May 3, 2025

Position on Bills at 2025 Session of Oregon Legislature:

SB 680: Support

CONSOLIDATED OREGON INDIVISIBLE NETWORK

The Consolidated Oregon Indivisible Network (COIN) is a coalition of over 50 local Indivisible groups throughout Oregon that cooperate and amplify their joint efforts to advance important federal and state legislation and engage with elected officials to promote causes for the benefit of all Oregonians.

COIN supports SB 680, which would prohibit an electric or gas company (utility) from recovering costs or expenses incurred by a utility from ratepayers that are associated with:

- payments to a trade association that uses any portion of payments to advertise or support a political influence activity
- charitable giving
- political influence activity
- advertising or related activity
- compensation to a person to influence a decision by a federal, state or local government official
- contributions to a political candidate, political party, campaign committee, issue committee or independent expenditure committee
- litigation over an existing or proposed federal, state or local legislation, regulation or ordinance
- any product or service not regulated by the Public Utility Commission
- penalty or fine
- travel, lodging, entertainment or food and beverage for a board member or officer
- aircraft owned, leased or chartered for a board member or officer
- investor relations
- compensation above 50 percent of the annual total compensation or expense reimbursement for board member

It would also require in establishing rules PUC to consider:

- limiting amount utility may recover from ratepayers for costs and expenses for attorneys, consultants, and third-party experts
- establishing a maximum percentage of costs and expenses a utility may recover from ratepayer
- establishing a maximum amount of costs and expenses a utility may recover from ratepayer as a proportion to amount of costs incurred by Citizens' Utility Board or an intervenor for participating in contested case proceeding.

We would prefer a bill that makes the above three considerations mandatory upon the PUC.

While the 13 mandatory and 3 non-mandatory provisions are generally needed, the limit on charging ratepayers for executive compensation does not appear to make sense. Today the compensation to utility executives in Oregon is absurdly high. In 2023, the total compensation for Portland General Electric's (PGE) President and CEO, Maria Pope, was $6,810,654. John Kochavatr, CIO, received $1,401,886. James Ajello, CFO, received $2,161,202. Angelica Espinosa, Chief Legal Officer, received $1,458,075.

SB 88 states that the following amounts are not to be allowed in rates:

> (13) Compensation above 50 percent of the annual total compensation or expense reimbursement for a member of the board of directors of the electric or gas company;

This limit would be easily evaded by increasing the annual total compensation or expense reimbursement to members of the board of directors. Or the utility could simply declare that the board of directors consists of the CEO and certain few other executives, thus dramatically increasing the average compensation to members of the board of directors and thus the amount of executive compensation that can be charged to ratepayers.

We suggest limiting the utility executive compensation charged to ratepayers to 10 times the average salary of working Oregonians, which is $66,706. Maria Pope in 2023 received more than 100 times the average salary of working Oregonians. This recommendation was made by the Oregon Progressive Party and by the Independent Party of Oregon in testimony on March 2, 2025, and has not been adopted.

Response to Testimony of Northwest Natural Gas Company

The company's testimony includes this:

> In a December 16, 2024 legal opinion, legislative counsel has concluded that SB 88 "seeks to burden and effectively prevent an electric or gas company from advertising or engaging in political influence activity, activities that are protected under the First Amendment to the United States Constitution." Legislative counsel goes on to say that SB 88 may result in gas and electric companies not being able to recover expenses that are a regular and necessary part of doing business, potentially creating a situation where the Takings Clause of the Fifth Amendment is violated.

This legal opinion is apparently not available to the public. And it is clearly wrong. The federal courts, including the United States Supreme Court, have consistently upheld the right of regulatory commissions to exclude the cost of political advertising from rates, when challenged under the First Amendment and/or the Fifth Amendment.

> PECO first argues that the PUC order impermissibly restricts PECO's freedom of speech and is therefore violative of the First Amendment. We disagree. The order does not prohibit PECO from engaging in speech; instead, it prevents PECO from charging ratepayers for expenses of communications which are of no direct benefit to the ratepayers. Thus, PECO shareholders/investors would be required to pay for those communications which are of no direct benefit to ratepayers.
>
> While we agree that there will necessarily be a measure of content-based analysis of communications, we cannot conclude a utility should be free to use ratepayers' money to

> put forth whatever communication the utility deems appropriate. We emphasize that utilities are completely unfettered in determining what communication they choose to disseminate; our holding is directed only to the question of who shall bear the burden of the expenses attached to the dissemination of information.

Philadelphia Elec. Co. v. Pennsylvania Pub. Util. Comm'n, 122 Pa Cmwlth 421, 429–30, 552 A2d 342, 346, 99 PUR4th 553, 1989 WL 200 (1989).

> However, we agree with the PUC that, in this case, PECO engaged in a broad and ratepayer-financed public relations campaign designed to gain acceptance of nuclear power. We do not dispute that PECO has every right to seek to persuade the public that nuclear power is safe, necessary and cost-effective. However, PECO is not free to expend ratepayers' money in a broad public relations campaign in support of nuclear energy. The role of nuclear power in our society is a subject upon which reasonable minds differ, and the shareholders/investors of a utility seeking to gain acceptance of its belief that nuclear power is appropriate should bear the cost of promoting that belief.

Id., 122 Pa Cmwlth 421, 431–33, 552 A2d 342, 347, 99 PUR4th 553, 1989 WL 200 (1989).

As the United States Supreme Court concluded in a case involving utility bill inserts including discussion of "controversial issues of public policy."

> The Consolidated Edison Company of New York, appellant in this case, placed written material entitled "Independence Is Still a Goal, and Nuclear Power Is Needed To Win the Battle" in its January 1976 billing envelope. The bill insert stated Consolidated Edison's views on "the benefits of nuclear power," saying that they "far outweigh any potential risk" and that nuclear power plants are safe, economical, and clean. App. 35. The utility also contended that increased use of nuclear energy would further this country's independence from foreign energy sources.

Consol. Edison Co. of New York, Inc. v. Pub. Serv. Comm'n of New York, 447 US 530, 532, 100 S Ct 2326, 2330, 65 L Ed 2d 319, 34 PUR4th 208, 6 Media L Rep 1518, 1980 WL 707465 (1980). The Court concluded that the New York Public Service Commission could simply exclude these costs from the utility's rates, rather than entirely ban the utility from distributing the bill inserts.

> Accordingly, there is no basis on this record to assume that the Commission could not exclude the cost of these bill inserts from the utility's rate base.

Id., 447 US 530, 543, 100 S Ct 2326, 2336, 65 L Ed 2d 319, 34 PUR4th 208, 1980 WL 707465 (1980).

Earlier cases established that the First Amendment and Fifth Amendment are not barriers to prohibiting utilities from charging the cost of political influence activities to ratepayers. The Fifth Circuit Court of Appeals ruled in 1962 (with certiorari denied by the United States Supreme Court):

> Finally, the petitioners assert that the Commission's action 'limits and makes free in violation of the First makes free in violation of the First Amendment and deprives the companies of property rights without due process of law in violation of the Fifth Amendment.' We are unable to find here any basis for an argument of this character. As

> we have noted, nothing in the order prohibits or restrains the petitioners from publishing or republishing these or any other similar advertisements. Their freedom of speech or freedom of action in this area are not in any manner limited. All that has occurred in this proceeding relating to keeping of accounts is to exercise the Commission's discretion as to where these expenditures should be entered and to do so in such manner as to indicate the views of the Commission that such expenditures should not be subsidized by the consumers who purchase the power; that those expenditures should be charged to an income account.
>
> In our opinion the order here involved did not impinge upon any constitutional rights of the petitioner any more than did the Internal Revenue regulation applied in *Cammarano v. United States*, 358 U.S. 498, 513, 79 S.Ct. 524, 3 L.Ed.2d 462. In that case, the Court said: 'Petitioners are not being denied a tax deduction because they engaged in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as every one else engaging in similar activities is required to do under the provisions of the Internal Revenue Code.'
>
> Here it may be said that these petitioners are not being denied the right to charge the cost of this advertising as operating expenses because they engage in constitutionally protected activities; they are simply being required to keep their books in such manner as to indicate that presumptively those activities are to be paid for out of their own pockets rather than passed on to the consumer.

Sw. Elec. Power Co. v. Fed. Power Comm'n, 304 F2d 29, 47, 44 PUR3d 274 (5th Cir 1962).

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