

**Enrolled**  
**Senate Bill 1008**

Sponsored by Senators DECKERT, NELSON, Representative BERGER

CHAPTER .....

AN ACT

Relating to electric utilities; creating new provisions; amending ORS 221.420, 221.450, 287.025 and 757.612; appropriating money; and declaring an emergency.

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

**SECTION 1. As used in sections 1 to 4, 6 and 9 to 23 of this 2005 Act:**

**(1) "Board" means the board of directors of Oregon Community Power.**

**(2) "Rate" has the meaning given that term in ORS 756.010.**

**(3) "Service" has the meaning given that term in ORS 756.010.**

**(4) "Service territory" means the geographic area within which a utility provides electricity to customers.**

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

**(2) Oregon Community Power is created as a public corporation in order to carry out public services in sectors of the economy in which activities or services are also provided by private enterprise. Oregon Community Power is granted increased operating flexibility under sections 1 to 4, 6, 9 to 23, 24, 30 to 34 and 37 to 42 of this 2005 Act in order to ensure the success of Oregon Community Power while retaining principles of public accountability and oversight.**

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

**SECTION 3. (1) Notwithstanding any other provision of law, Oregon Community Power shall be a created but inactive public corporation until activated by the Governor under this section.**

**(2) Oregon Community Power may be activated only upon action by the Governor to convene an initial Oregon Community Power Board Nominating Committee under section 5 of this 2005 Act.**

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

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

(a) One member shall be a delegate from the Citizens' Utility Board and shall represent the interests of residential electricity consumers.

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

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

(d) One member shall be a delegate from the League of Oregon Cities and shall represent the interests of municipalities and their residents.

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

(3) Of the members described in subsection (2)(d) and (e) of this section, one shall be from a local government that is within the service territory of Oregon Community Power and one shall be from a local government that is outside of the service territory of Oregon Community Power.

(4)(a) In order for the nominating committee to convene, the board of directors of Oregon Community Power shall prepare a proposed direction to convene as soon as is practicable following the earlier of the date that a vacancy occurs on the board or the date that it becomes known that a vacancy on the board will occur within six months.

(b) The proposed direction to convene shall state the qualified organizations that are to provide the delegates described in subsection (2)(b) and (c) of this section. The board shall send copies of the proposed direction to the Public Utility Commission and to each organization that served as a qualified organization at a prior convening of the nominating committee.

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

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

(6) The nominating committee shall nominate three individuals for each position on the board to be filled.

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

(8) In forwarding nominees to the Governor, the nominating committee shall strive to select individuals who:

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

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

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

(9) As used in this section, "qualified organization" means a nonprofit organization that represents a broad class of commercial or industrial customers and that has a substantial record of representing the broad class before state agencies or the Legislative Assembly in

matters related to public utility rates, terms and conditions and energy policy issues affecting the class.

**SECTION 5.** (1) Notwithstanding section 4 of this 2005 Act, the Governor shall convene the initial Oregon Community Power Board Nominating Committee for the first board of directors of Oregon Community Power on the date the Governor activates Oregon Community Power under section 3 of this 2005 Act.

(2) The nominating committee shall forward the first slate of nominees to the Governor for consideration under section 6 of this 2005 Act within 30 days following the convening of the committee by the Governor.

(3) If necessary, the nominating committee shall forward a second slate of nominees to the Governor for consideration within 10 days after the Governor's request for a second slate of nominees under section 6 (2) of this 2005 Act.

(4) For purposes of section 4 (3) of this 2005 Act, the service territory of the Portland General Electric Company, or the successor in interest to the Portland General Electric Company, shall be considered to be the service territory of Oregon Community Power.

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

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

(b) If the Governor reviews an initial slate of nominees made by the nominating committee and determines not to appoint a nominee, the Governor shall request that the nominating committee forward a second slate of nominees. If the Governor determines not to appoint a nominee from the second slate of nominees, the Governor may appoint any individual the Governor determines meets the qualifications of subsection (6) of this section.

(3) Notwithstanding the requirement that the Governor consider the nominations of the nominating committee prior to making an appointment, the Governor shall appoint an individual to be a board member within 120 days following the vacancy of a position on the board.

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

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

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

- (a) Business operations;
- (b) Utility management;
- (c) Legal or financial affairs;
- (d) Regional energy issues; or
- (e) Developing public policy.

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

**SECTION 7.** (1) Notwithstanding section 6 (5) of this 2005 Act, the term of office for the first board of directors of Oregon Community Power shall be as follows:

(a) Two members shall be appointed for a term that ends one year following the date the Governor convenes the board;

(b) Two members shall be appointed for a term that ends two years following the date the Governor convenes the board;

(c) Two members shall be appointed for a term that ends three years following the date the Governor convenes the board; and

(d) One member shall be appointed for a term that ends four years following the date the Governor convenes the board.

(2) Consistent with subsection (1) of this section, the Governor shall designate the duration of the term of office of each member of the first board of directors at the time the Governor convenes the board.

**NOTE:** Section 8 was deleted by amendment. Subsequent sections were not renumbered.

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 11.** The board of directors of Oregon Community Power shall establish the policies of Oregon Community Power to be used in the exercise of the powers enumerated for Oregon Community Power or the board, and may thereafter modify those policies. The board may delegate the exercise of powers enumerated for Oregon Community Power to a president, chief executive officer or general manager of Oregon Community Power. Delegated powers shall be exercised by the delegatee in a manner that is consistent with the policies established by the board. The powers of Oregon Community Power, as exercisable by the board of directors or by a president, chief executive officer or general manager under policies adopted by the board, are as follows:

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

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

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

(4) To issue bonds, notes or otherwise borrow moneys, incur indebtedness or issue, sell or assume evidence of indebtedness to the extent allowed under the Oregon Constitution.

(5) To sue and be sued.

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

(7) To build, acquire, own, operate and maintain generation, transmission and distribution resources that are sufficient to maintain an adequate supply of electricity to the service territory.

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

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

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

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

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

(13) To enter into contracts with the United States Government, with any other state, municipality or utility district or with any other person, for carrying out any provisions of sections 1 to 4, 6, 9 to 23, 24, 30 to 34 and 37 to 42 of this 2005 Act.

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

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

(16) To enter into franchise agreements with cities and pay fees under negotiated franchise agreements, intergovernmental agreements under ORS chapter 190 and contracts providing for the payment of such fees, and to pay privilege taxes imposed under ORS 221.450 or other applicable privilege taxes.

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

(18) To adopt bylaws as prescribed in section 14 of this 2005 Act.

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

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

(21) To execute any contract necessary to acquire, hedge or sell fuel or energy in any form, to manage electric utility operations, to construct, maintain or repair any energy generation or transmission facilities or equipment, to increase capacity for energy generation or transmission, to transfer any asset owned by Oregon Community Power or to acquire any asset for use in electric utility operations conducted by Oregon Community Power.

(22) To establish any funds or accounts at depository banks or other financial institutions that are determined to be necessary, useful or convenient for the conduct of business by Oregon Community Power.

(23) To take any other actions necessary or convenient for the proper exercise of the powers granted to Oregon Community Power by sections 1 to 4, 6, 9 to 23, 24, 30 to 34 and 37 to 42 of this 2005 Act.

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

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

(3) The rates adopted by the board shall be sufficient to accomplish the following purposes:

(a) To properly maintain and operate all Oregon Community Power property and facilities;

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

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

(d) To pay all franchise fees, in lieu payments, privilege taxes and other charges and assessments that are properly imposed on Oregon Community Power or the property or facilities of Oregon Community Power;

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

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

(g) To pay any debt administration costs associated with bonds, warrants, obligations or other indebtedness described in paragraphs (e) and (f) of this subsection;

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

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

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

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

(b) As a separate insert accompanying billing statements sent to customers;

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

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

(2) The notice shall state:

- (a) The date, time and location of the ratemaking hearing of the board;
- (b) The new rates or modifications to existing rates being proposed by the board; and
- (c) Any other information deemed relevant by the board.

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

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

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

(5) Notwithstanding section 19 of this 2005 Act, a decision by the board to establish or modify rates may be appealed as a contested case under ORS chapter 183.

**SECTION 14.** The board of directors of Oregon Community Power may adopt bylaws necessary to administer sections 1 to 4, 6, 9 to 23, 24, 30 to 34 and 37 to 42 of this 2005 Act, including but not limited to:

(1) Bylaws establishing the information the board must make available to the public prior to conducting a ratemaking hearing.

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

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

**SECTION 15.** (1) Oregon Community Power may exercise the power of eminent domain for the purpose of acquiring any property, within or outside the service territory of Oregon Community Power, necessary for carrying out the electric utility operations of Oregon Community Power.

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

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

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

**SECTION 16.** The board of directors of Oregon Community Power shall cause an independent audit to be performed at least annually. The audit shall review and report on the financial affairs of Oregon Community Power and on any other aspects of Oregon Community Power as the board may direct.

**SECTION 17.** (1) Oregon Community Power shall make payments in lieu of property taxes on all property that would otherwise be subject to assessment under ORS 308.505 to 308.665 if owned by a taxable owner. Oregon Community Power shall pay to each county in which property of Oregon Community Power is located an amount equal to the ad valorem property taxes that would have been charged by the county if Oregon Community Power property had been assessed to a taxable owner as of January 1 of the assessment year for which payment is being made.

(2) The Department of Revenue shall determine the assessed value of Oregon Community Power property as if the property were subject to assessment under ORS 308.505 to 308.665, and shall transmit the value information as provided in ORS 308.505 to 308.665 to the appropriate county assessor. Oregon Community Power shall comply with property reporting re-

quirements under ORS 308.505 to 308.665 as if the property were subject to assessment under ORS 308.505 to 308.665.

(3) The amount of the in lieu payment to be made to each county under this section shall be determined and certified annually by the county assessor of the county. A notice of the determination and certification shall be mailed to Oregon Community Power not later than October 15. The notice shall contain a statement of the value of the property and a complete explanation of the method used in computing the amount of the in lieu payment due under this section. Not later than November 15, Oregon Community Power shall pay the amount due to each county under this section, less a discount equivalent to that which is provided in ORS 311.505. Payment shall be made to the county treasurer. The county treasurer shall distribute the payment to the taxing districts of the county in accordance with the schedule of percentages computed under ORS 311.390.

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

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

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

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

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

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

(4) As used in this section, "direct access" and "electricity service supplier" have the meanings given those terms in section 30 of this 2005 Act.

**SECTION 18a.** (1) Whenever the Citizens' Utility Board of Governors determines that an Oregon Community Power proceeding may affect the interests of utility consumers, the Citizens' Utility Board may intervene as of right as an interested party or otherwise participate in the proceeding.

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

**SECTION 19.** (1) Except as provided in subsection (2) of this section, the provisions of ORS chapters 35 (other than ORS 35.550 to 35.575), 180, 190, 192 and 244 and ORS 30.260 to 30.460, 200.005 to 200.025, 200.045 to 200.090, 221.450, 236.605 to 236.640, 243.650 to 243.782 (other than ORS 243.696), 297.040, 307.090 and 307.112 apply to Oregon Community Power under the same terms as they apply to any other subdivision of state government.

(2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 238, 238A, 240, 270, 273, 276, 279A, 279B, 279C, 283, 286, 291, 292, 293, 294, 295 and 297 and ORS 35.550 to 35.575, 183.710 to 183.725, 183.745, 183.750, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105, 200.035, 236.380, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 282.010 to 282.150, 287.006, 287.452, 288.150 to 288.165, 288.600, 288.815 and 656.017 (2) do not apply to Oregon Community Power.

(3) Oregon Community Power is not a participating public employer in the Public Employees Retirement System.

(4) Any funds held by or under the control of Oregon Community Power are not public funds, as defined in ORS 295.005.

**SECTION 19a.** As used in sections 20 to 23 of this 2005 Act, "Portland General Electric Company" includes any successor in interest to the Portland General Electric Company.

**SECTION 20.** (1) Oregon Community Power shall:

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

(b) If the negotiations result in an agreement between Oregon Community Power and the persons described in paragraph (a) of this subsection for the acquisition of the Portland General Electric Company, the electric utility assets of the Portland General Electric Company or a combination of equity and asset acquisition or other form of acquisition of all or a part of the Portland General Electric Company, execute financing agreements or other arrangements or transactions to achieve the acquisition, and perform the acquisition.

(2) Notwithstanding section 15 (2) of this 2005 Act, Oregon Community Power may use the power of eminent domain to accomplish all or a part of an acquisition described in subsection (1) of this section if the Portland General Electric Company or the persons that have the authority to negotiate the disposition of the Portland General Electric Company consent to the use of eminent domain for acquisition purposes.

**SECTION 20a.** (1) Subsection (2) of this section applies if the Portland General Electric Company, or persons that have authority to negotiate the disposition of the Portland General Electric Company or the electric utility assets of the Portland General Electric Company, agrees to convey the Portland General Electric Company or the electric utility assets of the Portland General Electric Company to the City of Portland or to any entity created by the City of Portland.

(2) Prior to the issuance of any bonds for the purpose of acquiring any portion of the Portland General Electric Company, the City of Portland, or the entity created by the City of Portland to acquire the Portland General Electric Company or the electric utility assets of the Portland General Electric Company, may assign the right to acquire the Portland General Electric Company or the electric utility assets of the Portland General Electric Company to Oregon Community Power.

**SECTION 21.** (1) Following a request by Oregon Community Power, the Public Utility Commission shall transfer amounts necessary to fund any preliminary activities needed to determine the appropriateness or desirability of an acquisition described in section 20 of this 2005 Act, the requirements and terms of the acquisition, any due diligence activities related to the acquisition and the negotiations for the acquisition from the Public Utility Commission Account established by ORS 756.305 to the Oregon Community Power Utility Acquisition Fund established by section 21b of this 2005 Act.

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

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

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

**SECTION 21a.** If Oregon Community Power acquires the Portland General Electric Company or the electric utility assets of the Portland General Electric Company as the result of section 20a of this 2005 Act, Oregon Community Power shall transfer to the City of Portland an amount equal to a reasonable estimate of the costs incurred by the City of Portland in undertaking due diligence activities related to the acquisition and the negoti-

ations for the acquisition by the City of Portland, or by any entity created by the City of Portland, of the Portland General Electric Company or the electric utility assets of the Portland General Electric Company.

**SECTION 21b.** (1) The Oregon Community Power Utility Acquisition Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Community Power Utility Acquisition Fund shall be credited to the Oregon Community Power Utility Acquisition Fund.

(2) Moneys in the Oregon Community Power Utility Acquisition Fund are continuously appropriated to the Public Utility Commission for the purpose of transferring moneys to Oregon Community Power as described in section 21c of this 2005 Act.

**SECTION 21c.** (1) Oregon Community Power may request the Public Utility Commission to transfer moneys appropriated under section 21b of this 2005 Act in order to:

(a) Fund any preliminary activities undertaken by Oregon Community Power to determine the appropriateness or desirability of an acquisition described in section 20 of this 2005 Act, the requirements and terms of the acquisition, any due diligence activities related to the acquisition and the negotiations for the acquisition; or

(b) Reimburse the City of Portland as described in section 21a of this 2005 Act.

(2) Upon receiving a request from Oregon Community Power under this section, the commission shall transfer the requested moneys to Oregon Community Power.

**SECTION 21d.** If Oregon Community Power acquires the Portland General Electric Company under section 20 or 20a of this 2005 Act, all electric utility operations undertaken by Oregon Community Power after the acquisition shall be conducted under the name of Oregon Community Power.

**SECTION 22.** (1) If negotiations result in an acquisition described in section 20 or 20a of this 2005 Act, as of the date of the acquisition, unless the Oregon Constitution requires otherwise, Oregon Community Power shall constitute the successor in interest to the Portland General Electric Company for all purposes, including but not limited to:

(a) Allocation of territory and contracts allocating territory;

(b) City franchise fee agreements; and

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

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

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

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

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

(3) If negotiations result in an acquisition described in section 20 or 20a of this 2005 Act, Oregon Community Power shall be subject to all privilege taxes imposed by municipalities that the Portland General Electric Company was required to pay to municipalities immediately prior to the acquisition.

**SECTION 23.** (1) Any equity of the Portland General Electric Company, any electric utility assets of the Portland General Electric Company or any combination of equity and assets of the Portland General Electric Company that Oregon Community Power acquires under section 20 or 20a of this 2005 Act or thereafter shall be held in trust by Oregon Community Power, acting as a trustee, for the exclusive purpose of carrying out the powers,

rights and privileges of Oregon Community Power under sections 1 to 4, 6, 9 to 23, 24, 30 to 34 and 37 to 42 of this 2005 Act for the benefit of the electricity consumers of Oregon Community Power. Notwithstanding any other provision of law, electricity consumers of Oregon Community Power may not pursue any judicial remedy in any court of this state for any action of Oregon Community Power, except as provided in sections 1 to 4, 6, 9 to 23, 24, 30 to 34 and 37 to 42 of this 2005 Act.

(2) The State of Oregon declares that it has no proprietary interest in Oregon Community Power or in any tangible or intangible property of any form owned or acquired by Oregon Community Power. The state disclaims any right to reclaim any contributions made to Oregon Community Power under sections 21, 21b and 21c of this 2005 Act.

(3) Except as provided in sections 21, 21b and 21c of this 2005 Act, Oregon Community Power may not receive any moneys from the State of Oregon other than:

- (a) Electric utility operational revenues;
- (b) Public purpose charge revenues under ORS 757.612;
- (c) Nonrecourse bond proceeds or proceeds from any other nonrecourse borrowing; or
- (d) Loans, grants, payments or other assistance that any nonstate-governmental entity would be eligible to receive.

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

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

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

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

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

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

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

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

(3) As used in this section, "federal electric power" means electricity generated, distributed or sold by the Bonneville Power Administration.

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

221.420. (1) As used in this section:

(a) "Public utility" has the meaning for that term provided in ORS 757.005.

(b) "Commission" means the Public Utility Commission of Oregon.

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

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

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

(f) "Heating company" means any person furnishing heat but not electricity or natural gas to its customers.

(2) Every city may:

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

(b) Require any public utility, by ordinance or otherwise, to make such modifications, additions and extensions to its physical equipment, facilities or plant or service within such city as shall be reasonable or necessary in the interest of the public, and designate the location and nature of all additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed.

(c) Fix by contract, prescribe by ordinance, or in any other lawful manner, the rates, charges or tolls to be paid to, or that may be collected by, any public utility or the quality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product or service within such city. No schedule of rates, charges or tolls, fixed in the manner provided in this paragraph, shall be so fixed for a longer period than five years. Whenever it is proposed by any city to enter into any contract, or to enact any ordinance, or other municipal law or regulation concerning the matters specified in this paragraph, a copy of such proposed contract, ordinance or other municipal law or resolution shall be filed with the Public Utility Commission of Oregon before the same may be lawfully signed or enacted, as the case may be, and the commission shall thereafter have 90 days within which to examine into the terms thereof. If the commission is of the opinion that in any respect the provisions of the proposed contract, ordinance or other municipal law or resolution are not in the public interest, the commission shall file, in writing, with the clerk or other officer who has the custody of the files and records of the city, the commission's reasons therefor. If the objections are filed within said period of 90 days, no proposed contract, ordinance or other municipal law or regulation shall be valid or go into effect until it has been submitted to or ratified by the vote of the electors of the city. Unless and until a city exercises its powers as provided in this paragraph, the commission is vested with all powers with respect to the matters specified in this paragraph. If the schedule of rates, charges and tolls or the quality and character of each kind of product or service is fixed by contract, ordinance or other municipal law or regulation and in the manner provided in this paragraph, the commission has no power or jurisdiction to interfere with, modify or change it during the period fixed thereby. Upon the expiration of said period such powers shall again be vested in the commission, to be exercised by the commission unless and until a new schedule of rates or the quality and character for such service or product is fixed or prescribed by contract, ordinance or other municipal law or regulation in the manner provided in this paragraph.

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

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

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

**SECTION 27. Nothing in sections 1 to 4, 6, 9 to 23, 24, 30 to 34 or 37 to 42 of this 2005 Act diminishes, or authorizes the adoption of rules that diminish, the authority of a city to control the use of the city's rights of way or to collect license fees, privilege taxes, rent or other charges for the use of the rights of way of the city.**

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

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

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

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

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

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

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

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

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

(D) Five percent shall be transferred to the Housing and Community Services Department Revolving Account created under ORS 456.574 and used for the purpose of providing grants as described in ORS 458.625 (2). Moneys deposited in the account under this subparagraph are continuously appropriated to the Housing and Community Services Department for the purposes of ORS 458.625 (2). Interest on moneys deposited in the account under this subparagraph shall accrue to the account.

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

(d) The commission shall direct the manner in which public purpose charges are collected and spent by an electric company **or Oregon Community Power** and may require an electric company **or Oregon Community Power** to expend funds through competitive bids or other means designed to encourage competition, except that funds dedicated for low-income weatherization shall be directed to the Housing and Community Services Department as provided in subsection (7) of this section. The commission may also direct that funds collected by an electric company **or Oregon Community Power** through public purpose charges be paid to a nongovernmental entity for investment in public purposes described in subsection (1) of this section. Notwithstanding any other provision of this subsection[,];

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

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

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

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

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

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

(iii) Energy conservation education programs.

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

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

(g) The commission shall remove from the rates of each electric company any costs for public purposes described in subsection (1) of this section that are included in rates. A rate adjustment under this paragraph shall be effective on the date that the electric company begins collecting public purpose charges. **Oregon Community Power shall adhere to tariffs that were in existence on the date Oregon Community Power acquired the Portland General Electric Company, or the electric utility assets of the Portland General Electric Company, and that were designed to remove costs for public purposes from the rates.**

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

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

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

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

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

(A) The amount of the retail electricity consumer's qualifying expenditures; or

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

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

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

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

(B) A retail electricity consumer shall be entitled each year to the credit described in this subsection unless a subsequent independent audit determines that new conservation investment opportunities are available. The State Department of Energy may require that a new independent audit be performed on the site to determine whether new conservation measures are available, provided that the independent audits shall occur no more than once every two years.

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

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

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

(b) The total amount collected for low-income electric bill payment assistance under this section shall be \$10 million per year. The commission shall determine each electric company's proportionate share of the total amount **and Oregon Community Power's proportionate share of the total amount**. The commission shall determine the amount to be collected from a retail electricity con-

sumer, except that a retail electricity consumer shall not be required to pay more than \$500 per month per site for low-income electric bill payment assistance.

(c) Funds collected by the low-income electric bill payment assistance charge shall be paid into the Housing and Community Services Department Revolving Account created under ORS 456.574. Moneys deposited in the account under this paragraph are continuously appropriated to the Housing and Community Services Department for the purpose of funding low-income electric bill payment assistance. Interest earned on moneys deposited in the account under this paragraph shall accrue to the account. The department's cost of administering this subsection shall be paid out of funds collected by the low-income electric bill payment assistance charge. Moneys deposited in the account under this paragraph shall be expended solely for low-income electric bill payment assistance. Funds collected from an electric company **or Oregon Community Power** shall be expended in the service area of the electric company **or Oregon Community Power** from which the funds are collected.

(d) The Housing and Community Services Department, in consultation with the federal Advisory Committee on Energy, shall determine the manner in which funds collected under this subsection will be allocated by the department to energy assistance program providers for the purpose of providing low-income bill payment and crisis assistance, including programs that effectively reduce service disconnections and related costs to retail electricity consumers and electric utilities. Priority assistance shall be directed to low-income electricity consumers who are in danger of having their electricity service disconnected.

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

(f) Notwithstanding ORS 757.310, the commission may allow an electric company **or Oregon Community Power** to provide reduced rates or other payment or crisis assistance or low-income program assistance to a low-income household eligible for assistance under the federal Low Income Home Energy Assistance Act of 1981, as amended and in effect on July 23, 1999.

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

(9) For purposes of this section, "retail electricity consumers" includes any direct service industrial consumer that purchases electricity without purchasing distribution services from [*the electric utility*] **an electric company or Oregon Community Power**.

**(10) For purposes of this section, amounts collected by Oregon Community Power through public purpose charges are not considered moneys received from electric utility operations.**

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

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

**(1) "Ancillary services" has the meaning given that term in ORS 757.600.**

**(2) "Board" means the board of directors of Oregon Community Power.**

(3) “Direct access” means the ability of a retail electricity consumer to purchase electricity and ancillary services, as determined by the board of directors of Oregon Community Power, directly from an entity other than Oregon Community Power.

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

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

(6) “Nonresidential electricity consumer” means a retail electricity consumer that is not a residential electricity consumer.

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

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

(9) “Transition credit” and “transition charge” have the meanings given those terms in ORS 757.600.

(10) “Uneconomic utility investment” means all investments, including plants and equipment and contractual or other legal obligations, made by Oregon Community Power and properly dedicated to generation conservation and workforce commitments, the full costs of which are no longer recoverable as a result of direct access, absent transition charges.

**SECTION 31.** (1) Oregon Community Power shall allow nonresidential electricity consumers direct access.

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

(3)(a) Oregon Community Power shall supply default electricity service to a nonresidential electricity consumer in an emergency.

(b) The board shall establish reasonable terms and conditions for providing default service to a nonresidential electricity consumer in circumstances in which the consumer is receiving electricity services through direct access and elects instead to receive electricity services through the default service.

(4)(a) Oregon Community Power shall permit retail electricity consumers that are eligible for direct access to voluntarily aggregate their electricity loads.

(b) A retail electricity consumer that is eligible for direct access may voluntarily aggregate its electricity load with the electricity load of any other retail electricity consumer that is eligible for direct access.

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

(2) Oregon Community Power shall provide:

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

(b) Electricity service suppliers and retail electricity consumers timely access to information about the Oregon Community Power transmission facilities and distribution system, metering and loads comparable to that provided to Oregon Community Power’s own nondistribution divisions, affiliates and related parties.

(3) Oregon Community Power shall allow any electricity service supplier that has been certified by the Public Utility Commission to provide direct access to nonresidential electricity consumers.

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

(2) The total of all transition credits or transition charges shall equal the net value of all economic utility investments and all uneconomic utility investments of Oregon Community Power.

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

- (a) Auction;
- (b) Administrative valuation; or
- (c) Ongoing valuation.

(4) The transition credit or transition charge that applies to a retail electricity consumer under this section may change to reflect the duration of the service option chosen by the consumer, but may not be changed because of the electricity service supplier chosen by the consumer.

**SECTION 34.** The board of directors of Oregon Community Power shall determine whether and under what conditions Oregon Community Power will offer retail electricity consumers portfolio access to electricity service suppliers. The board shall have sole authority to determine:

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

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

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

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

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

(6) Access to or use of the Oregon Community Power transmission facilities or distribution system by retail electricity consumers or electricity service suppliers.

(7) Oregon Community Power's qualification standards for electricity service suppliers in addition to any certification standards established by the Public Utility Commission, provided that the qualification standards are uniformly applied to electricity service suppliers in a nondiscriminatory manner.

**SECTION 35.** Sections 30 to 34 of this 2005 Act become operative on the date of an acquisition described in section 20 of this 2005 Act.

**SECTION 36.** (1) Notwithstanding sections 1 to 4, 6, 9 to 23, 24, 30 to 34 or 37 to 42 of this 2005 Act, a consumer-owned utility shall have exclusive distribution rights, to the extent the distribution rights are provided by law other than sections 1 to 4, 6, 9 to 23, 24, 30 to 34 or 37 to 42 of this 2005 Act, and exclusive responsibility for the performance and oversight of:

(a) The utility's distribution system, including the acquisition, construction, financing, operation and maintenance of distribution facilities; and

(b) Metering, billing, collection and consumer response functions related to the distribution of electricity to retail electricity consumers located within the utility's service territory.

(2) Subsection (1) of this section and sections 1 to 4, 6, 9 to 23, 24, 30 to 34 or 37 to 42 of this 2005 Act do not:

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

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

**SECTION 37.** As used in sections 37 to 42 of this 2005 Act:

(1) "Credit enhancement agreement" means any agreement or contractual relationship between Oregon Community Power and any bank, trust company, insurance company, surety bonding company, pension fund or other financial institution providing additional credit on or security for a financing agreement or certificates of participation authorized by sections 37 to 42 of this 2005 Act.

(2) "Financing agreement" means a bond, installment sale agreement, loan agreement, note, note agreement, short-term promissory note, commercial paper, line of credit or similar obligation or any other agreement to finance real or personal property, tangible or intangible, that is or will be owned and operated by Oregon Community Power, to otherwise borrow money, or to refinance previously executed financing agreements.

**SECTION 38.** (1) Oregon Community Power may enter into financing agreements in accordance with sections 37 to 42 of this 2005 Act upon such terms as the board of directors of Oregon Community Power determines to be necessary or desirable. Amounts payable by Oregon Community Power under a financing agreement shall be limited to funds specifically pledged, budgeted for or otherwise made available by Oregon Community Power. If there are insufficient available funds to pay amounts due under a financing agreement, the lender may exercise any property rights that Oregon Community Power has granted to it in the financing agreement against the property that was purchased with the proceeds of the financing agreement, and may apply the amounts so received toward payments scheduled to be made by Oregon Community Power under the financing agreement.

(2) Oregon Community Power may enter into a financing agreement only following adoption by the board of directors of Oregon Community Power of a resolution authorizing the execution of the financing agreement or a series of similar financing agreements.

**SECTION 39.** The board of directors of Oregon Community Power may delegate to any board member, or to the chief executive officer, president, general manager or chief financial officer of Oregon Community Power, the authority to determine maturity dates, principal amounts, redemption provisions, interest rates or methods for determining variable or adjustable interest rates, denominations, methods of sale, agreements for the exchange of interest rates as an issuer under ORS 287.025 and other terms and conditions of a financing agreement that are not appropriately determined at the time of enactment or adoption of a resolution authorizing the execution of the financing agreement. The board may also delegate entering into a financing agreement or any other instrument authorized by law. This delegated authority shall be exercised subject to applicable requirements of law and any limitations and criteria as may be set forth in the resolution authorizing the execution of a financing agreement or in Oregon Community Power bylaws.

**SECTION 40.** Oregon Community Power may:

(1) Enter into agreements with third parties to hold financing agreement proceeds, payments and reserves as security for lenders, and to issue certificates of participation in the right to receive payments due from Oregon Community Power under a financing agreement. Amounts so held shall be invested at the direction of the board of directors of Oregon Community Power. Interest earned on any investments held as security for a financing agreement may, at the option of the board, be credited to the accounts held by the third party and applied in payment of sums due under a financing agreement.

(2) Enter into credit enhancement agreements for financing agreements or certificates of participation, provided that any credit enhancement agreements shall be payable solely from funds specifically pledged, budgeted for or otherwise made available by Oregon Com-

munity Power and amounts received from the exercise of property rights granted under the financing agreements.

(3) Use financing agreements to finance the costs of acquiring or refinancing real or personal property, either tangible or intangible, plus the costs of reserves, credit enhancements and costs associated with obtaining the financing.

(4) Grant security interests in property to trustees or lenders.

(5) Make pledges for the benefit of trustees and lenders.

(6) Purchase fire and extended coverage or other casualty insurance for property that is acquired or refinanced with proceeds of a financing agreement, assign the proceeds thereof to a lender or trustee to the extent of their interest, and covenant to maintain any insurance while the financing agreement is unpaid, as long as available funds are sufficient to purchase the insurance.

**SECTION 41.** Oregon Community Power may consult with and obtain advice from the State Treasurer on proposed or executed financing agreements. The State Treasurer may recover from Oregon Community Power any costs incurred by the State Treasurer in providing consultation and advice.

**SECTION 42.** (1) Oregon Community Power may issue and sell revenue bonds in accordance with the provisions of the Uniform Revenue Bond Act under ORS 288.805 to 288.945. However, ORS 288.815 does not apply to revenue bonds issued by Oregon Community Power. Revenue bonds issued by Oregon Community Power may not be a general obligation of Oregon Community Power and may not be a charge upon any revenues or property of Oregon Community Power that is not specifically pledged thereto. Any obligation of any kind incurred by Oregon Community Power under ORS 288.805 to 288.945 is not, and may not be considered, an indebtedness of the State of Oregon. Any obligation of any kind incurred by Oregon Community Power shall state on its face that it is solely an obligation of Oregon Community Power.

(2) Revenue bonds or other financing agreements issued by Oregon Community Power pursuant to ORS 288.805 to 288.945 shall be considered to be bonds or obligations of a political subdivision of the State of Oregon for the purposes of all laws of this state.

**SECTION 43.** ORS 287.025 is amended to read:

287.025. (1) As used in this section:

(a) "Agreement for exchange of interest rates" or "agreement" means a contract, or an option or forward commitment to enter into a contract, for the exchange of interest rates that provides for:

(A) Payments based on levels of or changes in interest rates; or

(B) Provisions to hedge payment, rate, spread or similar exposure including, but not limited to, an interest rate floor or cap or an option, put or call.

(b) "Issuer" means a public body as defined in ORS 288.605, the Oregon Health and Science University, [or] the Master Settlement Asset Corporation established in section 3, chapter 2, Oregon Laws 2002 (fifth special session), or Oregon Community Power.

(c) "Obligation" means a bond, note, bond anticipation note, commercial paper, certificate of participation or other agreement made in exercise of the borrowing powers of the issuer.

(2) If the issuer is a state issuer, including the State of Oregon or an agency, department, board or commission of the State of Oregon, the State Treasurer may exercise the authority granted by this section on behalf of the state issuer or the state issuer, with the approval of the State Treasurer, may exercise that authority directly.

(3) Subject to subsection (2) of this section, an issuer, or the State Treasurer on behalf of a state issuer, may enter into an agreement for exchange of interest rates related to an obligation the issuer has issued or will issue to manage payment, interest rate, spread or similar exposure undertaken in connection with the obligation upon a finding by the issuer, or the State Treasurer on behalf of a state issuer, that the agreement benefits the issuer.

(4) The issuer, or the State Treasurer on behalf of a state issuer, shall include in an agreement for exchange of interest rates provisions related to payment, term, security, collateralization, ter-

mination, default and remedy that the issuer, or the State Treasurer on behalf of a state issuer, determines necessary or appropriate upon consideration of the covenants applicable to the obligation and the creditworthiness of the parties.

(5) The issuer, or the State Treasurer on behalf of a state issuer, may enter into an agreement for exchange of interest rates only if:

(a) The long-term, senior, unsecured, unenhanced, unsubordinated debt obligations of the party, or the guarantors of the party, with whom the issuer, or the State Treasurer on behalf of a state issuer, enters the agreement are rated in one of the top three rating categories without gradation by at least two nationally recognized rating agencies; or

(b) The obligations of the party, or the guarantors of the party, with whom the issuer, or the State Treasurer on behalf of a state issuer, enters the agreement are collateralized by cash or obligations rated in one of the top three rating categories without gradation by at least two nationally recognized rating agencies and:

(A) The cash or obligations are deposited with the issuer, or the State Treasurer on behalf of a state issuer, or with an agent of the issuer;

(B) The cash or obligations have a market value sufficient to fully collateralize the obligations of the party under the agreement as determined at the discretion of the issuer, or the State Treasurer on behalf of a state issuer; and

(C) The collateral obligations are valued at least quarterly.

(6) With respect to an obligation that the issuer, or the State Treasurer on behalf of a state issuer, has issued or will issue, the issuer, or the State Treasurer on behalf of a state issuer, may agree:

(a) If the obligation bears interest at one or more variable rates, to pay sums equal to interest at one or more fixed rates or one or more different variable rates determined under a formula set forth in the agreement for exchange of interest rates on an amount not to exceed the outstanding principal amount of the obligation in exchange for an agreement for the issuer, or the State Treasurer on behalf of a state issuer, to be paid sums equal to interest on the same principal amount at a variable rate determined under a formula set forth in the agreement.

(b) If the obligation bears interest at one or more fixed rates, to pay sums equal to interest at one or more variable rates or one or more different fixed rates determined under a formula set forth in the agreement for exchange of interest rates on an amount not to exceed the outstanding principal amount of the obligation in exchange for an agreement for the issuer, or the State Treasurer on behalf of a state issuer, to be paid sums equal to interest on the same principal amount at a fixed rate or rates set forth in the agreement.

(7) The issuer, or the State Treasurer on behalf of a state issuer, may not enter into an agreement under this section that:

(a) Has a term that exceeds the original term of the obligation for which the agreement for exchange of interest rates is made or, in the case of an option or a forward commitment, has a term that exceeds the reasonably expected term of the obligation for which the agreement is made; or

(b) Is for a purpose other than to manage payment, interest rate, spread or similar exposure in connection with the obligation of the issuer.

(8) The limitation on interest on an obligation in ORS 286.036, or any other similar limitation, does not apply to interest paid under an agreement for exchange of interest rates entered into under this section.

(9) Upon entering into an agreement for exchange of interest rates under this section and continuing until the agreement is satisfied, terminated or otherwise no longer in effect, as long as no payment default has occurred, the issuer, or the State Treasurer on behalf of a state issuer, shall treat the amount or rate of interest on the obligation related to the agreement as the amount or rate of interest payable after giving effect to the agreement for the purpose of calculating:

(a) Tax levies, if any, to pay bond debt service; or

(b) Other amounts that are based upon the rate of interest of the obligation.

(10) Subject to covenants applicable to the obligation, payments required to be made under the agreement by the issuer, or the State Treasurer on behalf of a state issuer:

(a) May be made from revenues or other moneys committed to or legally available to pay the underlying debt obligation; and

(b) May rank in an order of priority of payment relative to the payment of the underlying debt obligation as the issuer, or the State Treasurer on behalf of a state issuer, determines. In connection with entering into an agreement, the issuer, or the State Treasurer on behalf of a state issuer, may enter into an agreement that enhances or supports the credit of the issuer in the agreement or enhances or supports the liquidity of the agreement.

(11) An agreement entered into under this section is not a debt or other obligation of the state issuer for purposes of any limitation upon the indebtedness of the state issuer.

(12)(a) The Oregon Municipal Debt Advisory Commission shall promulgate administrative rules establishing required terms, conditions, annual or periodic reporting requirements and other requirements for an agreement for exchange of interest rates entered into by an issuer other than a state issuer.

(b) The State Treasurer may promulgate administrative rules establishing required terms, conditions, annual or periodic reporting requirements and other requirements for an agreement for exchange of interest rates entered into by a state issuer acting with the approval of the State Treasurer under subsection (2) of this section.

(13)(a) Before an agreement for exchange of interest rates may be entered into under this section, the issuer, or the State Treasurer on behalf of a state issuer, shall determine whether:

(A) The agreement for exchange of interest rates is being executed for a permitted purpose and benefits the issuer; and

(B) The requirements of this section have been met.

(b) In addition to the determinations required under paragraph (a) of this subsection, an issuer other than a state issuer shall also determine whether the issuer has complied with the requirements of the administrative rules promulgated by the Oregon Municipal Debt Advisory Commission under subsection (12) of this section.

(14) An issuer other than a state issuer shall notify the State Treasurer of the execution by the issuer of an agreement for exchange of interest rates under this section.

**NOTE:** Sections 44 and 45 were deleted by amendment. Subsequent sections were not renumbered.

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

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

(b) **“Allocated territory”** has the meaning given that term in ORS 758.400.

(c) **“Person”** means:

(A) A person as defined in ORS 174.100;

(B) A person as defined in ORS 758.400;

(C) A public body as defined in ORS 174.109; or

(D) Any combination of entities described in subparagraphs (A), (B) and (C) of this paragraph.

(d) **“Trojan obligations”** means all of the obligations and liabilities of the Portland General Electric Company to pay amounts that are due or that may become due under the agreement or that are due or that may become due as a result of a requirement imposed by a federal, state or local governmental body, agency or instrumentality.

(e) **“Utility service”** has the meaning given that term in ORS 758.400.

(2) Any person acquiring all or a portion of any allocated territory of the Portland General Electric Company, or acquiring the right to provide utility service within the allocated territory of the Portland General Electric Company, shall assume a share of Trojan obligations that is proportionate to the total amount of allocated territory or the percentage of

retail customer load for which the person has acquired the right to provide utility service, whichever is greater.

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

(4) Any person assuming a share of Trojan obligations shall pay all required or necessary amounts, when due, into any decommissioning or other fund established, required or approved by any federal, state or local governmental body, agency or instrumentality for the purpose of meeting Trojan obligations. A person making payments into a fund described in this subsection may use the person's share of the fund for the purpose of meeting the person's Trojan obligations, subject to any limitation imposed by a federal, state or local governmental body, agency or instrumentality.

(5) The obligations imposed by subsection (2) of this section do not apply to any person acquiring allocated territory or customers of the Portland General Electric Company when:

(a) The acquisition occurs pursuant to the terms of a contract allocating territory that has been approved by the Public Utility Commission under ORS 758.400 to 758.475 and that is in effect on the effective date of this 2005 Act; or

(b) The acquisition comprises less than one percent of the total allocated territory of the Portland General Electric Company and less than one-tenth of one percent of the total retail customer load of the Portland General Electric Company at the time of acquisition, whichever is greater.

**SECTION 47.** (1) If the City of Portland or any other entity that is not an investor-owned utility acquires the Portland General Electric Company, all electric utility operations undertaken by the acquiring entity shall be conducted under the brand name of Oregon Community Power.

(2) Nothing in subsection (1) of this section causes any provision of sections 1 to 4, 6, 9 to 23, 24, 30 to 34 or 37 to 42 of this 2005 Act to apply unless Oregon Community Power, as created and activated under sections 1 to 4 and 6 of this 2005 Act, makes an acquisition described in section 20 or 20a of this 2005 Act.

**SECTION 48.** 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.

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**Passed by Senate May 6, 2005**

**Repassed by Senate July 20, 2005**

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Secretary of Senate

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President of Senate

**Passed by House July 19, 2005**

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Speaker of House

**Received by Governor:**

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

**Approved:**

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

.....  
Governor

**Filed in Office of Secretary of State:**

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

.....  
Secretary of State