

Senate Bill 1008

Sponsored by Senators DECKERT, NELSON, Representative BERGER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes Oregon Community Power. Directs Oregon Community Power to enter into negotiations and acquire assets of Portland General Electric Company. Authorizes State Treasurer, at request of Oregon Community Power, to issue revenue bonds and directs Oregon Community Power to expend bond proceeds to acquire assets of Portland General Electric Company.

Creates funds and continuously appropriates moneys to Oregon Community Power for purposes of acquisition, debt service and operation of electric utility. Limits expenditures of bond proceeds and debt service moneys. Appropriates moneys from General Fund to Oregon Community Power for purpose of negotiating acquisition.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to electric utilities; creating new provisions; amending ORS 757.612; appropriating money;
3 limiting expenditures; and declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 4, 7 to 12 and 24 of this 2005 Act:**

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

7 (2) "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, 7 to 12 and 24 of this 2005 Act in order to ensure the success of Oregon
17 Community Power, but Oregon Community Power constitutes an integral part of the gov-
18 ernment of the State of Oregon that retains principles of public accountability and oversight.

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

22 **SECTION 3. It is the intent of the Legislative Assembly in enacting sections 1 to 4, 7 to
23 12 and 24 of this 2005 Act that Oregon Community Power be created and operated as an in-
24 tegral part of state government and therefore be exempt from federal income taxes under
25 section 115 of the Internal Revenue Code, as amended and in effect on December 31, 2004.**

26 **SECTION 4. (1) Oregon Community Power shall be governed by a board of seven directors
27 appointed by the Governor.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) Each appointment shall be subject to confirmation by the Senate in the manner pre-
 2 scribed in ORS 171.562 and 171.565.

3 (3) The term of office for each member shall be four years, but each member serves at
 4 the pleasure of the Governor. Before the expiration of the term of a member, the Governor
 5 shall appoint a successor. A member is eligible for reappointment.

6 (4) Each member of the board shall have experience or expertise in overseeing the man-
 7 agement of a large public utility.

8 (5) The board shall select one of its members as chairperson. A majority of board
 9 members shall constitute a quorum. The board shall meet at least once every three months
 10 at a location determined by the chairperson. The board shall adopt bylaws establishing rules
 11 of procedure for board meetings and decisions.

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

14 **SECTION 5.** Notwithstanding section 4 of this 2005 Act, the Governor shall appoint the
 15 first members of the board of directors of Oregon Community Power as follows:

- 16 (1) Two members shall be appointed for a term that ends September 30, 2006;
- 17 (2) Two members shall be appointed for a term that ends September 30, 2007;
- 18 (3) Two members shall be appointed for a term that ends September 30, 2008; and
- 19 (4) One member shall be appointed for a term that ends September 30, 2009.

20 **SECTION 6.** The Governor shall make the appointments described in section 5 of this
 21 2005 Act within 60 days following the effective date of this 2005 Act.

22 **SECTION 7.** The board of directors of Oregon Community Power shall file with the Leg-
 23 islative Assembly and the Governor, not later than April 15 of each year, a report of the
 24 activities and operations of Oregon Community Power for the preceding year.

25 **SECTION 8.** (1) The board of directors of Oregon Community Power shall exercise all
 26 powers necessary to establish policy and governance over Oregon Community Power, in-
 27 cluding but not limited to hiring a general manager for Oregon Community Power and es-
 28 tablishing rates for Oregon Community Power.

- 29 (2) The policies of the board shall reflect the following objectives:
 - 30 (a) To have as a primary mission to provide reliable, low-cost electricity to customers;
 - 31 (b) To charge nondiscriminatory rates for electricity service;
 - 32 (c) To establish rates that are sufficient to meet all debt service requirements of Oregon
 33 Community Power;
 - 34 (d) To have rates that reflect the savings realized from Oregon Community Power's ex-
 35 emptions from federal, state and local taxes;
 - 36 (e) To take prudent measures to preserve existing electricity distribution systems and
 37 the workforce that maintains distribution systems;
 - 38 (f) To maintain a primary business concentration on the provision of electricity service;
 39 and
 - 40 (g) To develop such low-income electricity assistance programs as the board determines
 41 are prudent.

42 **SECTION 9.** The powers of Oregon Community Power are as follows:

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

1 sell or dispose of that property.

2 (2) To exercise the power of eminent domain for the purpose of acquiring any property,
3 within or outside of the service territory of Oregon Community Power, necessary for the
4 carrying out of the provisions of sections 1 to 4, 7 to 12 and 24 of this 2005 Act.

5 (3) To borrow money and incur indebtedness and issue, sell and assume evidences of
6 indebtedness.

7 (4) To refund and retire any indebtedness that may exist against or be assumed by
8 Oregon Community Power or that may exist against the revenues of Oregon Community
9 Power and to pledge any part of its revenues. The board of directors may borrow from banks
10 or other financial institutions, on notes payable within 12 months, such sums as the board
11 deems necessary or advisable but the amounts so borrowed, together with the principal
12 amounts of other like borrowings then outstanding and unpaid, may not exceed the amount
13 that the board estimates as Oregon Community Power's net income for the 12 full calendar
14 months following the date of the proposed borrowing, adjusted by adding to the net income
15 an amount equal to the estimated charges to depreciation for the 12-month period. Indebt-
16 edness may not be incurred or assumed except on account of the development and operation
17 of a utility.

18 (5) To enter into rental or lease-purchase agreements to rent, lease or acquire real or
19 personal property, or both, required for Oregon Community Power purposes.

20 (6) To sue and be sued.

21 (7) To make contracts, to employ labor and professional staff, to set wages, to set sala-
22 ries and provide compensation for services rendered by employees and by directors, to pro-
23 vide for life insurance, hospitalization, disability, health and welfare and retirement plans for
24 employees, and to do all things necessary and convenient for full exercise of the powers
25 herein granted. The provision for life insurance, hospitalization, disability, health and welfare
26 and retirement plans for employees is in addition to any other right or power of Oregon
27 Community Power to participate in those plans and does not repeal or modify any statutes
28 except those that may be in conflict with the provision for life insurance, hospitalization,
29 disability, health and welfare and retirement plans.

30 (8) To enter into contracts with the United States Government, with any other state,
31 municipality or utility district or with any other person, for carrying out any provisions of
32 sections 1 to 4, 7 to 12 and 24 of this 2005 Act.

33 (9) To fix, maintain and collect rates and charges for any electric energy or other com-
34 modity or service furnished, developed or sold by Oregon Community Power.

35 (10) To construct works across or along any street or public highway, or over any lands
36 that are property of this state, or any subdivision thereof, and to have the same rights and
37 privileges appertaining thereto as have been or may be granted to cities within the state, and
38 to construct its works across and along any stream of water or watercourse. Any works
39 across or along any state highway shall be constructed only with the permission of the De-
40 partment of Transportation. Any works across or along any county highway shall be con-
41 structed only with the permission of the appropriate county governing body. Any works
42 across or along any city street shall be constructed only with the permission of the city
43 governing body and upon compliance with applicable city regulations and payment of any fees
44 called for under applicable franchise agreements, intergovernmental agreements under ORS
45 chapter 190 or contracts providing for payment of such fees. Oregon Community Power shall

1 restore any such street or highway to its former state as near as may be practicable, and
2 may not use the street or highway in a manner unnecessarily to impair its usefulness.

3 (11) To enter into franchise agreements with cities and pay fees under negotiated fran-
4 chise agreements, intergovernmental agreements under ORS chapter 190 and contracts pro-
5 viding for the payment of such fees.

6 (12) To take any other actions necessary or convenient for the proper exercise of the
7 powers granted to Oregon Community Power by sections 1 to 4, 7 to 12 and 24 of this 2005
8 Act.

9 **SECTION 10.** Oregon Community Power may not acquire service territory of another
10 electric utility.

11 **SECTION 11.** (1) As used in this section, “financial regulation” has the meaning given
12 that term in ORS 757.061.

13 (2) Oregon Community Power is subject to regulation by the Public Utility Commission,
14 but is not subject to financial regulation by the commission.

15 **SECTION 12.** (1) The provisions of ORS chapters 35, 190, 192, 244 and 295 and ORS 30.260
16 to 30.460, 200.005 to 200.025, 200.045 to 200.090, 236.605 to 236.640, 243.650 to 243.782, 297.040,
17 307.090 and 307.112 apply to Oregon Community Power under the same terms as they apply
18 to any other subdivision of state government.

19 (2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 238,
20 238A, 240, 270, 273, 276, 279A, 279B, 279C, 283, 291, 292, 293, 294 and 297 and ORS 35.550 to
21 35.575, 180.060, 180.210 to 180.235, 183.710 to 183.725, 183.745, 183.750, 184.305 to 184.345, 190.430,
22 190.480, 190.490, 192.105, 200.035, 236.380, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315
23 to 278.415, 282.010 to 282.150 and 656.017 (2) do not apply to Oregon Community Power.

24 **SECTION 13.** Notwithstanding section 10 of this 2005 Act and subject to sections 6 and
25 9, Article XI of the Oregon Constitution, and subject to the availability of funds as described
26 in sections 15 to 23 of this 2005 Act, Oregon Community Power shall:

27 (1) Enter into negotiations with the Portland General Electric Company or persons that
28 have Oregon Community Power to negotiate the disposition of the electric utility assets of
29 the Portland General Electric Company; and

30 (2) If the negotiations result in an agreement between Oregon Community Power and the
31 persons described in subsection (1) of this section for the acquisition of the electric utility
32 assets of the Portland General Electric Company:

33 (a) Request that the State Treasurer issue revenue bonds as prescribed in section 16 of
34 this 2005 Act;

35 (b) Request a modification in the expenditure limitation established in section 20 of this
36 2005 Act; and

37 (c) Expend the bond proceeds as prescribed in section 17 (3) of this 2005 Act to acquire
38 the electric utility assets of the Portland General Electric Company.

39 **SECTION 14.** Section 13 of this 2005 Act is repealed on June 30, 2007.

40 **SECTION 15.** As used in sections 15 to 23 of this 2005 Act, “bond-related costs” means:

41 (1) The costs and expenses of issuing, selling and administering bonds under sections 15
42 to 23 of this 2005 Act, including but not limited to:

43 (a) Paying or redeeming the bonds;

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

45 (c) Paying the issuance and administrative costs and expenses of the State Treasurer and

1 Oregon Community Power, including the cost of consultants, attorneys and advisers retained
2 for bond-related advice by the State Treasurer or Oregon Community Power; and

3 (d) Any other costs or expenses that the State Treasurer or Oregon Community Power
4 determines are necessary or desirable in connection with issuing, selling and administering
5 the bonds;

6 (2) The cost of funding bond reserves;

7 (3) Capitalized interest for the bonds; and

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

9 **SECTION 16.** (1) At the request of Oregon Community Power, the State Treasurer shall
10 issue, sell and deliver revenue bonds in one or more series during the 2005-2007 biennium
11 under this section and ORS 286.031 for the purpose described in section 17 (3) of this 2005
12 Act. The State Treasurer shall determine the terms and conditions of revenue bonds issued
13 under this section.

14 (2) The State Treasurer may issue the revenue bonds authorized by this section on a date
15 selected by mutual agreement of the State Treasurer and the chairperson of the board of
16 directors of Oregon Community Power to facilitate the expenditure required in section 17 (3)
17 of this 2005 Act.

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

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

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

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

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

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

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

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

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

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

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

16 **(5) Revenue bonds issued under this section do not constitute a debt or general obligation**
17 **of this state, Oregon Community Power or a political subdivision of this state, but are pay-**
18 **able from income generated by electric utility operations of Oregon Community Power fol-**
19 **lowing the acquisition described in section 17 (3) of this 2005 Act and moneys deposited in the**
20 **Oregon Community Power Bond Debt Service Fund and secured solely by all or a portion of**
21 **the income generated by electric utility operations of Oregon Community Power, by amounts**
22 **in a debt service reserve account established with respect to revenue bonds issued under this**
23 **section or by a credit enhancement obtained for the revenue bonds issued under this section.**

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

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

35 **(b) Notwithstanding paragraph (a) of this subsection, the State Treasurer shall establish,**
36 **in the security documents for a series of revenue bonds issued under this section, the pri-**
37 **ority of the related series among the liens perfected under paragraph (a) of this subsection**
38 **on the income generated by the electric utility operations of Oregon Community Power.**

39 **(8) Notwithstanding ORS 286.505 to 286.545, revenue bonds may be issued under this sec-**
40 **tion during the 2005-2007 biennium in an aggregate principal amount that produces net pro-**
41 **ceeds that are adequate for the acquisition described in section 17 (3) of this 2005 Act, plus**
42 **an amount for bond-related costs determined by the State Treasurer. A series of revenue**
43 **bonds issued under this section may not mature later than _____ years from the date of**
44 **issuance.**

45 **(9) As long as any revenue bonds issued under this section are outstanding, the pro-**

1 visions of this section and the provisions of a security document related to the revenue bonds
2 are deemed to be contracts between the state and holders of the revenue bonds. The state,
3 acting through Oregon Community Power:

4 (a) Shall collect the income generated by electric utility operations of Oregon Community
5 Power and deposit the moneys as required under this section and sections 18 and 24 of this
6 2005 Act;

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

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

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

19 **SECTION 17.** (1) The Oregon Community Power Bond Fund is established in the State
20 Treasury separate and distinct from the General Fund. The net proceeds from the sale of
21 revenue bonds issued under section 16 (8) of this 2005 Act must be credited to the Oregon
22 Community Power Bond Fund. Investment earnings received on moneys in the Oregon
23 Community Power Bond Fund must be credited to the fund.

24 (2) Moneys in the Oregon Community Power Bond Fund are continuously appropriated
25 to Oregon Community Power for the purpose of making the acquisition required in sub-
26 section (3) of this section.

27 (3) Not later than June 30, 2007, Oregon Community Power shall expend the net proceeds
28 of revenue bonds issued under section 16 (8) of this 2005 Act to acquire the electric utility
29 assets of the Portland General Electric Company.

30 **SECTION 18.** (1) The Oregon Community Power Bond Debt Service Fund is established
31 in the State Treasury separate and distinct from the General Fund. The Oregon Community
32 Power Bond Debt Service Fund consists of:

33 (a) The amount of income generated by electric utility operations of Oregon Community
34 Power that is necessary in a fiscal year, as determined by Oregon Community Power under
35 the direction of the State Treasurer, to pay bond-related costs scheduled to be paid in that
36 fiscal year on the revenue bonds issued under section 16 of this 2005 Act;

37 (b) Any funds appropriated or allocated to the Oregon Community Power Bond Debt
38 Service Fund; and

39 (c) Investment earnings received on moneys in the Oregon Community Power Bond Debt
40 Service Fund.

41 (2) Moneys in the Oregon Community Power Bond Debt Service Fund are continuously
42 appropriated to Oregon Community Power for paying, when due, bond-related costs on out-
43 standing revenue bonds, for funding debt service reserves and for paying amounts due in
44 connection with an instrument authorized by section 16 (3)(c) of this 2005 Act.

45 (3) Oregon Community Power, in consultation with the State Treasurer, shall use

1 amounts in the Oregon Community Power Bond Debt Service Fund to pay, when due, the
 2 bond-related costs on outstanding revenue bonds, to fund debt service reserves and to pay
 3 amounts due in connection with any instrument authorized by section 16 (3)(c) of this 2005
 4 Act.

5 (4) If the income generated by electric utility operations of Oregon Community Power
 6 that is pledged and assigned to the payment of the bonds is not sufficient to pay the bond-
 7 related costs due to be paid in a fiscal year, Oregon Community Power, in consultation with
 8 the State Treasurer, shall make payments in that fiscal year according to the relative pri-
 9 ority of revenue bonds secured by the income generated by electric utility operations of
 10 Oregon Community Power that is pledged and assigned to the payment of the bonds.

11 **SECTION 19.** (1) The Oregon Community Power Bond Administration Fund is established
 12 in the State Treasury separate and distinct from the General Fund. The Oregon Community
 13 Power Bond Administration Fund consists of:

14 (a) The amount of revenue bond proceeds remaining after expending the net proceeds as
 15 provided in section 17 (3) of this 2005 Act;

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

17 (c) Any funds appropriated or allocated to the Oregon Community Power Bond Adminis-
 18 tration Fund; and

19 (d) Investment earnings received on moneys in the Oregon Community Power Bond Ad-
 20 ministration Fund.

21 (2) Moneys in the Oregon Community Power Bond Administration Fund are continuously
 22 appropriated to Oregon Community Power for paying bond-related costs during the term of
 23 revenue bonds issued under section 16 of this 2005 Act.

24 (3) Oregon Community Power, in consultation with the State Treasurer, may use
 25 amounts in the Oregon Community Power Bond Administration Fund to pay bond-related
 26 costs during the term of revenue bonds issued under section 16 of this 2005 Act. Amounts
 27 in the fund must be disbursed upon the written request of the chairperson of the board of
 28 directors of Oregon Community Power.

29 **SECTION 20.** Notwithstanding any other law, the amount of \$1 is established for the
 30 biennium beginning July 1, 2005, as the maximum limit for the acquisition described in sec-
 31 tion 17 (3) of this 2005 Act by Oregon Community Power from the Oregon Community Power
 32 Bond Fund established in section 17 of this 2005 Act.

33 **SECTION 21.** Notwithstanding any other law, the amount of \$1 is established for the
 34 biennium beginning July 1, 2005, as the maximum limit for payment of expenses by Oregon
 35 Community Power from the Oregon Community Power Bond Debt Service Fund established
 36 in section 18 of this 2005 Act. The expenses are payments for the bond-related costs on out-
 37 standing revenue bonds, for funding debt service reserves and for paying amounts due in
 38 connection with an instrument authorized by section 16 (3)(c) of this 2005 Act.

39 **SECTION 22.** Notwithstanding any other law, the amount of \$1 is established for the
 40 biennium beginning July 1, 2005, as the maximum limit for payment of expenses by Oregon
 41 Community Power from the Oregon Community Power Bond Administration Fund estab-
 42 lished in section 19 of this 2005 Act. The expenses are bond-related costs on the revenue
 43 bonds issued under section 16 of this 2005 Act.

44 **SECTION 23.** (1) There is appropriated to Oregon Community Power, for the biennium
 45 beginning July 1, 2005, out of the General Fund, the amount of \$_____ for the purpose of

1 **conducting the negotiations described in section 13 of this 2005 Act.**

2 **(2) When the board of directors of Oregon Community Power determines that moneys in**
 3 **sufficient amount are available in the Oregon Community Power Electric Utility Operations**
 4 **Fund established in section 24 of this 2005 Act, but no later than June 30, 2009, the board**
 5 **shall reimburse the General Fund, without interest, in an amount equal to the amount ap-**
 6 **propriated and expended as provided in subsection (1) of this section. The moneys used to**
 7 **reimburse the General Fund under this subsection may not be considered as a budget item**
 8 **on which a limitation is otherwise fixed by law, but shall be in addition to any specific**
 9 **biennial appropriations or amounts authorized to be expended from continuously appropri-**
 10 **ated moneys for any biennial period.**

11 **SECTION 24. (1) The Oregon Community Power Electric Utility Operations Fund is es-**
 12 **tablished in the State Treasury, separate and distinct from the General Fund. Interest**
 13 **earned by the Oregon Community Power Electric Utility Operations Fund shall be credited**
 14 **to the Oregon Community Power Electric Utility Operations Fund.**

15 **(2) All moneys received by Oregon Community Power from electric utility operations,**
 16 **other than moneys described in section 18 (1)(a) of this 2005 Act, shall be deposited into the**
 17 **Oregon Community Power Electric Utility Operations Fund.**

18 **(3) Moneys in the Oregon Community Power Electric Utility Operations Fund are con-**
 19 **tinuously appropriated to Oregon Community Power for the purpose of operating an electric**
 20 **utility under sections 1 to 4, 7 to 12 and 24 of this 2005 Act.**

21 **SECTION 25. ORS 757.612 is amended to read:**

22 **757.612. (1) There is established an annual public purpose expenditure standard for electric**
 23 **companies and Oregon Community Power to fund new cost-effective local energy conservation,**
 24 **new market transformation efforts, the above-market costs of new renewable energy resources, and**
 25 **new low-income weatherization. The public purpose expenditure standard shall be funded by the**
 26 **public purpose charge described in subsection (2) of this section.**

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

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

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

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

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

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

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

3 (D) Five percent shall be transferred to the Housing and Community Services Department Re-
4 volving Account created under ORS 456.574 and used for the purpose of providing grants as de-
5 scribed in ORS 458.625 (2). Moneys deposited in the account under this subparagraph are
6 continuously appropriated to the Housing and Community Services Department for the purposes of
7 ORS 458.625 (2). Interest on moneys deposited in the account under this subparagraph shall accrue
8 to the account.

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

14 (d) The commission shall direct the manner in which public purpose charges are collected and
15 spent by an electric company **or Oregon Community Power** and may require an electric company
16 **or Oregon Community Power** to expend funds through competitive bids or other means designed
17 to encourage competition, except that funds dedicated for low-income weatherization shall be di-
18 rected to the Housing and Community Services Department as provided in subsection (7) of this
19 section. The commission may also direct that funds collected by an electric company **or Oregon**
20 **Community Power** through public purpose charges be paid to a nongovernmental entity for in-
21 vestment in public purposes described in subsection (1) of this section. Notwithstanding any other
22 provision of this subsection, at least 80 percent of the funds allocated for conservation shall be spent
23 within the service area of the electric company **or Oregon Community Power** that collected the
24 funds.

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

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

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

1 an energy audit within the three years immediately prior to receiving the funds.

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

3 (iii) Energy conservation education programs.

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

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

12 (g) The commission shall remove from the rates of each electric company **or Oregon Commu-**
13 **nity Power** any costs for public purposes described in subsection (1) of this section that are in-
14 cluded in rates. A rate adjustment under this paragraph shall be effective on the date that the
15 electric company **or Oregon Community Power** begins collecting public purpose charges.

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

20 **(b) Oregon Community Power, upon satisfying its obligations under this section, shall**
21 **have no further obligation to invest in conservation, new market transformation, new**
22 **renewable energy resources or new low-income weatherization or to provide a commercial**
23 **energy conservation services program and is not subject to ORS 469.631 to 469.645, 469.860**
24 **to 469.900 and 758.505 to 758.555.**

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

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

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

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

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

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

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

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

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

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

26 (b) The total amount collected for low-income electric bill payment assistance under this section
27 shall be \$10 million per year. The commission shall determine each electric company's proportionate
28 share of the total amount **and Oregon Community Power's proportionate share of the total**
29 **amount**. The commission shall determine the amount to be collected from a retail electricity con-
30 sumer, except that a retail electricity consumer shall not be required to pay more than \$500 per
31 month per site for low-income electric bill payment assistance.

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

43 (d) The Housing and Community Services Department, in consultation with the federal Advisory
44 Committee on Energy, shall determine the manner in which funds collected under this subsection
45 will be allocated by the department to energy assistance program providers for the purpose of pro-

1 viding low-income bill payment and crisis assistance, including programs that effectively reduce
 2 service disconnections and related costs to retail electricity consumers and electric utilities. Priority
 3 assistance shall be directed to low-income electricity consumers who are in danger of having their
 4 electricity service disconnected.

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

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

13 (8) In addition to all other charges provided in this section, for the period from January 1, 2000,
 14 to October 1, 2001, an electric company shall collect from its retail electricity consumers an electric
 15 bill payment assistance charge. A retail electricity consumer shall not be required to pay more than
 16 \$500 per month per site for low-income electric bill payment assistance under this subsection. The
 17 statewide total amount collected under this subsection shall equal \$5 million per year, prorated for
 18 any fraction of a year. The commission shall determine each electric company's proportionate share
 19 of the statewide total amount. Moneys collected under this subsection shall be deposited in the
 20 Housing and Community Services Department Revolving Account created under ORS 456.574 and
 21 expended for low-income electric bill payment assistance in the manner provided in subsection (7)(d)
 22 of this section.

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

26 **SECTION 26. The amendments to ORS 757.612 by section 25 of this 2005 Act apply to**
 27 **public purpose charges collected on or after the date on which Oregon Community Power**
 28 **begins electric utility operations.**

29 **SECTION 27. The definitions in section 1 of this 2005 Act apply to sections 13 and 15 to**
 30 **23 of this 2005 Act.**

31 **SECTION 28. This 2005 Act being necessary for the immediate preservation of the public**
 32 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
 33 **on its passage.**

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