in, or affecting or relating to, the transportation of persons by street railroad, or the production, transmission, delivery or furnishing of heat, light, water or power, or the conveying of telegraph or telephone messages within this state, or any service in connection therewith, whereby any such service shall, by any device, be rendered free or at a less rate than that named in the published schedules and tariffs in force, or whereby any service or advantage is received other than authorized in this chapter.

757.335 Right of patron to recover treble damages for wrongs and omissions. (1) Any public utility which does, or causes or permits to be done, any matter, act or thing prohibited by ORS 757.020 to 757.030, 757.040, 757.055, 757.115 to 757.125, 757.135 to 757.150, 757.165, 757.175, 757.180, 757.205, 757.220 to 757.260, 757.305 to 757.340 and 757.505 to 757.595, or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in treble the amount of damages sustained in consequence of such violation together with a reasonable counsel's or attorney's fee, to be fixed by the court in every case of recovery. Such attorney's fee shall be taxed and collected as part of the costs in the case.

(2) Any recovery under this section does not affect recovery by the state of the penalty prescribed for such violation.

(3) This section does not apply with respect to the liability of any public utility for personal injury or property damage, which liability is as fixed by law without reference to this section.

757.340 Interference with commissioner's equipment. No person shall destroy, injure or interfere with any apparatus or appliance owned or operated by or in charge of the commissioner or his agent, or any apparatus or appliance sealed by him.

757.345 Restrictions on utility activities of foreign corporations. (1) Except as provided in subsection (2) of this section:

(a) No foreign corporation other than those which by compliance with the laws of this state are entitled to transact a public utility business within this state, shall transact within this state any public utility business.

(b) No foreign corporation which was on June 9, 1933, lawfully transacting business within this state shall transact within this state any public utility business of the character different from that which it was on that date authorized by its charter or articles of incorporation to transact.

(c) No license, permit or franchise to own, control, operate or manage any public utility business, or any part or incident thereof, shall, after June 9, 1933, be granted or transferred, directly or indirectly, to any foreign corporation which was not lawfully transacting within this state a public utility business of like character on June 9, 1933.

(2) Foreign corporations engaging in commerce with foreign nations or commerce among the several states of this union may transact within this state such commerce and intrastate commerce of a like character.

757.350 Transfer of stock between utilities. (1) No public utility shall purchase, acquire, take or hold any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this state, without first being authorized so to do by the commissioner.

(2) Every assignment, transfer, or contract or agreement for the assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of this section is void and of no effect, and no such transfer shall be made on the books of any public utility.

(3) This section does not prevent the holding of stock lawfully acquired prior to June 8, 1933.

ISSUANCE OF SECURITIES

757.400 Definition of "stocks." As used in ORS 757.400 to 757.450, "stocks" means stocks, stock certificates or other evidence of interest or ownership.

757.405 Commissioner's power to regulate issuance of utility securities. The power of public utilities to issue stocks and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state. Such power shall be exercised as provided by law and under such rules and regulations as the commissioner may prescribe.

757.410 When issuance of securities is void. All stocks and bonds, notes or other evidences of indebtedness, and any security of a public utility shall be void when issued:

(1) Without an order of the commissioner authorizing the same then in effect except as provided in subsection (3) of ORS 757.415.

(2) With the authorization of the commissioner, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the commissioner to contain; but no failure to comply with the terms or conditions of the order of authorization of the commissioner and no informality or defect in the application or in the proceedings in connection therewith or with the issuance of such order shall render void any stock or bond, note or other evidence of indebtedness, or security issued pursuant to and in substantial conformity with an order of the commissioner, except as to a person taking the same otherwise than in good faith and for value and without actual notice.

757.415 Purposes for which securities and notes may be issued; order required. (1) A public utility may issue stocks and bonds, notes and other evidences of indebtedness, and securities for the following purposes and no others, except as otherwise permitted by subsection (4) of this section:

(a) The acquisition of property, or the construction, completion, extension or improvement of its facilities.

(b) The improvement or maintenance of its service.

(c) The discharge or lawful refunding of its obligations.

(d) The reimbursement of money actually expended from income or from any other money in the treasury of the public utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such public utility, for any of the purposes listed in paragraphs (a) to (c) of this subsection except the maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the commissioner to ascertain the amount of money so expended and the purposes for which such expenditures were made.

(e) The compliance with terms and conditions of options granted to its employes to purchase its stock, if the commissioner first finds that such terms and conditions are reasonable and in the public interest.

(2) Before issuing such securities a public utility, in addition to the other requirements of law, shall secure from the commissioner upon application an order authorizing such issue, stating:

(a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to be applied; and

(b) In the opinion of the commissioner, the money, property or labor to be procured or paid for by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility, and will not impair its ability to perform that service; and

(c) Except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) This section and ORS 757.410 apply to demand notes but do not apply to the issuance or renewal of a note or evidence of indebtedness maturing not more than one year after date of such issue or renewal.

(4) Nothing in ORS 757.400 to 757.450 shall prevent issuance of stock to stockholders as a stock dividend if there has been secured from the commissioner an order:

(a) Finding that the stock dividend is compatible with the public interest;

(b) Authorizing such issue and a transfer of surplus to capital in an amount equal to the par or stated value of the stock so authorized; and

(c) Finding that a sum equal to the amount to be so transferred was expended for the purposes enumerated in subsection (1) of this section.

[Amended by 1961 c.319 §1]

757.420 Hearings and supplemental orders relating to issuance of securities; joint approval of issuance by interstate utility. (1) To enable him to determine whether he will issue an order under ORS 757.415, the commissioner may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents and contracts and require the filing of such data as he deems necessary. The application for such order shall be given priority and shall be disposed of by the commissioner within 30 days after the filing of such application, unless that period is extended with the consent of the public utility.

(2) The commissioner may, upon application of the public utility, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as he finds necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, extent to which, or the condition under which, any security theretofore authorized or its proceeds may be applied. Such supplemental orders are subject to the requirements of ORS 757.415. The period of time permitted under subsection (1) of this section for disposing of applications shall not apply to supplemental orders.

(3) If a commission or other agency is empowered by another state to regulate and control the amount and character of securities to be issued by any public utility within such other state, the commissioner of Oregon has power to agree with such commission or agency of such other state on the issue of stocks, bonds, notes, other evidences of indebtedness or securities by a public utility owning or operating a public utility both in such state and in this state, and has power to approve such issue jointly with such commission or agency and to issue a joint certificate of such approval. However, no such joint approval is required in order to express the consent to and approval of such issue by the State of Oregon if the issue is separately approved by the Oregon commissioner.

757.425 State not obligated following approval of issuance. No provision of ORS 757.405 to 757.450, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of Oregon to pay or guarantee, in any manner whatsoever, any stock or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of ORS 757.405 to 757.450.

757.430 Conditional approval of issuance authorized. The commissioner may by his order grant permission for the issue of stocks or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of his permission such condition or conditions as he deems reasonable and necessary.

757.435 Disposal of proceeds from issuance of securities. (1) No public utility shall, without the consent of the commissioner, apply the issue of any stock or bond, note or other evidence of indebtedness, or any part or proceeds thereof, to any purpose not specified in the commissioner's order, or to any purpose specified in the commissioner's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof.

(2) The commissioner has power to require public utilities to account for the disposition of the proceeds of all sales of stocks and bonds, notes and other evidences of indebtedness, in such form and detail as he deems advisable, and to establish such rules and regulations as he deems reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in his order.

757.440 Commissioner's approval required before utility may guarantee another's indebtedness. No public utility shall assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than 12 months after the date thereof, without first having secured from the commissioner an order authorizing it so to do. Every assumption made other than in accordance with such an order is void.

757.445 Wrongful issues or use of proceeds by utility. No public utility shall directly or indirectly, issue or cause to be issued any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the commissioner authorizing the same or contrary to the provisions

of ORS 757.400 to 757.450, or of the Constitution of this state, or apply the proceeds from the sale thereof, or any part thereof, to any purpose other than the purposes specified in the commissioner's order, or to any purpose specified in the commissioner's order in excess of the amount in the order authorized for such purpose.

757.450 Wrongful acts relating to issuance of securities. No person shall:

(1) Knowingly authorize, direct, aid in, issue or execute, or cause to be issued or executed, any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the commissioner authorizing the same, or contrary to the provisions of ORS 757.400 to 757.450 or of the Constitution of this state.

(2) In any proceeding before the commissioner, knowingly make any false statement or representation or with knowledge of its falsity file or cause to be filed with the commissioner any false statement or representation which may tend in any way to influence the commissioner to make an order authorizing the issue of any stock or bond, note or other evidence of indebtedness, or which results in procuring from the commissioner the making of any such order.

(3) With knowledge that any false statement or representation was made to the commissioner in any proceeding tending in any way to influence him to make such order, issue, execute or negotiate, or cause to be issued, executed or negotiated, any stock or bond, note or other evidence of indebtedness.

(4) Directly or indirectly, knowingly apply, or cause or assist to be applied, the proceeds, or any part thereof, from the sale of any stock or bond, note or other evidence of indebtedness, to any purpose not specified in the commissioner's order, or to any purpose specified in the commissioner's order in excess of the amount authorized for such purpose.

(5) With knowledge that any stock or bond, note or other evidence of indebtedness, has been issued or executed in violation of ORS 757.400 to 757.450, negotiate, or cause the same to be negotiated.

COMPLAINTS, HEARINGS AND ORDERS

757.505 For what reason and by whom complaints may be made. (1) The commissioner shall, with or without notice, make such investigation as he deems necessary or convenient, upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society, body politic or municipal organization or three other persons, that any:

(a) Of the rates, tolls, charges, schedules or joint rates are in any respect unreasonable or unjustly discriminatory;

(b) Regulation, measurement, practice or act affecting or relating to the production, transmission, delivery or furnishing of heat, light, water or power or the conveyance of any telegraph or telephone message, or the transportation of persons or property by street railroad, or any service in connection therewith is in any respect unreasonable, insufficient or unjustly discriminatory; or

(c) Service rendered by any public utility is inadequate or is not afforded.

(2) No order affecting such rates, tolls, charges, schedules, regulations, measurements, practice or act shall be entered by the commissioner without a formal hearing.

(3) No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(4) Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by any society, organization or group listed in subsection (1) of this section.

757.510 Notice of hearing; place where held. (1) All formal hearings shall be held at a place designated by the commissioner in the county in which the complainants, or a majority of the complainants, reside or have their principal place of business. However, hearings may be held in any county of the state, upon written consent of a majority of the complainants and the interested utilities, by and with the approval of the commissioner.

(2) The commissioner shall give the public utility and the complainant 10 days' written notice of the time when and place where such hearing and investigation will be held and the matters considered and determined. Both the public utility and complainant are entitled to be heard and to have process to enforce the attendance of witnesses.

757.515 Investigations and hearings on commissioner's own motion. (1) Whenever the commissioner believes that any rate or charge or schedule of rates or charges may

be unreasonable or unjustly discriminatory, or that any service is unsafe or inadequate, or is not afforded, or that an investigation of any matter relating to any public utility should be made, he may on his own motion summarily investigate any such matter, with or without notice.

(2) If after making such investigation he is satisfied that sufficient grounds exist to warrant a hearing being ordered upon any such matter, he shall furnish any public utility interested a statement notifying it of the matters under investigation, which statement shall be accompanied by a notice fixing the time and place for hearing upon such matters. Notice may likewise be given at least 10 days in advance of any hearing to all interested parties.

(3) Thereafter proceedings shall be had and conducted in reference to the matters investigated in like manner as though complaint had been filed with the commissioner relative thereto, and the same orders may be made in reference thereto as if such investigation had been made on complaint.

(4) However, the commissioner may, after he has made an investigation on his motion, but without notice or hearing, make such findings and orders as he deems justified or required by the results of such investigation. Such findings and orders have the same legal force and effect as any other finding or order of the commissioner.

757.520 Separate hearings authorized. The commissioner may, when a complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as he may prescribe.

757.525 Keeping, filing and evidentiary effect of record of hearing. (1) A full and complete record shall be kept of all proceedings had before the commissioner, examiner or agent on any investigation, and all testimony shall be taken down by a stenographer appointed by the commissioner.

(2) Whenever any complaint is served upon the commissioner under ORS 757.565, the commissioner shall, before the trial of such suit, cause a certified transcript of all proceedings had and testimony taken upon such investigation to be filed with the county clerk of the county where the action is pending.

(3) A transcribed copy of the evidence and proceedings, or any specific part thereof, on any investigation, taken by a stenographer appointed by the commissioner, being certified by such stenographer to be a true and correct transcript in long hand of all the testimony on the investigation, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and transcribed, shall be received in evidence with the same effect as if the evidence had been given and the proceedings had upon the trial in which the transcript or any part thereof is offered.

(4) This section applies only to hearings upon notice to the utility and other interested parties.

757.530 Orders issuable by commissioner. If upon investigation the commissioner finds that:

(1) Any rates, tolls, charges, schedules or joint rates are unjust, unreasonable, insufficient or unjustly discriminatory or are preferential or otherwise in violation of this chapter, he may fix and order substituted therefor just and reasonable rates, tolls, charges or schedules.

(2) Any regulation, measurement, practice, act or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise in violation of this chapter, any service is unsafe or inadequate, or any reasonable service cannot be obtained or is not afforded, he may substitute therefor just and reasonable regulations, measurements, practices, service or acts and make such order respecting them and such changes in them as shall be just and reasonable.

757.535 Delivery, effective date and evidentiary effect of orders and copies thereof. (1) The commissioner shall cause a certified copy of all orders to be delivered to an officer or agent of the public utility affected thereby and all orders shall of their own force take effect and become operative 20 days after service thereof, unless a different time is provided by the order. The commissioner may provide by rule that any public utility affected by any order shall within a time to be fixed by the commissioner, notify the commissioner whether the terms of the order are accepted and will be obeyed.

(2) Upon application of any person, the commissioner shall furnish certified copies, under his seal, of any order made by him, which shall be prima facie evidence of the facts stated therein.

757.540 Rescission and amendment of orders. The commissioner may at any time, upon notice to the public utility and after opportunity to be heard as provided in ORS 757.510, rescind, alter or amend any order fixing any rates, schedule of rates, tolls, charges or any other order made by the commission. Certified copies of the same shall be served and take effect as provided in ORS 757.535 for original orders.

757.545 Operation and effect of orders. All rates, tolls, charges, schedules and joint rates fixed by the commissioner, every order determining and fixing the value of the property of a public utility or fixing and determining a revaluation thereof, and every order made and entered by the commissioner upon any cause or matter within his jurisdiction shall be and remain in full force and be prima facie lawful and all regulations, practices and services prescribed by the commissioner shall be in force and be prima facie lawful and reasonable unless and until found otherwise in a suit brought for the purpose under ORS 757.565 to 757.585. Unless and until set aside or modified, the findings and order of the commissioner upon any of such matters are conclusive, both as to matters of fact and matters of law.

757.550 Appointment of examiners to conduct hearings and investigations. (1) For the purpose of making any investigation which may be required or permitted by any law the commissioner may appoint, by an order in writing, an examiner or agent whose duties shall be prescribed in such order. In the discharge of his duties such examiner or agent has every power of an inquisitorial nature granted the commissioner and the same powers as a notary public with regard to the taking of depositions. Any investigation, inquiry or hearing which the commissioner has power to undertake or hold may be undertaken or held by or before any such examiner or agent of the commission.

(2) The decision of the commissioner shall be based upon his examination of all the testimony and records in the matter investigated or heard.

757.555 Powers of commissioner or examiner at hearings; duty to obey subpenas or orders of commissioner. (1) The commissioner, and every examiner or agent acting under authority of ORS 757.550, may administer oaths, certify to official acts, issue notices in the name of the commissioner, issue subpenas under his hand, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony, and take and receive testimony, conduct hearings and investigations, whether upon complaint or upon the commissioner's own motion.

(2) In case of disobedience on the part of any person to any order or subpena issued by the commissioner or any such examiner or agent, or refusal of any witness to testify to any matter regarding which he may lawfully be interrogated before the commissioner or any such examiner or agent, the circuit court of any county or the judge thereof shall, upon application of the commissioner, compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein. Any such application shall be given precedence over all other matters pending before any such court or judge.

(3) No person shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, waybills, contracts, accounts and documents, if in his power so to do, in obedience to the subpena or lawful requirement of the commissioner.

757.560 Depositions permitted in investigations. The commissioner or any party may, in any investigation, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil suits in the circuit court.

757.565 Suits to set aside orders and findings of commissioner. (1) Any public utility or other person interested in or affected by any findings and order of the commissioner fixing any rates, tolls, charges, schedules, classifications, joint rates, regulations, practices, act or service, or fixing and determining the value of the property of any public utility or making a revaluation thereof, or any other findings or order of the commissioner involving a substantial

right of such utility or person, being dissatisfied with any such finding and order, may commence a suit in the circuit court of the county in which the hearing was held against the commissioner as defendant to vacate and set aside any such order or specified portion thereof on the ground that the order or portion thereof is unlawful.

(2) In such suit a copy of the complaint shall be served with the summons as in a suit in equity. The commissioner shall serve and file his answer to the complaint within 10 days after the service thereof, whereupon the suit shall be at issue and stand ready for trial upon 10 days' notice by either party.

(3) All suits brought under this section shall have precedence over any civil cause of a different nature pending in the court, and the circuit court is always open for the trial thereof. Such suits shall be tried and determined as a suit in equity.

(4) Every such suit to set aside, vacate or amend any determination or order of the commissioner, to enjoin the enforcement thereof or to prevent in any way such order or determination from becoming effective, shall be commenced, and every appeal or right or recourse to the courts shall be taken or exercised, within 90 days after the entry or rendition of such order or determination, and the right to commence any such action, proceeding or suit shall terminate absolutely at the end of such 90 days.

757.570 Suspending order during suit to set aside order. (1) After the commencement of a suit under ORS 757.565, the circuit court may for cause shown, upon application to the circuit court or presiding judge thereof, and upon notice to the commissioner and hearing, suspend or stay the operation of the order of the commissioner complained of until the final disposition of such suit, upon the giving of such bond or other security, and upon such conditions as the court may require.

(2) If such order of injunction suspends the order or requirement of the commissioner fixing rates, the court shall require a bond with good and sufficient surety, conditioned that the public utility applying for such injunction shall answer for all damages caused by the delay in the enforcement of the order of the commissioner and all compensation for whatever sums any person is compelled to pay in excess of the sums he would have been compelled to pay if the order of the commissioner had not been suspended. The bond shall cover the periods transpiring from time of issuance of any such injunction until the final determination of the question litigated. It shall be executed in favor of the commissioner for the benefit of whom it may concern, and shall be enforceable by the commissioner or any person interested, in an appropriate proceeding.

(3) Any person paying charges found to be excessive has a claim for the excess, whether paid under protest or not, and unless refunded within 30 days after written demand made after final judgment, may recover the same by action against the public utility, or the public utility and the sureties on the bond. Claims of persons for money collected in excess of the amount payable under the rates established by the commissioner are assignable in the same manner as any chose in action.

757.575 Procedure when new evidence is introduced in a suit to set aside order. The provisions of ORS 756.600 apply to suits commenced under ORS 757.565.

757.580 Appeals to Supreme Court; stay of order pending appeal. (1) Either party to a suit under ORS 757.565, within 60 days after the entry of the judgment or decree of the circuit court, may appeal to the Supreme Court. Where an appeal is taken the cause shall, on the return of the papers to the Supreme Court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar, but shall have precedence over civil causes of a different nature pending in said court.

(2) No appeal to the Supreme Court shall stay the operation of any order of the commissioner unless the circuit court or Supreme Court so directs, and unless the public utility so appealing gives a bond with like conditions and terms as that given on granting injunctions suspending an order of the commissioner fixing rates.

757.585 Burden of proof and other rules of procedure. In all suits, actions and proceedings in court arising under this chapter, all processes shall be served and the practice and rules of evidence shall be the same as in civil actions, except as otherwise provided in this chapter. In all trials, actions, suits and proceedings arising under this chapter

or growing out of the exercise of the authority and powers granted in this chapter to the commissioner, the burden of proof is upon the party adverse to such commissioner or seeking to set aside any determination, requirement, direction or order of the commissioner to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commissioner complained of is unreasonable or unlawful.

757.590 Self-incrimination of witnesses. No person shall be excused from testifying or from producing books and papers in any proceeding based upon or growing out of any violation of the statutes listed in ORS 757.335 on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may have testified or produced any documentary evidence. However, no person shall be exempted from prosecution or punishment for perjury while so testifying. The immunity conferred by this section shall extend only to a natural person who, in obedience to a subpena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

757.595 Fees of witnesses appearing before commissioner. Each witness who appears before the commissioner, or his agent by his order, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the commissioner; but no witness shall be entitled to receive double mileage fees, and no witness subpenaed at the instance of parties other than the commissioner is entitled to compensation from the state for attendance or travel unless the commissioner certifies that his testimony was material to the matter investigated.

ALLOCATION OF TERRITORIES AND CUSTOMERS

757.605 Definitions for ORS 757.605 to 757.690 and 758.015. As used in ORS 757.605 to 757.690 and 758.015 unless the context requires otherwise:

(1) "Allocated territory" means an area with boundaries established by a contract between persons furnishing a similar utility service and approved by the commissioner or established by an order of the commissioner approving an application for the allocation of territory.

(2) "Commissioner" means the Public Utility Commissioner of Oregon.

(3) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

(4) "Person" includes individuals, firms, partnerships, corporations, associations, cooperatives and municipalities, or their agent, lessee, trustee or referee.

(5) "Utility service" means service provided by any equipment, plant or facility for the distribution of electricity to users, the distribution of natural or manufactured gas to consumers through a connected and interrelated distribution system or the conveyance of telephone or telegraph messages to subscribers, with or without wires. "Utility service" does not include service provided through or by the use of any equipment, plant or facilities:

(a) For the production or transmission of electricity or gas or the conveyance of telephone or telegraph messages, which pass through or over but are not used to provide service in or do not terminate in an area allocated to another person providing a similar utility service; nor

(b) For the conveyance of telephone or telegraph messages, commonly known as "private lines" or "farmer lines."

[1961 c.691 §2]

757.610 Purpose of ORS 757.605 to 757.690. The elimination and future prevention of duplication of utility facilities is a matter of state-wide concern; and in order to promote the efficient and economic use and development and the safety of operation of utility services while providing adequate and reasonable service to all territories and customers affected thereby, it is necessary to regulate in the manner provided in ORS 757.605 to 757.690 all persons and entities providing utility services.

[1961 c.691 §18]

757.615 Contracts for allocation of territories and customers between suppliers of utility service and for transfer of facilities. (1) Any person providing a utility service may

contract with any other person providing a similar utility service for the purpose of allocating territories and customers between the parties and designating which territories and customers are to be served by which of said contracting parties; and the territories and customers so allocated and designated may include all or any portion of the territories and customers which are being served by either or both of the parties at the time the contract is entered into, or which could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto.

(2) Any such contracting parties may also contract in writing for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of the allocation agreed upon pursuant to subsection (1) of this section. Any sale, exchange, transfer or lease of equipment, plant or facilities made pursuant to this subsection by any person which is a "public utility" as defined in ORS 757.005 is also subject to the approval of the commissioner to the extent required by ORS 757.005 to 757.090 and 757.105 to 757.450.
[1961 c.691 §§3, 11; part renumbered 757.652]

757.620 Contract enforceable if approved by commissioner; conditions for approval. Notwithstanding any other provisions of law, a contract entered into pursuant to ORS 757.615, when approved by the commissioner as provided in ORS 757.625 to 757.690, shall be valid and enforceable; provided, that the commissioner shall approve such a contract only if he finds, after a hearing as provided in ORS 757.625 to 757.690, that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby.
[1961 c.691 §4]

757.625 Hearing on contract approval; notice. (1) A contract entered into pursuant to ORS 757.615 shall be promptly filed with the commissioner, and the commissioner shall, within 60 days after such filing, give notice and set the date and place of hearing on the question as to whether or not such contract will be approved. The hearing shall be held at a place within or conveniently accessible to the territories affected by the contract.

(2) The commissioner shall publish notice of the hearing in a newspaper or newspapers of general circulation in each of the territories affected by the contract. Each such notice shall be published at least once weekly for two successive weeks.
[1961 c.691 §5]

757.630 Order of commissioner on contract; suit to vacate order. (1) On the basis of the record made at the hearing held pursuant to ORS 757.625, the commissioner shall enter an order either approving or disapproving the contract as filed, together with findings of the facts supporting such order.

(2) Any party to such contract may commence a suit to vacate and set aside the commissioner's order on the ground that such order is unlawful, and so far as applicable and not inconsistent herewith, the provisions of ORS 756.580 to 756.610 shall govern such suit.

(3) If the commissioner approves a contract and no suit is filed to vacate or set aside the commissioner's order as above provided, the contract shall be deemed to be valid and enforceable for all purposes from the date on which the right to file such suit expires. If a suit to vacate or set aside the commissioner's order is filed, the validity of the contract shall be as determined by the final judgment therein rendered.
[1961 c.691 §6]

757.635 Amendment of contract; approval of commissioner. Any contract that has been approved as provided in ORS 757.605 to 757.690 may be subsequently amended by the parties thereto, but any such amendatory agreement shall be filed with the commissioner and shall thereafter be approved or disapproved by the commissioner in the manner provided in ORS 757.625 and 757.630. An amendatory agreement may be enforced in the manner provided in ORS 757.675.
[1961 c.691 §7]

757.640 Application, by person providing exclusive utility service, for allocation of territory; hearing; notice. (1) Any person providing a utility service in a territory that is not served by another person providing a similar utility service may make application to the commissioner for an order allocating

such territory to it. The application may include any adjacent area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person.

(2) The commissioner shall within 60 days after the filing of such application give notice and set the date and place of hearing. The hearing shall be held at a place within or conveniently accessible to the territory covered by the application. Notice shall be by publication in a newspaper or newspapers of general circulation in the territory covered by the application and shall be published at least once weekly for two successive weeks.

(3) Territory within the limits of a city, as fixed on May 31, 1961, shall not be deemed to be served exclusively by any person, if such city is, on such date, served by more than one person having necessary municipal or franchise authority to serve within the entire city.
[1961 c.691 §8]

757.645 Order of commissioner on application. (1) On the basis of the record made at the hearing held pursuant to ORS 757.640, the commissioner shall enter an order either approving or disapproving the application as filed, or as amended, together with findings of the facts supporting such order.

(2) The commissioner, before approving an application for the allocation of territory, shall find that the applicant is exclusively serving the territory covered by the application and in the case of an adjacent unserved area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person.
[1961 c.691 §9]

757.650 Suit to vacate order on application. Any party to the hearing may commence a suit to vacate and set aside the commissioner's order as provided in ORS 756.580 to 756.610. If no suit is filed to vacate or set aside the commissioner's order within the specified time, the order shall thereafter be valid and enforceable for the purposes herein specified from the date on which the right to file such suit expires. If a suit to vacate or set aside the commissioner's order is filed, the validity of the order shall be determined by the final judgment therein provided.
[1961 c.691 §10]

757.652 Contract required for allocation of territory; allocated territory exclusive; activity prohibited during pendency of application. (1) Territory served by more than one person providing similar utility service may only become an allocated territory by a contract approved by the commissioner.

(2) No other person shall offer, construct or extend utility service in or into an allocated territory.

(3) During the pendency of an application for an allocation of exclusively served territory, no person other than applicant shall offer, construct or extend utility service in or into the territory applied for; nor shall any person, without the express consent of the commissioner, offer, construct or extend utility service in or into any unserved territory which is the subject of a filing pending before the commissioner under ORS 757.625 or 757.640.
[Formerly part of 757.615; amended by 1965 c.242 §1]

757.655 Investigation by commissioner respecting contracts or applications; hearing procedure. (1) The commissioner may make such investigations respecting a contract or an application for the allocation of territory as he deems proper including the physical examinations and evaluations of the facilities and systems of the parties to the contract, estimates of their operating costs and revenues and studies of such other information as he deems pertinent.

(2) In so far as applicable and consistent herewith, the provisions of ORS 756.505 to 756.610 shall govern the conduct of hearings.

(3) In considering competing applications to serve the same territory, there shall be a disputable presumption that applicants have an equal ability to extend, improve, enlarge, build, operate and maintain existing or proposed facilities.
[1961 c.691 §13]

757.670 Assignment or transfer of rights acquired by allocation; approval of commissioner. (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the commissioner and after a finding that such assignment or transfer is not contrary to the public interest and authorizes such assignment or transfer.

(2) No approved contract or order approving an allocation of territory shall be construed to confer any property right; providing, however, upon the death of an indi-

vidual who is a party to an approved contract or the applicant under an approved order, the executor or administrator shall continue the operation thereunder for the purpose of transferring such rights for a period of not to exceed two years from the date of death.

(3) In the event the property of a person serving an allocated territory is condemned, no value shall be claimed or awarded by reason of the contract or order making such allocation.

[1961 c.691 §14]

757.675 Enforcement procedure. In the event a contract approved by the commissioner is breached or in the event an allocated territory is served by a person not authorized by such contract, or order of the commissioner, the aggrieved person or the commissioner may file a suit in the circuit court for any county in which is located some or all of the allocated territory allegedly involved in said breach or invasion, for an injunction against said alleged breach or invasion. The trial of such suit shall proceed as in other suits in equity. Any party may appeal to the Supreme Court from the court's decree, as in other equity cases. The remedy provided in this section shall be in addition to any other remedy provided by law.

[1961 c.691 §12]

757.680 Application to cities, municipalities and cooperatives of ORS 757.605 to 757.690 and 758.015. (1) ORS 757.605 to 757.690 and 758.015 shall not be construed or applied to restrict the powers granted to cities to issue franchises, or to restrict the exercise of the power of condemnation by a municipality; and when a municipality has condemned or otherwise acquired another person's equipment, plant or facilities for rendering utility service, it shall acquire all of the rights of the person whose property is condemned to serve the territory served by the acquired properties.

(2) ORS 757.605 to 757.690 and 758.015 shall not be construed to restrict the right of a municipality to provide utility service for street lights, fire alarm systems, airports, buildings and other municipal installations regardless of their location.

(3) ORS 757.605 to 757.690 and 758.015 shall not be construed to confer upon the commissioner any regulatory authority over rates, service or financing of cooperatives or municipalities.

[1961 c.691 §15]

757.685 Fees. To cover the costs of administering ORS 757.605 to 757.690 and 758.015 the commissioner is required to receive fees before filing any contract, application, petition, complaint, protest, appearance, motion, answer or other pleading and for holding any hearing. All fees shall be collected in accordance with the following schedule:

(1) Filing application for allocated territory under ORS 757.640 by a person having annual gross revenue derived from within the state for the calendar year 1960:

(a) In excess of $5 million or more, a fee of two-tenths of one mill of such revenue but in no event shall such fee exceed	$10,000
(b) In excess of $100,000 but less than $5 million	100
(c) Less than $100,000	50
(2) Filing a contract or application under ORS 757.625, 757.670 or 758.015	100
(3) Filing petition or complaint	25
(4) Filing protest, appearance, motion, answer or other pleading	10
(5) Filing an application for allocated territory under ORS 757.640 subsequent to an original allocation and payment of fee under subsection (1) of this section	100

[1961 c.691 §16; 1965 c.242 §2]

757.690 [1961 c.691 §17; repealed by 1967 c.164 §4]

PENALTIES

757.990 Penalties. (1) Any person or municipality, or their agents, lessees, trustees or receivers, who omits, fails or refuses to do any act required by ORS 757.035, or fails to comply with any orders, rules or regulations of the commissioner made in pursuance of ORS 757.035, shall forfeit and pay into the State Treasury a sum of not less than $100, nor more than $10,000 for each such offense.

(2) Violation of ORS 757.075 subjects the owner, manager or person operating the street railway or line to a fine of $50 for the first offense and $100 for each subsequent violation. Each car run one day when not equipped as provided in ORS 757.075 constitutes a separate violation.

(3) Violation of ORS 757.180 is punishable, upon conviction, by a fine of not less

than $1,000 for each offense. A penalty of not less than $500 nor more than $1,000 shall be recovered from the public utility for each such offense when such officer, agent or employe acted in obedience to the direction, instruction or request of the public utility or any general officer thereof.

(4) Violation of ORS 757.305 is punishable, upon conviction, by a fine of not exceeding $1,000 or less than $200, or by imprisonment in the penitentiary for not more than five years, or both.

(5) Any public utility violating ORS 757.310 shall, upon conviction, forfeit and pay to the State Treasurer not less than $100 nor more than $1,000 for each offense. Violation of ORS 757.310 by an officer or agent of a public utility is punishable, upon conviction, by a fine of not less than $50 nor more than $100 for each offense.

(6) Any person violating ORS 757.325 shall, upon conviction, forfeit and pay to the State Treasurer not less than $100 and not more than $10,000 for each offense. Violation of ORS 757.325 by any agent or officer of any public utility or person is punishable, upon conviction, by a fine of not less than $100 and not more than $1,000 for each offense.

(7) Violation of ORS 757.330 is punishable, upon conviction, by a fine of not less than $50 nor more than $1,000 for each offense.

(8) Violation of ORS 757.340 is punishable, upon conviction, by a fine of not exceeding $100 or imprisonment for not exceeding 30 days, or both. Any public utility knowingly permitting the violation of ORS 757.340 shall, upon conviction, forfeit not exceeding $1,000 for each offense.

(9) Violation of ORS 757.445 is punishable, upon conviction, by a fine of not less than $500 nor more than $20,000 for each offense.

(10) Violation of ORS 757.450 is a felony and is punishable, upon conviction, by a fine of not less than $1,000 nor more than $20,000, or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

(11) Violation of ORS 757.555 is punishable, upon conviction, by a fine of not less than $100 nor more than $1,000, or by imprisonment in the county jail for not more than one year, or both.

757.991 Civil penalty for noncompliance with gas regulations. Any person or municipality, or their agents, lessees, trustees or receivers, engaged in the management, operation, ownership or control of facilities for the transmission or distribution of gas by pipeline, or facilities for the storage or treatment of gas to be transmitted or distributed by pipeline, who fails to do any act required by ORS 757.095, or fails to comply with any orders, rules or regulations of the commissioner made in pursuance of ORS 757.095, shall forfeit and pay into the State Treasury a civil penalty not to exceed $1,000 for each such failure for each day such failure persists, except that the maximum civil penalty shall not exceed $200,000 for any related series of failures.

[1969 c.372 §4]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1969

Robert W. Lundy
Legislative Counsel