

SENATE AMENDMENTS TO SENATE BILL 1008

By COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

May 4

1 On page 1 of the printed bill, line 2, after “ORS” insert “221.420, 221.450 and”.

2 Delete lines 5 through 27 and delete pages 2 through 13 and insert:

3 **“SECTION 1. As used in sections 1 to 4, 6, 9 to 19 and 45 of this 2005 Act:**

4 **“(1) ‘Board’ means the board of directors of Oregon Community Power.**

5 **“(2) ‘Rate’ has the meaning given that term in ORS 756.010.**

6 **“(3) ‘Service’ has the meaning given that term in ORS 756.010.**

7 **“(4) ‘Service territory’ means the geographic area within which Oregon Community**
8 **Power provides electricity to customers.**

9 **“SECTION 2. (1) Oregon Community Power is created as a public corporation. Oregon**
10 **Community Power shall exercise and carry out all powers, rights and privileges that are**
11 **conferred upon Oregon Community Power expressly or by implication, or that are incidental**
12 **to otherwise conferred powers, rights and privileges.**

13 **“(2) Oregon Community Power is created as a public corporation in order to carry out**
14 **public services in sectors of the economy in which activities or services are also provided**
15 **by private enterprise. Oregon Community Power is granted increased operating flexibility**
16 **under sections 1 to 4, 6, 9 to 19 and 45 of this 2005 Act in order to ensure the success of**
17 **Oregon Community Power, but Oregon Community Power constitutes an integral part of the**
18 **government of the State of Oregon that retains principles of public accountability and over-**
19 **sight.**

20 **“(3) The primary mission of Oregon Community Power is to provide reliable, low-cost**
21 **electricity to electricity consumers in the service territory in which Oregon Community**
22 **Power undertakes to provide electricity service.**

23 **“SECTION 3. It is the intent of the Legislative Assembly in enacting sections 1 to 4, 6,**
24 **9 to 19 and 45 of this 2005 Act that Oregon Community Power be created and operated as an**
25 **integral part of state government and therefore be exempt from federal income taxes under**
26 **section 115 of the Internal Revenue Code, as amended and in effect on December 31, 2004.**

27 **“SECTION 4. (1) There is established the Oregon Community Power Board Nominating**
28 **Committee. The purpose of the nominating committee is to assist the Governor in appointing**
29 **members to the board of directors of Oregon Community Power under section 6 of this 2005**
30 **Act.**

31 **“(2) The nominating committee shall consist of five members, as follows:**

32 **“(a) One member shall be a delegate from the Citizens’ Utility Board and shall represent**
33 **the interests of residential electricity consumers.**

34 **“(b) One member shall be a delegate from a qualified organization that represents the**
35 **interests of primarily commercial electricity consumers.**

1 “(c) One member shall be a delegate from a qualified organization that represents the
2 interests of primarily industrial electricity consumers.

3 “(d) One member shall be a delegate from the League of Oregon Cities and shall repre-
4 sent the interests of municipalities and their residents.

5 “(e) One member shall be a delegate from the Association of Oregon Counties and shall
6 represent the interests of counties and their residents.

7 “(3)(a) In order for the nominating committee to convene, the board of directors of
8 Oregon Community Power shall prepare a proposed direction to convene as soon as is prac-
9 ticable following the earlier of the date that a vacancy occurs on the board or the date that
10 it becomes known that a vacancy on the board will occur within six months.

11 “(b) The proposed direction to convene shall state the qualified organizations that are to
12 provide the delegates described in subsection (2)(b) and (c) of this section. The board shall
13 send copies of the proposed direction to the Public Utility Commission and to each organ-
14 ization that served as a qualified organization at a prior convening of the nominating com-
15 mittee.

16 “(c) Within 15 days after receipt of the proposed direction to convene, the commission
17 shall review the proposed direction. The commission shall afford the opportunity for a
18 hearing if requested by any party. If the proposed direction lists organizations that meet the
19 qualifications of subsection (2)(b) and (c) of this section, the commission shall approve the
20 direction. If the proposed direction does not list organizations that are qualified organiza-
21 tions under subsection (2)(b) and (c) of this section, the commission may modify the direction
22 prior to approval. A determination by the commission may be appealed as a contested case
23 under ORS chapter 183.

24 “(4) The nominating committee shall convene as soon as is practicable after receiving an
25 approved direction to convene under subsection (3) of this section, and shall forward the first
26 slate of nominees to the Governor for consideration under section 6 of this 2005 Act no later
27 than 90 days after the date an approved direction to convene is issued.

28 “(5) The nominating committee shall nominate three individuals for each position on the
29 board to be filled.

30 “(6) A nominating committee that has been convened shall remain convened until each
31 vacant position on the board is filled. The nominating committee shall forward a second
32 slate of nominees to the Governor if requested by the Governor under section 6 (2) of this
33 2005 Act.

34 “(7) In forwarding nominees to the Governor, the nominating committee shall strive to
35 select individuals who:

36 “(a) Meet the qualifications described in section 6 (6) of this 2005 Act;

37 “(b) If appointed, would result in a board of directors in which the Oregon Community
38 Power service territory is represented with a significant degree of geographic diversity; and

39 “(c) Have the ability and experience to fulfill the principal charge of the board under
40 section 9 of this 2005 Act.

41 “(8) As used in this section, ‘qualified organization’ means a nonprofit organization that
42 represents a broad class of commercial or industrial customers and that has a substantial
43 record of representing the broad class before state agencies or the Legislative Assembly in
44 matters related to public utility rates, terms and conditions and energy policy issues affect-
45 ing the class.

1 **“SECTION 5. (1) Notwithstanding section 4 (2) to (4) of this 2005 Act, for purposes of**
2 **assisting the Governor in the selection of the first board of directors of Oregon Community**
3 **Power, the Oregon Community Power Board Nominating Committee shall comprise:**

4 **“(a) One member from the Citizens’ Utility Board to represent the interests of residential**
5 **electricity consumers.**

6 **“(b) One member from Associated Oregon Industries to represent the interests of com-**
7 **mmercial electricity consumers.**

8 **“(c) One member from the Industrial Customers of Northwest Utilities to represent the**
9 **interests of primarily industrial electricity consumers.**

10 **“(d) One member from the League of Oregon Cities to represent the interests of**
11 **municipalities and their residents.**

12 **“(e) One member from the Association of Oregon Counties to represent the interests of**
13 **counties and their residents.**

14 **“(2) The nominating committee shall forward the first slate of nominees for each board**
15 **position to be filled within 90 days following the effective date of this 2005 Act.**

16 **“SECTION 6. (1) Oregon Community Power shall be governed by a board of seven direc-**
17 **tors appointed by the Governor using the procedure set forth in this section.**

18 **“(2)(a) Prior to making any appointment to the board, the Governor shall consider the**
19 **nominations of the Oregon Community Power Board Nominating Committee.**

20 **“(b) If the Governor reviews an initial slate of nominees made by the nominating com-**
21 **mittee and determines not to appoint a nominee, the Governor shall request that the nomi-**
22 **nating committee forward a second slate of nominees. If the Governor determines not to**
23 **appoint a nominee from the second slate of nominees, the Governor may appoint any indi-**
24 **vidual the Governor determines meets the qualifications of subsection (6) of this section.**

25 **“(3) Notwithstanding the requirement that the Governor consider the nominations of the**
26 **nominating committee prior to making an appointment, the Governor shall appoint an indi-**
27 **vidual to be a board member within 120 days following the vacancy of a position on the board.**

28 **“(4) Each appointment shall be subject to confirmation by the Senate in the manner**
29 **prescribed in ORS 171.562 and 171.565.**

30 **“(5) The term of office for each member shall be four years. A board member may be**
31 **nominated and appointed to successive terms, but within 150 days prior to the expiration of**
32 **the term of the member, the board shall issue a proposed direction to convene the nomi-**
33 **nating committee under section 4 of this 2005 Act for the purpose of nominating individuals**
34 **to fill the board position.**

35 **“(6) A member of the board shall have significant experience or expertise in one or more**
36 **of the following areas:**

37 **“(a) Business operations;**

38 **“(b) Utility management;**

39 **“(c) Legal or financial affairs;**

40 **“(d) Regional energy issues; or**

41 **“(e) Developing public policy.**

42 **“(7) The Governor may remove any member of the board for cause, after notice and**
43 **public hearing.**

44 **“SECTION 7. Notwithstanding section 6 of this 2005 Act, the Governor shall appoint the**
45 **first members of the board of directors of Oregon Community Power as follows:**

1 “(1) Two members shall be appointed for a term that ends September 30, 2006;

2 “(2) Two members shall be appointed for a term that ends September 30, 2007;

3 “(3) Two members shall be appointed for a term that ends September 30, 2008; and

4 “(4) One member shall be appointed for a term that ends September 30, 2009.

5 “SECTION 8. The Governor shall make the appointments described in section 7 of this
6 2005 Act within 120 days following the effective date of this 2005 Act.

7 “SECTION 9. The principal charge of the board of directors of Oregon Community Power
8 is to:

9 “(1) Establish policy and develop consistent positions on core utility issues that promote
10 and implement the primary mission of Oregon Community Power under section 2 of this 2005
11 Act;

12 “(2) Oversee the investments and operations of Oregon Community Power;

13 “(3) Take all actions to ensure that revenues and income from electric utility operations
14 are sufficient to satisfy all costs, including principal and interest payments on all outstanding
15 bonds and other debt obligations issued by Oregon Community Power or by the State
16 Treasurer on behalf of Oregon Community Power, and to maintain financial integrity in the
17 operation of Oregon Community Power;

18 “(4) Make decisions that are in the best interests of the customers and communities
19 within the service territory of Oregon Community Power and that are consistent with the
20 primary mission of Oregon Community Power; and

21 “(5) Consider the social, economic and environmental impacts of electricity generation,
22 transmission and distribution in board decision-making.

23 “SECTION 10. (1) The board of directors of Oregon Community Power shall meet at least
24 once each month to conduct the business of the board.

25 “(2) A majority of board members shall constitute a quorum.

26 “(3) The board shall select one of its members as chairperson.

27 “(4) The board shall adopt bylaws establishing rules of procedure for board meetings and
28 decisions.

29 “(5) A member of the board shall be compensated as provided in section 11 (12) of this
30 2005 Act.

31 “(6) The board, not later than April 15 of each year, shall file a report with the Governor
32 and the Legislative Assembly. The report shall explain the activities and operations of
33 Oregon Community Power for the preceding calendar year, including a summary of the audit
34 described in section 16 of this 2005 Act.

35 “SECTION 11. The powers of Oregon Community Power, as exercisable by the board of
36 directors of Oregon Community Power or by any person delegated those powers by the board,
37 are as follows:

38 “(1) To acquire and hold, including by lease-purchase agreement, real and other property
39 necessary or incident to the business of Oregon Community Power, within or outside of, or
40 partly within or partly outside of, the service territory of Oregon Community Power, and to
41 sell or dispose of that property.

42 “(2) To execute contracts to purchase, sell or lease assets, power, services or property.

43 “(3) To execute contracts for the management or operation of any Oregon Community
44 Power facilities.

45 “(4) To issue bonds, notes or otherwise borrow moneys, incur indebtedness or issue, sell

1 or assume evidence of indebtedness to the extent allowed under the Oregon Constitution.

2 “(5) To sue and be sued.

3 “(6) To refund and retire any indebtedness that may exist against or be assumed by
4 Oregon Community Power or that may exist against the revenues of Oregon Community
5 Power.

6 “(7) To build, acquire, own, operate and maintain generation, transmission and distrib-
7 ution resources that are sufficient to maintain an adequate supply of electricity to the ser-
8 vice territory.

9 “(8) To enter into intergovernmental agreements with local governments or other state
10 agencies or subdivisions of state government.

11 “(9) To periodically develop least-cost plans at regular intervals. A least-cost plan may
12 only be developed with public participation. A least-cost plan shall take into consideration
13 economic and environmental risks of providing adequate and reliable energy for customers,
14 energy efficiency, renewable resources and cogeneration, in order to achieve adequate re-
15 sources at the least overall cost.

16 “(10) To oversee all aspects of Oregon Community Power operations.

17 “(11) To hire and fire employees of Oregon Community Power.

18 “(12) To make contracts, to set wages, to set salaries and provide compensation for ser-
19 vices rendered by employees and by board members, to provide for life insurance,
20 hospitalization, disability, health and welfare and retirement plans for employees and to do
21 all things necessary and convenient for full exercise of the powers granted in this subsection.
22 The provision of life insurance, hospitalization, disability, health and welfare and retirement
23 plans for employees is in addition to any other right or power of Oregon Community Power
24 to participate in those plans and does not repeal or modify any statutes except those that
25 may be in conflict with the provision of life insurance, hospitalization, disability, health and
26 welfare and retirement plans.

27 “(13) To enter into contracts with the United States Government, with any other state,
28 municipality or utility district or with any other person, for carrying out any provisions of
29 sections 1 to 4, 6, 9 to 19 and 45 of this 2005 Act.

30 “(14) To fix, maintain and collect electric energy rates as prescribed in sections 12 and
31 13 of this 2005 Act and to establish and collect charges for any other commodity or service
32 furnished, developed or sold by Oregon Community Power.

33 “(15) To construct works across or along any street or public highway or over any lands
34 that are the property of this state, or of any city or other subdivision of this state, subject
35 to any franchise agreement, privilege tax or municipal regulation that would apply to the
36 works, and to construct works across or along any stream of water or watercourse. Any
37 works across or along any state highway shall be constructed only with the permission of
38 the Department of Transportation. Any works across or along any county highway shall be
39 constructed only with the permission of the county governing body. Any works across or
40 along any city street shall be constructed only with the permission of the city governing body
41 and upon compliance with applicable city regulations and payment of any fees called for un-
42 der applicable franchise agreements, intergovernmental agreements under ORS chapter 190
43 or contracts providing for payment of these fees. Oregon Community Power shall restore
44 any street or highway to its former state as near as may be practicable, and may not use
45 the street or highway in a manner that impairs its usefulness unnecessarily.

1 **“(16) To enter into franchise agreements with cities and pay fees under negotiated fran-**
2 **chise agreements, intergovernmental agreements under ORS chapter 190 and contracts pro-**
3 **viding for the payment of such fees, and to pay privilege taxes imposed under ORS 221.450**
4 **or other applicable privilege taxes.**

5 **“(17) To exercise the power of eminent domain, as prescribed in section 15 of this 2005**
6 **Act.**

7 **“(18) To adopt rules as prescribed in section 14 of this 2005 Act.**

8 **“(19) To make payments in lieu of property taxes as prescribed in section 17 of this 2005**
9 **Act.**

10 **“(20) To acquire property, execute contracts or otherwise conduct business with or**
11 **within the territory of any state or local government that is outside the State of Oregon, any**
12 **Indian tribe wherever located or Canada or any province of Canada.**

13 **“(21) To execute any contract necessary to acquire, hedge or sell fuel or energy in any**
14 **form, to manage electric utility operations, to construct, maintain or repair any energy**
15 **generation or transmission facilities or equipment, to increase capacity for energy gener-**
16 **ation or transmission, to transfer any asset owned by Oregon Community Power or to ac-**
17 **quire any asset for use in electric utility operations conducted by Oregon Community Power.**

18 **“(22) To take any other actions necessary or convenient for the proper exercise of the**
19 **powers granted to Oregon Community Power by sections 1 to 4, 6, 9 to 19 and 45 of this 2005**
20 **Act.**

21 **“SECTION 12. (1) The board of directors of Oregon Community Power shall establish**
22 **rates for the provision of electricity within the service territory of Oregon Community Power**
23 **using the procedure set forth under section 13 of this 2005 Act.**

24 **“(2) The board shall establish a rate structure under which rates that apply to a specific**
25 **class of customers are designed to recover the costs of providing electricity and related**
26 **services to that class of customers.**

27 **“(3) The rates adopted by the board shall be sufficient to accomplish the following pur-**
28 **poses:**

29 **“(a) To properly maintain and operate all Oregon Community Power property and facili-**
30 **ties;**

31 **“(b) To recover the overall costs of the electric utility operations of Oregon Community**
32 **Power;**

33 **“(c) To reflect the income tax exempt status of Oregon Community Power so that the**
34 **savings from tax exemption accrue to the benefit of the customers of Oregon Community**
35 **Power;**

36 **“(d) To pay all franchise fees, in lieu payments, privilege taxes and other charges and**
37 **assessments that are properly imposed on Oregon Community Power or the property or fa-**
38 **ilities of Oregon Community Power;**

39 **“(e) To pay principal and interest on all bonds, warrants or other obligations of any**
40 **character in accordance with the terms and provisions of the obligations, including but not**
41 **limited to bonds issued by Oregon Community Power or by the State Treasurer on behalf of**
42 **Oregon Community Power for an acquisition described in section 20 of this 2005 Act;**

43 **“(f) To pay any other indebtedness or obligation for which Oregon Community Power may**
44 **be obligated to pay;**

45 **“(g) To pay any debt administration costs associated with bonds, warrants, obligations**

1 or other indebtedness described in paragraphs (e) and (f) of this subsection;

2 “(h) To fund operating reserves in sufficient amounts to ensure the continued efficient
3 operation of Oregon Community Power; and

4 “(i) To establish and maintain any special funds that Oregon Community Power is obli-
5 gated to create for the purpose of paying bond issues or other obligations.

6 “**SECTION 13.** (1) Whenever the board of directors of Oregon Community Power deter-
7 mines to seek a modification in any rate imposed by the board for electricity service, the
8 board shall give notice of a ratemaking hearing, at least 30 days in advance, as follows:

9 “(a) In newspapers of general circulation that are published in the service territory;

10 “(b) As an insert accompanying billing statements sent to customers;

11 “(c) To persons that have requested notice of ratemaking action by the board; and

12 “(d) By publication on the Oregon Community Power Internet website.

13 “(2) The notice shall state:

14 “(a) The date, time and location of the ratemaking hearing of the board;

15 “(b) The new rates or modifications to existing rates being proposed by the board; and

16 “(c) Any other information deemed relevant by the board.

17 “(3) At the time that the board issues a notice of a ratemaking hearing, the board shall
18 publish on the Oregon Community Power Internet website or otherwise make available to the
19 public the underlying utility information upon which the proposed rates are based. The board
20 shall provide the specific information required by rules adopted under section 14 (1) of this
21 2005 Act.

22 “(4)(a) Pursuant to ORS 183.625, the board shall request, and the Office of Administrative
23 Hearings shall assign, an administrative law judge to conduct the ratemaking hearing. The
24 ratemaking hearing shall be conducted under ratemaking hearing procedures established by
25 rules adopted under section 14 (2) of this 2005 Act. The hearing shall be conducted so as to
26 afford interested parties the opportunity to present information and argument and to es-
27 tablish a record upon which the board may establish or modify rates pursuant to section 12
28 of this 2005 Act.

29 “(b) The administrative law judge shall ensure that the rates established at the
30 ratemaking hearing are sufficient to accomplish all of the purposes described in section 12
31 (3) of this 2005 Act.

32 “(5) A decision by the board to establish or modify rates may be appealed as a contested
33 case under ORS chapter 183.

34 “**SECTION 14.** The board of directors of Oregon Community Power may adopt rules nec-
35 essary to administer sections 1 to 4, 6, 9 to 19 and 45 of this 2005 Act, including but not
36 limited to:

37 “(1) Rules establishing the information the board must make available to the public prior
38 to conducting a ratemaking hearing.

39 “(2) Rules establishing procedures for conducting a ratemaking hearing that provide for
40 substantially the same procedures as set forth in ORS 183.415, 183.425, 183.440 and 183.450.

41 “(3) Rules to facilitate the implementation of the primary mission of Oregon Community
42 Power under section 2 of this 2005 Act.

43 “**SECTION 15.** (1) Oregon Community Power may exercise the power of eminent domain
44 for the purpose of acquiring any property, within or outside the service territory of Oregon
45 Community Power, necessary for carrying out sections 1 to 4, 6, 9 to 19 and 45 of this 2005

1 Act.

2 “(2) Notwithstanding subsection (1) of this section, eminent domain may not be used:

3 “(a) To acquire service territory of another electric utility; or

4 “(b) To acquire any property for a purpose that is unrelated to electric utility operations.

5 “SECTION 16. The board of directors of Oregon Community Power shall cause an inde-
6 pendent audit to be performed at least annually. The audit shall review and report on the
7 financial affairs of Oregon Community Power and on any other aspects of Oregon Commu-
8 nity Power as the board may direct.

9 “SECTION 17. (1) Oregon Community Power shall make payments in lieu of property
10 taxes on all property that would otherwise be subject to assessment under ORS 308.505 to
11 308.665 if owned or used by a nonpublic entity.

12 “(2) The total amount of in lieu payments shall equal the total amount of property taxes
13 that would be collected from property described in subsection (1) of this section for each tax
14 year.

15 “(3) Oregon Community Power shall transfer the total amount of in lieu payments for
16 each year to the Department of Revenue on or before November 15 of each year. The dis-
17 count described in ORS 311.505 shall apply to the payments. The department shall apportion
18 the total amount of annual in lieu payments to counties in the manner that would apply
19 under ORS 308.635 if the property described in subsection (1) of this section were subject to
20 tax. The department shall apportion and transfer to each county tax collector the county’s
21 apportioned share of the total in lieu payment for deposit in the county unsegregated tax
22 collections account described in ORS 311.385.

23 “(4) For purposes of computing in lieu payments, Oregon Community Power shall comply
24 with ORS 308.505 to 308.665 as if Oregon Community Power were a taxable entity and shall
25 otherwise assist the department in the assessment of property described in subsection (1)
26 of this section.

27 “SECTION 18. (1) Solely for purposes of determining the authority of the Public Utility
28 Commission to regulate Oregon Community Power and the activities and operations of
29 Oregon Community Power, Oregon Community Power shall be considered a consumer-owned
30 utility, as defined in ORS 757.270, and the commission shall regulate Oregon Community
31 Power as a consumer-owned utility.

32 “(2) In addition to having the authority granted the commission under subsection (1) of
33 this section, the commission has the authority to:

34 “(a) Regulate electricity service suppliers that conduct business with or use the facilities
35 of Oregon Community Power;

36 “(b) Regulate a claim by an electricity service supplier that Oregon Community Power
37 has acted in an anticompetitive manner; and

38 “(c) Enforce consumer protection rules adopted under ORS 757.659 (3) and applicable to
39 direct access consumers against Oregon Community Power.

40 “(3) Oregon Community Power may not be required to obtain the approval of the Public
41 Utility Commission to make an acquisition described in section 20 of this 2005 Act.

42 “(4) As used in this section, ‘direct access’ and ‘electricity service supplier’ have the
43 meaning given those terms in section 30 of this 2005 Act.

44 “SECTION 18a. (1) Whenever the Citizens’ Utility Board of Governors determines that
45 an Oregon Community Power proceeding may affect the interests of utility consumers, the

1 Citizens' Utility Board may intervene as of right as an interested party or otherwise partic-
2 ipate in the proceeding.

3 "(2) The Citizens' Utility Board shall have standing to obtain judicial or administrative
4 review of any action of Oregon Community Power, and may intervene as of right as an in-
5 terested party or otherwise participate in any proceeding that involves the review or
6 enforcement of any action by Oregon Community Power, if the Citizens' Utility Board of
7 Governors determines that the action may affect the interests of utility consumers.

8 "SECTION 19. (1) Except as provided in subsection (2) of this section, the provisions of
9 ORS chapters 35 (other than 35.550 to 35.575), 190, 192, 244 and 295 and ORS 30.260 to 30.460,
10 200.005 to 200.025, 200.045 to 200.090, 221.450, 236.605 to 236.640, 243.650 to 243.782 (other than
11 243.696), 297.040, 307.090 and 307.112 apply to Oregon Community Power under the same terms
12 as they apply to any other subdivision of state government.

13 "(2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 238,
14 238A, 240, 270, 273, 276, 279A, 279B, 279C, 283, 291, 292, 293, 294 and 297 and ORS 35.550 to
15 35.575, 183.710 to 183.725, 183.745, 183.750, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105,
16 200.035, 236.380, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835 to
17 279.855, 282.010 to 282.150 and 656.017 (2) do not apply to Oregon Community Power.

18 "(3) Oregon Community Power is not a participating public employer in the Public Em-
19 ployees Retirement System.

20 "SECTION 20. (1) Notwithstanding section 15 of this 2005 Act and subject to sections 6
21 and 7, Article XI of the Oregon Constitution, and subject to the availability of funds as de-
22 scribed in sections 37 to 44 of this 2005 Act, Oregon Community Power shall:

23 "(a) Enter into negotiations with the Portland General Electric Company or persons that
24 have authority to negotiate the disposition of the Portland General Electric Company or the
25 electric utility assets of the Portland General Electric Company; and

26 "(b) If the negotiations result in an agreement between Oregon Community Power and
27 the persons described in paragraph (a) of this subsection for the acquisition of the Portland
28 General Electric Company, the electric utility assets of the Portland General Electric Com-
29 pany or a combination of equity and asset acquisition or other form of acquisition of all or
30 a part of the Portland General Electric Company:

31 "(A) Request that the State Treasurer issue revenue bonds as prescribed in section 38
32 of this 2005 Act;

33 "(B) Request modification of the expenditure limitation established in section 42 of this
34 2005 Act; and

35 "(C) Expend the bond proceeds as prescribed in section 39 (3) of this 2005 Act to make
36 an acquisition described in this section.

37 "(2) Notwithstanding subsection (1) of this section, Oregon Community Power may use
38 the power of eminent domain to accomplish all or a part of an acquisition described in sub-
39 section (1) of this section if the Portland General Electric Company or the persons that have
40 the authority to negotiate the disposition of the Portland General Electric Company consent
41 to the use of eminent domain for acquisition purposes.

42 "SECTION 21. (1) The Public Utility Commission shall transfer amounts necessary to
43 fund any preliminary activities needed to determine the appropriateness or desirability of an
44 acquisition described in section 20 of this 2005 Act, the requirements and terms of the ac-
45 quisition, any due diligence activities related to the acquisition and the negotiations for the

1 acquisition from the Public Utility Commission Account established by ORS 756.305 to the
2 Oregon Community Power Utility Acquisition Fund established by section 21a of this 2005
3 Act.

4 “(2) Notwithstanding any other provision of law, the commission may increase the rates
5 of any public utility that is the subject of potential acquisition by Oregon Community Power
6 in order to recover the costs incurred in negotiating acquisition by Oregon Community
7 Power.

8 “(3) Notwithstanding any other provision of law, the commission may assess a fee on a
9 public utility that is the subject of potential acquisition by Oregon Community Power in or-
10 der to fund the transfer described in subsection (1) of this section.

11 “(4) ORS 756.360 (1) does not apply to amounts transferred under subsection (1) of this
12 section.

13 “SECTION 21a. (1) The Oregon Community Power Utility Acquisition Fund is established
14 in the State Treasury, separate and distinct from the General Fund. Interest earned by the
15 Oregon Community Power Utility Acquisition Fund shall be credited to the Oregon Commu-
16 nity Power Utility Acquisition Fund.

17 “(2) Moneys in the Oregon Community Power Utility Acquisition Fund are continuously
18 appropriated to Oregon Community Power for the purposes of funding any preliminary ac-
19 tivities needed to determine the appropriateness or desirability of an acquisition described
20 in section 20 of this 2005 Act, the requirements and terms of the acquisition, any due dili-
21 gence activities related to the acquisition and the negotiations for the acquisition.

22 “SECTION 22. Sections 20, 21 and 21a of this 2005 Act are repealed on June 30, 2009.

23 “SECTION 23. (1) If the negotiations described in section 20 of this 2005 Act result in an
24 acquisition described in section 20 of this 2005 Act, as of the date of the acquisition, unless
25 the Oregon Constitution requires otherwise, Oregon Community Power shall constitute the
26 successor in interest to the Portland General Electric Company for all purposes, including
27 but not limited to:

28 “(a) Allocation of territory and contracts allocating territory;

29 “(b) City franchise fee agreements; and

30 “(c) Contracts or obligations of any nature, to the extent the contracts or obligations
31 apply to a successor in interest to the Portland General Electric Company.

32 “(2) Until the board of directors of Oregon Community Power establishes rules governing
33 the procedures for conducting a ratemaking hearing and establishing rates under sections
34 12 and 13 of this 2005 Act and under those procedures establishes one or more new rates or
35 tariffs or establishes one or more changes in rates or tariffs, Oregon Community Power
36 shall:

37 “(a) Adopt all existing rate schedules in effect for the Portland General Electric Company
38 on the date of acquisition;

39 “(b) Adopt the General Rules and Regulations of the Portland General Electric Company
40 Tariff; and

41 “(c) Maintain Oregon Community Power books and records in accordance with generally
42 accepted accounting principles and with the uniform system of accounts established by the
43 Federal Energy Regulatory Commission.

44 “(3) If the negotiations described in section 20 of this 2005 Act result in an acquisition
45 described in section 20 of this 2005 Act, Oregon Community Power shall be subject to all

1 privilege taxes imposed by municipalities that the Portland General Electric Company was
2 required to pay to municipalities immediately prior to the acquisition.

3 **“SECTION 24. (1) The Legislative Assembly declares that it is the policy of the State of**
4 **Oregon to:**

5 **“(a) Ensure that the formation and operation of Oregon Community Power does not di-**
6 **rectly or indirectly diminish the amount of federal electric power available for purchase by**
7 **consumer-owned utilities to serve their retail electricity consumers;**

8 **“(b) Ensure that the formation and operation of Oregon Community Power does not, di-**
9 **rectly or indirectly, increase the lowest cost-based rates charged by the Bonneville Power**
10 **Administration to consumer-owned utilities for the purchase of federal electric power above**
11 **the level that would most likely have been charged absent the formation and operation of**
12 **Oregon Community Power;**

13 **“(c) Preserve the existing exclusive distribution rights of consumer-owned utilities;**

14 **“(d) Ensure the preservation of contract rights currently existing between consumer-**
15 **owned utilities and the Portland General Electric Company; and**

16 **“(e) Preserve the authority of cities to impose franchise fees and privilege taxes and to**
17 **execute contracts with Oregon Community Power.**

18 **“(2)(a) Oregon Community Power may not purchase or accept electric energy or capacity**
19 **sold by the Bonneville Power Administration pursuant to 16 U.S.C. 839c(b)(1), under rates**
20 **established under 16 U.S.C. 839e(b)(1).**

21 **“(b) Paragraph (a) of this subsection does not prohibit Oregon Community Power from**
22 **receiving benefits under 16 U.S.C. 839c(c).**

23 **“(3) As used in this section, “federal electric power” means electricity generated, di-**
24 **tributed or sold by the Bonneville Power Administration.**

25 **“SECTION 25. ORS 221.420 is amended to read:**

26 **“221.420. (1) As used in this section:**

27 **“(a) ‘Public utility’ has the meaning for that term provided in ORS 757.005.**

28 **“(b) ‘Commission’ means the Public Utility Commission of Oregon.**

29 **“(c) ‘Council’ means the common council, city council, commission or any other governing body**
30 **of any municipality wherein the property of the public utility is located.**

31 **“(d) ‘Municipality’ means any town, city or other municipal government wherein property of the**
32 **public utility is located.**

33 **“(e) ‘Service’ is used in its broadest and most inclusive sense and includes equipment and facil-**
34 **ities.**

35 **“(f) ‘Heating company’ means any person furnishing heat but not electricity or natural gas to**
36 **its customers.**

37 **“(2) Every city may:**

38 **“(a) Determine by contract or prescribe by ordinance or otherwise, the terms and conditions,**
39 **including payment of charges and fees, upon which any public utility, electric cooperative, people’s**
40 **utility district or heating company, or Oregon Community Power, may be permitted to occupy the**
41 **streets, highways or other public property within such city and exclude or eject any public utility**
42 **or heating company therefrom.**

43 **“(b) Require any public utility, by ordinance or otherwise, to make such modifications, additions**
44 **and extensions to its physical equipment, facilities or plant or service within such city as shall be**
45 **reasonable or necessary in the interest of the public, and designate the location and nature of all**

1 additions and extensions, the time within which they must be completed, and all conditions under
2 which they must be constructed.

3 “(c) Fix by contract, prescribe by ordinance, or in any other lawful manner, the rates, charges
4 or tolls to be paid to, or that may be collected by, any public utility or the quality and character
5 of each kind of product or service to be furnished or rendered by any public utility furnishing any
6 product or service within such city. No schedule of rates, charges or tolls, fixed in the manner
7 provided in this paragraph, shall be so fixed for a longer period than five years. Whenever it is
8 proposed by any city to enter into any contract, or to enact any ordinance, or other municipal law
9 or regulation concerning the matters specified in this paragraph, a copy of such proposed contract,
10 ordinance or other municipal law or resolution shall be filed with the Public Utility Commission of
11 Oregon before the same may be lawfully signed or enacted, as the case may be, and the commission
12 shall thereafter have 90 days within which to examine into the terms thereof. If the commission is
13 of the opinion that in any respect the provisions of the proposed contract, ordinance or other mu-
14 nicipal law or resolution are not in the public interest, the commission shall file, in writing, with
15 the clerk or other officer who has the custody of the files and records of the city, the commission’s
16 reasons therefor. If the objections are filed within said period of 90 days, no proposed contract, or-
17 dinance or other municipal law or regulation shall be valid or go into effect until it has been sub-
18 mitted to or ratified by the vote of the electors of the city. Unless and until a city exercises its
19 powers as provided in this paragraph, the commission is vested with all powers with respect to the
20 matters specified in this paragraph. If the schedule of rates, charges and tolls or the quality and
21 character of each kind of product or service is fixed by contract, ordinance or other municipal law
22 or regulation and in the manner provided in this paragraph, the commission has no power or juris-
23 diction to interfere with, modify or change it during the period fixed thereby. Upon the expiration
24 of said period such powers shall again be vested in the commission, to be exercised by the commis-
25 sion unless and until a new schedule of rates or the quality and character for such service or
26 product is fixed or prescribed by contract, ordinance or other municipal law or regulation in the
27 manner provided in this paragraph.

28 “(d) Provide for a penalty for noncompliance with the provisions of any charter provision, ordi-
29 nance or resolution adopted by the city in furtherance of the powers specified in this subsection.

30 “**SECTION 26.** ORS 221.450 is amended to read:

31 “221.450. Except as provided in ORS 221.655, the city council or other governing body of every
32 incorporated city may levy and collect **a privilege tax from Oregon Community Power and from**
33 every electric cooperative, people’s utility district, privately owned public utility, telecommuni-
34 cations carrier as defined in ORS 133.721 or heating company. **The privilege tax may be collected**
35 **only if the entity is** operating for a period of 30 days within the city without a franchise from the
36 city and actually using the streets, alleys or highways, or all of them, in such city for other than
37 travel on such streets or highways[, a *privilege tax*]. **The privilege tax shall be** for the use of those
38 public streets, alleys or highways, or all of them, in such city in an amount not exceeding five per-
39 cent of the gross revenues of the cooperative, utility, district or company currently earned within
40 the boundary of the city. However, the gross revenues earned in interstate commerce or on the
41 business of the United States Government shall be exempt from the provisions of this section. The
42 privilege tax authorized in this section shall be for each year, or part of each year, such utility,
43 cooperative, district or company, **or Oregon Community Power**, operates without a franchise.

44 “**SECTION 27. Nothing in sections 1 to 4, 6, 9 to 19, 30 to 34, 37 to 44 or 45 of this 2005**
45 **Act diminishes, or authorizes the adoption of rules that diminish, the authority of a city to**

1 **control the use of the city's rights of way or to collect license fees, privilege taxes, rent or**
2 **other charges for the use of the rights of way of the city.**

3 **"SECTION 28.** ORS 757.612 is amended to read:

4 "757.612. (1) There is established an annual public purpose expenditure standard for electric
5 companies **and Oregon Community Power** to fund new cost-effective local energy conservation,
6 new market transformation efforts, the above-market costs of new renewable energy resources, and
7 new low-income weatherization. The public purpose expenditure standard shall be funded by the
8 public purpose charge described in subsection (2) of this section.

9 "(2)(a) Beginning on the date an electric company **or Oregon Community Power** offers direct
10 access to its retail electricity consumers, except residential electricity consumers, the electric
11 company **or Oregon Community Power** shall collect a public purpose charge from all of the retail
12 electricity consumers located within its service area for a period of 10 years. Except as provided in
13 paragraph (b) of this subsection, the public purpose charge shall be equal to three percent of the
14 total revenues collected by the electric company, **Oregon Community Power** or **the** electricity
15 service supplier from its retail electricity consumers for electricity services, distribution, ancillary
16 services, metering and billing, transition charges and other types of costs included in electric rates
17 on July 23, 1999.

18 "(b) For an aluminum plant that averages more than 100 average megawatts of electricity use
19 per year, beginning on March 1, 2002, the electric company **or Oregon Community Power** whose
20 territory abuts the greatest percentage of the site of the aluminum plant shall collect from the alu-
21 minum company a public purpose charge equal to one percent of the total revenue from the sale of
22 electricity services to the aluminum plant from any source.

23 "(3)(a) The Public Utility Commission shall establish rules implementing the provisions of this
24 section relating to electric companies **and Oregon Community Power.**

25 "(b) Subject to paragraph (e) of this subsection, funds collected by an electric company **or**
26 **Oregon Community Power** through public purpose charges shall be allocated as follows:

27 "(A) Sixty-three percent for new cost-effective conservation and new market transformation.

28 "(B) Nineteen percent for the above-market costs of new renewable energy resources.

29 "(C) Thirteen percent for new low-income weatherization.

30 "(D) Five percent shall be transferred to the Housing and Community Services Department Re-
31 volving Account created under ORS 456.574 and used for the purpose of providing grants as de-
32 scribed in ORS 458.625 (2). Moneys deposited in the account under this subparagraph are
33 continuously appropriated to the Housing and Community Services Department for the purposes of
34 ORS 458.625 (2). Interest on moneys deposited in the account under this subparagraph shall accrue
35 to the account.

36 "(c) The costs of administering subsections (1) to (6) of this section for an electric company **or**
37 **Oregon Community Power** shall be paid out of the funds collected through public purpose charges.
38 The commission may require that an electric company **or Oregon Community Power** direct funds
39 collected through public purpose charges to the state agencies responsible for implementing sub-
40 subsections (1) to (6) of this section in order to pay the costs of administering such responsibilities.

41 "(d) The commission shall direct the manner in which public purpose charges are collected and
42 spent by an electric company **or Oregon Community Power** and may require an electric company
43 **or Oregon Community Power** to expend funds through competitive bids or other means designed
44 to encourage competition, except that funds dedicated for low-income weatherization shall be di-
45 rected to the Housing and Community Services Department as provided in subsection (7) of this

1 section. The commission may also direct that funds collected by an electric company **or Oregon**
2 **Community Power** through public purpose charges be paid to a nongovernmental entity for in-
3 vestment in public purposes described in subsection (1) of this section. Notwithstanding any other
4 provision of this subsection[.];

5 “(A) At least 80 percent of the funds allocated for conservation shall be spent within the service
6 area of the electric company that collected the funds[.]; **or**

7 “(B) **If Oregon Community Power collected the funds, at least 80 percent of the funds**
8 **allocated for conservation shall be spent within the service area of Oregon Community**
9 **Power.**

10 “(e)(A) The first 10 percent of the funds collected annually by an electric company **or Oregon**
11 **Community Power** under subsection (2) of this section shall be distributed to education service
12 districts, as described in ORS 334.010, that are located in the service territory of the electric com-
13 pany **or Oregon Community Power**. The funds shall be distributed to individual education service
14 districts according to the weighted average daily membership (ADMw) of the component school
15 districts of the education service district for the prior fiscal year as calculated under ORS 327.013.
16 The commission shall establish by rule a methodology for distributing a proportionate share of funds
17 under this paragraph to education service districts that are only partially located in the service
18 territory of the electric company **or Oregon Community Power**.

19 “(B) An education service district that receives funds under this paragraph shall use the funds
20 first to pay for energy audits for school districts located within the education service district. An
21 education service district shall not expend additional funds received under this paragraph on a
22 school district facility until an energy audit has been completed for that school district. To the ex-
23 tent practicable, an education service district shall coordinate with the State Department of Energy
24 and incorporate federal funding in complying with this paragraph. Following completion of an en-
25 ergy audit for an individual school district, the education service district may expend funds received
26 under this paragraph to implement the energy audit. Once an energy audit has been conducted and
27 completely implemented for each school district within the education service district, the education
28 service district may expend funds received under this paragraph for any of the following purposes:

29 “(i) Conducting energy audits. A school district shall conduct an energy audit prior to expending
30 funds on any other purpose authorized under this paragraph unless the school district has performed
31 an energy audit within the three years immediately prior to receiving the funds.

32 “(ii) Weatherization and upgrading the energy efficiency of school district facilities.

33 “(iii) Energy conservation education programs.

34 “(iv) Purchasing electricity from environmentally focused sources and investing in renewable
35 energy resources.

36 “(f) The commission may establish a different public purpose charge than the public purpose
37 charge otherwise described in subsection (2) of this section for an individual retail electricity con-
38 sumer or any class of retail electricity consumers located within the service area of an electric
39 company **or Oregon Community Power**, provided that a retail electricity consumer with a load
40 greater than one average megawatt shall not be required to pay a public purpose charge in excess
41 of three percent of its total cost of electricity services.

42 “(g) The commission shall remove from the rates of each electric company any costs for public
43 purposes described in subsection (1) of this section that are included in rates. A rate adjustment
44 under this paragraph shall be effective on the date that the electric company begins collecting
45 public purpose charges. **Oregon Community Power shall adhere to tariffs that were in exist-**

1 **ence on the date Oregon Community Power acquired the Portland General Electric Company,**
2 **or the electric utility assets of the Portland General Electric Company, and that were de-**
3 **signed to remove costs for public purposes from the rates.**

4 “(4)(a) An electric company that satisfies its obligations under this section shall have no further
5 obligation to invest in conservation, new market transformation, new renewable energy resources
6 or new low-income weatherization or to provide a commercial energy conservation services program
7 and is not subject to ORS 469.631 to 469.645, 469.860 to 469.900 and 758.505 to 758.555.

8 “(b) **Oregon Community Power, for any period during which Oregon Community Power**
9 **collects a public purpose charge under subsection (2) of this section:**

10 “(A) **Shall have no other obligation to invest in conservation, new market transforma-**
11 **tion, new renewable energy resources or new low-income weatherization or to provide a**
12 **commercial energy conservation services program; and**

13 “(B) **Is not subject to ORS 469.631 to 469.645, 469.860 to 469.900 and 758.505 to 758.555.**

14 “(5)(a) A retail electricity consumer that uses more than one average megawatt of electricity
15 at any site in the prior year shall receive a credit against public purpose charges billed by an
16 electric company **or Oregon Community Power** for that site. The amount of the credit shall be
17 equal to the total amount of qualifying expenditures for new energy conservation, not to exceed 68
18 percent of the annual public purpose charges, and the above-market costs of purchases of new
19 renewable energy resources incurred by the retail electricity consumer, not to exceed 19 percent
20 of the annual public purpose charges, less administration costs incurred under this subsection. The
21 credit shall not exceed, on an annual basis, the lesser of:

22 “(A) The amount of the retail electricity consumer’s qualifying expenditures; or

23 “(B) The portion of the public purpose charge billed to the retail electricity consumer that is
24 dedicated to new energy conservation, new market transformation or the above-market costs of new
25 renewable energy resources.

26 “(b) To obtain a credit under this subsection, a retail electricity consumer shall file with the
27 State Department of Energy a description of the proposed conservation project or new renewable
28 energy resource and a declaration that the retail electricity consumer plans to incur the qualifying
29 expenditure. The State Department of Energy shall issue a notice of precertification within 30 days
30 of receipt of the filing, if such filing is consistent with this subsection. The credit may be taken after
31 a retail electricity consumer provides a letter from a certified public accountant to the State De-
32 partment of Energy verifying that the precertified qualifying expenditure has been made.

33 “(c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that
34 are not used in one year may be carried forward for use in subsequent years.

35 “(d)(A) A retail electricity consumer that uses more than one average megawatt of electricity
36 at any site in the prior year may request that the State Department of Energy hire an independent
37 auditor to assess the potential for conservation investments at the site. If the independent auditor
38 determines there is no available conservation measure at the site that would have a simple payback
39 of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment
40 obligation for public purpose charges related to the site. If the independent auditor determines that
41 there are potential conservation measures available at the site, the retail electricity consumer shall
42 be entitled to a credit against public purpose charges related to the site equal to 54 percent of the
43 public purpose charges less the estimated cost of available conservation measures.

44 “(B) A retail electricity consumer shall be entitled each year to the credit described in this
45 subsection unless a subsequent independent audit determines that new conservation investment op-

1 portunities are available. The State Department of Energy may require that a new independent audit
2 be performed on the site to determine whether new conservation measures are available, provided
3 that the independent audits shall occur no more than once every two years.

4 “(C) The retail electricity consumer shall pay the cost of the independent audits described in
5 this subsection.

6 “(6) Electric utilities and retail electricity consumers shall receive a fair and reasonable credit
7 for the public purpose expenditures of their energy suppliers. The State Department of Energy shall
8 adopt rules to determine eligible expenditures and the methodology by which such credits are ac-
9 counted for and used. The rules also shall adopt methods to account for eligible public purpose
10 expenditures made through consortia or collaborative projects.

11 “(7)(a) In addition to the public purpose charge provided under subsection (2) of this section,
12 beginning on October 1, 2001, an electric company **or Oregon Community Power** shall collect
13 funds for low-income electric bill payment assistance in an amount determined under paragraph (b)
14 of this subsection.

15 “(b) The total amount collected for low-income electric bill payment assistance under this sec-
16 tion shall be \$10 million per year. The commission shall determine each electric company’s propor-
17 tionate share of the total amount **and Oregon Community Power’s proportionate share of the**
18 **total amount**. The commission shall determine the amount to be collected from a retail electricity
19 consumer, except that a retail electricity consumer shall not be required to pay more than \$500 per
20 month per site for low-income electric bill payment assistance.

21 “(c) Funds collected by the low-income electric bill payment assistance charge shall be paid into
22 the Housing and Community Services Department Revolving Account created under ORS 456.574.
23 Moneys deposited in the account under this paragraph are continuously appropriated to the Housing
24 and Community Services Department for the purpose of funding low-income electric bill payment
25 assistance. Interest earned on moneys deposited in the account under this paragraph shall accrue
26 to the account. The department’s cost of administering this subsection shall be paid out of funds
27 collected by the low-income electric bill payment assistance charge. Moneys deposited in the ac-
28 count under this paragraph shall be expended solely for low-income electric bill payment assistance.
29 Funds collected from an electric company **or Oregon Community Power** shall be expended in the
30 service area of the electric company **or Oregon Community Power** from which the funds are col-
31 lected.

32 “(d) The Housing and Community Services Department, in consultation with the federal Advi-
33 sory Committee on Energy, shall determine the manner in which funds collected under this sub-
34 section will be allocated by the department to energy assistance program providers for the purpose
35 of providing low-income bill payment and crisis assistance, including programs that effectively re-
36 duce service disconnections and related costs to retail electricity consumers and electric utilities.
37 Priority assistance shall be directed to low-income electricity consumers who are in danger of hav-
38 ing their electricity service disconnected.

39 “(e) Notwithstanding ORS 293.140, interest on moneys deposited in the Housing and Community
40 Services Department Revolving Account under this subsection shall accrue to the account and may
41 be used to provide heating bill payment and crisis assistance to electricity consumers whose primary
42 source of heat is not electricity.

43 “(f) Notwithstanding ORS 757.310, the commission may allow an electric company **or Oregon**
44 **Community Power** to provide reduced rates or other payment or crisis assistance or low-income
45 program assistance to a low-income household eligible for assistance under the federal Low Income

1 Home Energy Assistance Act of 1981, as amended and in effect on July 23, 1999.

2 “(8) In addition to all other charges provided in this section, for the period from January 1, 2000,
3 to October 1, 2001, an electric company shall collect from its retail electricity consumers an electric
4 bill payment assistance charge. A retail electricity consumer shall not be required to pay more than
5 \$500 per month per site for low-income electric bill payment assistance under this subsection. The
6 statewide total amount collected under this subsection shall equal \$5 million per year, prorated for
7 any fraction of a year. The commission shall determine each electric company’s proportionate share
8 of the statewide total amount. Moneys collected under this subsection shall be deposited in the
9 Housing and Community Services Department Revolving Account created under ORS 456.574 and
10 expended for low-income electric bill payment assistance in the manner provided in subsection (7)(d)
11 of this section.

12 “(9) For purposes of this section, ‘retail electricity consumers’ includes any direct service in-
13 dustrial consumer that purchases electricity without purchasing distribution services from [*the elec-*
14 *tric utility*] **an electric company or Oregon Community Power.**

15 “(10) **For purposes of this section, amounts collected by Oregon Community Power**
16 **through public purpose charges are not considered moneys received from electric utility op-**
17 **erations and may not be deposited in the Oregon Community Power Electric Utility Oper-**
18 **ations Fund established by section 45 of this 2005 Act.**

19 “**SECTION 29. The amendments to ORS 757.612 by section 28 of this 2005 Act apply to**
20 **public purpose charges collected on or after the date on which Oregon Community Power**
21 **begins electric utility operations.**

22 “**SECTION 30. As used in sections 30 to 34 of this 2005 Act:**

23 “(1) ‘Ancillary services’ has the meaning given that term in ORS 757.600.

24 “(2) ‘Board’ means the board of directors of Oregon Community Power.

25 “(3) ‘Direct access’ means the ability of a retail electricity consumer to purchase elec-
26 tricity and ancillary services, as determined by the board of directors of Oregon Community
27 Power, directly from an entity other than Oregon Community Power.

28 “(4) ‘Economic utility investment’ means all investments, including plants and equipment
29 and contractual or other legal obligations, made by Oregon Community Power and properly
30 dedicated to generation or conservation, the full benefits of which are no longer available to
31 consumers as a result of electing direct access, absent transition credits.

32 “(5) ‘Electricity,’ ‘electricity services’ and ‘electricity service supplier’ have the meanings
33 given those terms in ORS 757.600.

34 “(6) ‘Nonresidential electricity consumer’ means a retail electricity consumer that is not
35 a residential electricity consumer.

36 “(7) ‘Portfolio access’ means the ability of a retail electricity consumer to choose from
37 a set of product and pricing options for electricity determined by the board and may include
38 product and pricing options offered by Oregon Community Power or by an electricity service
39 supplier.

40 “(8) ‘Retail electricity consumer’ means the end user of electricity for specific purposes
41 that is served through the distribution system of Oregon Community Power, whether or not
42 the end user purchases the electricity from Oregon Community Power.

43 “(9) ‘Transition credit’ and ‘transition charge’ have the meanings given those terms in
44 ORS 757.600.

45 “(10) ‘Uneconomic utility investment’ means all investments, including plants and equip-

1 ment and contractual or other legal obligations, made by Oregon Community Power and
2 properly dedicated to generation conservation and workforce commitments, the full costs of
3 which are no longer recoverable as a result of direct access, absent transition charges.

4 **“SECTION 31. (1) Oregon Community Power shall allow nonresidential electricity con-**
5 **surers direct access.**

6 **“(2) Unless the board of directors of Oregon Community Power determines otherwise,**
7 **Oregon Community Power shall provide all retail electricity consumers of Oregon Commu-**
8 **nity Power with a regulated, cost-of-service rate option.**

9 **“(3)(a) Oregon Community Power shall supply default electricity service to a nonresi-**
10 **dential electricity consumer in an emergency.**

11 **“(b) The board shall establish reasonable terms and conditions for providing default ser-**
12 **vice to a nonresidential electricity consumer in circumstances in which the consumer is re-**
13 **ceiving electricity services through direct access and elects instead to receive electricity**
14 **services through the default service.**

15 **“(4)(a) Oregon Community Power shall permit retail electricity consumers that are eli-**
16 **gible for direct access to voluntarily aggregate their electricity loads.**

17 **“(b) A retail electricity consumer that is eligible for direct access may voluntarily ag-**
18 **gregate its electricity load with the electricity load of any other retail electricity consumer**
19 **that is eligible for direct access.**

20 **“SECTION 32. (1) Every electricity service supplier is authorized to use the distribution**
21 **facilities of Oregon Community Power on a nondiscriminatory basis.**

22 **“(2) Oregon Community Power shall provide:**

23 **“(a) Electricity service suppliers and retail electricity consumers access to the Oregon**
24 **Community Power transmission facilities and distribution system that is comparable to that**
25 **provided for Oregon Community Power’s own use; and**

26 **“(b) Electricity service suppliers and retail electricity consumers timely access to infor-**
27 **mation about the Oregon Community Power transmission facilities and distribution system,**
28 **metering and loads comparable to that provided to Oregon Community Power’s own nondis-**
29 **tribution divisions, affiliates and related parties.**

30 **“(3) Oregon Community Power shall allow any electricity service supplier that has been**
31 **certified by the Public Utility Commission to provide direct access to nonresidential elec-**
32 **tricity consumers.**

33 **“SECTION 33. (1) Each retail electricity consumer of Oregon Community Power shall**
34 **receive a transition credit or pay a transition charge as determined under this section.**

35 **“(2) The total of all transition credits or transition charges shall equal the net value of**
36 **all economic utility investments and all uneconomic utility investments of Oregon Commu-**
37 **nity Power.**

38 **“(3) The board of directors of Oregon Community Power shall adopt one of the following**
39 **methods to establish the net value described under subsection (2) of this section and all**
40 **procedures connected with the adopted method:**

41 **“(a) Auction;**

42 **“(b) Administrative valuation; or**

43 **“(c) Ongoing valuation.**

44 **“(4) The transition credit or transition charge that applies to a retail electricity con-**
45 **sumer under this section may change to reflect the duration of the service option chosen**

1 by the consumer, but may not be changed because of the electricity service supplier chosen
2 by the consumer.

3 **“SECTION 34.** The board of directors of Oregon Community Power shall determine
4 whether and under what conditions Oregon Community Power will offer retail electricity
5 consumers portfolio access to electricity service suppliers. The board shall have sole au-
6 thority to determine:

7 **“(1)** The quality and nature of electricity services, including but not limited to different
8 product and pricing options, that will be made available to its retail electricity consumers.

9 **“(2)** The extent to which products and services will be unbundled and the rates, tariffs,
10 terms and conditions on which they may be offered.

11 **“(3)** Whether one or more pilot programs for direct access, portfolio access or other
12 forms of access to alternative suppliers will be offered.

13 **“(4)** The degree to which provision of portfolio access necessitates modification of tran-
14 sition credits, transition charges and the net value described in section 33 (2) of this 2005
15 Act on which transition credits or transition charges are based.

16 **“(5)** The establishment of technical capability requirements, financial responsibility re-
17 quirements and other protections for retail electricity consumers located within the Oregon
18 Community Power service territory in dealings with electricity service suppliers.

19 **“(6)** Access to or use of the Oregon Community Power transmission facilities or distrib-
20 ution system by retail electricity consumers or electricity service suppliers.

21 **“(7)** Oregon Community Power’s qualification standards for electricity service suppliers
22 in addition to any certification standards established by the Public Utility Commission, pro-
23 vided that the qualification standards are uniformly applied to electricity service suppliers
24 in a nondiscriminatory manner.

25 **“SECTION 35.** Sections 30 to 34 of this 2005 Act become operative on the date of an ac-
26 quisition described in section 20 of this 2005 Act.

27 **“SECTION 36.** (1) Notwithstanding sections 1 to 4, 6, 9 to 19, 30 to 34, 37 to 44 or 45 of
28 this 2005 Act, a consumer-owned utility shall have exclusive distribution rights, to the extent
29 the distribution rights are provided by law other than sections 1 to 4, 6, 9 to 19, 30 to 34, 37
30 to 44 or 45 of this 2005 Act, and exclusive responsibility for the performance and oversight
31 of:

32 **“(a)** The utility’s distribution system, including the acquisition, construction, financing,
33 operation and maintenance of distribution facilities; and

34 **“(b)** Metering, billing, collection and consumer response functions related to the distrib-
35 ution of electricity to retail electricity consumers located within the utility’s service terri-
36 tory.

37 **“(2)** Subsection (1) of this section and sections 1 to 4, 6, 9 to 19, 30 to 34, 37 to 44 or 45
38 of this 2005 Act do not:

39 **“(a)** Diminish or enlarge the rights of any person under ORS 758.400 to 758.475; or

40 **“(b)** Affect the administration or enforcement of ORS 758.400 to 758.475.

41 **“SECTION 37.** As used in sections 37 to 44 of this 2005 Act, ‘bond-related costs’ means:

42 **“(1)** The costs and expenses of issuing, selling and administering bonds under sections
43 37 to 44 of this 2005 Act including, but not limited to:

44 **“(a)** Paying or redeeming the bonds;

45 **“(b)** Paying amounts due in connection with credit enhancement or a reserve instrument;

1 “(c) Paying the issuance and administrative costs and expenses of the State Treasurer
2 and Oregon Community Power, including the cost of consultants, attorneys and advisers re-
3 tained for bond-related advice by the State Treasurer or Oregon Community Power;

4 “(d) Costs incurred for activities described in section 21a (2) of this 2005 Act that are not
5 covered by transfers to the Oregon Community Power Utility Acquisition Fund under section
6 21 of this 2005 Act; and

7 “(e) Any other costs or expenses that the State Treasurer or Oregon Community Power
8 determines are necessary or desirable in connection with issuing, selling and administering
9 the bonds;

10 “(2) The cost of funding bond reserves;

11 “(3) Capitalized interest for the bonds; and

12 “(4) Rebates or penalties due to the federal government in connection with the bonds.

13 “SECTION 38. (1) At the request of Oregon Community Power, the State Treasurer may
14 issue, sell and deliver revenue bonds in one or more series for the purpose of making the
15 expenditure described in section 39 (3) of this 2005 Act. The State Treasurer shall determine
16 the terms and conditions of revenue bonds issued under this section.

17 “(2) The State Treasurer may issue the revenue bonds authorized by this section on a
18 date selected by the State Treasurer, after consultation with the board of directors of
19 Oregon Community Power, to facilitate the expenditure required in section 39 (3) of this 2005
20 Act.

21 “(3) In connection with the issuance of revenue bonds under this section, the State
22 Treasurer, or Oregon Community Power as requested by the State Treasurer, may:

23 “(a) Establish maturity schedules, interest rates, including fixed or adjustable interest
24 rate terms, tender or redemption provisions, provisions for capitalized interest and any other
25 terms consistent with the requirements for revenue bonds issued under this section.

26 “(b) Provide that revenue bonds be issued in different series and that each series be se-
27 cured by a lien on and pledge of all or a portion of the income generated by electric utility
28 operations that are superior to, subordinate to or on parity with the lien of the pledge se-
29 curing other series of revenue bonds issued under this section.

30 “(c) Obtain credit enhancement to provide additional security or liquidity for revenue
31 bonds issued under this section or to provide funding for all or a portion of a debt service
32 reserve account established with respect to the bonds. The state’s obligations under a credit
33 enhancement are payable from the income generated by electric utility operations that are
34 pledged thereto.

35 “(d) Appoint and enter into appropriate contracts with bond or disclosure counsel in ac-
36 cordance with ORS 288.523 and a bond trustee and retain the services of and enter into ap-
37 propriate contracts for financial consultants, underwriters, paying agents and other
38 professional service providers in connection with the issuance, sale and administration of the
39 revenue bonds.

40 “(e) Enter into security documents with a bond trustee and deposit funds with the bond
41 trustee for the benefit of bondholders and the providers of credit enhancement.

42 “(f) Enter into covenants for the benefit of bondholders or the providers of credit en-
43 hancement or to improve the security of bondholders or providers of credit enhancement.
44 Covenants may include, but are not limited to, covenants regarding the issuance and sale of
45 additional revenue bonds and the priority of payment of the revenue bonds.

1 “(g) Establish one or more debt service reserve accounts, funded with proceeds from the
2 issuance and sale of the revenue bonds or from income generated by electric utility oper-
3 ations of Oregon Community Power.

4 “(h) Establish funds or accounts that are necessary or desirable to secure and pay for
5 the revenue bonds or for other purposes reasonably related thereto.

6 “(i) Apply the proceeds of the revenue bonds to pay bond-related costs.

7 “(4) Revenue bonds issued under this section are payable from income generated by
8 electric utility operations and other moneys deposited in the Oregon Community Power Bond
9 Debt Service Fund established in section 40 of this 2005 Act. The State Treasurer may
10 irrevocably pledge and assign all or a portion of the income generated by electric utility op-
11 erations and other moneys deposited in the Oregon Community Power Bond Debt Service
12 Fund to secure revenue bonds and credit enhancements. The pledge and assignment may
13 include a direction by the State Treasurer to Oregon Community Power or to any other party
14 that may be designated to distribute income generated by electric utility operations that all
15 or a portion of the income pledged and assigned to the payment of the bonds be paid to a
16 bond trustee, escrow agent or other party appointed by the State Treasurer or the board of
17 directors of Oregon Community Power, as directed by the State Treasurer, to receive the
18 income as security for, and for the benefit of the holders of, the revenue bonds.

19 “(5) Revenue bonds issued under this section do not constitute a debt or general obli-
20 gation of this state, Oregon Community Power or a political subdivision of this state, but are
21 payable from income generated by electric utility operations of Oregon Community Power
22 following the acquisition described in section 39 (3) of this 2005 Act and moneys deposited in
23 the Oregon Community Power Bond Debt Service Fund and secured solely by all or a portion
24 of the income generated by electric utility operations of Oregon Community Power, by
25 amounts in a debt service reserve account established with respect to revenue bonds issued
26 under this section or by a credit enhancement obtained for the revenue bonds issued under
27 this section.

28 “(6) The State Treasurer and Oregon Community Power have no obligation to pay bond-
29 related costs except as provided in this section. A holder of revenue bonds or other similar
30 obligations issued under this section does not have the right to compel the exercise of the
31 taxing power of the state to pay bond-related costs.

32 “(7)(a) The holders of revenue bonds issued under this section, upon the issuance of the
33 revenue bonds, have a perfected lien on the income generated by Oregon Community Power
34 electric utility operations that is pledged and assigned to the payment of the revenue bonds.
35 The lien and pledge are valid and binding from the date of issuance of the first series of re-
36 venue bonds and are automatically perfected without physical delivery, filing or other act.
37 The lien and pledge are superior to all subsequent claims or liens on the income generated
38 by the electric utility operations or Oregon Community Power.

39 “(b) Notwithstanding paragraph (a) of this subsection, the State Treasurer shall estab-
40 lish, in the security documents for a series of revenue bonds issued under this section, the
41 priority of the related series among the liens perfected under paragraph (a) of this subsection
42 on the income generated by the electric utility operations of Oregon Community Power.

43 “(8) Notwithstanding ORS 286.505 to 286.545, revenue bonds may be issued under this
44 section during the 2005-2007 biennium in an aggregate principal amount that produces net
45 proceeds that are adequate for the acquisition described in section 39 (3) of this 2005 Act,

1 plus an amount for bond-related costs determined by the State Treasurer. A series of re-
2 venue bonds issued under this section may not mature later than _____ years from the
3 date of issuance.

4 “(9) As long as any revenue bonds issued under this section are outstanding, the pro-
5 visions of this section and the provisions of a security document related to the revenue bonds
6 are deemed to be contracts between the state and holders of the revenue bonds. The state,
7 acting through Oregon Community Power:

8 “(a) Shall collect the income generated by electric utility operations of Oregon Commu-
9 nity Power and deposit the moneys as required under this section and sections 40 and 45 of
10 this 2005 Act;

11 “(b) May not create, or allow the creation of, a lien or encumbrance on income generated
12 by electric utility operations of Oregon Community Power that is pledged and assigned to the
13 payment of the bonds that is superior to the liens of the pledges authorized by subsection
14 (7) of this section; and

15 “(c) May not give force or effect to a statute or initiative or referendum measure ap-
16 proved by the electors of this state if doing so would unconstitutionally impair existing
17 covenants made with the holders of existing revenue bonds or would impair other obligations
18 or agreements regarding the distribution and allocation of income generated by electric
19 utility operations of Oregon Community Power that is pledged and assigned to secure the
20 revenue bonds.

21 “(10) The State Treasurer, in consultation with Oregon Community Power, may issue,
22 sell and deliver refunding bonds in the manner provided for revenue bonds in this section.

23 “SECTION 39. (1) The Oregon Community Power Bond Fund is established in the State
24 Treasury separate and distinct from the General Fund. The net proceeds from the sale of
25 revenue bonds issued under section 38 (8) of this 2005 Act must be credited to the Oregon
26 Community Power Bond Fund. Investment earnings received on moneys in the Oregon
27 Community Power Bond Fund must be credited to the fund.

28 “(2) Moneys in the Oregon Community Power Bond Fund are continuously appropriated
29 to Oregon Community Power for the purpose of making the acquisition required in sub-
30 section (3) of this section.

31 “(3) Oregon Community Power shall expend the net proceeds of revenue bonds issued
32 under section 38 (8) of this 2005 Act to make an acquisition described in section 20 of this
33 2005 Act.

34 “SECTION 40. (1) The Oregon Community Power Bond Debt Service Fund is established
35 in the State Treasury separate and distinct from the General Fund. The Oregon Community
36 Power Bond Debt Service Fund consists of:

37 “(a) The amount of income generated by electric utility operations of Oregon Community
38 Power that is necessary in a fiscal year, as determined by Oregon Community Power under
39 the direction of the State Treasurer, to pay bond-related costs scheduled to be paid in that
40 fiscal year on the revenue bonds issued under section 38 of this 2005 Act;

41 “(b) Any funds appropriated or allocated to the Oregon Community Power Bond Debt
42 Service Fund; and

43 “(c) Investment earnings received on moneys in the Oregon Community Power Bond
44 Debt Service Fund.

45 “(2) Moneys in the Oregon Community Power Bond Debt Service Fund are continuously

1 appropriated to Oregon Community Power for paying, when due, bond-related costs on out-
2 standing revenue bonds, for funding debt service reserves and for paying amounts due in
3 connection with an instrument authorized by section 38 (3)(c) of this 2005 Act.

4 “(3) Oregon Community Power, in consultation with the State Treasurer, shall use
5 amounts in the Oregon Community Power Bond Debt Service Fund to pay, when due, the
6 bond-related costs on outstanding revenue bonds, to fund debt service reserves and to pay
7 amounts due in connection with any instrument authorized by section 38 (3)(c) of this 2005
8 Act.

9 **“SECTION 41.** (1) The Oregon Community Power Bond Administration Fund is estab-
10 lished in the State Treasury separate and distinct from the General Fund. The Oregon
11 Community Power Bond Administration Fund consists of:

12 “(a) The amount of revenue bond proceeds remaining after expending the net proceeds
13 as provided in section 39 (3) of this 2005 Act;

14 “(b) The proceeds of revenue bonds issued to pay bond-related costs;

15 “(c) Any funds appropriated or allocated to the Oregon Community Power Bond Admin-
16 istration Fund; and

17 “(d) Investment earnings received on moneys in the Oregon Community Power Bond
18 Administration Fund.

19 “(2) Moneys in the Oregon Community Power Bond Administration Fund are contin-
20 uously appropriated to Oregon Community Power for paying bond-related costs during the
21 term of revenue bonds issued under section 38 of this 2005 Act.

22 “(3) Oregon Community Power, in consultation with the State Treasurer, may use
23 amounts in the Oregon Community Power Bond Administration Fund to pay bond-related
24 costs during the term of revenue bonds issued under section 38 of this 2005 Act. Amounts
25 in the fund must be disbursed upon the written request of the chairperson of the board of
26 directors of Oregon Community Power.

27 **“SECTION 42.** Notwithstanding any other law, the amount of \$1 is established for the
28 biennium beginning July 1, 2005, as the maximum limit for the acquisition described in sec-
29 tion 39 (3) of this 2005 Act by Oregon Community Power from the Oregon Community Power
30 Bond Fund established in section 39 of this 2005 Act.

31 **“SECTION 43.** Notwithstanding any other law, the amount of \$1 is established for the
32 biennium beginning July 1, 2005, as the maximum limit for payment of expenses by Oregon
33 Community Power from the Oregon Community Power Bond Debt Service Fund established
34 in section 40 of this 2005 Act. The expenses are payments for the bond-related costs on out-
35 standing revenue bonds, for funding debt service reserves and for paying amounts due in
36 connection with an instrument authorized by section 38 (3)(c) of this 2005 Act.

37 **“SECTION 44.** Notwithstanding any other law, the amount of \$1 is established for the
38 biennium beginning July 1, 2005, as the maximum limit for payment of expenses by Oregon
39 Community Power from the Oregon Community Power Bond Administration Fund estab-
40 lished in section 41 of this 2005 Act. The expenses are bond-related costs on the revenue
41 bonds issued under section 38 of this 2005 Act.

42 **“SECTION 45.** (1) The Oregon Community Power Electric Utility Operations Fund is es-
43 tablished in the State Treasury, separate and distinct from the General Fund. Interest
44 earned by the Oregon Community Power Electric Utility Operations Fund shall be credited
45 to the Oregon Community Power Electric Utility Operations Fund.

1 “(2) All moneys received by Oregon Community Power from electric utility operations,
2 other than moneys described in section 40 (1)(a) of this 2005 Act, shall be deposited into the
3 Oregon Community Power Electric Utility Operations Fund.

4 “(3) Moneys in the Oregon Community Power Electric Utility Operations Fund are con-
5 tinuously appropriated to Oregon Community Power for the purpose of operating an electric
6 utility under sections 1 to 4, 6, 9 to 19 and 45 of this 2005 Act.

7 “SECTION 46. (1) As used in this section:

8 “(a) ‘Agreement’ means the agreement dated October 5, 1970, and titled ‘Agreement for
9 Construction, Ownership and Operation of the Trojan Nuclear Plant,’ as amended.

10 “(b) ‘Assets’ means tangible property, intangible financial property or property of any
11 kind, the acquisition of which results in the transfer of rights to collect rate revenues from
12 retail electricity consumers located within the service territory of an electric utility.

13 “(c) ‘City’, ‘district’ and ‘electric cooperative’ have the meaning given those terms in
14 ORS 225.450.

15 “(d) ‘Entity’ means a person, a public body as defined in ORS 174.109, a city, a district,
16 an electric cooperative or an intergovernmental entity.

17 “(e) ‘Intergovernmental entity’ has the meaning given that term in ORS 294.311.

18 “(f) ‘Trojan obligations’ means all of the obligations and liabilities of the Portland General
19 Electric Company to pay amounts that are due or that may become due under the agreement
20 or as required by a court or administrative order, the United States Government or any
21 agency or instrumentality of the United States Government, or the State of Oregon or any
22 agency or instrumentality of the State of Oregon.

23 “(2) An entity shall assume a proportionate share of Trojan obligations if the entity ac-
24 quires all or a portion of:

25 “(a) The Portland General Electric Company;

26 “(b) The assets of the Portland General Electric Company as of the effective date of this
27 2005 Act;

28 “(c) The service territory of the Portland General Electric Company; or

29 “(d) The rights to provide electricity or electric distribution services within the service
30 territory of the Portland General Electric Company, other than rights acquired pursuant to
31 direct access under ORS 757.600 to 757.691.

32 “(3) The entity shall assume that share of total Trojan obligations of the Portland Gen-
33 eral Electric Company that corresponds to whichever of the following applies:

34 “(a) The portion of the Portland General Electric Company being acquired;

35 “(b) The portion of the assets of the Portland General Electric Company being acquired;

36 “(c) The portion of the service territory of the Portland General Electric Company being
37 acquired; or

38 “(d) The portion of the rights to provide electricity or electric distribution services within
39 the service territory of the Portland General Electric Company.

40 “(4) The assumption of Trojan obligations described in this section shall occur without
41 regard to whether the acquisition described in subsection (2) of this section occurs through
42 market transactions, condemnation proceedings or by any other means.

43 “(5) Following the assumption of Trojan obligations described in this section, the entity
44 shall pay the entity’s proportionate share of all required or necessary amounts into any
45 Trojan decommissioning fund established, required or approved by the Energy Facility Siting

1 Council or the United States Nuclear Regulatory Commission. The entity may use the enti-
2 ty's proportionate share of amounts in the Trojan decommissioning fund to which the entity
3 makes payments for the purpose of paying the entity's proportionate share of Trojan obli-
4 gations, subject to any limitation imposed by a court or administrative order, the United
5 States Government or any agency or instrumentality of the United States Government, or
6 the State of Oregon or any agency or instrumentality of the State of Oregon.

7 SECTION 47. This 2005 Act being necessary for the immediate preservation of the public
8 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
9 on its passage.”

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