

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

SENATE COMMITTEE ON
TELECOMMUNICATIONS AND CONSUMER AFFAIRS

March 21, 1991Hearing Room B
1:00 p.m.Tapes 32 - 33

MEMBERS PRESENT:Senator Jolin, Chair
 Senator Otto, Vice-Chair
 Senator Bunn
 Senator Shoemaker

STAFF EXCUSED: Senator Kennemer

STAFF PRESENT: Cherie Copeland, Committee Administrator
 Apryl Poff, Committee Assistant

MEASURES HEARD: SB 670 Refund of interim rates, PUB.

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PUBLIC HEARING AND POSSIBLE WORK SESSION.

TAPE 32, SIDE A

005 CHAIR JOLIN: Calls the meeting to order at 1:06 p.m.

009 SB 670 REFUND OF INTERIM RATES, PUB.

Witnesses: Denise McPhail, Portland General Electric.
 Mike Katz, Public Utilities Commission.
 Dan Meek, Oregon Fair Share, and Utility Reform Project.
 Rion Bourgeois, Citizens' Utility Board.

014 DENISE MCPHAIL: Submits and summarizes written testimony in favor to SB 670 (EXHIBIT

A). The bill does the following:

>Gives the Public Utilities Commission greater authority to order refunds of interim rate increases.

>Sets a clear standard for ordering such a refund.

>Clarifies the Commission's authority to settle disputed orders.

>Makes common sense legal.

Portland General Electric proposed this bill to give greater clarity to statutes that in their current opaque state have lead to a lengthy, continuous legal battle with the PUC. We believe that the language and standards in SB 670 will lead to fairer and more timely and efficient regulation of energy utility rates.

It will also free PGE and the PUC from a legal stalemate that currently exists. In 1990, the utility and the PUC agreed to settle the case, with \$15.7 million going to customers, the remainder to PGE. On

page 2, section 2, we are asking that these amendments apply to all interim

increases granted by the Commission since January 1, 1986. In section 3, we ask you to declare an emergency. That is so we can put this issue to rest as soon as possible. SB 670 gives the Commission the discretion to do what's right in the present case and in the future.

080 MIKE KATZ: Submits and summarizes written testimony in favor to SB
670 (EXHIBIT B). With the passage of SB 670, the PUC hopes to achieve two important objectives:
>Permit successful settlement of a serious lawsuit brought by PGE
challenging a PUC-ordered rate refund.
>Give the Commission enhanced flexibility in administering interim rate changes in a more reasonable manner, something which existing law precludes.
The PUC ordered PGE to refund the entire interim increase. PGE appealed the decision to the courts. If the PUC prevails, it can be argued that the outcome will be unfair to the company. If the company prevails, PGE ratepayers will be denied a rate refund to which they are entitled. To protect ratepayers and achieve a reasonable outcome, the PUC believes that the lawsuit should be settled along the lines approved by both the PUC and the company. Enactment of SB 670 will do this. The provisions of SB 670 would allow the Commission to assess the utility's actual earnings in 1987 and, if deemed reasonable to cover legitimate costs, allow utility retention of all, part, or none of the interim increase.

142 CHAIR JOLIN: If the court suit continues it is an all or nothing scenario. If Portland General Electric (PGE) prevails then the ratepayers will receive nothing.

155 MIKE KATZ: That is a very possible outcome. If PGE is right the PUC will lose it all and vice versa.

165 MIKE KATZ: Continues with written testimony.

290 SENATOR SHOEMAKER: The "with or without interest" phrase on line 26 is needed to legitimize the settlement that you have reached. Would this bill apply only to interim increases?

300 MIKE KATZ: Yes. If a refund must be made.

305 SENATOR SHOEMAKER: It seems that prospectively it's better policy to require that it be returned with interest rather than to leave that open for future negotiations.

308 MIKE KATZ: I feel the same way.

375 SENATOR SHOEMAKER: Why do you want to make a change in the existing law regarding rate increases that aren't suspended?

380 DENISE MCPHAIL: Under subsection 5 line 1 our interim rate increase was given us. That section of law doesn't provide for any refund. This whole section of law deals with interim rate increases. It doesn't deal with regular rate increases.

401 SENATOR SHOEMAKER: What is the reason for subsection 4 that involves setting a rate and not suspending it and then revisiting it later?

463 BILL WARREN: These are questions of the law that I'm not qualified to answer. But in a practical sense the rate filings are indistinguishable as we see them. There is no such thing as a rate

filing for interim increase versus a rate filing for a permanent increase.

480 BENNY WON: The existing law (subsection 4) provides that if a utility company requests a rate increase and the PUC allows that increase to go into effect but decides to hold a hearing and doesn't suspend the rate increase then subsection 4 would apply.

TAPE 33 SIDE A

015 BENNY WON: If the Commission determines that the utility is entitled to a lesser rate increase then the difference would be subject to refund.

060 SENATOR SHOEMAKER: Why move from a requirement that there be a refund of excess revenues to a requirement that the Commission orders the utility to refund that portion of the amount collected that the Commission finds is not justified?

075 SENATOR BUNN: You can determine that a refund is necessary but a 100% refund isn't justified. The PUC would be given the ability to attribute the percentage that was justified and require refund of that percentage that was not justified.

083 BILL WARREN: The all or nothing phrase on line 21 is the objectional part of the statute that we are trying to remedy.

089 SENATOR SHOEMAKER: Are you saying that there isn't any difference between interim refund or any other type of refund?

091 BILL WARREN: Yes.

112 CHAIR JOLIN: Is there anything in SB 670 that would prevent someone else in the future from challenging the settlement?

114 BENNY WAN: No.

140 SENATOR SHOEMAKER: Is an interim increase common?

162 BILL WARREN: No. There have only been a few in the last 10 years that I know of.

212 DAN MEEK: Submits and summarizes written testimony in opposition to SB 670 (EXHIBIT C). I represent the Utility Reform Project and Oregon Fair Share, Portland Chapter. Both organizations believe that this bill would be an extremely raw deal for ratepayers. PGE doesn't like what the law was in 1986 on utility rates when it asked for \$50 million annual rate increase. Now it is asking the Legislature to change the law in order to deprive the ratepayers of a refund they are due which could be as high as \$105 million under the current law.

215 DAN MEEK: Illustrates on the chalkboard.

307 DAN MEEK: The PUC is attempting to come to a partial settlement which calls for a refund of \$15.7 million instead of \$105 million. The PUC order that was issued in 1986 said that we are granting you this interim rate increase of \$40 million subject to refund.

320 SENATOR BUNN: Under this bill wouldn't the Commission have the ability to debate the amount of the refund?

325 DAN MEEK: Under existing law the refund is mandatory. This bill makes it discretionary. Under existing law commissions and courts routinely hold that refunds must be made with interest. This bill

would authorize the Commission to make refunds without interest.

373 SENATOR BUNN: Does this bill deny the people who are dissatisfied with the agreement the ability to go to court and deal with it?

386 RION BOURGEOIS: The PUC has agreed to settle with PGE. I doubt the PUC would go back on its settlement.

411 SENATOR BUNN: Does this bill deny a company to argue in court if they feel the amount is wrong?

413 DAN MEEK: In essence it does because it allows the Public Utilities Commission to make a new determination about what was the appropriate rate during the entire period before the final order.

427 SENATOR BUNN: Can this kind of decision be repealed?

430 DAN MEEK: Existing law requires that the interim period amount be trued up to the final order. In this case it would be trued up to an amount that is \$25 million below what PGE started with.

TAPE 33 SIDE B

050 DAN MEEK: Refers back to illustration on chalkboard.

140 CHAIR JOLIN: Referring back to the all or nothing scenario, what happens if you lose your case in court? At some point someone is going to win and someone is going to lose. I want to give some guarantee to the ratepayers that they are going to get some remedy.

165 DAN MEEK: In this case we have PGE trying to change the odds of prevailing. Under existing law we would not end up with a refund of \$15.7 million. We would have a much larger refund either from ultimate success and litigation or from a more favorable settlement.

178 SENATOR SHOEMAKER: If this bill becomes law, what are the chances of this being repealed and by whom?

191 BENNY WON: If the Commission were to issue an order then any of the parties in this rate case could appeal it to Circuit Court.

199 SENATOR SHOEMAKER: What is the standard of review?

200 BENNY WON: Whether the findings in the Commission's order are supported by substantial evidence and whether the legal conclusions have a rational basis.

206 RION BOURGEOIS: The way I understand this bill is that it wouldn't take away the right of procedural appeal. But if you change the law you are taking away the intervenors and the PUC ammunition.

214 SENATOR BUNN: You said that the Citizens' Utility Board (CUB) position is without the bill they win and with the bill they lose. Aren't we just taking the time lag windfall? It doesn't mean that CUB loses, does it?

232 RION BOURGEOIS: My understanding is that under present law the ratepayers are entitled to \$105 million. The purpose of this bill is to allow a settlement which will not follow existing law. This allows the PUC, instead of refunding the entire \$105 million to the ratepayers which is presently required, to only refund approximately a tenth of that.

247 SENATOR BUNN: That is assuming that the \$15 million figure couldn't be appealed based upon the logic we were presented today. Are you saying that CUB loses the ability to appeal the figure from January of 1987 forward?

253 DAN MEEK: Yes. If you pass this bill it allows the Commission retroactively to set a new benchmark for rates during the interim period.

257 SENATOR BUNN: Once they have placed that benchmark, where in the bill does it say that it can't be appealed?

259 DAN MEEK: Beginning on line 27 the bill states that any refund shall be based upon analysis of earnings for a period reasonably representative of the period during which the interim increase was in effect.

265 SENATOR BUNN: Can you challenge their analysis in court?

270 DAN MEEK: You can but it eliminates the refund we are talking about.

400 RION BOURGEOIS: Submits and summarizes written testimony and proposed amendments in opposition to SB 670 (EXHIBIT D). Under the present state of affairs, if a utility requests a rate increase, the PUC has the authority to allow a utility to do so prior to a hearing. This allows the utility to obtain an immediate rate increase. The utility therefore doesn't suffer from regulatory lag. The PUC has recently held that if it decides to conduct a hearing to decrease a utility's rates under current law, it neither has the authority to order the utility to immediately file new rate schedules reducing its rates, nor does it have the authority to merely declare the utility's existing rates interim and subject to refund.

TAPE 32 SIDE B

066 RION BOURGEOIS: It would be inappropriate to grant Portland General Electric (PGE) the proposed amendment to ORS 757.215 which would reduce the refund of excess revenues realized under an interim rate increase pending a hearing. If the utility requests an immediate rate increase, with interim rates, it's only fair that the entire differential be refunded. CUB's proposed amendment to ORS 756.515 would allow the PUC to order a utility to decrease its rates subject to surcharge or declare a utility or telecommunications utility's existing rates interim and subject to refund when the PUC initiates a case to reduce rates.

089 RION BOURGEOIS: This amendment wouldn't put the utility at risk. First, if decreased rates are ordered, they are subject to surcharge in the event it's found the reduction wasn't warranted, or in the alternative, if existing rates are declared interim and subject to refund, the utility is allowed to continue to collect its old rates pending the full hearing. Second, the amendment provides for a preliminary hearing within 60 days to establish that there is good cause to order decreased rates be filed subject to surcharge, or declaring existing rates interim and subject to refund. If the PUC can declare existing rates interim and subject to refund, the utility's incentive to litigate the rate case is lessened.

155 RION BOURGEOIS: In conclusion, the ratepayers need a statutory amendment to authorize interim rate decreases, and a common sense of equity and fair play requires such an amendment. The

ratepayers are entitled to interim rate decreases in these years of declining costs.

208 CHAIR JOLIN: Suggests to Rion Bourgeois that he introduce the concepts in his amendments and offers to have this committee introduce it.

245 SENATOR SHOEMAKER: It appears that the only refund could be of the requested increase. Under this bill, it appears that the Commission can order a refund not only of the requested increase but of the decrease.

265 We are in subcommittee 2:52.

325 SENATOR SHOEMAKER: On line 20 of SB 670 it says that any increased revenue collected by the utility shall be subject to being refunded. This says that increases over the existing rates can be refunded.

378 BENNY WON: The Attorney General's interpretation of the existing law is that the maximum amount of the refund is the amount of the interim increase that was granted.

404 CHAIR JOLIN: I wouldn't be comfortable moving forward with this bill unless it was limited to this particular instance. I'm also not comfortable with this language because I don't want to set precedent that someone could take to court.

430 SENATOR SHOEMAKER: Would it be appropriate to consider an amendment that would apply to this particular situation that would give authority to the Commission to order a refund that in its judgment was fair including all of any decrease that was found to be appropriate?

438 CHAIR JOLIN: Yes. Gives opportunity for parties interested to offer amendments to hear at the next committee meeting on this bill.

450 CHAIR JOLIN: Adjourns hearing at 3:00 p.m.

Submitted by: Reviewed by:

Apryl Poff Cherie Copeland
Assistant Committee Administrator

EXHIBIT LOG:

- A - Written testimony submitted by Denise McPhail, 5 pages.
- B - Written testimony submitted by Mike Katz, 6 pages.
- C - Written testimony submitted by Dan Meek, 2 pages.
- D - Written testimony submitted by Rion Bourgeois, 11 pages.