

Chapter 757

1985 REPLACEMENT PART

Utility Regulation Generally

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DEFINITIONS; GENERAL PROVISIONS**757.005 Definitions for ORS chapter**

757. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection, "public utility" 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 provision of telecommunications service, 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 the public utility.

(b) As used in this chapter, "public utility" does not include:

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

(B) Any railroad, as defined in ORS 760.005, 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 corporation not providing intrastate telecommunications 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.

(D) Any corporation, company, individual or association of individuals providing heat, light or power:

(i) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14, 1985;

(ii) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers;

(iii) From solar or wind resources to any number of customers; or

(iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any number of customers.

(E) A qualifying facility on account of sales made under the provisions of ORS 758.505 to 758.555.

(F) Any water utility serving less than 300 customers at an average annual residential rate of \$15 per month or less, which provides adequate and nondiscriminatory service.

(G) Any person acting only as a competitive telecommunications provider.

(H) Any corporation, company, individual or association of individuals providing only telephone customer premise equipment to the public.

(2) Nothing in sub-subparagraph (iv) of subparagraph (D) of paragraph (b) of subsection (1) of this section shall prohibit third party financing of acquisition or development by a utility customer of energy resources to meet the heat, light or power requirements of that customer.

(3) As used in this chapter:

(a) "Competitive telecommunications provider" means a telecommunications services provider which has been classified as such by the commissioner pursuant to ORS 757.815.

(b) "Intrastate telecommunications service" means any telecommunications service in which the information transmitted originates and terminates within the boundaries of the State of Oregon.

(c) "Local exchange telecommunications service" means telecommunications service provided within the boundaries of exchange maps filed with and approved by the commissioner.

(d) "Private telecommunications network" means a system, including the construction, maintenance or operation thereof, for the provision of telecommunications service or any portion of such service, by a person for the exclusive use of that person and not for resale, directly or indirectly.

(e) "Radio common carrier" means any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers, and any town making available facilities to provide radio communications service, radio paging or cellular communications service for hire.

(f) "Shared telecommunications service" means the provision of telecommunications and information management services and equipment to a user group located in discrete premises in building complexes, campuses or high-rise buildings, by a commercial shared services provider or by a users' association, through privately owned

customer premises equipment and associated data processing and information management services and includes the provision of connections to local exchange telecommunications service.

(g) "Telecommunications service" means two-way switched access and transport of voice communications but does not include:

(A) Services provided by radio common carrier.

(B) One-way transmission of television signals.

(C) Surveying.

(D) Private telecommunications networks.

(E) Communications of the customer which take place on the customer side of on-premises equipment.

(h) "Telecommunications public utility" means a public utility providing telecommunications service that has been so classified by the commissioner pursuant to ORS 757.815.

(i) "Toll" means telecommunications between exchanges carried on the public switched network for which charges are made on a per-unit basis.

(4) 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, 1971 c.655 §64a, 1973 c.726 §1, 1979 c.62 §1; 1981 c.360 §1; 1981 c.749 §21, 1983 c.118 §1; 1983 c.799 §7; 1985 c.550 §1; 1985 c.633 §7; 1985 c.779 §1]

757.010 [Repealed by 1971 c 655 §250]

757.015 "Affiliated interest" defined.

As used in ORS 757.105 (1) and in ORS 757.495, "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. [Amended by 1971 c.655 §65]

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 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. [Amended by 1971 c.655 §66]

757.025 [Amended by 1971 c.655 §14; renumbered 756.062]

757.030 [Repealed by 1971 c.655 §250]

757.035 Adoption of safety regulations; enforcement.

(1) The commissioner has power, after a hearing had upon the motion of the commissioner 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 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 employees, customers 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, customers 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 1973 edition of the American National Standard, National Electrical Safety Code, C2.

(3) In lieu of subsection (2) of this section, or in addition thereto, the commissioner may adopt by rule any revision or edition of or amendment to the National Electrical Safety Code approved by the American National Standards Institute after July 14, 1977, and in effect on the date of adoption by the commissioner. [Amended by 1969 c.530 §1; 1971 c.655 §68; 1975 c.658 §1, 1977 c.346 §1]

757.039 Regulation of hazardous substance distribution and storage operations; cooperation with federal agencies; disclosure of reports and information. (1) As used in this section, "hazardous substance or material" means:

(a) Fuel gas, whether in a gaseous, liquid or semisolid state;

(b) Petroleum or petroleum products; and

(c) Any other substance or material which may pose an unreasonable risk to life or property when transported by pipeline facilities.

(2) The commissioner has power, after a hearing had upon the commissioner's own motion or upon complaint, to require by general or special orders embodying reasonable rules, 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 a hazardous substance or material by pipeline; or of facilities for the storage or treatment of a hazardous substance or material to be transmitted or distributed by pipeline or upon the public streets or highways; or of any other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every pipeline, plant, system, equipment or apparatus used in the transmission, distribution, storage or treatment of a hazardous substance or material to be transmitted by pipeline or upon the public streets or highways in such manner as to protect and safeguard the health and safety of all employes, customers 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 and safety of all employes, customers or the public.

(3) 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, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979 and to assume responsibility for and to carry out on behalf of the Secretary of Transportation, safety jurisdiction relating to pipeline facilities and transportation of hazardous substances and materials in Oregon in any manner not otherwise subject to the jurisdiction of any other agency of this state.

(4) 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, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979 and the regulations thereunder and provide such information as is required thereunder to the Secretary of Transportation.

(5) The jurisdiction of the commissioner over propane, butane or mixtures of these gases shall be limited to systems transporting such gases to 10 or more customers, or to systems any portion of which is located in a public place. [Formerly 757.095; 1983 c.540 §3]

757.040 [Amended by 1971 c.655 §101; renumbered 758.035]

757.045 [Amended by 1967 c.394 §1; repealed by 1971 c.781 §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 as may be necessary for the extension of service, and unless the conditions are such as to reasonably justify the necessary investment by the public utility in extending its line, plant or system into such locality and furnishing such service. [Amended by 1971 c.655 §67]

757.055 [Repealed by 1971 c.655 §250]

757.056 Information on energy conservation to be furnished by certain utilities.

(1) As used in this section, "energy conservation services" means services provided by public utilities to educate and inform customers and the public about energy conservation. Such services include but are not limited to providing answers to questions concerning energy saving devices and providing inspections and making suggestions concerning the construction and siting of buildings and residences.

(2) All public utilities as defined in ORS 757.005, that produce, transmit, deliver or furnish heat, light or power shall establish energy conservation services and shall provide energy conservation information to customers and to the public. The services shall be performed in accordance with such rules as the commissioner may prescribe. [1977 c.197 §2; 1977 c.887 §11]

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

757.065 [Renumbered 756.370]

757.070 [Renumbered 756 375]

757.075 [Repealed by 1971 c.655 §250]

757.080 [1953 c.356 §1; 1961 c.354 §1, 1971 c.655 §30a; renumbered 756.380]

757.085 [1953 c 356 §2; 1961 c 354 §2; renumbered 756.385]

757.090 [1953 c.356 §3; 1961 c.354 §3; renumbered 756 390]

757.095 [1969 c.372 §2; 1971 c.655 §69; renumbered 757.039]

BUDGET, ACCOUNTS AND REPORTS OF UTILITIES

757.105 Filing of budget; review by commissioner; 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, the commissioner shall examine into and investigate the same and unless rejected within 60 days thereafter, the proposed budget is presumptively fair and reasonable and not contrary to public interest.

(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; 1971 c.655 §82]

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 provisions of ORS 757.105 (3) apply to adjustments and additions to budgets. [Amended by 1971 c.655 §83]

757.110 Effect of 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 756.580 to 756.610 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 756.580 to 756.610 or modified or set aside by the commissioner. [Amended by 1971 c 655 §84]

757.115 [Amended by 1971 c.655 §20; renumbered 756.105]

757.120 Accounts required. (1) Every public utility shall keep and render to the commissioner, in the manner and form prescribed by the commissioner, 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 a public utility 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 accounts and records of such other business. [Amended by 1971 c.655 §85]

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

(2) No public utility shall keep any other accounts 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. [Amended by 1971 c.655 §86]

757.130 [Repealed by 1971 c.655 §250]

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 may examine and audit any account. Items shall be allocated to the accounts in the manner prescribed by the commissioner. [Amended by 1983 c.540 §4]

757.140 Depreciation accounts. Every public utility shall carry a proper and adequate depreciation account. 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 the commissioner may find to be necessary. [Amended by 1971 c.655 §87]

757.145 [Repealed by 1971 c.655 §250]

757.150 [Repealed by 1971 c 655 §250]

757.155 [Amended by 1971 c.655 §90; renumbered 757.480]

757.160 [Amended by 1971 c.655 §91; renumbered 757.485]

757.165 [Amended by 1971 c.655 §92; renumbered 757.490]

757.170 [Amended by 1971 c 655 §93; renumbered 757.495]

757.175 [Amended by 1971 c.655 §94, renumbered 757.500]

757.180 [Amended by 1971 c.655 §21; renumbered 756.115]

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 the commissioner, 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.

(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. [Amended by 1971 c 655 §70]

757.210 Hearing to establish new schedules. (1) Except as provided in ORS 757.825, 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 the commissioner's own initiative, after reasonable notice, conduct a hearing to determine the propriety and reasonableness of such rate or schedule. The commissioner shall conduct such a hearing upon written complaint filed by the utility, its customer or customers, or any other proper party within 60 days of the utility's filing; provided that no hearing need be held if the particular rate change is the result of an automatic adjustment clause. 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. The term "automatic adjustment clause" means a provision of a rate schedule which provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred by a utility and which is subject to review by the commissioner at least once every two years.

(2) The commissioner and staff may consult at any time with, and provide technical assistance to, utilities, their customers, and other interested parties on matters relevant to utility rates and charges. If a hearing is held with respect to a rate change, the commissioner's decisions shall be based on the record made at the hearing. [Amended by 1971 c 655 §70a; 1981 c.715 §1; 1985 c.550 §2]

757.215 Commissioner authorized to suspend new rates or order interim rates during hearings; revenues collected under unapproved rates subject to refund; 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, the commissioner may enter an 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.

(4) If the commissioner is required to or determines to conduct a hearing on a rate or schedule of rates filed pursuant to ORS 757.210, but does not order a suspension thereof, any increased revenue collected by the utility as a result of such rate or rate schedule becoming effective shall be received subject to being refunded. If the rate or rate schedule thereafter approved by the commissioner is for a lesser increase or for no increase, the utility shall refund the amount of revenues received that exceeds the amount approved as nearly as possible to the customers from whom such excess revenues were collected, by a credit against future bills or otherwise, in such manner as the commissioner orders.

(5) The commissioner may in a suspension order authorize an interim rate or rate schedule under which the utility's revenues will be increased by an amount deemed reasonable by the commissioner, not exceeding the amount requested by the utility. Any such interim increase for a public utility as defined in ORS 757.005 that produces, transmits, delivers or furnishes heat, light or power shall be effected by rates designed to increase the utility's revenues without materially changing the revenue relationships among customer classes or between the revenues derived from demand charges and from energy charges. An interim rate or rate schedule shall remain in effect until terminated by the commissioner. [Amended by 1981 c.715 §2]

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 rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in ORS 757.210 to 757.220 and 757.825. [Amended by 1971 c.655 §71; 1985 c.550 §3]

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. The service classifications and schedule forms shall be designed consistently with the requirements of ORS 469.010. Each public utility is required to conform its schedules of rates 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. [Amended by 1971 c.655 §72; 1977 c.682 §1]

757.235 [Amended by 1953 c.285 §2; repealed by 1981 c.715 §3]

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 business office of such public utility, 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 business office of such public utility 30 days prior to the time the schedules are to take effect, unless the commissioner prescribes a shorter time. [Amended by 1971 c.655 §73]

757.245 Establishment of joint rates.

(1) A public utility may establish reasonable through service and joint rates and classifications with other public utilities. Public utilities establishing joint rates 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, classification, regulation, practice and division is prohibited.

(2) The commissioner may, and shall, whenever deemed by the commissioner to be necessary or desirable in the public interest, after full hearing upon complaint, or upon the commissioner's own initiative without complaint, establish through service, classifications and joint rates, the divisions of such rates 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 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 the commissioner's own initiative without complaint, the commissioner is of the opinion that the divisions of joint rates 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 was established pursuant to the finding or order of the commissioner and the divisions thereto are found by the commissioner 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, 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 than another. [Amended by 1971 c.655 §74]

757.250 Standards and appliances for measuring service. (1) The commissioner shall ascertain and prescribe for each kind of public utility suitable and convenient standard commercial units of 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 service rendered by any public utility and prescribe reasonable regulations for examination and testing of such 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. [Amended by 1971 c.655 §75]

757.255 Testing of measuring appliances. (1) The commissioner may provide for the examination and testing of any and all appliances used for the measuring of any service of a public utility, and may provide by rule that no such appliance shall be installed and used for the measuring of any 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 customer, the fee to be paid by the customer at the time of the customer's request, but to be repaid to the customer by the commissioner and to be paid by the public utility if the appliance is found defective or incorrect to the disadvantage of the customer or used beyond such reasonable limit as may be prescribed by the commissioner.

(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 the commissioner deems necessary. [Amended by 1971 c.655 §76]

757.260 [Amended by 1971 c 655 §18, renumbered 756.075]

757.265 [Repealed by 1971 c 655 §250]

ATTACHMENTS REGULATION

757.270 Definitions for ORS 757.270 to 757.290. As used in ORS 757.270 to 757.290, unless the context requires otherwise:

(1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves, or other phenomena, or for the transmission of electricity for light, heat or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television or communications right-of-way, duct, conduit, manhole or handhole or other similar facility or facilities owned or controlled, in whole or in part, by one or more public utility or people's utility district.

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association which is authorized to construct attachments upon, along, under or across the public ways.

(3) "Public utility" means any electrical company, telephone company or telegraph company, as defined in ORS 757.005, and does not include any entity cooperatively organized or owned by federal, state or local government, or a subdivision of state or local government.

(4) "People's utility district" means any concern providing electricity organized pursuant to ORS 261.010 and includes any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government. [1979 c.356 §2]

757.273 Attachments by licensees to public utility facilities regulated. The Public Utility Commissioner of Oregon shall have the authority to regulate in the public interest the rates, terms and conditions for attachments by licensees to poles or other facilities of public utilities. All rates, terms and conditions made, demanded or received by any public utility for any attachment by a licensee shall be just, fair and reasonable. [1979 c.356 §3]

757.276 Attachments by licensees to people's utility districts regulated. The Director of the Department of Commerce shall have the authority to regulate the rates, terms and conditions for attachments by licensees to poles or other facilities of people's utility districts. All rates, terms and conditions made, demanded or received by any people's utility

district for any attachment by a licensee shall be just, fair and reasonable. [1979 c.356 §4]

757.279 Fixing of rates or charges by Director of Commerce or Public Utility Commissioner; costs of hearing. (1) Whenever the Public Utility Commissioner of Oregon or the Director of the Department of Commerce finds, after hearing had upon complaint by a licensee, a public utility or a people's utility district that the rates, terms or conditions demanded, exacted, charged or collected in connection with attachments or availability of surplus space for such attachments are unjust or unreasonable, or that such rates or charges are insufficient to yield a reasonable compensation for the attachment and the costs of administering the same, the commissioner or director shall determine the just and reasonable rates, terms and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing such rates, terms and conditions, the commissioner or director shall consider the interest of the customers of the licensee, as well as the interest of the customers of the public utility or people's utility district which owns the facility upon which the attachment is made.

(2) When the order is issued by the Director of the Department of Commerce, the order shall also provide for payment by the parties of the cost of the hearing. The payment shall be made in a manner which the director considers equitable. [1979 c.356 §5, 1983 c.251 §1]

757.282 Criteria for a just and reasonable rate for attachments. A just and reasonable rate shall assure the public utility or the people's utility district the recovery from the licensee of not less than all the additional costs of providing and maintaining pole attachment space for the licensee nor more than the actual capital and operating expenses, including just compensation, of the public utility or people's utility district attributable to that portion of the pole, duct or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum attachment grade level, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities. [1979 c.356 §6]

757.285 Presumption of reasonableness of rates set by private agreement. Agreements regarding rates, terms and conditions of attachments shall be deemed to be just, fair and reasonable, unless the commissioner or director finds upon complaint by a public utility,

people's utility district or licensee party to such agreement and after hearing, that such rates, terms and conditions are adverse to the public interest and fail to comply with the provisions hereof. [1979 c.356 §7]

757.287 Application to electrical utility attachments. Nothing in ORS 757.270 to 757.290 shall be deemed to apply to any attachment by one or more electrical utilities on the facilities of one or more other electrical utilities. [1979 c.356 §8]

757.290 Regulatory procedures. The procedures of the commissioner or director for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those applicable to the commissioner and director respectively. [1979 c.356 §9]

ILLEGAL PRACTICES

757.305 [Amended by 1971 c.655 §77; repealed by 1979 c.190 §431]

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 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. [Amended by 1971 c.655 §78]

757.315 Transactions not constituting unjust discrimination. (1) ORS 757.310 does not prevent any public utility from giving free service, or reduced rates therefor, to:

(a) Its officers, directors, employees and members of their families;

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

(c) Members of families of deceased employees of such public utility.

(2) The commissioner may require any public utility to file with the commissioner a list, ver-

ified under oath, of all free or reduced rate privileges granted by a public utility under the provisions of this section. [Amended by 1971 c.655 §79]

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 customer's facilities incident to providing its services and for 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 customer, except meters and appliances for measurements of any service, unless otherwise ordered by the commissioner. [Amended by 1971 c.655 §80]

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 whereby any such service shall, by any device, be rendered free or at a lesser 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. [Amended by 1971 c.655 §81]

757.335 [Amended by 1971 c.655 §25; renumbered 756.185]

757.340 [Amended by 1971 c 655 §22; renumbered 756 125]

757.345 [Repealed by 1971 c 655 §250]

757.350 [Repealed by 1971 c.655 §250]

757.355 Costs of property not presently providing utility service excluded from rate base.

No public utility shall, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates which are derived from a rate base which includes within it any construction, building, installation

or real or personal property not presently used for providing utility service to the customer. [1979 c.3 §2]

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 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 ORS 757.415 (3).

(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]

757.417 Limitation on application of ORS 757.415. ORS 757.415 does not apply to the issuance, renewal or assumption of liability on any evidence of indebtedness when such issuance, renewal or assumption is for the purpose of acquiring specific real or personal property, if the aggregate principal amount thereof, together with all other then outstanding evidences of indebtedness issued, renewed or assumed under this section, does not exceed whichever is the greater of the following amounts:

(1) The amount of \$75,000.

(2) The amount of one-half of one percent of the sum of:

(a) The total principal amount of all bonds or other securities representing secured indebtedness of the public utility issued or assumed and then outstanding; and

(b) The capital and surplus as then stated on the books of account of the public utility. [1971 c.655 §88]

757.419 Limitation on application of ORS 757.480. ORS 757.480 does not apply to any mortgage or other encumbrance upon any real or personal property given to secure payment of any evidence of indebtedness issued under ORS 757.415. [1971 c.655 §89]

757.420 Hearings and supplemental orders relating to issuance of securities; joint approval of issuance by interstate utility. (1) To enable the commissioner to determine whether the commissioner 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 the commissioner 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 the commissioner 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 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 the permission such condition or conditions as the commissioner 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 the commissioner deems advisable, and to establish such rules and regulations as the commissioner deems reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in the order.

757.440 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 the commissioner 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.

TRANSACTIONS INVOLVING UTILITIES

757.480 Approval needed prior to disposal, mortgage 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 or otherwise dispose of the whole of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$10,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such public utility or public utility property, or perform any service as a public utility; or

(b) Mortgage or otherwise encumber the whole or any part of the property of such public utility necessary or useful in the performance of its duties to the public, including any franchise, permit or right to maintain and operate such public utility or public utility property, or perform any service as a public utility; or

(c) By any means whatsoever, directly or indirectly, merge or consolidate any of its 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. [Formerly 757 155]

757.485 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 stocks or bonds or property utilized for utility purposes and having a value in excess of \$10,000 of any other public utility unless authorized so to do by the commissioner.

(2) 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. [Formerly 757.160]

757.490 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 the investigation and approval when the public utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations.

(2) When any such proposed contract has been filed with the commissioner, the commissioner shall promptly investigate and act upon it in accordance with ORS 757.495 (3) and (5).

(3) In making such investigation the commissioner and accountants, examiners and agents, appointed by the commissioner 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. [Formerly 757.165]

757.495 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, the commissioner promptly shall examine and investigate it. If, after such investigation, the commissioner determines that it is fair and reasonable and not contrary to the public interest, the commissioner shall enter 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, the commissioner determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest, the commissioner shall enter 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 the commissioner, shall be by findings and order to be entered within 90 days after the matter has been submitted to the commissioner 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 756.580 to 756.610, and the public utility, or any other person or corporation affected by any such findings and order, may bring and prosecute such suit. [Formerly 757.170]

757.500 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 customers of such public utility directly engaged in such business demands. No such contract or agreement is valid or enforceable until it has been approved by the commissioner as being in the public interest. [Formerly 757.175]

757.505 [Repealed by 1971 c.655 §250]

757.506 Findings and policy regarding exercise of influence over utility by person not engaged in utility business. (1) The Legislative Assembly finds and declares that:

(a) The protection of customers of public utilities which provide heat, light or power is a matter of fundamental state-wide concern;

(b) Existing legislation requires the commissioner's approval of one public utility's acquisition of another public utility's stocks, bonds and certain property used for utility purposes, but does not require the commissioner's approval of such acquisitions by persons not engaged in the public utility business in Oregon; and

(c) An attempt by a person not engaged in the public utility business in Oregon to acquire the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power could result in harm to such utility's customers, including but not limited to the degradation of utility service, higher rates, weakened financial structure and diminution of utility assets.

(2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not engaged in the public utility business in Oregon of the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power in the manner set forth in this section and ORS 757.511

in order to prevent unnecessary and unwarranted harm to such utilities' customers. [1985 c.632 §2]

757.510 [Repealed by 1971 c 655 §250]

757.511 Application for authority to exercise influence over utility; contents of application; issuance of order; dissemination of information about acquisition. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility which provides heat, light or power without first securing from the commissioner, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015 (1), (2) or (3).

(2) The application required by subsection (1) of this section shall set forth detailed information regarding:

(a) The applicant's identity and financial ability;

(b) The background of the key personnel associated with the applicant;

(c) The source and amounts of funds or other consideration to be used in the acquisition;

(d) The applicant's compliance with federal law in carrying out the acquisition;

(e) Whether the applicant or the key personnel associated with the applicant have violated any state or federal statutes regulating the activities of public utilities;

(f) All documents relating to the transaction giving rise to the application;

(g) The applicant's experience in operating public utilities providing heat, light or power;

(h) The applicant's plan for operating the public utility;

(i) How the acquisition will serve the public utility's customers in the public interest; and

(j) Such other information as the commissioner may require by rule.

(3) The commissioner promptly shall examine and investigate each application received pursuant to this section and shall issue an order disposing of the application within 19 business days of its receipt. If the commissioner determines that approval of the application will serve the public utility's customers in the public interest, the commissioner shall issue an order granting the application. The commissioner may condition an order authorizing the acquisition upon the applicant's satisfactory performance or adherence to specific requirements. The commis-

sioner otherwise shall issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest.

(4) Nothing in this section shall prohibit dissemination by any party of information concerning the acquisition so long as such dissemination is not otherwise in conflict with state or federal law. [1985 c.632 §3]

757.515 [Amended by 1971 c.655 §39; renumbered 756 515]

757.520 [Repealed by 1971 c.655 §250]

757.525 [Repealed by 1971 c.655 §250]

757.530 [Repealed by 1971 c.655 §250]

757.535 [Repealed by 1971 c 655 §250]

757.540 [Amended by 1971 c.655 §53; renumbered 756 568]

757.545 [Repealed by 1971 c.655 §250]

757.550 [Repealed by 1971 c.655 §250]

757.555 [Amended by 1971 c.655 §49, renumbered 756 555]

757.560 [Repealed by 1971 c.655 §250]

757.565 [Repealed by 1971 c 655 §250]

757.570 [Repealed by 1971 c.655 §250]

757.575 [Repealed by 1971 c 655 §250]

757.580 [Repealed by 1971 c.655 §250]

757.585 [Repealed by 1971 c.655 §250]

757.590 [Amended by 1971 c 655 §48; renumbered 756.552]

757.595 [Repealed by 1971 c 655 §250]

757.605 [1961 c 691 §2; 1971 c.655 §97; renumbered 758.400]

757.606 [Formerly 758 040; renumbered 165.475]

757.610 [1961 c.691 §18; renumbered 758.405]

757.611 [Formerly 758.050; renumbered 165.480]

757.615 [1961 c.691 §§3, 11; part renumbered 757.652; 1971 c 655 §98; renumbered 758 410]

757.616 [Formerly 758.060, renumbered 165.485]

757.620 [1961 c.691 §4; renumbered 758 415]

757.621 [Formerly 758.070; renumbered 165.490]

757.625 [1961 c.691 §5; renumbered 758.420]

757.626 [Formerly 758.080; renumbered 165.495]

757.630 [1961 c.691 §6; renumbered 758.425]

757.631 [Formerly 758 090, renumbered 165 840]

757.635 [1961 c.691 §7; renumbered 758.430]

757.636 [Formerly 758.100; renumbered 165.845]

757.640 [1961 c.691 §8, renumbered 758.435]

757.641 [Formerly 758.110; renumbered 165.850]

757.645 [1961 c.691 §9; renumbered 758.440]

757.650 [1961 c.691 §10; renumbered 758.445]

757.652 [Formerly part of 757.615; 1965 c.242 §1; renumbered 758.450]

757.655 [1961 c.691 §13; renumbered 758.455]

757.670 [1961 c.691 §14, renumbered 758.460]

757.675 [1961 c.691 §12; 1971 c.655 §99; renumbered 758.465]

757.680 [1961 c.691 §15; renumbered 758.470]

757.685 [1961 c.691 §16; 1965 c.242 §2; 1971 c.655 §99a; renumbered 758.475]

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

EMERGENCY CURTAILMENT OF ELECTRICITY OR NATURAL OR MANUFACTURED GAS

757.710 Emergency curtailment plan required; credits for weatherization or alternate energy devices. (1) Any person, as defined in ORS 758.400, engaged in the sale or resale of electricity or natural or synthetic gas in this state shall present for approval by the commissioner a plan for curtailment of electrical or gas load in the event of any predictable circumstance that may jeopardize prolonged continuity of service. Utility plans shall be submitted in such form and within such time limits as the commissioner shall specify.

(2) Utility plans may provide for a credit against future curtailment for a customer who has already accomplished a reduction in demand for the utility's service by installing an alternative energy device or by weatherization or other installed conservation measures equivalent to the proposed level of curtailment. Where the level of curtailment exceeds the demand reduction produced, by the conservation measures or installed alternative energy device of the customer, the utility plan may provide for credit against the level of curtailment ordered to the extent of the demand reduction produced by the conservation measure or alternate energy device.

(3) The commissioner shall approve the feature of any plan concerning such credit against curtailment to the extent of the demand reduction produced and shall not penalize either the utility or the customer, in the event of a curtailment order, under ORS 757.720 for the amount of reduced demand. [1973 c.309 §2; 1975 c.606 §10; 1979 c.355 §1]

757.720 Factors to be considered in approving plan; authority to establish plan; consultation with Department of Energy.

(1) Approval of utility plans for the curtailment of load shall be based on the following factors:

(a) The consistency of the plan with the public health, safety and welfare;

(b) The technical feasibility of implementation of the plan;

(c) The effectiveness with which the plan minimizes the impact of any curtailment; and

(d) Consistency with Oregon energy policies formulated under ORS 176.820, 192.500, 192.690, 469.010 to 469.580, 469.533, 469.990, 757.710 and this section.

(2) In the event of an emergency threatening the health, safety and welfare of the general public, the commissioner may on the commissioner's own motion and without hearing establish a plan for the curtailment of load by any person referred to in ORS 757.710. Where an emergency is not present, the commissioner shall prior to approval hold public hearings with respect to any proposed plan and give reasonable notice of such hearings.

(3) The commissioner shall consult with the Director of the Department of Energy before approving a plan. [1973 c.309 §3, 1975 c.606 §11]

757.730 Liability when curtailment occurs. A utility shall not be liable for damages to persons or property resulting from a curtailment of service in accordance with a plan approved by the commissioner. [1973 c.309 §4]

HEALTH ENDANGERING TERMINATION OF RESIDENTIAL UTILITY SERVICE

757.750 Legislative findings. The Legislative Assembly finds that the termination of residential electric and natural gas utility service can lead to the serious impairment of human health and possibly to loss of life; therefore, the Legislative Assembly has enacted ORS 757.750 to 757.760. [1979 c.868 §2; 1983 c.326 §1]

757.755 Termination of residential electric or natural gas service prohibited; rules of commissioner. (1) The Public Utility Commissioner of Oregon shall establish rules to prohibit the termination of residential electric or natural gas service when such termination would significantly endanger the physical health of the residential consumer.

(2) The commissioner shall provide by rule a method for determining when the termination of residential electric or natural gas service would significantly endanger the physical health of the residential consumer. [1979 c.868 §3, 1983 c.326 §2]

757.760 Requirements for notice of termination of service; payment schedules.

The commissioner shall establish rules to require each electric and natural gas utility to:

(1) Give written or personal notice of a proposed termination of residential service in a manner reasonably calculated to reach the residential consumer within a reasonable period of time before the proposed date of termination;

(2) Accept reasonable partial payment on the outstanding account and to establish a reasonable payment schedule for any indebtedness, including a deposit, that the utility claims the residential consumer owes for service at any residential address in lieu of termination of or refusal to provide service, and to inform the residential consumer of the provisions of this subsection;

(3) Inform those residential consumers who cannot afford to pay their bills or deposits of the names and telephone numbers of the appropriate unit within the Department of Human Resources or other appropriate social service agencies that can help the consumer investigate what federal, state or private aid might be available to that consumer; and

(4) Provide that a transfer of service from one premise to another within the utility's service area shall not be considered a discontinuation of service. [1979 c.868 §4; 1983 c 326 §3]

REGULATION OF TELECOMMUNICATIONS SERVICE

757.810 Legislative findings. The Legislative Assembly finds and declares that it is the goal of the State of Oregon to secure and maintain high-quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition. The commissioner shall administer the statutes with respect to telecommunications rates and services in accordance with this policy. [1985 c 550 §5]

757.815 Certificates of authority required; application; notice; restrictions; hearing; classification of successful applicants. (1) No person, corporation, company, association of individuals or their lessees, trustees, or receivers shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the commissioner under this section.

(2) Applications for certificates of authority shall be in a form prescribed by the commissioner and shall describe the telecommunications services the applicant proposes to provide. Notice of all applications shall, within 30 days of filing, be

served by the commissioner upon all persons holding authority to provide telecommunications service issued under this section or providing local exchange telecommunications service.

(3) No certificate shall authorize any person to provide local exchange telecommunications service within the local exchange telecommunications service area of a telecommunications public utility unless such utility consents, is unable to provide the service, or fails to protest an application. This subsection shall not apply to any application for a certificate by a provider of shared telecommunications services.

(4) After notice, a hearing need not be held prior to issuance of a certificate of authority except upon the commissioner's own motion or unless the application is to authorize a person to provide local exchange telecommunications service in the local exchange telecommunications service area of a telecommunications public utility and such utility protests. After hearing, the commissioner shall issue the certificate only upon a showing that the proposed service is required by the public interest.

(5) The commissioner may classify a successful applicant for a certificate as a telecommunications public utility or as a competitive telecommunications services provider. If the commissioner finds that a successful applicant for a certificate has demonstrated that services it offers are subject to competition or that its customers or those proposed to become customers have reasonably available alternatives, the commissioner shall classify the applicant as a competitive telecommunications services provider. The commissioner shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commissioner may establish by rule, after hearings. The commissioner may attach reasonable conditions to such classification and may amend or revoke any such order as provided in ORS 756.568. For purposes of this section, in determining whether telecommunications services are subject to competition or whether there are reasonably available alternatives, the commissioner shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commissioner. [1985 c 550 §6]

757.820 Certificates of authority for persons, companies and corporations providing services on January 1, 1986.

Notwithstanding ORS 757.815, the commissioner shall issue to any person, company or corporation providing intrastate telecommunications services that are subject to regulation by the commissioner on January 1, 1986, a certificate of authority to continue to provide those services on and after January 1, 1986. [1985 c.550 §6a]

757.825 Regulation by commissioner; exemptions; use of revenues; price list filing; toll service rates; subsidies; alternative access requirements. (1) Except as otherwise provided in this section, the commissioner shall have authority to determine the manner and extent of regulation of telecommunications services within the State of Oregon.

(2) Upon petition by any interested party and following notice and investigation, the commissioner may exempt in whole or in part from regulation those telecommunications services for which the commissioner finds that price or service competition exists, or that such services can be demonstrated by the petitioner or the commissioner to be subject to competition, or that the public interest no longer requires full regulation thereof. The commissioner may attach reasonable conditions to such exemption and may amend or revoke any such order as provided in ORS 756.568.

(3) Upon petition by any telecommunications public utility the commissioner shall exempt from regulation those telecommunications services for which the commissioner finds that:

(a) The rates the utility proposes for such services cover the full long-range incremental costs of providing such services; and

(b) Price and service competition exists; or

(c) Such services can be demonstrated by the utility to be subject to competition.

(4) Prior to making the findings required by subsections (2) and (3) of this section, the commissioner shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commissioner.

(5) No telecommunications public utility may use revenues earned from or allocate expenses to that portion of its business which is regulated under this chapter to subsidize activities which are not regulated under this chapter; nor shall the commissioner require revenues or expenses from any activity not regulated under this chapter to be attributed to the regulated activities of a telecommunications public utility. However, this subsection shall not be interpreted to affect any appropriate subsidy determined by the commissioner under subsection (9) of this section.

(6) If the commissioner determines that a product or service offered by a telecommunications public utility as part of local exchange telecommunications services can be demonstrated by the utility to be subject to competition, or if a product or service is not an essential product or service, the commissioner may authorize the utility to file a price list, together with the terms and prices of such services or products. The price list or any revision thereof is not subject to the provisions of ORS 757.210 to 757.220 and shall become effective immediately on filing with the commissioner unless a later date is specified. In making the determination of whether a product or service is subject to competition, the commissioner shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commissioner.

(7) Rates and terms of toll telecommunications services shall not be established under the procedures of ORS 757.210 to 757.220. However, the commissioner, in the public interest, may establish maximum rate levels and terms for toll service on noncompetitive routes.

(8) The commissioner may require any person providing telecommunications service on noncompetitive toll routes to file rates and terms for service on such noncompetitive routes which may be effective immediately unless otherwise ordered by the commissioner.

(9) The commissioner is authorized to determine whether and to what extent a telecom-

munications service provided by a public utility within the State of Oregon should be subsidized in order for telecommunications services to be available at reasonable rates. If any subsidy is found to be required, the commissioner shall undertake an investigation and determine, after hearings, the revenue source or sources of a fund necessary to provide the subsidy and the manner of collection and distribution of the fund.

(10) If the commissioner finds upon notice and investigation that customers of shared telecommunications services have no alternative access to local exchange telecommunications services, the shared telecommunications service provider may be required to make alternative facilities or conduit space available on reasonable terms and conditions at reasonable prices. [1985 c.550 §7]

757.835 Optional measured service for business customers; conditions for authorization. (1) Notwithstanding any other provision of this chapter, the commissioner shall not authorize a public utility providing telephone service to implement a rate schedule that includes optional measured service for business customers unless the rate for the service is sufficient to defray all costs that must be incurred to implement the service, including the costs of measuring and billing.

(2) As used in this section:

(a) "Local exchange telephone service" means telephone service provided within the boundaries of exchange maps filed with and approved by the commissioner.

(b) "Measured service" means local exchange telephone service, the rate for which is based upon the number of calls, length of calls, distance or time of day. [1985 c.550 §3]

Note: Section 2, chapter 389, Oregon Laws 1985, provides:

Sec.2. (1) Notwithstanding any other provision of this chapter, the commissioner shall not authorize any public utility providing telephone service to implement, prior to July 1, 1986, a rate schedule that requires telephone customers to pay for local exchange telephone service based upon the number of calls, length of calls, distance or time of day.

(2) Nothing in subsection (1) of this section is intended to prohibit the commissioner from authorizing a public utility providing telephone service to implement a rate schedule that requires customers to pay for service based upon the number of calls, length of calls, distance or time of day for:

(a) Land, marine or air mobile service, extended area service, toll service or any other such service that traditionally has been offered on that payment basis.

(b) Public access lines or pricing interconnections with resold or shared telecommunication services.

(3) Any order adopted by the commissioner in violation of subsection (1) of this section is invalid

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) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

[Amended by 1971 c.655 §95, 1979 c.990 §428]

757.991 Civil penalty for non-compliance 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 757.039, or fails to comply with any orders, rules or regulations of the commissioner made in pursuance of ORS 757.039, 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]

757.992 [Formerly 758.990; renumbered 165 990]
