

REVENUE: Revenue statement issued

FISCAL: Fiscal statement issued

Action: Do Pass as Amended and Be Printed Engrossed

Vote: 5 - 1 - 1

Yeas: Atkinson, Kruse, Merkley, Morgan, Welsh

Nays: Kafoury

Exc.: Taylor

Prepared By: B. Harrison Conley, Analyst

Meeting Dates: 06/25

WHAT THE BILL DOES: Provides Oregon commercial electricity consumers direct access to competitive electricity markets not later than October 1, 2001. Allows commercial and industrial customers to voluntarily aggregate electricity. Adopts transition policies for competitive electricity markets. Provides residential electricity consumers a cost-of-service rate option and a portfolio of options not later than October 1, 2001. Requires the Public Utility Commission to report to the Legislative Assembly by January 1, 2003 on whether residential consumers would benefit from direct access. Requires an electric company to unbundle the costs of electricity services into power generation, transmission, distribution and retail services not later than October 1, 2001. Adopts retail electricity consumer protections. The PUC must establish rules for ESP certification. Each bill sent to direct access customers from an ESP shall include. Establishes public purpose expenditure standard funded by a public purpose 3% charge. Requires the first 10% of public purpose funds collected to be distributed to Educational School Districts for energy efficiency activities and programs. Allocates moneys from public purpose funds to energy conservation, renewable energy resources, low-income weatherization, and low-income bill assistance. Beginning 10/01/01, requires an aluminum plant that averages more than 100 mw and abuts an IOU or a COU territory to pay a 1% public purpose charge. Limits collection of funds for electric bill payment assistance to \$500 per month per site. Requires the PUC to establish terms and conditions for providing default electricity service for nonresidential consumers in circumstances when the consumer is wants to switch from direct access to default services. Require electric meter installation, testing and maintenance to be performed by a distribution utility. Permits certain electric utilities to elect exemption from direct access requirements of the Act. Allows local governments to continue to levy privilege tax for use of public streets, alleys or highways. Certain provisions of the bill, however, do not become operative until the PUC determines that the provisions will not adversely impact access to BPA power. Exempts from disclosure personally identifiable information to third parties about customers of municipal electric utilities and people's utility districts except 1) as necessary to the delivery of service; 2) to third party credit reporting agencies; or with written or electronic consent of the customer. Exempts from disclosure sensitive business, financial or commercial information furnished to or developed by a public body providing electricity or electricity services if the disclosure would competitively disadvantage the public body or its customers. Declares an emergency, effective on passage.

ISSUES DISCUSSED:

- Purpose of conflict amendments

EFFECT OF COMMITTEE AMENDMENTS:

- Adjust conflicts only related to new exemptions from public record disclosure between the bill and HB 3218 and HB 3576

BACKGROUND:

Electric Industry History

Demand has been growing at the federal and state level to open the electricity market to competition. It is no longer a question of "if" markets will be opened up, since access to the wholesale market is already a requirement, but of

“how” markets will continue to be opened and “what” kind of access will be granted to different types of electricity users.

In general, proponents of deregulation view competition as the means for achieving lower electricity rates, and more efficient use of energy resources. Those opposed to restructuring the current regulatory environment contend that electricity consumers could neither easily achieve more affordable services nor more reliable services under a different system.

Until the early 1970s, the industry was characterized by large, vertically integrated utilities that controlled exclusive service territories. Utilities typically owned the generation, transmission, and distribution facilities and sold electricity as a “bundled” package with one single rate. State utility commissions determined a utility’s “allowable profits” by considering investment in new plants and a fair return for shareholders. Many believe that cost-based policies encouraged utilities to operate inefficiently, to invest in superfluous capital projects, and to impede innovation.

In the 1970s, electricity prices began to rise for the first time. Between 1970 and 1985, average residential electricity rates tripled and industrial electric prices more than quadrupled. The industry was confronted with recessionary and inflationary pressures; foreign oil embargoes; and new environmental obligations. The significant increases in electricity costs compelled industrial users to begin constructing their own generation facilities. Hence, the push to deregulate the industry had begun.

During this period, traditional utilities were reluctant to make significant investments in light of excess capacity, sliding demand, evolving conservation trends, high costs, and nuclear power problems. Although the operating environment was unstable and not attractive given previous investment opportunities, it sparked innovation in technology that led to the advent of small generators and, thus, the advent of smaller and more efficient power plants. In many cases, the new power plants were independent power producers (IPPs) that built their plants for a fee and sold electricity to utilities.

The late 1970s and early 1980s was a period primed for deregulation. Many of the inefficiencies that existed in the 1970s provoked the federal government to seek free market solutions. Several previous monopolies— airline, railroad, natural gas pipelines, and telecommunications—were required to begin to deregulate.

Federal Electricity Industry Policies

Before attempting to fix the current system, it is useful to understand the evolution of electric industry regulation. This is accomplished most efficiently by summarizing regulation and policy responsible for the metamorphosis of the electric industry environment.

Federal Power Act of 1935: Until 1927, most state utility commissions regulated public utilities. In that year, the U.S. Supreme Court ruled that states could not regulate interstate electric rates because they caused a burden on interstate commerce. This hiatus in regulation of the electric industry was not filled until Congress enacted the Federal Power Act of 1935. The act authorized the Federal Power Commission to govern the transmission and sale of electric energy at wholesale rates in interstate commerce.

Public Utility Holding Company Act (PUHCA): Also in 1935, Congress passed the Public Utility Holding Company Act, which had the effect of limiting a utility’s service area to a certain geographic boundary. The act also prohibited utilities from owning businesses that were not part of an “integrated public-utility system” when combined with other electric business.

Public Utility Regulatory Policies Act (PURPA) of 1978: In response to the energy crises of the late 1970s, Congress enacted the Public Utility Regulatory Policies Act to reduce the nation’s dependence on oil and to impel utilities to conserve energy.

Energy Policy Act of 1992 (EPAAct): The growing popularity of competitive market solutions helped to bring about a new national energy policy strategy: the Energy Policy Act (EPAAct) of 1992. The purpose of this act was to begin

realizing the efficiencies of a competitive market system. The Federal Energy Regulatory Commission (FERC) was responsible for overseeing the change.

The EPAct relaxed some PUHCA and PURPA provisions for corporations that primarily owned and operated generating plants selling wholesale power. This stimulated the formation of new generating companies that were separate from traditional utilities and effectively unlocked the market to wholesale power wheeling—directly selling electricity to other utilities. The act also provided access to the nationwide transmission grid for wholesale power marketers, wholesale power brokers, and generating companies. The FERC ordered transmission-owning companies to open their lines to parties desiring to buy or sell electricity at wholesale.

The Role of Regulation and Jurisdictional Issues

FERC has actively pursued initiatives to increase competitiveness at the wholesale level. In 1993, FERC recommended that Regional Transmission Groups (RTGs) be created to facilitate open access to the transmission grid. Subsequent to FERC's suggestion, three RTGs—the Western Regional Transmission (WRT), the Northwest Regional Transmission Association (NRTA), and the Southwest Regional Transmission Association (SWRTA)—have worked together to coordinate transmission planning, expansion, operation, and use on a regional and interregional basis. In 1996, FERC enacted Orders 888 and 889 requiring investor-owned utilities under federal jurisdiction to provide mutual nondiscriminatory access to transmission lines for wholesale transactions in interstate commerce.

Wholesale electric sales and interstate transmission of energy, whether wholesale or retail, are exclusively within FERC's jurisdiction. FERC does not currently have the authority to order retail access, and it has indicated that retail stranded investment issues should be addressed at the state level. However, FERC has ruled that stranded investments which are the result of wholesale competition will remain under its jurisdiction, while those caused by retail competition will be within state jurisdiction. Stranded investments that fall between the wholesale and retail levels, such as municipalization, will remain subject to FERC's jurisdiction. FERC will also retain jurisdiction over these issues if a state lacks a mechanism for addressing them.