

March 7, 2022

Public Utility Commission

Attn: Filing Center P.O. Box 1088 Salem, OR 97308-1088

**Re: Docket No. AR 653
Strengthening Consumer Protections Concerning Disconnections
Docket No. UM 2114
Investigation into the Effects of the COVID-19 Pandemic on Utility
Customers
Advocates' Comments on Staff's Draft Changes to Division 21 Rules**

The Joint Advocates, representing community-based organizations, community action agencies, consumer advocates, individual advocates, energy and climate justice organizations, and local governments, thank Oregon Public Utility Commission (OPUC) Staff for their thoughtful work on the January 21, 2022 draft revisions to the Division 21 Rules. True to the name of AR 653, Staff's work reflects an interest in strengthening consumer protections concerning disconnections.

Staff's draft changes to the Division 21 Rules would take important steps to recognize that some customers are at higher risk of disconnection and face strong consequences when disconnected due to economic injustice and systemic racism. One-size-fits-all rules on disconnection and related issues, like the current Division 21 Rules, disproportionately impact community members already experiencing economic and social vulnerability. As a result, we are grateful for, and encouraged by, the important steps towards less inequitable rules reflected in Staff's draft changes.

We include the following suggestions to further strengthen the draft Division 21 Rule changes, and encourage Staff to incorporate them in the next revision of the draft rules:

- Update 860-021-0180(1) to ensure that all minimum wage earners can access Division 21 protections.
- Consider the conversations regarding income verification and re-enrollment that have taken place in the context of HB 2475 and of PGE's HB 2475 proposal.
- Expand the re-enrollment period beyond one year, specially for people on a fixed income.
- Expand eligibility for Division 21 protections to households with Functional and Access Needs/At-Risk Populations like households with children and elderly residents.
- Expand eligibility for Division 21 protections to people with medical certificates.
- Explore whether to do away with deposit requirements for all customers.
- Determine a data-driven cap for annual reconnection fees.
- Allow a fee waiver for after-hour reconnections for customers with medical certificates or other vulnerability factors, when severe weather or poor air quality events are occurring or forecasted, or in the context of wildfires.

- Explore more health protective triggers for cold-weather-based severe weather moratoria.
- Add local government extreme or severe weather emergency declaration to the list of triggers for severe weather moratoria.
- Add forecasted severe weather or air quality events as triggers for moratoria on disconnections.
- Add language requiring utilities to engage in outreach to people facing severe weather events while disconnected for non-payment.
- Consider comments and conversations taking place in the context of the wildfire protection plans.
- Require that utilities prioritize low-income customers and medically vulnerable customers in their outreach related to protections to customers impacted by wildfires.
- Require that utilities report on how their vulnerable customers were affected (or not) by disconnections during wildfires and other severe weather events.
- Specify that the moratorium on disconnections due to wildfire evacuations in 860-021-0406(1) is triggered by Level 2 and 3 evacuation orders.
- Explore how customers would be notified of their need and ability to call the utility to seek reconnections under 860-021-0406(3).
- Require utility to play a more active role in areas impacted by wildfires., including by being more proactive regarding resiliency solutions for vulnerable customers like those with medical certificates.
- Add customers with medical certificates to the list of people eligible for Division 21 protections.
- Explore additional protections for customers with medical certificates, such as no disconnections.
- If Staff modifies draft 860-021-0415 language adopting 24 months time-payment agreements as default, require that utilities inform customers that they can have up to 24 months for their TPA.
- Consider expanding changes to 860-021-0405(3) and adopting a longer period for customers eligible for Division 21 protections.
- Include language in 860-021-0009(4) regarding demographic data collection, and modify to clarify that customers can refuse to provide such data.
- Abandon changes to 860-021-0405(11) that would effectively eliminate the requirement that a utility seeks a waiver before refusing to accept “cash at the door.”

I. Protections for vulnerable community members

Staff’s draft changes to the Division 21 Rules would create an “eligible low-income residential customer or applicant” classification. Eligible low-income residential customers would no longer face deposit requirements or late payment fees. They would also get a set number of reconnection and field visit fee waivers per year. Staff’s draft rules identify standards for utilities to verify eligibility.

The Joint Advocates generally support the concept of seeking consistency between the thresholds and processes related to eligibility for Division 21 low-income customer protections with those in the context of low-income rate solutions enabled by HB 2475. However, and as we outline below, we encourage Staff to include factors of vulnerability as criteria for eligibility to Division 21 protections.

A. All minimum-wage earners should be eligible for low-income residential customer status

We encourage Staff to change the language in 860-021-0180(1) so the income thresholds for eligibility for Division 21 low-income protections include all minimum wage earners. Conversations on PGE's proposed low-income customer discount revealed that earnings for a minimum-wage earner in a household of one in the Portland area would be above the 60% state median income (SMI) threshold. Excluding such minimum-wage earners from low-income customer discounts or from the Division 21 protections for low-income customers would not be reasonable. As a result, we encourage updating 860-021-0180(1) to clarify that minimum-wage earners above the 60% SMI threshold are eligible for the Division 21 protections.

We are eager to continue conversations about the appropriate thresholds for considering a customer "low-income." We expect those conversations will take place in the context of the longer HB 2475 investigation. While 60% SMI income is a familiar threshold used in the context of energy assistance, many people with incomes over the 60% SMI live with economic insecurity. For example, the average Oregon renter needs to make multiple times the minimum wage to afford a two-bedroom home while paying no more than 30% of wages in rent.¹

B. Decisions on income-verification requirements should factor burdens on customer and program costs

We applaud Staff's proposed adoption of categorical eligibility for Division 21 low-income customer protections. Still, we encourage Staff working on this rulemaking to consider the approach to initial income-verification outlined by Staff in the context of interim HB 2475 (UM 2211) implementation and by PGE in its proposed interim program. We also encourage Staff to avoid imposing duplicative burdens for customers in need of the Division 21 low-income customer protections and to consider the administrative cost and burden associated with stringent income verification requirements.

Under Staff's proposed 860-021-0180(4)(e), utilities would need to verify customer income-based eligibility on an annual basis. Here, we also point to conversations in the context of UM 2211 and to PGE's approach in their interim low-income customer discount program. Those robust conversations have focused on weighing the costs of stringent income verification approaches—both to the utility and to the customer.

¹ Andrew Aurand et al., National Low Income Housing Coalition, *Out of Reach 2021* at 202 (2021), https://nlihc.org/sites/default/files/oor/2021/Out-of-Reach_2021.pdf.

We appreciate the balance that PGE sought to strike with its proposal and encourage Staff to consider it, with adjustments appropriate in the context of the Division 21 protections: PGE's proposal includes self-attestation of income, with periodic need for re-enrollment and verification of a sample of participants. In the context of PGE's proposal, we considered enrolling participants for a period longer than one year, but decided against that because of Staff's concerns regarding the interim nature of the program. In contrast, the Division 21 protections are not interim, so a longer period between enrollment and re-enrollment could be warranted.

Importantly, we encourage Staff to recognize that people with fixed incomes warrant a longer period between enrollment and any post-enrollment income verification because their income is less likely to increase to the point that they are no longer eligible. For that reason, any re-enrollment period should be longer than one year for people with fixed incomes, like social security recipients.

C. Division 21 protections should be extended to other vulnerable communities

Importantly, the Joint Advocates encourage Staff to consider broadening eligibility for Division 21 protections to recognize that households are vulnerable to disconnection for reasons other than income. Specifically, we ask that Staff expands eligibility for Division 21 protections to households with "Functional and Access Needs/At-Risk Populations."

In addition to economically disadvantaged groups, these populations include youth and the elderly, groups with limited English proficiency, low literacy skills, and hearing/visual difficulties, people with medical conditions or who experience disability, and isolated groups.² For example, Staff should consider including in 860-021-0180 households with children under a certain age or with elderly residents,³ as well as people with medical certificates.

D. Waiving deposit requirement for eligible low-income customers is an important first step

The Joint Advocates support waiving deposit requirements for eligible low-income customers. We also encourage Staff to go further and explore whether the practice of charging deposits remains reasonable. In practice, utility deposit rules generally do not apply to higher income customers and deposits are paid by those with low incomes who may often have difficulty

² Illinois Department of Public Health, *Functional and Access Needs/At-Risk Populations* 1 (Jul. 2019), <http://dph.illinois.gov/sites/default/files/publications/080519-fan-resource-document-final-combined.pdf#:~:text=A>

%20functional%20and%20access%20needs%20%28FAN%29%2Fat-risk%20population%20is,physical%20and%20For%20cognitive%20disabilities%2C%20age%2C%20or%20language%20skills.

³ The NAACP's Report *Lights Out in the Cold* lists a number of protections adopted in other states for households that are vulnerable for reasons other than income. For example, the report lists Massachusetts not allowing disconnections for households with children under twelve-months or for households where the only residents are aged sixty-five or older and minor children. NAACP, *Lights Out in the Cold: Reforming Utility Shut-Of Policies as if Human Rights Matter* 20 (Mar. 2017), <https://naacp.org/resources/lights-out-cold>.

accumulating the necessary funds. An example of the inequitable burden of deposits can be found in the context of housing. Oregon is having a housing crisis. Landlords often require fees and deposits from folks trying to rent an apartment. Requiring a deposit equal to two months of service is one more barrier to households gaining housing.

We encourage staff to consider the inequities of requiring deposits of low-income customers and other credit-challenged customers, and whether requiring deposits is reasonable or necessary, particularly given existing bill assistance programs and other remedies that may come out of this rulemaking. If deposits do not save utilities and their customers money, they are neither necessary nor reasonable. Notably, PGE and Cascade Natural Gas are moving away from requiring deposits signaling they may no longer be necessary means to an end.

E. The reconnection-fee waiver changes go further

We are concerned that the 1-2 cap on annual reconnection fee waivers per eligible customer in the proposed 860-021-0330(1) and (2) may be arbitrary. For that reason, we call for a more data driven determination of the appropriate cap. Specifically, we encourage Staff to request data from the utilities about the number of reconnections for customers that would be eligible for these protections (i.e. using the number of reconnections for energy assistance recipients as a proxy). That data would help us determine a potentially more appropriate cap on annual reconnection fee waivers.

Additionally, we encourage Staff to amend language excluding after-hours reconnections from the waiver in the proposed 860-021-0330(3). After-hour reconnections should be eligible for waiver at least in a limited set of circumstances, like when the customer has a medical certificate or other vulnerability factor,⁴ when severe weather or poor air quality are on the horizon, or in the context of wildfires.

F. The field-visit fee waiver is a positive development

We support waiving the field visit fee for low-income customers and other vulnerable populations.

II. Health-based updates to severe weather moratorium rules

A. Severe weather moratorium rules

The Joint Advocates strongly appreciate Staff's recommended changes to the severe weather moratorium rules. They enhance the health protective value of these rules, and show a recognition that severe weather events heighten the inequitable impacts of disconnection.

We support, and hope to see continue inclusion in future iterations of the draft rules, the following changes in Staff's draft Staff's January 21, 2022 draft changes: 1) including severe

⁴ See discussion of Functional and Access Needs/At-Risk Populations above.

weather warnings in the factors that trigger disconnection due to cold, 2) memorializing in rules the moratorium on days with bad air quality, and 3) requiring reconnections of those disconnected within the last 72 hours. That third item is crucial to recognizing that members of our community with a situation of vulnerability may struggle to quickly line up the resources to seek reconnection in advance of a severe weather event.

1. We need more health-protective thresholds for cold weather moratoria

We encourage Staff to explore additional changes that set more health protective triggers for severe weather moratoria due cold weather in addition to the inclusion of severe weather warnings in the proposed changes to 860-021-0407(1). Strengthening the cold weather moratorium rules is important and necessary.

The last severe cold weather events that the region experienced highlighted how the current threshold is not sufficiently protective of human health, but also that the new thresholds still need to be stronger than what Staff included in its proposed changes to the Division 21 Rules. The region saw extremely cold weather during the last week of 2021, yet Multnomah County experienced few if any days triggered the severe weather moratorium. Staff's proposed Division 21 update would have triggered a moratorium because we had a severe weather warning during that week. Hence our gratitude and support for Staff's proposed update to 860-021-0407(1). However, the new rules would not have triggered a moratorium during the week of February 21st when the region also had very cold temperatures, with lows in the 20s but few, if any, days with highs below 32 degrees in Multnomah County. To our knowledge, no severe weather warning was issued. Hence our request that we continue to explore additional triggers to the moratorium due to cold weather.

Severe weather events do not impact everyone equally. For example, disconnection will be riskier for people living in poorly insulated housing. Multnomah County Environmental Health staff indicated that symptoms of hypothermia and respiratory symptoms can occur at temperatures well above 32 degrees fahrenheit. We are working with them to identify and propose a more health-centering range. While we continue to work on identifying a specific threshold, we encourage Staff to reference local government extreme or severe weather emergency declarations among the events that trigger severe weather moratoria.⁵

2. Forecasts should trigger severe weather moratoria

We encourage Staff to incorporate as in its Division 21 rule revisions forecasted severe high and cold temperatures, and forecasted high air quality levels as triggers for severe weather moratoria. Adopting a moratorium only on the day of an event could unnecessarily place community members at risk should they not be able to find the resources they need to achieve reconnection. In prior conversations on this topic, utilities have expressed logistical concerns

⁵ See *i.e.* Multnomah County, *February 2022 Declaration of Emergency Due to Extreme Winter Weather* (Feb. 22, 2022), <https://www.multco.us/february-2022-declaration-emergency-due-extreme-winter-weather>.

related to forecasts changing. However, the margin of error for a short term forecasts is only a few degrees. If the forecast changes, the utility could recommence disconnections.

3. Utilities should engage in outreach to disconnected community members during severe weather events

Utilities are the only entities aware of who is facing a severe weather event while disconnected. Customers facing a severe weather event without utility service are especially vulnerable to negative health impacts. As a result, utilities should engage in outreach to those customers to make them aware of resources. The outreach should include resources available in the community as well as information on protections available to customers.

B. Wildfire protection rules

The Joint Advocates strongly support memorializing protections for customers impacted by wildfires in the proposed 860-021-0406. We thank Staff for language that recognizes the heightened state of vulnerability that a customer may experience when facing the threat of wildfire.

We also encourage Staff to look into the dockets related to utility wildfire plans. In that context, organizations working with impacted communities, like Rogue Climate, are advocating for evaluating planned actions through an energy justice lens in recognition of the disproportionate impacts that wildfires have on already vulnerable communities.⁶ For example, Staff should consider including in rules an obligation for utilities to prioritize low-income and medically vulnerable customers in their outreach, and to report on how its vulnerable customers were affected (or not) by disconnections during wildfires and other severe weather events.⁷

1. Evacuation levels 2 and 3 should trigger disconnection moratoria

We are especially appreciative of the proposed moratorium on disconnections that would be triggered under draft 860-021-0406(1) when an area is under evacuation notice due to wildfire. We recommend that Staff specifies in its revisions to 860-021-0406(1) that this refers to evacuation levels two and three.

The wildfire evacuation notification system in Oregon consists of three levels: 1) Under Level 1, people should be ready to evacuate and are advised to monitor emergency services websites and local media outlets for information. Seniors and people with disabilities are encouraged to “take action early.” 2) Under Level 2, people should be ready to leave at a moment’s notice due to significant danger in the area. 3) Under Level 3, people should leave the area immediately.

While ideally people under Level 1 would not be disconnected as lack of utility service may hinder their ability to be prepared to evacuate and informed about the changing risk, those

⁶ See *i.e. In the Matter of PacifiCorp, dba, Pacific Power, Wildfire Protection Plan*, Docket Um 2207, Rogue Climate’s Comments (Feb. 24, 2022), <https://edocs.puc.state.or.us/efdocs/HAC/um2207hac17031.pdf>.

⁷ *Id.* at 4-5.

among the Joint Advocates with more experience with wildfires recognize that parts of Oregon spend significant portions of the year on Level 1. Still, the goal of the moratorium on disconnection is to recognize the essential nature of utility service during the crisis that the risk of wildfire represents. For that reason, we suggest that the moratorium should apply at Levels 2 and 3.

2. Changes to Staff's draft reconnection language merit additional discussion

We appreciate Staff's language regarding the reconnection of customers impacted by wildfires under 860-021-0406(3). At the February 2 workshop, the Joint Utilities asked for the ability to reconnect customers only upon customer's request. We appreciate their stated reasons, and request that we explore this topic further. Joint Advocates working in communities that have experienced wildfires, and who have themselves evacuated as a result of wildfire risk, have expressed concerns about asking additional steps from community members overwhelmed by a crisis. Before we can be comfortable, we would like to hear more about how the utilities would inform customers of the need to contact them to be reconnected under draft 860-021-0406(3).

3. Utilities should take a more active role when communities in their service territory is impacted by wildfire

Some of the Joint Advocates work in regions that were highly impacted by the wildfires that the state has experienced over the last few years. Their experience indicates that wildfires may result in people losing all of their documents, which makes it impossible for them to, for example, verify their income or residency, etc. Utilities are well situated to help communities recovering from wildfires by sending customers a copy of their records through email or mail, and/or by sending utility staff to resource centers after disasters to help customers get their records.

Utilities should also have systems in place to ensure that people who cannot go back home are not reconnected. Some homes were damaged after the fires in Southern Oregon and became dangerous to live in, yet they were still being charged rent and utilities. Structural wildfires also leave behind a plethora of health and environmental hazards for months where it becomes a health risk to live in that area. Clean up can also take months, even years.

Importantly, utilities and the PUC must recognize the unique circumstances faced by medically vulnerable customers by, for example, offering back-up batteries or other resiliency solutions to those customers. This would be especially helpful for customers who are evacuating. Under Pacific Power's Wildfire Protection Plan, they will have Community Resource Centers that basically will act like a mini resilience hub, but only during power safety planned shut offs. However, those communities are also vulnerable during other emergencies that tax the system and put them at risk of losing power, like severe weather. As a result, utilities should consider what protections they can offer customers during those emergencies.

III. Protections for medically vulnerable community members

In adopting 860-021-0410, the PUC has recognized that the heightened medical vulnerability of certain community members warrant additional protections. For that reason, we encourage Staff to add customers with medical certificates to the list of people eligible for the Division 21 protections that the draft rules currently reserve for customers with Low-Income Residential Customer Status.

Recognizing the unique circumstances of customers with low-income and health conditions that warrant a medical certificate, we encourage the PUC to go one step further and adopt additional protections for customers in that intersection, such as no disconnections.

IV. Extended payment protections

We support Staff's proposed changes to 860-021-0415 extending the maximum length of a time payment agreement from 12 to 24 months. If Staff settles on language that would not set the 24 months as the default, the 860-021-0415 should outline that utility customer representatives must inform customers that they can have up to 24 months to repay their arrears.

V. Timing of Disconnection Notices

We strongly support Staff's proposed change to OAR 860-021-0405(3) increasing the disconnection notice requirements from 15 to 20 days. A longer disconnection notice was one of the measures of relief identified by the focus groups with people who had experienced disconnection that the PUC hosted with Brown Power. We support Staff's efforts to be responsive to the voices of people who have experienced disconnection by extending the disconnection notice period.

We recommend that Staff goes one step further and adopts a longer disconnection period for people with Low-Income Residential Customer Status. We suggest the 45-day period that Staff had originally considered exploring for energy assistance recipients.

VI. Other Issues

A. Demographic data collection

We appreciate Staff's proposed 860-021-0009(4) allowing the utility to collect demographic information with the caveat that customers should have a right to decline to provide that information. Some of the Joint Advocates provide direct services and collect this information, and it is not unusual for this information to be requested in many contexts in which people interact with entities. Having this information about utility customers can also offer much needed information about who utility programs are reaching or failing to reach. For that reason, we support including the language on collection of demographic information.

While census tract data is often used as a proxy when demographic information has not been collected, we encourage the utilities here and in the HB 2475 process to look at demographic data collection as an opportunity for people to show up as they are. Multnomah County has developed tools in this regard that we offer to Staff and the utilities as we collectively consider questions regarding demographic data collection.⁸

B. Reduction in the payment that a customer must make for the utility to have to provide service

We support the proposed changes in 860-021-0335(2) reducing the payment that a residential customer must make for the utility to have to provide service from 1/2 to 1/3 of the overdue amount and increasing the timeline for customers to submit payment from 30 to 60 days. From our perspective, this change reduces potential barriers to access to utility service that would very likely impact low-income people more severely. Someone with a higher income may face less barriers finding the resources with half of the overdue amount, while someone experiencing financial difficulties would likely struggle more to do it. As a result, removing this barrier is important.

C. No cash at the door policy

We oppose getting rid of the requirement for utilities to seek a waiver in order to have “no cash at the door” policies. This issue has not been discussed in the context of this rulemaking, and this is not a rule change that addresses inequities embedded in the Division 21 Rules. In fact, this proposed change could exacerbate existing inequities by allowing utilities to create a barrier to payment by permitting them to unilaterally avoid the rule through their own policies. Utilities can request a waiver to adopt those policies. We consider that waiver process the appropriate process to have a conversation about whether a particular utility should be allowed to refuse payment at the door. For that reason, we encourage Staff to not include in future draft rules this proposed amendment to 860-021-0405(11).

VII. Conclusion

We strongly appreciate Staff’s work to put draft updates to Division 21 that reflect the conversations we had in the workshop process leading up to this rulemaking, as well as what we learned from the focus group work with people who have experienced disconnection. In these comments, we offer suggestions to further strengthen the changes to Division 21 and the impacts we expect they will have in addressing the inequitable impacts of current rules.

Respectfully submitted this 7th day of March,

Alessandra de la Torre, Advocacy & Programs Director
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⁸ Multnomah County, *Toolbox: Race/Ethnicity Data Policy*, <https://www.multco.us/dchs/toolbox-raceethnicity-data-policy>.

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