

BEFORE THE OREGON PUBLIC UTILITIES COMMISSION

DR 10 / UE 88 / UM 989

In the Matters of

**The Application of Portland General Electric
Company for an Investigation into Least Cost
Plan Plant Retirement. (DR 10)**

**Revised Tariffs Schedules for Electric Service
in Oregon Filed by Portland General Electric
Company. (UE 88)**

**Portland General Electric Company's
Application for an Accounting Order and for
Order Approving Tariff Sheets Implementing
Rate Reduction. (UM 989)**

**RESPONSE TO REQUEST OF ADMINISTRATIVE
LAW JUDGE FOR SURVEY OF STATES WITH
STATUTES SIMILAR TO ORS 756.185
BY
UTILITY REFORM PROJECT, ET AL.
AND THE CLASS ACTION PLAINTIFFS**

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At the August 9, 2007, hearing in these matters, Judge Grant asked the parties to submit, within one week, a survey of states having statutes similar to ORS 756.185. Utility Reform Project (URP) and the Class Action Plaintiffs (CAPs) offer this response. States with statutes similar to ORS 756.185 are listed below. The statutes cited pertain to public utilities, except where noted otherwise. If a state has a statute similar to ORS 756.185 applicable to public utilities, then we do not list that state's other similar statutes applicable to telecommunications utilities, railroads, carriers, etc.

State	Statute similar to ORS 756.185
Arkansas	A.C.A. § 23-4-705 (railroads)
California	Cal. Pub. Util. Code § 2106
Colorado	C.R.S.A. § 40-7-102
Idaho	I.C. § 61-702
Illinois	220 ILCS 5/5-201
Indiana	IC 8-1-2-107
Kansas	K.S.A. § 50-137 (grain dealers)
Maine	M.R.S. 35-A §1501
Michigan	M.C.L.A. 462.19 (railroads)
Michigan	M.C.L.A. 477.9 (motor carriers)
Michigan	M.C.L.A. 476.9 (carriers)
Missouri	V.A.M.S. 622.530 (common carrier)
Missouri	V.A.M.S. 392.350 (telecommunications)
Missouri	V.A.M.S. 488.472 (telecommunications)
New York	McKinney's Public Service Law § 93 (telephone)
North Dakota	NDCC, 49-05-10
Ohio	R.C. § 4905.61

State	Statute similar to ORS 756.185
Pennsylvania	66 Pa.C.S.A. § 3309
Rhode Island	§ 39-2-7
South Dakota	SDCL § 49-13-14.1 (telecommunications and carriers)
Washington	RCWA 80.04.440
Wisconsin	W.S.A. 196.64
Wyoming	W.S.1977 § 37-12-208

Various courts have determined whether statutes similar to ORS 756.185 are available for use by ratepayers as a remedy for unlawful utility charges. See, e.g., ***Keco Industries v. Cincinnati & Suburban Bell Telephone Co.***, 166 Ohio St 254, 141 NE2d 465, *cert denied*, 355 US 182, 78 SCt 267, 2 LEd2d 187 (1957). The outcome in these cases appears to be determined by whether the remedies offered by the regulatory agency are considered exclusive. In Oregon, ***Dreyer v. Portland General Electric Co.***, 341 Or 262 (2006), determined that the agency remedies for ratepayers are not exclusive, thanks at least in part to ORS 756.200, and that ratepayers who paid unlawful charges have a cause of action for damages against the utility. Several states have statutes similar to ORS 756.200.

State	Statute similar to ORS 756.200
Alabama	Ala.Code 1975 § 37-2-44
Arizona	A.R.S. § 40-428
California	Cal. Pub. Util. Code § 243
Colorado	C.R.S.A. § 40-7-103
Idaho	I.C. § 61-703

State	Statute similar to ORS 756.200
Illinois	220 ILCS 5/4-205
Indiana	IC 8-1-2-117
Michigan	M.C.L.A. 462.46 (railroads)
New Jersey	N.J.S.A. 48:2-524
Utah	U.C.A. 1953 § 54-7-23
Washington	RCWA 80.04.480
Wisconsin	W.S.A. 196.76

Thus, the other states having both a statute similar to ORS 756.185 and a statute similar to ORS 756.200 are California, Colorado, Idaho, Illinois, Indiana, Washington, and Wisconsin. Michigan appears to have that pair of statutes, applicable to railroads.

Dated: August 16, 2007

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed the original and 5 copies of the foregoing by email to the Filing Center and by mail, postmarked this date, and that I served a true copy of the foregoing RESPONSE TO REQUEST OF ADMINISTRATIVE LAW JUDGE FOR SURVEY OF STATES WITH STATUTES SIMILAR TO ORS 756.185 by email to the physical and email addresses shown below, which comprise the service list on the Commission's web site as of this day (email service only to those who have waived physical service).

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Dated: August 16, 2007

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