Docket No. AR 673 – Context for Workshop 2

Background and Docket Status

The purpose of Docket No. AR 673 is to establish Oregon Administrative Rules (OARs) to implement Senate Bill (SB) 845 (2025). This new law enables the Oregon Public Utility Commission (PUC) to order the sale of a regulated water utility that fails to provide safe and adequate service. The first workshop in the informal phase of Docket No. AR 673 was held on March 26, 2026. Several stakeholders attended to provide comments, and written comments were also filed by California Water Service Group, Inc. (Cal Water) and NW Natural Water following the workshop. Staff appreciates each stakeholder's participation and all feedback that has been shared. This document summarizes and addresses the issues raised. Staff's current draft of proposed rule language is also attached.

Context of PUC-Ordered Sale

An ordered sale under SB 845 is intended to serve as a last-resort tool to protect customers' access to potable water. Before such a sale could occur, a PUC-regulated water utility would need to fail to provide safe and adequate service, fail to correct those deficiencies after receiving a Commission order, and fail to pursue the alternative remedies available under the law to avoid a sale. The issues at stake would involve conditions that compromise the safety or adequacy of potable water service and may pose unreasonable risk to health or safety. Consequently, the circumstances giving rise to a PUC-ordered sale are expected to be serious.

Identified Concerns

Many of the concerns raised by stakeholders relate to the potential difficulties of selling an affected water system. A water utility subject to a PUC-ordered sale would likely be experiencing significant operational or infrastructure deficiencies that may require substantial and timely investment to correct. Such a system may also be small, limiting the

customer base from which these costs could be recovered (currently, only three PUC-regulated water utilities serve more than 4,000 customers, while most serve fewer than 200). Consequently, a utility facing an ordered sale may not be an attractive acquisition for potential buyers. Nevertheless, if all other alternatives have been exhausted and a sale is the only viable option to protect customers, identification of a willing purchaser is essential. While SB 845 authorizes the PUC to order the sale of a water utility, the PUC cannot compel an unwilling buyer to purchase. OARs related to SB 845 must protect customers while allowing the Commission sufficient flexibility to address unusual and dire circumstances appropriately.

Rate Base

The potential inclusion of acquisition adjustments in rate base was a main concern expressed by stakeholders. An acquisition adjustment (also known as "goodwill") refers to the difference between the utility's net book value and the purchase price. Currently, under OAR 860-036-2130, the Commission may consider including some or all of an acquisition adjustment in rate base based on the benefit to customers and the public interest. However, the approval of such inclusions is not common. Furthermore, the included amount would typically be determined during the first rate case following the acquisition—a process that may take up to nine months to complete.

Stakeholders in this docket argue that establishing clear criteria for approving acquisition adjustments and pre-approving specific amounts would give potential buyers greater certainty and increase the likelihood of attracting a qualified purchaser. Stakeholders also noted that initial capital investments will likely be required to bring the system into timely compliance, and that a buyer would be more willing to undertake those investments if it had advance assurance that the related costs would be recoverable.

Rates and Timeliness

An ordered sale would need to be handled efficiently so the underlying safety and adequacy of service problems could be corrected quickly. Stakeholders suggested the use of certain mechanisms that could enable swift rate recovery prior to a rate case. Again,

these mechanisms may provide assurances that could attract potential buyers. Mechanisms suggested by stakeholders include:

- Interim Rates: Under ORS 757.215, the Commission may allow a temporary rate increase while a rate case is underway. If the rate case reveals that a portion of the interim rate was not justified, that portion would be subject to refund.
- Line Item/Tariff Rider: The Commission could authorize the recovery of a specific amount outside of the rate case process. This amount could be recovered as a standalone line item on customer bills rather than being incorporated into regular rates.
- Rate Consolidation: If a purchaser already operates PUC regulated water utilities, the Commission could allow the purchaser to combine the acquired utility under an existing PUC-approved rate schedule.
- Automatic Adjustment Clause: Under ORS 757.210, the Commission may authorize rate changes for specific costs outside of the rate case process. These mechanisms are subject to Commission review at least once every two years.

It may be appropriate to enact such mechanisms to enable the timely restoration of service to customers. Mechanisms such as interim rates could also provide a purchaser some relief in cases where the acquired utility's rates are outdated, or where the acquired utility is not already rate-regulated by the Commission at the time of the sale.

Penalties

Cal Water noted that a buyer in a PUC-ordered sale would be inheriting a distressed system with known violations. Consequently, Cal Water states that the new owner should not be assessed penalties associated with non-compliant issues that are present at the time of acquisition.

Other Concerns

The below items were raised and considered by Staff, but may not fully addressed in the draft rules due to being outside the Commission's purview or otherwise not needed.

No Willing Buyers

Staff and stakeholders share concern regarding the potential that no buyer will purchase a distressed system. While the Commission could potentially allow certain cost recovery mechanisms that might make a sale more attractive for a potential buyer, ultimately, the Commission cannot compel an acquisition.

Ownership Dispute

A PUC-ordered sale situation could arise when a water utility owner passes away or otherwise becomes incapacitated. In such situations, inheritance-related ownership disputes may arise, further complicating an already difficult situation. However, the Commission does not possess the authority to decide such matters, and the OARs developed in this docket would be unable to resolve such a situation. The Commission would need to utilize its existing authority—such as the ability to appoint a regent or carry out emergency repairs—to protect customers as thoroughly as possible in the interim.

Safe and Adequate Service – Wildfire Resilience

Wildfire concerns have increasingly affected water customers in recent years. Such concerns relate to both the quantity of available water and the electricity needed for pumping during power outages. The PUC does not currently require water utilities to maintain the ability to combat wildfires, and such a requirement would generally be untenable for a typical community water system. Staff clarifies here that it would not consider a water utility to be in violation of "safe and adequate service" standards solely based on the utility's wildfire resiliency status.

Funding

Cal Water states that the PUC should approve or encourage the use of State Revolving Funds or grant funding, which an investor-owned utility may typically be ineligible for. While the PUC is generally unlikely to dispute the inclusion of low-cost funding for necessary investments in customer rates, it has no authority to require outside entities to extend such funding.

Staff's Draft Rules

To address stakeholder concerns and increase clarity for potential buyers, Staff's draft rules clarify that the Commission will determine the rate base of a water utility subject to a Commission-ordered sale. The Commission could consider the inclusion of acquisition adjustments or other special cost recovery mechanisms in rate base. Again, the Commission's existing rules allow for the inclusion of acquisition adjustments "based on the benefit to the customers being acquired and the public interest on a case-by-case basis." The same standard would apply in an ordered sale. However, due to the potentially serious circumstances surrounding such a situation, the benefits of allowing an acquisition adjustment may be greater than in a typical water utility transaction.

Staff's draft rules also include clarifications to address Cal Water's concerns regarding penalties originating from the prior owner's actions. Additionally, OAR 860-036-1710 is modified to increase the allowable amount for Commission-funded emergency repairs from $5,000 per biennium to $100,000 per biennium, as provided in SB 845.

Staff anticipates the new rules related to Commission-ordered sales will be placed in a new Division 225 of Chapter 860.

Staff's Draft Rules

860-225-0000 Scope and Applicability of Rules

The rules in this division prescribe the rules and procedures applicable to a Commission-ordered sale of a water utility pursuant to ORS 757.066.

860-225-0010
Definitions for OAR 860-225-0000 to OAR 860-225-0050

(1) "Alternative actions" means actions a water utility may take to avoid a Commission-ordered sale as provided in ORS 757.066(5).

(2) "Acquiring entity" means a person or company taking ownership of a water utility subject to a Commission-ordered sale.

(3) "Acquisition adjustment" means some or all of the difference between the net book value and the purchase price, as provided in OAR 860-036-2130.

(4) "Initial response" means the water utility's response to a notice of intent issued by the Commission.

(5) "Notice of intent" means notice provided to a water utility specifying the Commission's intent to open a contested case as provided in ORS 757.066(4).

(6) "Ordered sale" means a sale of a water utility directed by the Commission under ORS 757.066 following a contested case.

(7) "Water utility" is defined as provided in OAR 860-036-1010.

860-225-0020

Commission Notice of Intent to Open Contested Case

(1) If a water utility is found to be in violation of statutory or regulatory standards affecting the safety and adequacy of potable water service, the Commission will issue written notice to the utility prior to opening a contested case to determine whether to order the sale of the water utility. The notice must include the following information:

a. Specific violations committed by the utility;

b. Conditions impairing the safety and adequacy of service, if relevant;

c. Alternative actions the Commission finds acceptable;

d. Instructions for filing an initial response; and

e. The Commission's intent to open a contested case.

(2) The water utility must provide an initial response to the Commission within the number of days specified in the notice of intent. The initial response must identify alternative action(s), if any, the water utility intends to take to remedy the condition or violation.

(3) If the initial response indicates that the water utility will pursue alternative action(s), it must provide a detailed plan for taking such action(s), which include:

a. A description of the anticipated timeline to implement the alternative action(s) with milestones;

b. The known or estimated cost of completing the chosen action(s), including how the necessary funds will be secured, and;

c. A description of any interim efforts the water utility will take to ensure safety and adequacy of service while the alternative action(s) are pursued.

(4) If the water utility fails to provide its initial response within the timeframe specified in the notice of intent, the Commission may immediately open a contested case to consider whether to order the sale of the water utility.

860-225-0030

Contested Case Hearing and Ordered Sale

(1) If after a hearing the Commission orders the sale of a water utility, the order must include:

a. Process for sale for sale of the water utility;

b. Required timelines, if any, for an acquiring entity to resolve safety and adequacy conditions or violations;

c. Any interim action(s) necessary to protect customer health or safety.

(2) In establishing a sale process, the Commission may consider:

a. Type and severity of the water utility's conditions or violations;

b. Anticipated amount of time needed to correct conditions or violations;

c. Utility size and complexity;

d. Potential impacts to customers;

e. Financial condition of the water utility; and

f. Any other information deemed relevant by the Commission.

860-225-0040

Transactions under this Division

(1) Applications for sale, lease, assignment, mortgage, disposition, encumbrance, 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.

(2) After receiving an application for approval of an ORS 757.480 transaction, the Commission must open a proceeding to adjust the water utility's rate base.

a. The Commission may require the water utility to obtain professional appraisal of system value from an independent third party.

b. The Commission may consider whether the public interest supports use of special cost recovery mechanisms.

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.

Proposed Amendments to Existing OARs

860-036-1710

Expenditure of Charges Collected Under ORS 756.310 to Make Emergency Repairs

~~(1)~~ The Commission may use up to **$100,000** per biennium of the charges collected under ORS 756.310 to make emergency repairs for water utilities **under the conditions set forth in ORS 757.068**. ~~The Commission may expend monies under the provisions of this rule if the Commission determines that repairs to the water system are necessary for the health and safety of the customers or the water utility.~~

(2) The Commission will seek recovery of charges used under this rule from the water utility providing service. Interest will not accrue on the outstanding balance.

~~(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the charges are expended.~~

Statutory/Other Authority: ORS 183, 756 & 757

Statutes/Other Implemented: ORS 756.040, 757.068 & 757.310