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VIA ELECTRONIC FILING

Public Utility Commission of Oregon
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Re: AR 673 – In the Matter of Rulemaking to Implement 2025 Senate Bill 845

NW Natural Water submits the following comments regarding the May 7, 2026 workshop at which Staff presented draft rules implementing Senate Bill 845 (2025) along with a context document in Docket AR 673. Senate Bill 845 authorizes the Commission to compel the sale of a privately owned water utility that is unable or unwilling to provide safe and adequate service. These comments address: (1) whether a Commission-ordered sale encompasses asset transfers as a permissible transaction structure; and (2) whether the liability protections in proposed OAR 860-225-0050 are sufficient to protect an acquiring entity from pre-existing fines and penalties when the transaction is structured as an asset purchase rather than a stock sale or merger.

Proposed OAR 860-225-0040 provides that transactions under this division must meet the requirements of OAR 860-036-2110 and that the terms of any transaction will be determined by negotiations between the water utility and an acquiring entity. However, neither the draft rules nor the context document address whether a Commission-ordered sale may be structured as an asset purchase, rather than as a stock purchase, merger, or consolidation.

This distinction is not merely technical. It may have practical implications for the willingness of potential buyers to participate in an ordered sale and for how effectively the draft rules' liability protections operate.

In a stock purchase or merger, the acquiring entity steps into the shoes of the prior owner and generally assumes all existing liabilities, including outstanding fines, penalties, and regulatory violations. In an asset purchase, by contrast, the acquiring entity takes title to specific assets and does not automatically assume the liabilities of the prior owner unless those liabilities are explicitly assumed in the transaction documents.

Given that a utility subject to a Commission-ordered sale will by definition have unresolved violations and potentially outstanding penalties, an asset transfer structure may be the most favorable transaction form for a qualified buyer. A sophisticated acquiring entity is far more likely to accept the operational and capital challenges of a distressed system if it can do so without inheriting the prior owner's regulatory liabilities.

NW Natural recognizes that proposed OAR 860-225-0050(1) provides that an acquiring entity will not be liable for violations that occurred prior to acquisition, and that the Commission may postpone or waive penalties imposed due to violations committed by prior ownership. This protection is welcome and reflects sound policy.

However, transactions structured as stock purchases or mergers, the acquiring entity becomes the successor to the prior owner and may be exposed to pre-existing liabilities under Oregon law regardless of what the Commission's rules provide. OAR 860-22-0050 can address the Commission's own enforcement postures, but it cannot extinguish liabilities arising under other legal frameworks, including Oregon environmental law, drinking water regulations enforced by the Oregon Health Authority, or federal law. To the extent OAR 860-225-0050 implies that these other liabilities may be extinguished, it is overbroad and may need to be more narrowly tailored.

Because many violations that give rise to an ordered sale will involve drinking water quality or public health matters, the primary enforcement authority may rest with the Oregon Health Authority ("OHA") or the Environmental Protection Agency ("EPA") rather than the Commission. OAR 860-225-0050 as drafted does not address this overlap. In addition to clarity regarding the Commission's enforcement intentions, potential buyers may benefit from clarity about the posture of other agencies with concurrent jurisdiction.

Staff and the Commission should consider committing in the rules to notifying the OHA and EPA when an ordered sale has been initiated and to facilitate coordination among agencies regarding the treatment of pre-acquisition violations. This coordination obligation does not require the Commission to bind other agencies, but it would signal the Commission's policy intent and give other agencies an opportunity to consider analogous relief within their own authority.

To implement the recommendations set forth above, NW Natural proposed the following specific amendments to Staff's proposed rules. New proposed text is underlined.

A. Proposed Amendment to OAR 860-225-0040 (Transactions)
860-225-0040
Transactions under this Division

(1) Applications for sale, lease, assignment, mortgage, disposition, merger, or consolidation, under ORS 757.480 must meet the requirements of OAR 860-036-2110.
   a. The terms of any transaction, including cost, will be determined by negotiation between the water utility and an acquiring entity.
   b. The Commission will consider any requests for an acquisition adjustment.

c. A transaction may be structured as an asset transfer as defined in OAR 860-225-0010(4). An asset transfer is a permissible and potentially preferred transaction form where it would facilitate the identification of a qualified buyer, reduce barriers to acquisition, or limit the acquiring entity's exposure to pre-existing regulatory liabilities of the prior owner.

B. Proposed Amendment to OAR 860-225-0050 (Liability for Penalties and Violations)

860-225-0050
Liability for Penalties and Violations

(1) When ownership of a water utility is transferred under this division, the acquiring entity will not be liable for violations which occurred prior to acquisition of the water utility. The Commission may postpone or waive any penalties that were imposed on the utility due to violations committed by prior ownership.

(2) The acquiring entity will be allowed a reasonable time to correct violations originating from prior ownership prior to the application of penalties.

(3) The liability protection provided in subsection (1) of this section applies to penalties and violations within the Commission's enforcement jurisdiction. It does not extinguish liabilities arising under other regulatory frameworks, including those enforced by the Oregon Health Authority or the United States Environmental Protection Agency.

(4) Upon ordering a sale under this division, the Commission will notify the Oregon Health Authority and Oregon Department of Environmental Quality of the ordered sale and the policy intent to facilitate acquisition of the water utility by a qualified buyer. Such notification is intended to encourage those agencies to consider, within their respective authority, analogous protections that would limit an acquiring entity's exposure to pre-existing violations and penalties of the prior owner.

The liability protection framework in the draft rules reflects sound policy and is essential to attracting qualified buyers for distressed water systems. To make that framework effective, the rules must account for the structure of the actual utility acquisition and the realities of the multi-agency environment in which such utilities operate. Clarifying that asset transfers are a permissible transaction form, ensuring that liability protections are calibrated to the transaction structure used, and providing procedural certainty at each stage of the ordered sale process will strengthen the rules and better serve the policy goals of SB 845. For these reasons, NW Natural respectfully requests that the Commission consider proposals described in these comments as it develops the final rules. Please contact me if you have any questions or would like additional information.

Sincerely,

/s/ *Adam Triplett*

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