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Oregon Public Utility Commission

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Copy PUC Staff: Ezell Watkins, Michele Scala, Mark Brown

RE: SBUA Comments on Staff 2/2/22 Draft Division 21 Rules

Greetings. Please see below and attached enclosed comments of SBUA to the Oregon Public Utility Commission (“Commission”) Staff’s Draft revisions of the Division 21 Rules produced in the UM 2114 Investigation into the Effect of the COVID-19 Pandemic on Utility Customers (“UM 2114”).

1) Kermode comments:

These Division 21 comments include the attached UM 2114 Exhibit A Comments of Danny Kermode CPA dated 11/4/21 and filed with UM 2114 Comments of SBUA on 11/5/22. Topics relevant as proposed Division 21 rule changes include the following:

- Shutoff and late fee protections along with extended arrearage payments options should be applied by understanding the needs of the small business community not by reference to another utility service class.
- Small business needs longer shutoff protections than currently allowed and extended time for the payback of arrearages to stay financially viable.
- Perhaps this rule division is an appropriate place to clarify the accounting of late fees and reconnection charges and bifurcating residential and small commercial late fees to prevent cross-subsidization between small commercial and residential class.

2) General comments: These comments include certain revisions related to inclusivity language (e.g. “his/her”) or clarifying terminology.

3) SBUA supports the Joint Advocates’ proposal to explore doing away with deposit requirements for all customers and the points made regarding data-driven cap for annual reconnection fees.

4) Regarding severe weather and wildfires, SBUA appreciates the robust conversation on this topic and Staff’s inclusion of small commercial customers in the draft rules. All customers are impacted by severe weather and wildfires. Many customers, including low-income and medically vulnerable customers, rely on the small commercial customer services including emergency management service providers, grocers, and other services essential to providing basic needs especially in times of extreme weather and wildfire. Large commercial customers are much more easily able to survive such events and have resources to respond or rebound where small commercial customers are more fragile. See Bartik, Alexander et al. “The Impact of COVID-19 on Small Business Outcomes and Expectations,” referenced by Kermode and included in the Report’s entirety with UM 2114 Comments of SBUA filed 11/5/22.

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5) Rule specific comments and brief explanations are as follows:

OAR 860-021-008(3)

“Customer”—refers to “person”. This could be revised to include the “Small commercial customer” using the UM 2114 Stipulation definition: Small commercial customer: The definition of small commercial is the definition provided by a utility on its applicable tariff.

OAR 860-021-009—Appears to apply to all customers, however, the requirements of the rule do not seem to fit entity customers. For example, how are the questions in (3) and (5) answered when the customer is an entity?

OAR 860-021-0010 Generally, this could be revised so as to include small commercial customers.

(1) Change language to avoid pronoun limitation of “him/her”.

OAR 860-021-0021 (3) Consider changing “at the residence” to “at the location of service” in order to include the location of commercial customers.

OAR 860-021-0045(4) Change language to avoid pronoun limitation of “his/her” expense.

OAR 860-021-120 Meter readings and bill forms

(1) Please explain the terminology “Proper constant”.

SBUA suggests more input generally from small commercial customers on how the bill forms read.

OAR 860-021-0126(2) Late payment charge

Include small commercial in this rule.

Consider the continued use of late fees per Kermode, supra footnote 2, and include a provision that late payments will not be included as lost revenue. Id.

OAR 860-021-0180 Verification of eligibility for Low-Income Residential Customer or Applicant

Consider this provision that would enable certain small commercial customers to receive treatment similar to residential customers eligible for low income treatment.

“(5) A small commercial applicant whose owner is eligible for low income residential customer treatment shall receive treatment as Low Income Small Commercial Customer.”

OAR 860-0210-205(5)

Consider eliminating deposits; alternatively apply similar treatment to eligible small commercial.

OAR 860-021-0210

Add to Staff’s (4): “An energy utility will apply interest to deposits submitted by an eligible low-income residential or small commercial customers or applicant for the time period that the deposit is being held by the utility.”

OAR 860-021-0330 Reconnection fee for Utility Service

See Kermode regarding accounting of reconnection fees.

OAR 860-021-0408 Disconnection Reporting Rule

Rule should be generally applicable, apply to all customers or at least also to small commercial customers.

Add: (3)(A) should read “Number of active residential and small commercial accounts”.

OAR 860-021-0410 Emergency Medical Certificate

Comment: SBUA has suggested exploring how many small commercial customers have these certificates as residential customers and should that include the commercial account of those residential customers possessing the emergency medical certificates.

Comments below incorporate Kermode comments suggesting that small commercial customers be included as customers who may take part in the equal payment programs and Time-Payment Agreements.

Bold – Staff proposed changes

SMALL CAPS – SBUA PROPOSED CHANGES

OAR 860-021-0414 Equal-Payment Plans

SBUA recommends that Equal-Payment Plans for Energy services be expanded to include small-commercial. The use of EPP for small commercial would be exceptionally helpful to small business allowing them to budget for utility service rather than continually estimating changes in seasonal energy use. It would be a win for both the small business and the utility. Far from being a radical idea, many of Canada’s largest energy companies currently provide Equal-Payment Plans to small commercial customers (e.g., FortisBC, Hydro Ottawa, Enbridge).

OAR 860-021-0414

Equal-Payment Plans for Residential **AND SMALL-COMMERCIAL** Electric and Gas Service

Electric companies and gas utilities will make equal-payment plans available to residential and **SMALL COMMERCIAL** customers. A customer with no outstanding balance who agrees to remain on an equal-payment plan for 12 months may enter into equal-payment agreement at any time during the year. The plan will provide for an annual adjustment between the estimated charge and the actual charges. If a customer changes **SERVICE ADDRESS, WHETHER IT BE** residences **OR PLACE OF BUSINESS**, during the term of the agreement, the payments may be adjusted to reflect the anticipated change in usage. Nothing in this rule is intended to restrict a utility’s right to adopt additional payment options.

OAR 860-021-0415 Time-Payment Agreements

SBUA recommends that 60-021-0415 be modified to include mostly the same equal-pay arrearage plan provisions for small commercial customers that is provided residential customers. However, assuming the acceptance of our recommendation for the inclusion of small-commercial in Equal-Payment Plans **(OAR 860-021-0414) SBUA does not propose the inclusion of the levelized payment plans for small commercial.**

In the alternative, if the commission does not accept the inclusion of equal-pay arrearage plans for small commercial customers, SBUA supports Staff's proposal to expand Time-Payment Agreements to include small-commercial customers. We however suggest that an eleven-month duration would be better to allow the company to complete a full business operating cycle rather than the six months suggested by Staff.

In its filing the Joint Utilities asks that Time-Payment Agreements not be provided for small-commercial customers but instead rely on the customer service teams to work with the small-commercial customers.

The Joint Utilities admit that they have used commercial Time-Payment Agreements "under appropriate circumstances." We are concerned that there is a clear lack of clarity as to what "under appropriate circumstances" means and that it's a bar that will change depending on the utility and the whims of management.

The Joint Utilities also mentioned in support of its suggestion to strike the provision of Time-Payment Agreements for small-commercial customers that they have a concern that commercial uncollectible balances will increase if commercial Time-Payment Agreements become a regular practice. Their logic does not stand up to scrutiny, the very purpose of time-payment agreements is to allow a systematic payment of pass due arrearages. Rather, with the lack of a well-defined time payment option, it is more likely there would be an increase in commercial uncollectibles as companies, unable to pay their relatively large lump-sum arrearage amounts, quickly fail and go out of business leaving the unpaid amount to become written off, which in turn is paid by ratepayers. By allowing a reasonable time-for payments of past arrearages provides a small company an opportunity to keep in business, keep its employees on the payroll, and to rebuild its working capital, while repaying its outstanding obligations.

OAR 860-021-0415

Time-Payment Agreements for Residential **and Small Commercial** Electric and Gas Service (Nonmedical Certificate Customers)

(1) An energy utility may not disconnect residential **or small commercial** service for nonpayment if a customer enters into a **written** time-payment plan.

(a) An energy utility will offer **residential** customers a choice of payment agreements. At a minimum, the **residential** customer may choose between a levelized payment plan and an equal-pay arrearage plan.

(b) **AN ENERGY UTILITY WILL OFFER SMALL COMMERCIAL CUSTOMERS AN EQUAL-PAY ARREARAGE PLAN.**

(2) A **residential** customer who selects a levelized payment plan will pay a down payment equal to the average annual bill including the account balance, divided by **12 24**, and a like payment each month for **11-23** months thereafter:

(a) The energy utility shall review the monthly installment plan periodically. If needed due to changing rates or variations in the amount of service used by the **residential** customer, the installment amount may be adjusted to bring the account into balance within the time specified in the original agreement;

(b) If a **residential** customer changes service address at any time during the period of a time-payment agreement, provided that payments are then current and the **residential** customer pays other tariff charges associated with the change in residence, the energy utility shall recalculate the **residential** customer's deposit and/or monthly installment. The recalculated amount shall reflect the balance of the

account at the previous service address and the average annual bill at the new service address for the months remaining in the original time-payment agreement. When installments on a time-payment agreement have not been kept current, a **residential** customer shall pay all past-due installments and any other applicable charges before service is provided at the new residence.

(3) A **residential** customer who selects an equal-pay arrearage plan will pay a down payment equal to one ~~twelfth~~ ~~twenty-fourth~~ the amount owed for past electric or gas service (including the overdue amount and any amounts owed for a current bill or a bill being prepared but not yet delivered to the **residential** customer) each month, for the next ~~11~~ ~~23~~ months, an amount equal to the down payment will be added to, and payable with, the current charges due for utility service. If a **residential** customer changes service address at any time during the period of an equal-pay arrearage plan, the plan continues. However, the **residential** customer must pay any past-due charges and all other applicable charges before the energy utility provides service at the new address.

(4) A SMALL-COMMERCIAL CUSTOMER ON AN EQUAL-PAY ARREARAGE PLAN WILL PAY A DOWN PAYMENT EQUAL TO ONE-TWELFTH THE AMOUNT OWED FOR PAST ELECTRIC OR GAS SERVICE AND ANY AMOUNTS OWED FOR A CURRENT BILL OR A BILL BEING PREPARED BUT NOT YET DELIVERED TO THE CUSTOMER, EACH MONTH, NOT TO EXCEED 11 MONTHS, AN AMOUNT EQUAL TO THE DOWN PAYMENT WILL BE ADDED TO, AND PAYABLE WITH, THE CURRENT CHARGES DUE FOR UTILITY SERVICE. IF A SMALL-COMMERCIAL CUSTOMER CHANGES SERVICE ADDRESS AT ANY TIME DURING THE PERIOD OF AN EQUAL-PAY ARREARAGE PLAN, THE PLAN CONTINUES. HOWEVER, THE CUSTOMER MUST PAY ANY PAST-DUE CHARGES AND ALL OTHER APPLICABLE CHARGES BEFORE THE ENERGY UTILITY PROVIDES SERVICE AT THE NEW ADDRESS.

(4 5) The energy utility and customer may agree **in writing** to alternate payment arrangement, provided the utility first informs the customer of the availability of the payment terms in sections (2) and (3) of this rule.

(6) During the term of the time-payment arrangement, a residential customer or small commercial customer whose financial condition changes during the term of a time-payment arrangement who defaults on a time-payment arrangement and who seeks to renegotiate payment arrangements, may do so at least one time under the same terms specified above.

(57) If a customer fails to abide by the time-payment agreement, the energy utility may disconnect service after serving ~~15~~~~20~~ days' notice. The notice shall comply with OAR 860-021-0405, except subsection (2)(d) of this rule shall not be applicable. If a medical certificate is in effect, 860-021-0410(6) shall apply.

In the alternative, SBUA supports the Staff proposed paragraph (4) with some modifications.

(4) For small commercial customers, the energy utility shall offer a time-payment plan for up to a ~~six~~ ELEVEN-month duration. The small commercial customer shall pay a minimum 10 percent down payment to enter into a time-payment plan.

Lastly, SBUA acknowledges and greatly appreciates the Staff and all parties thoughtful and hard work in this stage of rulemaking.

Respectfully submitted,

Small Business Utility Advocates
diane@utilityadvocates.org

November 4, 2021

Public Utility Commission of Oregon
550 Capitol St. N.E. Suite 215
Salem, OR 97301-2551

Re: UM 2114 Investigation into the Effects of the COVID-19 Pandemic on Utility Customers
Comments of Danny Kermode CPA for the small business utility advocates (SBUA) regarding
the impact of certain revenue deferrals and disconnection policy on small commercial customers

Chairperson Decker and Commissioners Tawney and Thompson,

I am submitting the following comments in preparation for the Public Meeting the Commission will hold on November 17, 2021, in Docket No. UM 2114 I would first like to recognize the work done by both the Commission Staff and the utilities to help customers maintain utility service and to keep the State of Oregon's utility systems financially sound.

In its November 5, 2020, Order 20-401, the commission approved a stipulated agreement expressly allowing deferral of four categories of costs and revenues. These were broadly classified as (1) increased direct costs (e.g., PPE cleaning supplies and services), (2) late payments fees, (3) bad debt, and (4) forgone reconnection fees. [Appendix A of Attachment A Stipulated Agreement on Effects of COVID-19 Pandemic on Energy Utility Customers (“Stipulation”) pgs. 19-20]

Small Business Cross- Subsidizing Residential Customers

There is no question that the commission should allow the deferral of those reasonable and prudently incurred costs reflected in the stipulation. However, my concern focuses on the possibility that small businesses will be saddled with costs created by the residential class. Specifically, deferred late payment fees, bad debt expenses, and the forgone reconnection fees.

Small businesses, though sometimes equated to the residential class because of similar load demands, is financially different. I would recommend that any deferrals of late payment fees, bad debt, and reconnection fees be clearly segregated between residential and small commercial. While I recognize the severe impact COVID has put on residential customers, it's important we all recognize that the financial viability of the state's local small business continues to be precarious.

Though buried in the combine data, it appears that the bad debt burden associated with the residential class is substantially greater than the bad debt burden associated with the small business community. This disparity is not limited to only bad debt, but is the same for deferred late fees and reconnection revenue. It is important that any of the revenue deferrals and bad debt be clearly divided to recognize the differences in class. In this way the commission can prevent

added financial burden on small business of the cross-subsidization of small business of residential customers.

Extended Shutoff and Late Fee Protections Along with Extended Arrearage Payments

Although most would recognize that small businesses should not be equated to the large commercial, the commission's policy on service disconnections and late fees does just that. Equally, small business should also not be blindly equated to the residential class, instead it is best to recognize that small businesses are a unique class of their own. Shutoff and late fee protections along with extended arrearage payments options should be applied by understanding the needs of the small business community not by reference to another utility service class.

Small business needs longer shutoff protections than currently allowed and extended time for the payback of arrearages to stay financially viable.

It is important that, through regulatory policy, local small business be given every opportunity to continue business in the communities they live and serve until the impact of the pandemic is past us. This is not just for the well-being of those businesses, but also the health of the communities where they are located. A current study of small business found that it is not uncommon for small businesses to have little-to-no cash reserves with their survival depending on the next problematic cash infusion.¹ I strongly urge the commission to allow the state's small business community to have, at the minimum, the same extended protections provided to the residential population.

Lost Revenue - Creation

Care must be taken when allowing recovery of lost revenue without a clear understanding of the changes in the related expenses. The commission should recognize by their very nature, the deferral of revenues are not the same as a deferral of an expense. An expense, a debit, is simply moved from the income statement, deferring recognition to a later period, to a regulatory asset account, which is also a debit.

On the other hand, the recognition of "Lost revenue," a credit, requires the creation of a transaction through a journal entry which produces an imputed revenue amount that is deferred as a regulatory asset (a debit). Since no actual transaction exists in the financials, an offsetting credit must also be created. This offsetting credit is as important to understand as the creation of the regulatory asset.

¹ In a recent study on the fragility of small business due to COVID found that the median firm with greater than \$10,000 in monthly expenses had less than fifteen days of available cash on hand. See Bartik, Alexander, et al. "The Impact of COVID-19 on Small Business Outcomes and Expectations." Proceedings of the National Academy of Sciences 117, no. 30 (July 28, 2020).

The record is not clear as to the journal entries companies will use to create the deferred lost revenue into a regulatory asset. I would ask the commission staff to clarify the accounting used by the companies for full transparency.

Lost Revenue – Gross-up

Is the use of deferred revenue merely a shortcut method for capturing the impact of COVID on the costs the lost revenue is designed to recover? Why not instead identify and defer the actual costs that are not being recovered by the loss of revenue and recover those costs later like the other costs cited in 25(a) of the stipulation?

The reason the actual expenses are not deferred is that these unique tariff charges are commonly based on two factors, an allocation of labor costs and, importantly, an additional punitive amount to provide a disincentive of late payment.² Late fees and reconnection charges are not wholly cost based because they are traditionally designed to act as a disincentive (punishment) for not paying on time. These lost revenue items are creations of rate design not cost of service and are commonly used to generate additional revenue for revenue requirement purposes, not cost recovery per se.

Since late fees and reconnection charges lack a solid cost-basis and logically, no related additional expenses have been incurred by the companies during the moratorium, revenue is the only measure that is available to make the company whole.

The distinction is that these deferrals are revenue, not an expense. When revenues are embedded in rates they are “grossed-up.” Which means they include the tax impact of the costs that are being recovered. Therefore, any deferral of revenues in this docket should be “grossed-down” (reduced) to avoid the double collection of taxes when those amounts are amortized into the rate case income statement for recovery. This is distinct from those deferred expenses which are based on specific identifiable costs and are not grossed-up, that is, they do not include any embedded tax impact. As a minimum, carrying costs should be calculated solely on the deferred revenue less taxes.

Late Fee Deferral Cap

The maximum accrual of deferred late fees (deferral cap), set out in paragraph 25(b) of the stipulation, states that the accrual cannot exceed the amount of late payment fees included in the utility’s last general rate case. However, the deferral cap should also be reduced by the tax gross-up factor to prevent double collection of income taxes when the regulatory asset is amortized into the income statement.

² Traditionally late fees have been used by the general business community to provide a disincentive, i.e., financial punishment, for not paying on time. Late fees and reconnections charges, which have lower costs than the resulting revenues, effectively subsidizes the system’s other customers. Regulators are beginning to question their continued use because of their regressive nature (meaning lower-income people are affected more and can end up paying more than those with higher income). *see KY PSC 2020-00085 (Sept 9, 2020)*

I would also ask that the historical late fees used in the deferral cap be bifurcated between residential and small commercial to prevent any cross-subsidization by small business of the residential class.

Thank you for the opportunity to comment and allowing me to voice my concerns regarding the COVID-19 related deferrals and their impact on the Oregon's small business community.