Chapter 757

1989 EDITION

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 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, 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.

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

(E) Any water utility serving less than 300 customers at an average annual residential rate of $18 per month or less, which provides adequate and nondiscriminatory service.

(F) Any person furnishing heat, but not delivering electricity or natural gas to its customers, except:

(i) As provided in ORS 757.007 and 757.009; or

(ii) With respect to heat furnished in municipalities which on January 1, 1989, had a municipally owned system that was furnishing steam or other thermal forms of heat to its customers.

(2) Nothing in sub-subparagraph (iv) of subparagraph (C) 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) 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; 1987 c 447 §96; 1987 c.900 §3; 1989 c.5 §2; 1989 c.999 §§1, 2]

757.007 Contract and rate schedule filing for certain furnishers of heat exempt from regulation; procedure. (1) Every person exempt from regulation under ORS 757.005 (1)(b)(F) shall file with the commission, not later than 30 days prior to their effective date, all contracts and schedules establishing rates, terms and conditions for the provision of heating services.

(2) Prior to the effective date, the commission may suspend the effective date of such contracts or schedules for an additional period of not more than 120 days in order to determine the reasonableness of such contracts or schedules, taking into consideration the services being provided, the costs and risks of service, the availability and costs of alternative forms of service and other reasonable considerations, including the impact on existing customers of the utilities furnishing electricity and natural gas and on the public generally.

(3) If the contract or schedule is not suspended, or if the contract or schedule is determined reasonable by the commission after suspension, the contract or schedule shall not be subject to further commission review during its term or such other period as the commission may specify, except as provided in ORS 757.009.

(4) In any proceeding before the commission to determine the reasonableness of contracts or schedules proposed under this section, the burden shall be upon the proponent of the contract or schedule to establish its reasonableness. [1989 c.999 §§4a, 4c]

757.009 Procedure for reregulation of furnishers of heat. (1) Except as provided

in subsection (2) of this section, the commission may, upon written complaint or upon the commission's own motion, regulate, under ORS 757.205 to 757.240, or any part thereof, any person otherwise exempt from regulation under ORS 757.005 (1)(b)(F) as follows:

(a) With respect to any or all customers, if the commission finds that the activities of such person have an adverse effect upon the customers of public utilities furnishing electricity or natural gas and the benefits of such regulation outweigh any adverse effect on the public generally; or

(b) With respect to any customer receiving service not exceeding 500 million British thermal units per year or any residential customer, if the commission finds that such person has engaged in unjust or unreasonable practices with respect to the services or rates available to the customer and the customer has no reasonable alternative to the services provided.

(2) The commission shall not regulate persons under paragraph (a) of subsection (1) of this section with respect to contracts that became effective prior to the date of service of the complaint or with respect to heating systems already in place on the date of service of the complaint if the commission determines that continued expansion will increase the efficiency of those systems. [1989 c 999 §§4b, 4d]

Note: Section 5, chapter 999, Oregon Laws 1989, provides:

Sec. 5. The commission shall study the effect of this 1989 Act on the actual and projected usage of various kinds of fuel sources for heating and cooling and shall report its findings to the Sixty-sixth Legislative Assembly [1989 c.999 §5]

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 and person, five percent or more of which is directly or indirectly owned by a public utility.

(7) Every corporation or person which the commission 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.

(8) Every person or corporation who or which the commission 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, 1989 c.17 §1]

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 commission has power, after a hearing had upon the motion of the commission 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 commission necessary or proper for the protection of the health or safety of all employees, customers or the public.

(2) When acting pursuant to subsection (1) of this section, the commission 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 commission 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 commission. [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 commission has power, after a hearing had upon the commission'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 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 commission necessary or proper for the protection of the health and safety of all employees, customers or the public.

(3) The commission 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 commission 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 commission 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 commission to order extension of service to unserved areas. The commission 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 commission may prescribe. [1977 c.197 §2; 1977 c.887 §11]

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

757.061 Water utility exemption from certain financial regulations; conditions; maximum rates established by commission. (1) ORS 757.105 to 757.110, 757.135, 757.140, 757.205 to 757.220, 757.400 to 757.450 and 757.480 to 757.495 do not apply to a water utility serving fewer than 500 customers unless:

(a) Twenty percent or more of the customers of the water utility file a petition with the commission requesting that the water utility not be exempt from regulation under the statutes set forth in this subsection; and

(b) A rate charged by the water utility for water service exceeds maximum rates established by the commission under subsection (2) of this section.

(2) The commission shall adopt rules establishing maximum rates for water utilities serving fewer than 500 customers for the purpose of determining whether such utilities are subject to regulation under the statutes set forth in subsection (1) of this section.

(3) Not less than 60 days before a water utility serving fewer than 500 customers increases any rate to exceed any maximum rate prescribed under subsection (2) of this section, it shall provide written notice to all of its customers advising the customers of their right to file a petition under paragraph (a) of subsection (1) of this section. The commission shall adopt rules prescribing the content of the written notice. [1989 c.403 §2]

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 commission; pensions as operating expenses. (1) The commission 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 employees 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 commission.

(3) When any such budget has been filed with the commission, the commission 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 employees 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 employees and if such pensions are reasonable and nondiscriminatory. The commission 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 employees 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 commission. 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 commission 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 commission. 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 commission.

(2) Nothing in ORS 757.105 or 757.107 prevents the commission 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 commission. [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 commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. All forms of accounts which may be prescribed by the commission 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 commission, keep and render separately to the commission, 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 commission to furnish blanks. (1) The commission 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 commission and to comply with all directions of the commission 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 commission except such as may be required by the laws of the United States.

(3) The commission 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 commission shall prescribe, verified by an officer of the public utility, shall be filed with the commission.

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

757.140 Depreciation accounts; use of certain undepreciated investment in rates. (1) Every public utility shall carry a proper and adequate depreciation account. The commission 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 commission may make changes in such rates of depreciation from time to time as the commission may find to be necessary.

(2) In the following cases the commission may allow in rates, directly or indirectly, amounts on the utility's books of account which the commission finds represent undepreciated investment in a utility plant, including that which has been retired from service:

(a) When the retirement is due to ordinary wear and tear, casualties, acts of God, acts of governmental authority; or

(b) When the commission finds that the retirement is in the public interest. [Amended by 1971 c.655 §87, 1989 c 956 §2]

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 commission; data filed with schedules. (1) Every public utility shall file with the commission, within a time to be fixed by the commission, 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 commission 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 commission. [Amended by 1971 c 655 §70]

757.210 Hearing to establish new schedules. (1) Whenever any public utility files with the commission 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 commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine the propriety and reasonableness of such rate or schedule. The commission 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 commission at least once every two years.

(2) The commission 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 commission'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, 1987 c 447 §97, 1987 c.613 §1; 1989 c.5 §§3, 23]

757.215 Commission authorized to suspend new rates or order interim rates during hearings; revenues collected under unapproved rates subject to refund; order after hearing. (1) The commission 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 commission finds that the investigation will not be completed at the expiration of the initial suspension, the commission 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 commission 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 commission 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 commission 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 commission 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 commission orders.

(5) The commission 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 commission, 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 commission. [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 commission. 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 commission, 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 759.030. [Amended by 1971 c.655 §71; 1985 c.550 §3]

757.230 Control of commission over classification of services and forms of schedules. (1) The commission 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, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration. Based on such considerations the commission may authorize classifications or schedules of rates applicable to individual customers or groups of customers. 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. If the commission determines that a tariff filing under ORS 757.205 results in a rate classification primarily related to price competition or a service alternative, the commission, at a minimum, shall consider the following:

(a) Whether the rate generates revenues at least sufficient to cover relevant short and long run costs of the utility during the term of the rates;

(b) Whether the rate generates revenues sufficient to insure that just and reasonable rates are established for remaining customers of the utility;

(c) For electric and natural gas utilities:

(A) Whether it is appropriate to incorporate interruption of service in the utility's rate agreement with the customer; and

(B) Whether the rate agreement requires the utility to acquire new resources to serve the load; and

(d) For electric utilities, for service to load not previously served, the effect of the rate on the utility's average system cost through the residential exchange provision of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501, as amended.

(2) The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient. The commission shall adopt rules which allow any person who requests notice of tariff filings described under subsection (1) of this section to receive such notice. [Amended by 1971 c.655 §72; 1977 c.682 §1; 1987 c.900 §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 commission 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 commission 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 classi-

fications 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 commission may, and shall, whenever deemed by the commission to be necessary or desirable in the public interest, after full hearing upon complaint, or upon the commission'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 commission is suspended by the commission 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 commission's own initiative without complaint, the commission 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 commission 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 commission and the divisions thereto are found by the commission to have been unjust, unreasonable or inequitable, or unduly preferential or prejudicial, the commission 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 commission 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 commission 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 commission 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 commission relative thereto. [Amended by 1971 c.655 §75]

757.255 Testing of measuring appliances. (1) The commission 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 commission and found to be accurate.

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

(3) The commission 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 commission 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 commission.

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

(5) The commission may purchase such materials, apparatus and standard measuring instruments for the examination and tests as the commission deems necessary. [Amended by 1971 c.655 §76]

757.259 Amounts includable in rate schedule; deferral; limit in effect on rates by amortization. (1) In addition to powers otherwise vested in the commission, and subject to the limitations contained in subsection (6) of this section, under amortization schedules set by the commission, a rate or rate schedule may reflect the following:

(a) Amounts lawfully imposed retroactively by order of another governmental agency; or

(b) Amounts deferred under subsection (2) of this section.

(2) Upon application of a utility or ratepayer or upon the commission's own motion and after public notice and opportunity for comment, the commission by order may authorize deferral of the following amounts for later incorporation in rates:

(a) Amounts incurred by a utility resulting from changes in the wholesale price of natural gas or electricity approved by the Federal Energy Regulatory Commission;

(b) Balances resulting from the administration of Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980; or

(c) Utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.

(3) The commission may authorize deferrals under subsection (2) of this section beginning with the date of application, together with interest established by the commission. A deferral may be authorized for a period not to exceed 12 months beginning on or after the date of application.

(4) Unless subject to an automatic adjustment clause under ORS 757.210 (1), amounts described in this section shall be allowed in rates only to the extent authorized by the commission in a proceeding to change rates and upon review of the utility's earnings at the time of application to amortize the deferral.

(5) Amounts that have accrued in deferred accounts with commission authorization before July 10, 1987, also may be reflected in rates. However, in order to continue to use such accounts the public utility shall apply for authorization of the commission under subsection (2) of this section.

(6) In any one year, the overall average rate impact of the amortizations authorized under this section shall not exceed three percent of the utility's gross revenues for the preceding calendar year.

(7) The provisions of this section shall not apply to a telecommunications utility. [1987 c.563 §2; 1989 c.18 §1; 1989 c 956 §1]

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, telecommunications 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" has the meaning for that term provided 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.

(5) "Telecommunications utility" has the meaning for that term provided in ORS 759.005, and does not include any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government. [1979 c.356 §2; 1989 c.5 §4]

757.273 Attachments to public utility and telecommunications utility facilities regulated. The Public Utility Commission 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 and telecommunications utilities. All rates, terms and conditions made, demanded or received by any public utility or telecommunications utility for any attachment by a licensee shall be just, fair and reasonable. [1979 c.356 §3; 1989 c.5 §5]

757.276 Attachments by licensees to people's utility districts regulated. The Public Utility Commission of Oregon 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, 1987 c 414 §164]

757.279 Fixing rates or charges by commission; cost of hearing. (1) Whenever the Public Utility Commission of Oregon finds, after hearing had upon complaint by a licensee, a public utility, a telecommunications 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 commission 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 commission shall consider the interest of the customers of the licensee, as well as the interest of the customers of the public utility, telecommunications utility or people's utility district which owns the facility upon which the attachment is made.

(2) When the order applies to a people's utility district, 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 commission considers equitable. [1979 c 356 §5, 1983 c.251 §1; 1987 c.414 §165; 1989 c.5 §6]

757.282 Criteria for a just and reasonable rate for attachments. A just and reasonable rate shall assure the public utility, telecommunications 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, telecommunications 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; 1989 c.5 §7]

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 commission finds upon complaint by a public utility, telecommunications 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; 1987 c.414 §166; 1989 c.5 §8]

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 commission for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those otherwise generally applicable to the commission. [1979 c.356 §9, 1987 c.414 §167]

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. A difference in rates or charges based upon a difference in classification pursuant to ORS 757.230 shall not constitute a violation of this paragraph.

(2) Any public utility violating this section is guilty of unjust discrimination. [Amended by 1971 c.655 §78; 1987 c.900 §2]

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 commission may require any public utility to file with the commission a list, verified 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 commission. [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 commission 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 commission authorizing the same then in effect except as provided in ORS 757.415 (3).

(2) With the authorization of the commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain; but no failure to comply with the terms or conditions of the order of authorization of the commission 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 commission, 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 commission 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 employees to purchase its stock, if the commission 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 commission 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 commission, 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 commission 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 commission to determine whether the commission will issue an order under ORS 757.415, the commission 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 commission deems necessary. The application for such order shall be given priority and shall be disposed of by the commission within 30 days after the filing of such application, unless that period is extended with the consent of the public utility.

(2) The commission 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 commission 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 commission 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 commission.

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 commission 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 commission deems reasonable and necessary.

757.435 Disposal of proceeds from issuance of securities. (1) No public utility shall, without the consent of the commission, 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 commission's order, or to any purpose specified in the commission'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 commission 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 commission deems advisable, and to establish such rules and regulations as the commission 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 commission 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 commission 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 commission's order, or to any purpose specified in the commission'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 commission 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 commission, knowingly make any false statement or representation or with knowledge of its falsity file or cause to be filed with the commission any false statement or representation which may tend in any way to influence the commission 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 commission the making of any such order.

(3) With knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission 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 commission's order, or to any purpose

specified in the commission'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 commission'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 commission 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 commission.

(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 commission 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) When 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 commission 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) Any such proposed contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. The commission shall promptly investigate and act upon the contract in accordance with ORS 757.495 (3) and (6).

(3) In making such investigation the commission and accountants, examiners and agents, appointed by the commission 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 commission 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 commission to that effect, which has the same force and effect as any other determination or order of the commission. [Formerly 757.165; 1989 c.956 §6]

757.495 Contracts involving utilities and persons with affiliated interests. (1) When any public utility doing business in this state enters into any 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, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(2) When any 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, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(3) When any such contract has been submitted to the commission, the commission promptly shall examine and investigate it. If, after such investigation, the commission determines that it is fair and reasonable and not contrary to the public interest, the commission shall enter findings and order to this effect and serve a copy thereof upon the public utility, whereupon any expenses and capital expenditures incurred by the public utility under the contract may be recognized in any rate valuation or other hearing or proceeding. If, after such investigation, the commission determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest, the commission shall enter findings and order accordingly and serve a copy thereof upon the public utility, and, except as provided in subsection (4) of this section, it shall be unlawful to recognize the contract for the purposes specified in this section.

(4) When any such contract has been filed with the commission within 90 days of execution and the commission has not entered an order disapproving the contract under subsection (3) of this section, the commission shall not base its refusal to recognize any expenses or capital expenditures incurred under the contract in any rate valuation or other hearing or proceeding solely on the basis that such contract has not been approved under subsection (3) of this section.

(5) 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 commission.

(6) The action of the commission with respect to all the matters described in this section when submitted to the commission, shall be by findings and order to be entered within 90 days after the matter has been submitted to the commission for consideration, and the findings and order of the commission 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; 1989 c.956 §7]

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 commission 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 commission 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 commission'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 commission'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 commission, 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 commission may require by rule.

(3) The commission 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 commission determines that approval of the application will serve the public utility's customers in the public interest, the commission shall issue an order granting the application. The commission may condition an order authorizing the acquisition upon the applicant's satisfactory performance or adherence to specific requirements. The commission 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]

EXCAVATION REGULATION

757.541 Definitions for ORS 757.541 to 757.571. As used in ORS 757.541 to 757.571, unless the context requires otherwise:

(1) "Business day" means any 24-hour day other than a Saturday, Sunday or federal, state or local legal holiday.

(2) "Damage" means harm to, or destruction of, underground facilities including, but not limited to, the weakening of structural, lateral or subjacent support; the penetration, impairment or destruction of any coating, housing or other protective device; and the denting of, penetration into or severance of underground facilities.

(3) "Emergency" means any condition constituting an immediate danger to life or property, or a customer service outage.

(4) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the road grade or original ditch flow line. "Excavation" does

not include the tilling of soil for agricultural purposes, as defined in ORS 215.203 (2), conducted on private property that is not within the boundaries of a recorded right of way or easement for underground facilities.

(5) "Excavator" means any person who engages in excavation.

(6) "Locatable underground facilities" means underground facilities which can be marked with reasonable accuracy.

(7) "Mark" means the use of stakes, paint or other clearly identifiable material to show the field location or absence of underground facilities.

(8) "Reasonable accuracy" means a distance measured from the outside lateral dimensions of an underground facility, as the commission, by rule, may prescribe.

(9) "Response" means action by the owners of underground facilities to mark or identify by other means the location of its locatable underground facilities in the area of the proposed excavation, to notify the excavator that there are unlocatable underground facilities in the area of the proposed excavation, to notify the excavator that there are no underground facilities in the area of the proposed excavation or to notify the excavator that there are underground facilities in the area of the proposed excavation which are at a depth greater than the excavator plans to dig.

(10) "Underground facilities" means items below the surface of the ground for use in connection with the storage or conveyance of electrical energy, water, sewage, petroleum products, gas, gaseous vapors or hazardous liquids; or the transmission of electronic, telephonic, telegraphic or cable communications. Such items include, but are not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors which are underground.

(11) "Unlocatable underground facilities" means underground facilities which cannot be marked with reasonable accuracy, including nonconductive sewers and nonmetallic underground facilities that have no trace wires.

(12) "Utilities notification system" means a system through which a person can notify the owners of underground facilities of proposed excavations and request that the underground facilities be marked. [1987 c.599 §1]

757.545 [Repealed by 1971 c.655 §250]

757.546 Project plans to notify excavator of law requirements. Project plans shall contain language notifying the excavator performing the project that the excavator must comply with the provisions of ORS 757.541 to 757.571. [1987 c 599 §2]

757.550 [Repealed by 1971 c 655 §250]

757.551 Excavator to give notice of proposed work; exemption. (1) Except as provided in subsection (2) of this section, at least 48 business day hours, but not more than 10 business days before commencing an excavation, the excavator shall notify a utilities notification system of the date, location and depth of the proposed excavation, and the type of work to be performed. Notifying a utilities notification system constitutes notice only to the participating members of that service. If no utilities notification system is available, or if the owner of underground facilities is not a member of a utilities notification system, the excavator shall give the same notice to each owner of underground facilities who is known to the excavator or who can be identified and contacted by the excavator.

(2) The notice requirement of subsection (1) of this section shall not apply if the excavator is an employee or tenant of an owner of private property, the excavation is on the private property of that owner and the excavation is less than 12 inches in depth and the excavation is not within an established easement.

(3) The excavator, when giving notice in compliance with subsection (1) of this section, shall furnish information as to how the excavator can be contacted. [1987 c.599 §3]

757.555 [Amended by 1971 c.655 §49; renumbered 756.555]

757.556 When excavator exempt from giving notice. (1) The excavator is exempt from providing at least 48 business day hours prior notice when:

(a) The excavator is responding to an emergency.

(b) The excavator has an agreement with each owner of underground facilities that marks will be provided on a regular basis as the excavator progresses through a project of more than one day's duration.

(c) The excavator has an agreement with each owner of underground facilities that the notice required by this section is unnecessary.

(d) The excavator discovers an underground facility in an area where the owner of underground facilities had previously indicated there were no facilities.

(2) Notwithstanding paragraphs (a) and (b) of subsection (1) of this section, the excavator shall notify the utilities notification system or the owner of underground facilities of the proposed excavation prior to commencing or continuing excavations.

(3) Notwithstanding paragraph (d) of subsection (1) of this section, if an excavator discovers underground facilities in an area where the owner of underground facilities had previously stated there were no underground facilities, the excavator shall notify the utilities notification system of the location and depth of the underground facilities. If no utilities notification system is available, the excavator shall notify the owner of the underground facilities and the owner of the property upon which the underground facilities were discovered. [1987 c.599 §5]

757.560 [Repealed by 1971 c 655 §250]

757.561 Owner to mark facilities or notify excavator that none exist; rules. (1) Except as provided in subsection (2) of this section, within 48 business day hours after the excavator notifies a utilities notification system or the owner of underground facilities of a proposed excavation, the owner of the underground facilities shall:

(a) Mark with reasonable accuracy all of its locatable underground facilities within the area of the proposed excavation. All marks should indicate the name, initials or logo of the owner of the underground facilities and the width of the facility if it is greater than two inches;

(b) Provide the excavator the best description available to the owner of the unlocatable underground facilities in the area of the proposed excavation;

(c) Notify the excavator that in the area of the proposed excavation there are underground sewer or storm drain facilities which are not marked because those facilities are at a depth greater than the excavator plans to dig; or

(d) Notify the excavator that the owner does not have any underground facilities in the area of the proposed excavation.

(2) If the excavator notifies the owner of underground facilities of an excavation in response to an emergency, the owner of underground facilities shall comply with subsection (1) of this section as soon as possible.

(3) The Public Utility Commission shall adopt rules designating the color with which underground facilities shall be marked.

(4) Each mark shall be effective for not more than 10 days from the date it is made. [1987 c 599 §4]

757.565 [Repealed by 1971 c.655 §250]

757.566 Delay of excavation until response from facility owners; duty of excavator to use care; damage to facilities. (1) The excavator shall not commence a proposed excavation which requires notice under ORS 757.541 to 757.571 until a response is received from each owner of underground facilities in the area of the proposed excavation, or until 48 business day hours have elapsed from the time of notification.

(2) Once underground facilities have been marked, the excavator shall:

(a) Maintain marks during the excavation period to insure that the original marks remain effective not to exceed 10 days and can be reestablished.

(b) Use reasonable care to expose the underground facilities through excavations by hand in a safe manner during trenching and other open excavation.

(c) Use reasonable care during all other types of excavation to avoid damaging the underground facilities.

(3) The excavator shall provide such lateral and subjacent support for underground facilities as may be reasonably necessary for the protection of such facilities.

(4) If the excavator causes or observes damage to underground facilities, the excavator shall notify the owner of the underground facilities immediately. If the damage causes an emergency, the excavator shall also notify all appropriate local public safety agencies immediately and shall take reasonable steps to insure the public safety. The excavator shall not bury damaged underground facilities without consent of the owner of the damaged underground facilities. [1987 c 599 §6]

757.570 [Repealed by 1971 c.655 §250]

757.571 Public authority not liable for unauthorized installations; effect of law on powers of governmental agencies. (1) The public authority with jurisdiction over a right of way is not liable under ORS 757.541 to 757.571 for improper or unauthorized installations not made by the public authority.

(2) Nothing in ORS 757.541 to 757.571 shall limit or affect any of the powers granted to cities, counties, the Department of Transportation or the Public Utility Commission. [1987 c.599 §§7, 8]

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 commission 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 commission 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 commission 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, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 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 commission may on the commission'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 commission shall prior to approval hold public hearings with respect to any proposed plan and give reasonable notice of such hearings.

(3) The commission 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 commission. [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 commission. (1) The Public Utility Commission 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 commission 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 commission 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]

HIGH VOLTAGE POWER LINE REGULATION

757.800 Definitions for ORS 757.800 and 757.805. As used in this section and 757.805, unless the context requires otherwise:

(1) "Authorized person" means:

(a) An employee of a utility which produces, transmits or delivers electricity.

(b) An employee of a utility which provides and whose work relates to communication services or state, county or municipal agencies which have authorized circuit construction on or near the poles or structures of a utility.

(c) An employee or agent of an industrial plant whose work relates to the electric system of the industrial plant.

(d) An employee of a cable television or communication services company or an employee of a contractor of a cable television or communication services company if specifically authorized by the owners of the poles to make cable television or communication services attachments.

(e) An employee or agent of state, county or municipal agencies which have or whose work relates to overhead electric lines or circuit construction or conductors on poles or structures of any type.

(2) "High voltage" means voltage in excess of 600 volts measured between conductors or between a conductor and the ground.

(3) "Overhead line" means all bare or insulated electric conductors installed above ground.

(4) "Person" or "business entity" means those parties who contract to perform any function or activity upon any land, building, highway or other premises.

(5) "Utility" means any electric or communication utility described by ORS 757.005, any plant owned or operated by a municipality, any person furnishing community antenna television service to the public and any cooperative corporation or people's utility district engaged in furnishing electric or communication service to customers.

(6) "Proximity" means within 10 feet or such greater distance as may be prescribed by rule adopted pursuant to ORS chapter 654. [1989 c.672 §2]

757.805 Accident prevention required for work near high voltage lines; effect of failure to comply; applicability; other remedies unaffected. (1) Any person or business entity responsible for performing any function, activity, work or operation in proximity to a high voltage overhead line shall guard effectively against accidents involving such high voltage overhead line, as required by rules adopted pursuant to ORS chapter 654.

(2) If any violation of subsection (1) of this section or rules adopted pursuant to ORS chapter 654 results in, or is a contributing cause of, a physical or electrical accident involving any high voltage overhead line, the person or business entity violating subsection (1) of this section or rules adopted pursuant to ORS chapter 654 is liable to the utility operating the high voltage overhead lines for all damages to its facilities and all costs and expenses, including damages to any third persons, incurred by the utility as a result of the accident. However, any person or business entity that has given advance notice of the function, activity or work to the utility operating the high voltage overhead line, and has otherwise substantially complied with rules adopted pursuant to ORS chapter 654, shall only be liable for such

damages in proportion to that person or business entity's comparative fault in causing or contributing to the accident.

(3) This section and ORS 757.800 do not apply to:

(a) Construction, reconstruction, operation or maintenance by an authorized person of overhead electric or communication circuits or conductors and their supporting structures or electric generation, transmission or distribution systems or communication systems.

(b) Fire, police or other emergency service workers acting under authority of a state agency or other public body while engaged in emergency operations.

(4) The provisions of this section and ORS 757.800 are not intended to displace any other remedies which may be available to the utility by statute or common law. [1989 c.672 §§3, 4, 5, 6]

757.810 [1985 c 550 §5; renumbered 759.015 in 1989]

757.815 [1985 c.550 §6; 1987 c.447 §72; renumbered 759 020 in 1989]

757.820 [1985 c 550 §6a; 1987 c.302 §1; renumbered 759.025 in 1989]

757.825 [1985 c 550 §7, 1987 c.447 §73; 1987 c.613 §2; 1989 c.5 §§9, 23, 1989 c.378 §1; 1989 c.543 §1; renumbered 759.030 in 1989]

757.835 [1985 c.389 §3; 1987 c.447 §74, renumbered 759.230 in 1989]

757.840 [1987 c.1 §§1, 2, 3, 1989 c.5 §10; renumbered 759.235 in 1989]

757.850 [1987 c.613 §4; 1989 c.5 §11; 1989 c.378 §2; 1989 c.543 §2, renumbered 759.195 in 1989]

757.860 [1987 c.302 §3; 1989 c 5 §12; renumbered 759 225 in 1989]

757.870 [1987 c 388 §2, 1989 c.5 §13; 1989 c 574 §6, renumbered 759.040 in 1989]

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 commission 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 custody of the Department of Corrections for not less than one nor more than five years, or both. [Amended by 1971 c.655 §95; 1979 c.990 §428; 1987 c.320 §245]

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 757.039, or fails to comply with any orders, rules or regulations of the commission 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]