

**PUBLIC UTILITY COMMISSION OF OREGON
AHD REPORT
PUBLIC MEETING DATE: November 30, 2021**

REGULAR **CONSENT** **RULEMAKING** X **EFFECTIVE DATE** N/A

DATE: November 24, 2021

TO: Public Utility Commission

FROM: Nolan Moser **SIGNED**

THROUGH: Diane Davis

SUBJECT: OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. AR 648) Wildfire Mitigation Rules

AHD RECOMMENDATION:

Adopt the proposed order and permanent rules as shown in Attachment A.

DISCUSSION:

This rulemaking follows from Order No. 21-299, in which the Commission opened this formal rulemaking on the recommendation of Staff. In June 2021, the Oregon Legislature passed Senate Bill (SB) 762, and Governor Brown signed SB 762 into law on July 19, 2021. SB 762 is a comprehensive bill establishing standards for Wildfire Protection Plans for electric utilities, statewide risk analysis, and wildfire smoke mitigation. The legislation directs the Commission to develop rules to implement its provisions and requires that initial Wildfire Protection Plans be filed annually, beginning December 31, 2021.

The Commission is currently in the informal phase of rulemaking for Wildfire Protection Plans (Docket Number AR 638) based on requirements set forth by the Governor's Executive Order 20-04. AR 638 was opened prior to the passage of SB 762 on August 17, 2020. Executive Order 20-04 directed the Commission to evaluate utility Wildfire Protection Plans. Staff developed a schedule planning adoption of rules in AR 638 for the spring of 2022.

The rules recommended for adoption address the specific requirements in SB 762 and articulates the process and procedure for submitting Wildfire Protection Plans. This represents phase I of a two phase rulemaking process. The existing rulemaking (AR 638) will proceed as Phase II and will provide for enhancements to the basic requirements included in AR 648 rules.

A comment deadline for these rules was set for October 22, 2021. Written comments were received from the Joint Utilities (Idaho Power Company, Portland General Electric Company, and PacifiCorp, dba Pacific Power). Additional comments were filed by Pano, Central Lincoln People's Utility District and Tillamook People's Utility District, Oregon Solar + Storage Industries Association, and Northwest Environmental Defense Center.

PROPOSED COMMISSION MOTION:

Adopt new permanent rules and the order as set forth in Attachment A of this memo.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 648

In the Matter of
Rulemaking for Phase I Wildfire Mitigation.

ORDER

DISPOSITION: NEW RULES ADOPTED

I. SUMMARY

In this order we adopt rules to govern wildfire mitigation as required by Senate Bill 762 (2021). SB 762 establishes requirements for utilities to file wildfire protection plans with the Commission annually, beginning December 31, 2021.

The rules establish procedures for the annual filing of wildfire protection plans and outline required plan elements. Adoption of these rules signals the completion of phase I of the wildfire mitigation rule development process. Though the rules we adopt here are permanent rules, a long-term effort to develop detailed requirements continues in docket no. AR 638. The final rules we will review and consider in AR 638 are intended to supplement the largely procedural rules we adopt through this order.

II. PROCEDURAL BACKGROUND

In June 2021, the Oregon Legislature passed Senate Bill (SB) 762, and Governor Brown signed SB 762 into law on July 19, 2021. On August 10 and 20, Staff filed a draft of the proposed AR 648 rules, and on August 31, 2021, Staff filed a recommendation to open a formal rulemaking to adopt permanent rules consistent with SB 762. On September 7, 2021, the Commission reviewed draft rules at its Regular Public Meeting. A Notice of Proposed Rulemaking Hearing (NOPR) was filed with the Secretary of State on September 14, 2021 and served on September 15, 2021, to the AR 638 and AR 648 service lists, the electric rulemaking notification list and certain legislators as required by ORS 182.335. Comments were received from stakeholders after the public meetings and publication of the NOPR.

Comments were filed by the Joint Utilities (Idaho Power Company, Portland General Electric Company, and PacifiCorp, dba Pacific Power). Additional comments were filed by Pano, Central Lincoln People's Utility District (CLPUD) and Tillamook People's Utility District (TPUD), Oregon Solar + Storage Industries Association (OSSIA), and Northwest Environmental Defense Center (NEDC). After reviewing these comments, the Administrative Hearings Division prepared an updated set of rules, which is included in this order as Appendix A.

III. DISCUSSION

On March 20, 2020, the Governor issued Executive Order 20-04, which in part directed the Commission to:

Evaluate electric companies' risk-based wildfire protection plans and planned activities to protect public safety, reduce risks to utility customers, and promote energy system resilience in the face of increased wildfire frequency and severity, and in consideration of the recommendations made by the Governor's Council on Wildfire Response 2019 Report and Recommendations[.]

This prompted AR 638, a comprehensive rulemaking to address risk-based wildfire planning and response by Oregon utilities. While the current procedural schedule in AR 638 anticipates rules to be finalized in spring 2022, SB 762 included a deadline of December 31, 2021, for utilities to file wildfire mitigation plans with the Commission. Accordingly, we opened this docket to adopt permanent rules to have basic requirements in place to adhere to SB 762's deadline, while continuing our more in-depth AR 638 rulemaking process to address a broader set of issues in more detail.

A. Requirements of Senate Bill 762

SB 762 requires that Oregon's investor-owned electric utilities create and update risk-based wildfire protection plans on a schedule created by the Commission. These plans must include the identification of areas of heightened wildfire risk, the means for mitigating wildfires, balancing costs, and reducing risk. Plans must also include identification of preventative actions and programs the utility will carry out to minimize risk of facility-caused wildfires. Utilities must identify a protocol for de-energizing power lines and adjusting their power systems. Plans must also contain descriptions of procedures, standards, and time frames used to inspect infrastructure and manage vegetation. Plans must identify costs and describe community outreach and public awareness efforts.

Consistent with the legislation, not more than 180 days after receipt of a plan or update the Commission will approve a plan or approve a plan with conditions as appropriate. Costs associated with wildfire mitigation are recoverable in rates from all customers.

Violations of SB 762 are subject to civil penalties up to \$10,000. The legislation requires that consumer-owned utilities will also have wildfire mitigation plans to be approved by their governing bodies, and will provide a copy of the plan to the Commission. Initial wildfire protection plans must be submitted to the Commission by investor-owned utilities no later than December 31, 2021; and consumer-owned utilities' initial wildfire protection plans must be submitted to their governing bodies no later than June 30, 2022.

B. Adopted Rules

Upon review of Staff's recommended draft rules, stakeholders submitted comments. The Administrative Hearings Division reviewed Staff's proposal, the submitted comments, and provided revised proposed rules in Appendix A, which we adopt through this order. Below, we describe the comments and changes recommended by stakeholders and where appropriate outline our resolution of issues as reflected in adopted rules.

1. Scope and Applicability of Rules

Stakeholder Comments

NEDC provided comments indicating that "good cause" for the issuance of a waiver under OAR 860-300-0001(2) is not described or explained. NEDC recommends adding language to the rule that would serve to describe good cause.

Resolution

We decline at this time to clarify under what circumstances these rules may be waived. Given the intended interim nature of these rules, and the degree to which they track the requirements of the legislation, we expect substantial compliance with these rules from electric companies in the near term. We will address any request for a waiver at the time such a waiver is offered and will consider the circumstances and context of the request to determine if the good cause for a waiver is warranted.

2. *Wildfire Protection Plan Requirements*

Stakeholder Comments

OSSIA argues that where utilities act to make the grid more resilient to wildfire, they should also act to enhance capacity for the utility system to host and facilitate distributed energy resources.

The Joint Utilities provided comments indicating support of the rules streamlining near-term requirements. Overall, they believe that the phase I language allows for flexibility in development and execution of each utility's wildfire protection plan. Idaho Power advocates for continued flexibility to develop plans appropriately tailored to individual service areas. The Joint Utilities have concerns over the 180-day approval period because, if it takes the full 180 days for the Commission to approve a plan filed on December 31, then fire season may be in effect by the time Commission approval occurs, causing any needed changes to be difficult to implement for that season.

NEDC requests the Commission use this rulemaking opportunity to address other environmental justice concerns that are also the subject of consideration in AR 638.

Comments from Pano request additions to the rules in reference to situational awareness measures and rule language that would outline what technology will be utilized by utilities.

CLPUD provided comment regarding issues surrounding vegetation requirements. These include difficulty in obtaining trained workers to meet trimming requirements and the varied need for trimming based on geographic location.

Resolution

We largely adopt Staff's recommendation regarding the content and timing of plans and decline to adopt in rules a shorter timeline for Commission action. We agree with the Joint Utilities that accelerated consideration of plans may be necessary to provide effective feedback for electric companies prior to the commencement of fire season. Accordingly, though we reflect in rule the timeline dictated by the legislature of 180 days for review of plans, we note that we may develop plan review schedules that allow for less time for Commission review. Electric companies can aid in this effort to ensure plans are approved and improved before fire season begins by filing plans as soon as these plans are available, rather than close to the December 31 deadline for filings.

Stakeholder requests for additional issues to be addressed and details to be outlined in these temporary rules should be advanced in AR 638. Given the interim nature of these rules, we

intend for them to be streamlined and tailored to the requirements reflected in legislation. Additional directives and nuance may be appropriate as part of long-term rules.

3. Cost Recovery

Stakeholder Comments

Joint Utilities request that cost recovery methods be flexible and more expressly stated in rules, while NEDC requests that the methods ensure timely recovery for the benefit of both ratepayers and utilities. NEDC requests that costs be categorized as operating costs to the utilities in order to protect ratepayers, specifically those who are part of environmental justice communities.

Resolution

Staff's proposed rule on cost recovery is sufficiently clear for these interim rules and is consistent with our general approach to review of utility expenditures. Prudent wildfire protection and prevention costs may be recovered through rate proceedings according to the generally applicable principles for considering rate recovery.

4. Other issues

Stakeholder Comments

Joint Utilities seek clarification on the relationship between phase I and II. They request that phase I clarify the specific time period and fire season for which the rules will apply and that phase II rules apply to 2023 and not 2022 fire season.

NEDC comments that consumer-owned utilities have undefined compliance deadlines and subsections should be added to govern consumer-owned utilities' (1) creation of plans, (2) conducting of risk assessments, and (3) submission of plans.

Finally, NEDC indicates that no rule describing penalties have been added to the rules even though SB 762 requires that civil penalties must be imposed by the Commission if there is a violation of the rules or of SB 762.

Resolution

The compliance requirements for consumer-owned utilities in final rules are a direct reflection of statute. We decline to add any additional requirements at this time for consumer-owned utilities. The civil penalty provisions of SB 762 are applicable even where not reflected in rule and are the same as any violation of our rules related to health and safety under ORS 757.035.

Our rules adopted by this order are permanent rules. However, due to time constraints associated with the directives of SB 762, these rules track closely to the requirements of the legislation and do not address the breadth or depth of issues expected to be addressed in the rules that result from AR 638. Upon conclusion of AR 638, we intend to supplement these interim rules. This is expected to occur in spring 2022, so that plans filed under the AR 638 rules can be filed no later than December 31, 2022, and approved in time for the 2023 fire season.

VI. ORDER

IT IS ORDERED that:

1. OAR 860-300-0001 through 860-300-0005 are adopted as set forth in Appendix A to this order.
2. The rules will become effective upon filing with the Secretary of State.

Made, entered, and effective _____.

Megan W. Decker
Chair

Letha Tawney
Commissioner

Mark Thompson
Commissioner

A person may petition the Public Utility Commission of Oregon for the amendment or repeal of a rule under ORS 183.390. A person may petition the Oregon Court of Appeals to determine the validity of a rule under ORS 183.400.

AR 648
Phase I Wildfire Mitigation Rules

OAR 860-300-0001

Scope and Applicability of Rules

(1) The rules in this division prescribe the filing requirements for risk-based Wildfire Protection Plans filed by a Public Utility that provides electric service in Oregon pursuant to ORS 757.005.

(2) Upon request or its own motion, the Commission may waive any of the rules in this division for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

OAR 860-300-0002

Wildfire Protection Plan Filing Requirements

(1) Wildfire Protection Plans and Updates must, at a minimum, contain the following requirements as set forth in Section 3(2)(a)-(h), chapter 592, Oregon Laws 2021 and as supplemented below:

(a) Identified areas that are subject to a heightened risk of wildfire, including determinations for such conclusions, and are:

(A) Within the service territory of the Public Utility, and

(B) Outside the service territory of the Public Utility but within the Public Utility's right-of-way for generation and transmission assets.

(b) Identified means of mitigating wildfire risk that reflects a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk.

(c) Identified preventative actions and programs that the Public Utility will carry out to minimize the risk of utility facilities causing wildfire.

(d) Discussion of outreach efforts to regional, state, and local entities, including municipalities regarding a protocol for the de-energization of power lines and adjusting power system operations to mitigate wildfires, promote the safety of the public and first responders and preserve health and communication infrastructure.

(e) Identified protocol for the de-energization of power lines and adjusting of power system operations to mitigate wildfires, promote the safety of the public and first responders and preserve health and communication infrastructure.

(f) Identification of the community outreach and public awareness efforts that the Public Utility will use before, during and after a wildfire season.

(g) Description of procedures, standards, and time frames that the Public Utility will use to inspect utility infrastructure in areas the Public Utility identified as heightened risk of wildfire.

(h) Description of the procedures, standards, and time frames that the Public Utility will use to carry out vegetation management in in areas the Public Utility identified as heightened risk of wildfire.

(i) Identification of the development, implementation, and administrative costs for the plan, which includes discussion of risk-based cost and benefit analysis, including consideration of technologies that offer co-benefits to the utility's system.

(j) Description of participation in national and international forums, including workshops identified in section 2, chapter 592, Oregon Laws 2021, as well as research and analysis the Public Utility has undertaken to maintain expertise in leading edge technologies and operational practices, as well as how such technologies and operational practices have been used develop implement cost effective wildfire mitigation solutions.

(2) A Public Utility's initial Wildfire Protection Plan must be filed no later than December 31, 2021 per section 5, chapter 592, Oregon Laws 2021. Subsequent Wildfire Protection Plans must be updated annually and filed with the Commission no later than December 15th.

(3) Within 180 days of submission, Wildfire Protection Plans and Wildfire Protection Plan Updates may be approved or approved with conditions through a process identified by the Commission in utility-specific proceedings, which may include retention of an Independent Evaluator (IE).

For purposes of this section, "approved" means the Commission finds that the Wildfire Protection Plan or Update is based on reasonable and prudent practices including those the Public Utility identified through Commission workshops and designed to meet all applicable rules and standards adopted by the Commission.

(4) Approval of a Wildfire Protection Plan or Update does not establish a defense to any enforcement action for violation of a commission decision, order or rule or relieve a Public Utility from proactively managing wildfire risk, including by monitoring emerging practices and technologies.

OAR 860-300-0003

Cost Recovery

All reasonable operating costs incurred by, and prudent investments made by, a Public Utility to develop, implement or operate a Wildfire Protection Plan are recoverable in the rates of the Public Utility from all customers through a filing under ORS 757.210 to 757.220.

OAR 860-300-0004

Consumer-owned Utility Plans

Municipal electric utilities, people's utility districts organized under ORS chapter 261 that sell electricity, and electric cooperatives organized under ORS chapter 62 must file with the Commission a copy of its approved risk-based wildfire mitigation plan or plan update within 30 days of approval from its governing body.