

Enrolled Senate Bill 408

Sponsored by Senator WALKER; Senator METSGER

CHAPTER

AN ACT

Relating to rates of public utilities; creating new provisions; amending ORS 757.210; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 and 3 of this 2005 Act are added to and made a part of ORS chapter 757.

SECTION 2. (1) The Legislative Assembly finds and declares that:

(a) The alignment of taxes collected by public utilities from utility customers with taxes paid to units of government by utilities, or affiliated groups that include utilities, is of special interest to this state.

(b) Taxes are a unique utility cost because the tax liability is affected by the operations or tax attributes of the parent company or other affiliates of the utility.

(c) The Public Utility Commission permits a utility to include costs for taxes that assume the utility is not part of an affiliated group of corporations for tax purposes.

(d) The parent company of a utility may employ accounting methods, debt, consolidated tax return rules and other techniques in a way that results in a difference between the tax liability paid to units of government by the utility, or the affiliated group of corporations of which the utility is a member, and the amount of taxes collected, directly or indirectly, from customers.

(e) Tax uncertainty in the ratemaking process may result in collecting taxes from ratepayers that are not paid to units of government.

(f) Utility rates that include amounts for taxes should reflect the taxes that are paid to units of government to be considered fair, just and reasonable.

(g) Tax information of a business is commercially sensitive. Public disclosure of tax information could provide a commercial advantage to other businesses.

(2) The definitions in section 3 of this 2005 Act apply to this section.

SECTION 3. (1) Every public utility shall file a tax report with the Public Utility Commission annually, on or before October 15 following the year for which the report is being made. The tax report shall contain the information required by the commission, including:

(a) The amount of taxes that was paid by the utility in the three preceding years, or that was paid by the affiliated group and that is properly attributed to the regulated operations of the utility, determined without regard to the tax year for which the taxes were paid; and

(b) The amount of taxes authorized to be collected in rates for the three preceding years.

(2) Every public utility shall be required to obtain and provide to the commission any other information that the commission requires to review the tax report and to implement and administer this section and ORS 757.210.

(3) The commission may disclose, or any intervenor may obtain and disclose, the amount by which the amount of taxes that units of government received from the public utility or from the affiliated group differs from the amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers, including whether the difference is positive or negative.

(4) The commission shall review the tax report and any other information the commission has obtained and make the determinations described in this section within 90 days following the filing of the report, or within a further period of time that the commission may by rule establish for making determinations under this section that does not exceed 180 days following the filing of the report. If the commission determines that the amount of taxes assumed in rates or otherwise collected from ratepayers for any of the three preceding years differed by \$100,000 or more from the amount of taxes paid to units of government by the public utility, or by the affiliated group and properly attributed to the regulated operations of the utility, the commission shall require the utility to establish an automatic adjustment clause, as defined in ORS 757.210, within 30 days following the date of the commission's determinations under this section, or by a later date that the commission may by rule prescribe for establishing an automatic adjustment clause that does not exceed 60 days following the date of the commission's determinations under this section.

(5) If an adjustment to rates is made under an automatic adjustment clause established under this section, the automatic adjustment clause shall remain in effect for each successive year after an adjustment is made and until an order terminating the automatic adjustment clause is made under subsection (9) of this section.

(6) The automatic adjustment clause shall account for all taxes paid to units of government by the public utility that are properly attributed to the regulated operations of the utility, or by the affiliated group that are properly attributed to the regulated operations of the utility, and all taxes that are authorized to be collected through rates, so that ratepayers are not charged for more tax than:

(a) The utility pays to units of government and that is properly attributed to the regulated operations of the utility; or

(b) In the case of an affiliated group, the affiliated group pays to units of government and that is properly attributed to the regulated operations of the utility.

(7) An automatic adjustment clause established under this section may not be used to make adjustments to rates for taxes paid that are properly attributed to any unregulated affiliate of the public utility or to the parent of the utility.

(8) Notwithstanding subsections (1) to (7) of this section, the commission may authorize a public utility to include in rates:

(a) Deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment; and

(b) Tax requirements and benefits that are required to be included in order to ensure compliance with the normalization requirements of federal tax law.

(9) If the commission determines that establishing an automatic adjustment clause under this section would have a material adverse effect on customers of the public utility, the commission shall issue an order terminating the automatic adjustment clause. The order shall set forth the reasons for the commission's determination under this subsection.

(10) The commission shall conduct a hearing under ORS 757.210 prior to making a determination under subsection (9) of this section that an automatic adjustment clause would have a material adverse effect on customers of the public utility.

(11) The commission may not use the tax information obtained by the commission under this section for any purpose other than those described in subsections (1) to (10) of this

section. An intervenor in a commission proceeding to review the tax report or make rate adjustments described in this section may, upon signing a protective order prepared by the commission, obtain and use the information obtained by the commission that is not otherwise required to be made publicly available under this section, according to the terms of the protective order.

(12) For purposes of this section, taxes paid that are properly attributed to the regulated operations of the public utility may not exceed the lesser of:

(a) That portion of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility; or

(b) The total amount of taxes paid to units of government by the utility or by the affiliated group, whichever applies.

(13) As used in this section:

(a) "Affiliated group" means an affiliated group of corporations of which the public utility is a member and that files a consolidated federal income tax return.

(b) "Public utility" or "utility" means:

(A) A regulated investor-owned utility that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003; or

(B) A successor in interest to an entity described in subparagraph (A) of this paragraph that continues to be a regulated investor-owned utility.

(c) "Regulated operations of the utility" means those activities of a public utility that are subject to rate regulation by the commission.

(d) "Tax":

(A) Means a federal, state or local tax or fee that is imposed on or measured by income and that is paid to units of government.

(B) Does not include any amount that is refunded by a unit of government as a tax refund.

(C) Does not include franchise fees or privilege taxes.

(e) "Taxes authorized to be collected in rates" means the product determined by multiplying the following three values:

(A) The revenues the utility collects from ratepayers in Oregon, adjusted for any rate adjustment imposed under this section;

(B) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, as determined by the commission in establishing rates; and

(C) The effective tax rate used by the commission in establishing rates.

(f) "Taxes paid" means amounts received by units of government from the utility or from the affiliated group of which the utility is a member, whichever is applicable, adjusted as follows:

(A) Increased by the amount of tax savings realized as a result of charitable contribution deductions allowed because of charitable contributions made by the utility;

(B) Increased by the amount of tax savings realized as a result of tax credits associated with investment by the utility in the regulated operations of the utility, to the extent the expenditures giving rise to the tax credits and tax savings resulting from the tax credits have not been taken into account by the commission in the utility's last general ratemaking proceeding; and

(C) Adjusted by deferred taxes related to the regulated operations of the utility.

(g) "Three preceding years" means the three most recent consecutive fiscal years preceding the date the tax report is required to be filed.

SECTION 4. (1) The tax report that, under section 3 of this 2005 Act, is required to be filed on or before October 15, 2005, shall set forth the information required to be reported under section 3 of this 2005 Act for the three most recent consecutive fiscal years of the public utility that concluded prior to the date of the filing of the tax report.

(2) If an automatic adjustment clause is established under section 3 of this 2005 Act, notwithstanding any other provision of section 3 of this 2005 Act, the automatic adjustment clause shall apply only to taxes paid to units of government and collected from ratepayers on or after January 1, 2006.

SECTION 5. ORS 757.210 is amended to read:

757.210. (1)(a) Whenever any public utility files with the Public Utility 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]* **whether the rate or schedule is fair, just and reasonable.** The commission shall conduct *[such a]* **the** 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]* **the** 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]* **fair, just and reasonable. The commission may not authorize a rate or schedule of rates that is not fair, just and reasonable.**

(b) As used in this subsection, "automatic adjustment clause" means a provision of a rate schedule *[which]* **that** provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred, **taxes paid to units of government** or revenues earned by a utility and *[which]* **that** is subject to review by the commission at least once every two years.

(2)(a) Subsection (1) of this section does not apply to rate changes under an approved alternative form of regulation plan, including a resource rate plan under ORS 757.212.

(b) Any alternative form of regulation plan shall include provisions to ensure that the plan operates in the interests of utility customers and the public generally and results in rates that are just and reasonable and may include provisions establishing a reasonable range for rate of return on investment. In approving a plan, the commission shall, at a minimum, consider whether the plan:

(A) Promotes increased efficiencies and cost control;

(B) Is consistent with least-cost resources acquisition policies;

(C) Yields rates that are consistent with those that would be obtained following application of section 3 of this 2005 Act;

[(C)] **(D)** Is consistent with maintenance of safe, adequate and reliable service; and

[(D)] **(E)** Is beneficial to utility customers generally, for example, by minimizing utility rates.

(c) As used in this subsection, "alternative form of regulation plan" means a plan adopted by the commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-service rate regulation.

(d) Prior to implementing a rate change under an alternative form of regulation plan, the utility shall present a report that demonstrates the calculation of any proposed rate change at a public meeting of the commission.

(3) Except as provided in ORS 757.212, the commission, at any time, may order a utility to appear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this section are in conformity with the plan and are just and reasonable. Except as provided in ORS 757.212, such rates, and the alternative form of regulation plan under which the rates are set, also shall be subject to complaint under ORS 756.500.

(4) Periodically, but not less often than every two years after the implementation of a plan referred to in subsection (2) of this section, the commission shall submit a report to the Legislative Assembly that shows the impact of the plan on rates paid by utility customers.

(5) 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.

SECTION 6. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by Senate June 8, 2005

Received by Governor:

Repassed by Senate August 1, 2005

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Approved:

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Secretary of Senate

.....M,....., 2005

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President of Senate

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Governor

Passed by House July 30, 2005

Filed in Office of Secretary of State:

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Speaker of House

.....M,....., 2005

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Secretary of State