

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: April 1, 2014

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE \_\_\_\_\_ N/A

DATE: March 20, 2014

TO: Public Utility Commission

FROM: Deborah Garcia and Phil Boyle *DB*

THROUGH: Jason Eisdorfer, Maury Galbraith, and Marc Hellman *E* *MG* *MH*

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. UM 1650) Petitions for Moratorium of Shutoffs and Disconnects.

**STAFF RECOMMENDATION:**

Staff recommends that the Commission decline the various petition requests and close this docket.

**DISCUSSION:**

This docket was opened at the April 9, 2013, Public Meeting in response to comments from the public, and petitions that were filed by members of the Jackson County Fuel Commission.

Staff determined during its review of the petitions that they consisted of four different petitions, some of which had overlapping legal or policy requests relative to Pacific Power or all energy utilities. For purposes of this discussion we refer to these groups of petitions as Group I, Group II, Group III, and Group IV to distinguish the different requests in each petition.<sup>1</sup>

In summary each Group's petitions request the following:

Group I Petitions

1. Requests the Public Utility Commission of Oregon (OPUC) repeal Pacific Power rate increases granted in December 2010;

<sup>1</sup> The Group IV petitions are directed at the City of Ashland. We do not address their requests.

2. Requests the OPUC enact a winter moratorium from November 1 through March 31 as an ongoing policy, for any individual or household whose income is at or below 200% of the federal poverty level, prohibiting electricity & natural gas shutoffs or disconnections for failure to pay delinquent bills. The petitioners also request the winter moratorium include a provision that customers whose service is terminated prior to or after the winter moratorium period would be granted a waiver of any and all reconnection fees for those ratepayers whose incomes meet the above guidelines; and,
3. Enact a moratorium on consideration of further Pacific Power rate increases.

#### Group II Petitions

1. Same as Group I, No.1. above;
2. Requests the OPUC direct Pacific Power to enact a year-round moratorium to prohibit electric service disconnections for failure to pay overdue bills as an ongoing policy for any individual or household whose income is at or below 200% of the federal poverty line. In addition, customers who meet the income guideline above, and whose service is terminated prior to the moratorium, be granted a waiver of any and all reconnection fees; and,
3. Requests the OPUC direct Pacific Power to make reasonable accommodations for payment plans with customers whose incomes are above 200% of the federal poverty line but whose financial condition, such as a job loss or foreclosure, leaves them unable to pay their utility bill in full and on time.

#### Group III Petitions

1. Requests the OPUC to establish and implement a permanent winter moratorium from November 1 through March 31 on all natural gas and electricity shutoffs, based on a residential ratepayer's inability to pay and to "write new rules immediately per Oregon Revised Statute 757.755(1) to this effect";
2. Requests the OPUC make rules "prohibiting shutoffs for any individual or household whose income is at or below 200% of the federal poverty level, "as criteria per ORS 757.755(2)" and;
3. Requests the OPUC amend ORS 757.760 such that the rules include a provision that any customer terminated prior to or after a winter moratorium due to economic

inability to pay, would be granted a waiver of any reconnect fees for those ratepayers at or below 200% of the poverty line.

From the petitions, Staff derived five legal questions and presented them to Staff's counsel for advice. The questions and the legal advice from Staff's counsel follow. For those requests that would require a change to current Commission policy, Staff includes an analysis of the issue and the Staff recommendation to the Commission.

1. *May the OPUC repeal a prior rate increase for Pacific Power residential, industrial and large commercial customers?*

Staff's counsel advises that the Commission may not repeal past rate increases that were approved for Pacific Power customers.

Generally, the Commission engages in prospective rate-making that is designed to provide adequate revenue for the utility and takes into consideration the interests of the public and customers to arrive at rates that are fair and reasonable.<sup>2</sup> Once the OPUC establishes rates for a utility, the utility must file tariffs consistent with those rates, and charge for its services using the approved rates.<sup>3</sup>

A tariff is presumed to be lawful and reasonable, unless found otherwise on appeal.<sup>4</sup> If a rate order is found to be unlawful on appeal, the Commission may reconsider the rates to determine whether the rates were just and reasonable in light of the information that was available and whether ratepayers were harmed.<sup>5</sup> Neither Group 1 nor Group II petitioners have challenged a Pacific Power rate order, as a party to the proceeding may do, pursuant to ORS 756.761 or ORS 756.610. Further, neither group claims in its petition that the OPUC erred in its orders approving recent rate increases, or that the rates were not fair or reasonable, pursuant to the aforementioned statutes. Therefore, the Commission may not repeal past rate increases that were approved by the Commission for Pacific Power customers.

2. *May the OPUC enact a moratorium on additional rate increases for Pacific Power customers?*

Staff's counsel advises that the OPUC may not enact a moratorium on additional rate increases for Pacific Power customers.

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<sup>2</sup> ORS 756.040(1), ORS 757.210(1)(a); *Gearhart v. Public Utility Commission of Oregon*, 255 Or App 58, 61 63, *rev allowed* 354 Or 386 (2013).

<sup>3</sup> ORS 757.205, ORS 757.225.

<sup>4</sup> ORS 756.610; *Dreyer v. PGE*, 341 Or 262, 279 (2006).

<sup>5</sup> ORS 756.610; *Gearhart*, 255 Or App at 81-83, 100-102.

Group I petitioners request a moratorium on additional Pacific Power rate increases. As noted in response to question 1 above, under ORS 757.040, the Commission is obligated to protect consumers from unjust and unreasonable exactions and to obtain utility customers "adequate service at fair and reasonable rates."<sup>6</sup> If the utility files a new rate schedule with the Commission, the Commission may approve that rate change if it is fair, just and reasonable.<sup>7</sup> The Commission may not adopt a moratorium on future increases because it cannot guarantee that the current rates will remain fair, just and reasonable into the future.

3. *Should the OPUC enact a moratorium on disconnections of service to low-income customers?*

The Commission has authorized an energy utility to disconnect a customer's utility service for a number of reasons, including when a customer fails to pay a deposit or to pay charges due for services rendered.<sup>8</sup> Three Groups petition for a moratorium on disconnections.<sup>9</sup> The specific details of the requested moratorium vary from group to group.

Group I petitions for a "winter moratorium" on electric and natural gas disconnections from November 1 through the March 31 for customers whose income falls at or below 200% of the federal poverty level.

Group II petitions for a year-round moratorium on electric disconnections for Pacific Power customers whose income falls at or below 200% of the federal poverty level.

Group III's request is substantially similar to Group I's. Group III petitions for a winter moratorium on electric and natural gas disconnects based on a customer's "inability to pay". Group III also requests a prohibition on all disconnections for low-income individuals under ORS 757.755(2).

Per the advice of Staff's counsel, the OPUC may enact a moratorium on disconnection of service to low-income customers. Under the Commission's current statutes and rules, disconnection of utility service is prohibited in specific circumstances. A utility may not disconnect residential service if the customer has submitted a certification from a qualified medical profession pursuant to OAR 860-021-0410. The rule implements

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<sup>6</sup> ORS 756.040(1).

<sup>7</sup> ORS 757.210(1).

<sup>8</sup> OAR 860-021-0305(1), (3), (4).

<sup>9</sup> We assume that these groups request a moratorium on disconnections based on a failure to pay a deposit or charge due, and not based on other grounds for disconnection.

ORS 757.755. In addition, a utility may not disconnect residential service for nonpayment if the customer enters into a time-payment plan that incorporates the account balance. OAR 860-021-0415. This rule implements ORS 757.760. Finally, a utility may not disconnect for nonpayment on a weekend or a holiday recognized by the State or the utility, nor on a Friday or the day before a holiday unless agreed to by the customer, the utility and the OPUC's Consumer Services Division.<sup>10</sup>

No current statute or administrative rule prohibits the disconnection of utility services based on the customer's income. The only administrative rule related to disconnections that allows for consideration of the consumer's income provides that when a customer with a medical certificate can show "financial hardship" the individual may re-negotiate the terms of a time-payment agreement.<sup>11</sup>

Group III petitions for a disconnection moratorium under ORS 757.755. This particular statute does not provide the OPUC with authority to impose a general moratorium on disconnections. ORS 757.755(1) requires the Commission to adopt administrative rules to prohibit the termination of residential utility service "when such termination would significantly endanger the physical health of the residential customer." ORS 757.755(2) provides that the OPUC "shall provide by rule a method for determining when the termination of residential electric or natural gas service would significantly endanger the physical health of the residential customer."

However, the OPUC has legal authority under other statutes to enact either a winter or a year-round moratorium on utility service disconnections if it finds such a policy to be beneficial. ORS 757.040 provides that the OPUC "shall represent the customers of any public utility . . . and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction."<sup>12</sup> The statute further provides that "[T]he commission shall make use of the jurisdiction and powers of the office to protect such customers and the public generally from unjust and unreasonable exactions and practices . . . ."<sup>13</sup>

The Commission has the discretion pursuant to its statutory authority under ORS 756.040 to adopt any of the various moratoriums requested by Groups I, II, and III.

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<sup>10</sup> OAR 860-021-0320.

<sup>11</sup> OAR 860-021-0410(5)(b).

<sup>12</sup> ORS 756.040(1).

<sup>13</sup> *Id.*

Staff Policy Analysis and Conclusion

Although the Commission has the authority to adopt rules providing for a winter moratorium for energy service disconnections, historically the Commission has not supported a blanket moratorium for the following reasons:

1. Oregon weather is not generally severe enough to pose a life-threatening risk to individuals whose service is disconnected.
2. To allow a low-income person to accrue a large energy bill they will not be able to pay in the future does not serve the individual in the long run.
3. Voluntary conservation is more likely to occur when there is a close relationship between when energy is used and when it must be paid for.

Historically, the energy utilities delay disconnection for a few days during severe winter weather or during the holidays. Any disconnection delay applies to all customers within a class and when the severe weather or holiday is over, the utilities continue normal operations. Generally, most utilities alert the Consumer Services Section if they plan to delay disconnecting customers. Further, the Consumer Services Section hasn't received complaints from customers about disconnection during extreme weather.

All energy disconnection notices that are sent to customers are required to provide information regarding options for time-payment plans, including the medical certificate program, energy assistance programs that may be available, and the contact information for the Consumer Services Section.

The energy utilities actively work with their customers on a case-by-case basis to accommodate a customer's inability to make a payment by its due date by negotiating a reasonable short-term alternate payment date, unless the customer has a history of making such arrangements that are not kept. The utilities also advise their customers of any energy assistance that may be available either through the utility or local outside agencies. They also provide customers with suggestions to conserve energy. The Consumer Services Section frequently intervenes to help customers negotiate reasonable alternative payment arrangements.

Finally, it's inevitable that a policy providing for a winter moratorium will create higher uncollectible amounts, the cost of which are included in base rates, effectively shifting the costs for unpaid service and ensuing debt collection attempts to the utility's other customers.

Staff concludes that the administrative rules provide sufficient protection and, while the Commission has authority to act, no change in Commission policy is necessary.

4. *Should the OPUC direct Pacific Power, or another electric utility, to provide "reasonable accommodations" on payment plans for individuals who are unable to pay for services due to "financial conditions"?*

Group II petitioners request that the OPUC direct Pacific Power to provide "reasonable accommodations" for payment plan options for individuals who do not qualify for the winter moratorium because their income is above 200 percent of the federal poverty guidelines, but who are unable to make full payment due to "financial conditions."

Per the advice of Staff's counsel, the OPUC may direct Pacific Power or another electric utility to do so. In fact, OAR 860-021-0415 sets forth specific details regarding time payment arrangements for partial payments that residential electric and gas service customers may make with a utility. This rule, as noted above, implements the requirements of ORS 757.760. The rule provides that "an energy utility may not disconnect residential service for nonpayment if a customer enters into a written time-payment plan" and that a "utility will offer customers a choice of payment agreements."<sup>14</sup> The rule requires at a minimum, customers be able to "choose between a levelized payment plan and an equal-pay arrearage plan" and details the requirements for both plans.<sup>15</sup> If the Commission determines that additional requirements should be adopted for payment arrangements to allow for "reasonable accommodation", it has sufficient statutory authority to act pursuant to ORS 757.760 and ORS 756.040.

Group II requested that the OPUC direct Pacific Power to make "reasonable accommodation" for certain customers based on the customer's "financial condition." Group II does not outline what constitutes "reasonable accommodation". The current rule, OAR 860-021-0415, allows any customer to make time payment arrangements, without the need for the customer to meet any established pre-conditions based on income.

#### Staff Policy Analysis and Conclusion

Staff is uncertain of the specific definitions the petitioners attribute to "reasonable accommodation" and "financial condition", but assumes the common understanding of those terms means that a customer should be able to make arrangements that are reasonable to the customer and to the utility, yet be responsible for paying their energy bill. For the same reasons discussed in section 4, Staff believes this petition request is provided for through the current administrative rules and the utilities' current business practices. Staff concludes that the administrative rules provide sufficient protection and no change in Commission policy is necessary.

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<sup>14</sup> OAR 860-021-0415(1).

<sup>15</sup> OAR 860-021-0415(1), (2), and (3).

5. *Should the OPUC allow for waiver of reconnection fees for low-income consumers whose natural gas or electric service is disconnected before or after a moratorium on disconnections?*

Group III petitioners request that the OPUC amend ORS 757.760 to grant reconnection fee waivers to customers whose income falls at or below 200 percent of the federal poverty level and whose natural gas or electric services were terminated prior to or after any moratorium on service disconnections. Group I and Group II also request that customers whose service is disconnected be granted a waiver of reconnection fees if their income falls at or below 200 percent of the federal poverty level.

While the Group III petitions request the OPUC amend ORS 757.760, only the Legislative Assembly may amend a state statute. It is possible that Group III meant to request that the OPUC amend its administrative rules promulgated pursuant to ORS 757.760. On the advice of Staff's counsel, ORS 757.760 does not grant the OPUC authority to write rules granting reconnection fee waivers to low-income customers. Rather, the statute requires the OPUC to make rules requiring utilities to accept reasonable partial payments.<sup>16</sup>

Further, there is no need for the OPUC to consider a legislative amendment to authorize a waiver of reconnection fees. OAR 860-021-0328 establishes reconnection procedures for reconnections within 20 days of a residential service disconnection. Customers must pay the standard reconnection fee or the After Hours Reconnect fee.<sup>17</sup> The OPUC may waive application of the reconnection fee provisions of OAR 860-021-0328 for good cause shown.<sup>18</sup> The OPUC may also identify specific circumstances in which no reconnection fee is required by adopting or amending an administrative rule pursuant to its general authority in ORS 757.040.

#### Staff Policy Analysis and Conclusion

Currently, reconnection fees are in place primarily as an added incentive to encourage a customer to take responsibility to pay for energy service and avoid service disconnection. The six energy utilities' reconnection charges range from \$20 to \$32 and only partially cover the utilities' costs to reconnect residential service. The rest of the costs are included in base rates that are spread to all customers. The reason the reconnection charges are lower than the actual costs to reconnect is to prevent placing a hardship on low-income customers.

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<sup>16</sup> ORS 757.760(2)

<sup>17</sup> OAR 860-021-0328(7).

<sup>18</sup> OAR 860-021-0005.



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Staff believes the reconnection charges for each of the energy utilities are reasonable and no change to Commission policy is necessary.

**PROPOSED COMMISSION MOTION:**

Decline the petition requests and close this docket.

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