

**VIA ELECTRONIC FILING**

October 22, 2021

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
P.O. Box 1088  
Salem, Oregon 97301

Re: Docket AR 648 – Wildfire Mitigation Rulemaking, Phase I

Dear Filing Center:

Idaho Power, Portland General Electric Company, and PacifiCorp (“Joint Utilities”) are grateful for the opportunity to submit these comments into the record in the formal rulemaking phase of the Public Utility Commission of Oregon’s (“OPUC” or “Commission”) Docket AR 648 – Wildfire Mitigation Rulemaking, Phase I. These comments, which were previously filed in the informal phase of the rulemaking, are offered again with the goal of seeking clarity on specific rule language and timing.

The Joint Utilities thank OPUC Staff (“Staff”) for its ongoing effort and commitment to establishing thoughtful and effective wildfire rules. Staff has worked tirelessly to develop wildfire rules amid several hurdles, most recently a conflict in timing created by Oregon Senate Bill 762 (“SB 762”).

With respect to draft rule language as outlined in this docket, the Joint Utilities support Staff’s effort to streamline near-term requirements. The comments below seek to ensure a clear course of action and to help clarify objectives and timing with respect to Phases I and II of the wildfire rulemaking effort.

**Background**

The Commission opened Docket AR 638 in August 2020 to begin an informal rulemaking process related to mitigating wildfire-related risks to utilities, utility customers, and the public.<sup>1</sup> Following

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<sup>1</sup> Order No. 21-167 at 1-2.

the 2020 wildfire season, including the Labor Day fires, Staff recommended a two-track approach for the docket. Staff's proposal included establishing temporary wildfire rules for the 2021 fire season (now adopted and effective as of May 28, 2021) and a secondary track to establish permanent rules for the 2022 fire season.

In June 2021, Staff identified six topics for further discussion in the permanent rulemaking effort—wildfire risk analysis, Public Safety Power Shutoffs (“PSPS”), community engagement, vegetation management, system hardening and operations, and cost analysis. Monthly workshops were established for most of these topics to gather feedback in support of adopting permanent rules for Spring 2022.

As Staff's workshops commenced, the Oregon legislature passed SB 762, the wildfire bill that, among other actions, established minimum requirements for utility wildfire protection plans (“plans” or “protection plans”). The bill, signed into law by Governor Brown on July 19, 2021, requires that utilities file inaugural plans for the 2022 fire season no later than December 31, 2021.<sup>2</sup>

In response to the passage of SB 762, Staff halted the permanent wildfire rulemaking workshops and established the AR 648 docket to develop interim permanent rules adhering to the requirements and timing of the new law. On September 15, 2021, the OPUC adopted Staff's recommendation to open a rulemaking in AR 648, thereby commencing the formal rulemaking process.

The Phase II permanent rulemaking docket, AR 638, remains open to discuss and develop Phase II wildfire rules additional to those in SB 762.

### ***Phase I Proposal***

The Joint Utilities are grateful to Staff for proposing a streamlined approach in this interim rulemaking. The two-step process that Staff envisions—interim permanent year-end rules followed by permanent rules in Q2/Q3 2022—establishes reasonable near-term requirements while preserving the opportunity to develop additional rules around wildfire-related issues that warrant more in-depth discussion, such as PSPS and vegetation management.

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<sup>2</sup> SB 762, Section 5.

The draft Phase I language, foundationally from SB 762, is both logical and practical. Importantly, the Phase I language allows flexibility in development and execution of each utility’s Wildfire Protection Plan. For the Phase I and Phase II rulemakings, the Joint Utilities advocate continued flexibility to develop plans appropriately tailored to individual service areas, which, based on varying geography, topography, demographics, weather and climate, and fuel types, etc., may necessitate different approaches and solutions to wildfire mitigation and protection.

### ***Relationship Between Phase I and Phase II***

Recognizing that the wildfire rulemaking will continue to evolve, the Joint Utilities seek clarity on the relationship between Phases I and II. The Joint Utilities interpret that these interim permanent (Phase I) rules govern the inaugural Wildfire Protection Plans for the 2022 fire season and that the Phase II permanent rules will add or modify requirements to be applied to *subsequent* wildfire protection plans. That is, comments and additional rules adopted in mid-2022 would apply to the 2023 wildfire season, 2023 updates would apply to plans for the 2024 season, and so on. The Joint Utilities would appreciate confirmation that this interpretation aligns with Staff’s and the Commission’s understanding and intent.

Additionally, the Phase I language notes that the Commission “shall approve or approve with conditions” wildfire protection plans no later than 180 days after filing.<sup>3</sup> The Joint Utilities would point out that, should the Commission use the full time allowed, decisions on plan validity would be made at the start or just after the start of the 2022 wildfire season, limiting the ability to implement any changes in the same wildfire season. For example, a protection plan filed in December 2021 with a 180-day review period would place the plan’s approval directly in the 2022 fire season. Such timing would make any shifts in strategy or action difficult to enact before the following wildfire season.

Based on the aforementioned considerations, the Joint Utilities’ request that Phase I rules clarify the specific time period and fire season for which the rules will apply. Further, the Joint Utilities request that the Phase II rules and any Commission directive on wildfire plans apply to the 2023 (not the 2022) fire season, other than not meeting the requirements of the Phase I rules.

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<sup>3</sup> OAR 860-XXX-0002 (3)

### ***Cost Recovery Options***

Finally, the Joint Utilities call attention to the cost recovery language in Phase I, adopted from SB 762, which allows recovery options for costs to “develop, implement, or operate a wildfire protection plan.”<sup>4</sup> While the Joint Utilities are grateful to see cost recovery addressed in Phase I, the Joint Utilities seek additional clarity of the Commission’s intent for procedures and mechanisms.

The cost recovery language encompasses all phases of the wildfire protection plan process—from initial development to execution and ongoing operation. Plan costs will materialize over years, beginning with the early phase of plan development and extending into the future for long-lead and multi-year implementation programs, such as vegetation management or system hardening. Costs over extended periods of time are challenging from a recovery perspective, as early costs may be known with precision while later costs will be based on estimates, if known at all. In the wildfire rulemaking, a utility could identify near-term costs associated with Phase I plan development but be unable to accurately predict costs associated with Phase II because those rules are not yet established. To resolve this issue, the Joint Utilities favor a streamlined and flexible cost recovery approach, similar to emergency deferral requests or, alternatively, a blanket cost recovery approach providing utilities the opportunity to adapt such an approach to match costs and cost categories. A more open-ended option for cost recovery is likely to help simplify the multi-year and iterative nature of wildfire mitigation spending and prevent a series of individual cost recovery requests per utility.

In conclusion, the Joint Utilities would like to thank Staff for its ongoing commitment to the wildfire rulemaking effort. We look forward to further clarification of the Phase I language in the process of adopting permanent interim rules.

Respectfully Submitted,

*/s/ Alison Williams*

Alison Williams  
Regulatory Policy & Strategy Advisor  
Idaho Power

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<sup>4</sup> OAR-860-XXX-0003

Public Utility Commission of Oregon

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*/s/ Doug Dockter*

Doug Dockter

Transmission & Distribution Engineering & Reliability Senior Manager

Idaho Power

*/s/ W.M. Messner*

William M. Messner

Director, Wildfire Mitigation & Resiliency

Portland General Electric

*/s/ Amy McCluskey*

Amy McCluskey

Managing Director, Wildfire Safety & Asset Management

PacifiCorp

Cc: OPUC Filing Center