

**PUBLIC UTILITY COMMISSION OF OREGON
AHD REPORT
SPECIAL PUBLIC MEETING DATE: August 4, 2022**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: August 2, 2022

TO: Public Utility Commission

FROM: Katie Mapes

THROUGH: Diane Davis and Nolan Moser **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. AR 638) Adopt Rules for Risk-Based Wildfire Protection Plans and Planned Activities Consistent with Executive Order 20-04.

AHD RECOMMENDATION:

Adopt the proposed permanent rules as attached in Appendix A.

DISCUSSION:

Issue

Whether the Public Utility Commission of Oregon (Commission) should adopt the amended and proposed rules addressing risk-based Wildfire Mitigation Plans consistent with Oregon SB 762 in Division 24 and 300 of the Commission's rules.

Applicable Law or Rule

Pursuant to ORS 756.060, the Commission "may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission..."

SB 762 was passed by the legislature in 2021. It lays out standards for utility Wildfire Protection Plans, statewide risk analysis, and wildfire smoke mitigation. Sections 1 through 6(b) of SB 762 list specific requirements to be included in electric utility Wildfire Protection Plans and also direct the Commission to promulgate rules more specifically delineating the requirements for those plans. This rulemaking is one of several where the Commission has undertaken to fulfill those directives.

Analysis

Background

SB 762 required utilities to file their first plans no later than December 31, 2021. To allow that to proceed smoothly and to ensure that near-term protections were in place, the Commission adopted temporary rules in Order No. 21-167 governing Public Safety Power Shutoff (PSPS) protocols and ignition reporting requirements. Those rules expired on November 24, 2021.

On August 31, 2021, a separate rulemaking was opened in docket AR 648 to adopt permanent rules addressing certain procedural and filing requirements in SB 762. Ultimately in that docket, the Commission adopted new rules in Order No. 21-440 that pertain to basic wildfire planning requirements and processes.

This proceeding was opened on August 25, 2021, in order to provide additional detail and requirements for wildfire mitigation and planning. During the informal phase of the rulemaking, Commission Staff conducted a number of workshops on issues such as vegetation management and system hardening, risk analysis, PSPS, and community engagement. At the end of the scoping period, Staff concluded that much of the detail in the temporary rules for PSPS and Community Engagement was overly prescriptive and then held a workshop to discuss the revised scope and schedule.

On September 29, 2021, Staff filed its initial draft proposed rules. Subsequently, it held a stakeholder workshop and received written comments from numerous stakeholders. It presented its proposed rules to the Commission at a Special Public Meeting on January 18, 2022. At that time, the Commission adopted Staff's recommendation and opened a formal rulemaking. A Commission workshop was scheduled to identify alternatives to the "Joint Inspection" concept in the rules, by which utilities and communications providers would be required to jointly inspect co-located facilities for fire risk. That workshop was held on February 8, 2022.

Following the opening of the formal phase of the rulemaking and given the importance of ensuring that PSPS rules were in place in time for the 2022 wildfire season, this proceeding was bifurcated—the PSPS rules contained in Division 300 of the rules were put on an expedited track and considered separately from the remaining Division 300 rules and the Division 24 rules. The PSPS rules were adopted, filed with the Secretary of State, and became effective on May 24, 2022.

In the meantime, the Commission's Administrative Hearings Division (AHD) conducted proceedings on the "other than PSPS" rules in Division 24 and Division 300 that are the subject of this report. During that time, we held two workshops and received several rounds of written comments. We also held a final Commission workshop on those rules on June 2, 2022. Following the Rulemaking Hearing on June 2, this proceeding was narrowed again and the issue of whether and how local ordinances might need to be

preempted in High Fire Risk Zones (HFRZs) will be reserved for a later stage of the proceeding. Final written comments were due on July 21, 2022.

Proposed Rules

Throughout this proceeding a variety of participants, including investor and consumer-owned utilities, communications companies and industry groups, and municipalities, have provided useful comments and feedback on the proposed rules. AHD incorporated that feedback and the work done by Commission Staff into revised proposed rules that were produced to participants, after which they provided final written comments. In this report, we lay out the issues for decision and AHD's recommendations as to associated modifications to the rules.

Division 24 Issues

Amount of Surcharge for Repairs to Co-Located Facilities

The participants in this proceeding have different views about the appropriate amount of a surcharge an electric utility can assess if it undertakes repairs or remediation of ignition risk on co-located facilities. As it stands, the pole attachment portion of the Commission's rules (which we have noticed as subject to potential change in this proceeding) state in OAR 860-028-0150(2):

A pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(5). Sanctions imposed under this section must not exceed 15 percent of the actual cost of corrections incurred under OAR 860-028-120(5).

Proposed rules impose a 25 percent surcharge. The communications industry groups participating in this proceeding—CTIA and the Oregon Cable Telecommunications Association (OCTA)—advocate that a maximum surcharge of 15 percent be allowed. OCTA notes the conflict with the provision cited above and states that the Commission should limit the 25 percent surcharge to work done on foreign-owned reject poles. CTIA also asks that to the extent the Commission is seeking to incentivize repair of particular issues, such as deteriorated poles, it limits the 25 percent surcharge to those items only. CTIA notes its concern that it will not have an opportunity to correct "immediate" violations under the rules.

Conversely, the electric utilities that have participated in this docket argue for retention of the 25 percent surcharge as it appears in the proposed rules. The Joint Utilities' comments state that the higher fee reflects the high-priority nature of the work in HFRZs. The comments filed by the Oregon Municipal Electric Utilities Association, the Eugene Water and Electric Board, and the Oregon People's Utility District Association (collectively, COUs) argue that the 25 percent surcharge would communicate the

urgency related to violations in HFRZs and that the current 15 percent adder does not appear to be working to incentivize those repairs.

AHD Recommendation:

We recommend that the Commission retain the 25 percent surcharge in the proposed rule as it stands in order to provide an incentive for pole attachers and the owners of foreign poles to fix issues in a timely manner. However, we also recommend that entities subject to the surcharge be able to apply for waiver of that surcharge in situations where it may not be appropriate, such as where an electric utility took immediate action to remedy an ignition hazard that the equipment owner could not have known about. AHD recommends that the Commission explicitly acknowledge the opportunities for waiver of this provision and others for good cause.

Applicability of Rules to Municipally-owned Facilities

The City of Portland (City), which has participated in this proceeding as a stakeholder, filed comments describing certain co-located facilities with Portland General Electric (PGE)—namely a 10-mile 57 kV line that the City contracts with PGE to maintain. The City is concerned that the proposed rules would allow PGE to identify an ignition risk and then “if/when” the City cannot complete the repair within 180 days, “PGE could perform the work itself, bill the City and charge 25% extra.” The City notes that the maintenance budget for these facilities comes out of the City’s general fund.

The City asks that equipment owned by municipal governments be excluded from Sections 8-10 of the proposed OAR 860-024-0018 and also suggests that “heightened wildfire risk” be better defined using federal or independent organization standards.

AHD Recommendation:

We recommend that the Commission not adopt the City’s proposed changes to the rules. The changes the City recommends could lead to ignition hazards being left in place in HFRZs for extended periods of time. We do, however, recommend clarifying that the City has the ability to use the new Complaint process in the rules to request a swift determination from the Commission if it believes a utility has designated an ignition hazard in error, as well as to ask for a waiver of any surcharge it has been charged. In addition, because the Wildfire Mitigation Plans themselves will further define what constitutes an ignition hazard and will be subject to the Commission’s approval, we do not recommend defining that risk using federal or independent organization standards at this time.

Abandoned Facilities

OCTA expresses concerns that the proposed rules do not sufficiently obligate electric utilities to reach out to third-party owners prior to deeming the facilities in question

“abandoned.” It requests that the language in OAR 860-024-0018(12) be amended to read (proposed additions underlined):

If an Operator of electric facilities discovers a violation in a HFRZ that correlates to a heightened wildfire risk and is unable, after good faith efforts, to ascertain who the pole owner or equipment owner is and to contact such owner; or if that pole owner or equipment owner is no longer a going concern with a legally responsible successor, then it is the obligation of the Operator to remove that equipment or otherwise remedy the condition correlating to a heightened risk of ignition.

The Joint Utilities express additional disagreement with this section. First, they note that the term “a going concern” may be confusing and potentially lead to misinterpretation. Second, the Joint Utilities believe that the *obligation* to remove abandoned equipment will serve as an incentive to abandon that equipment. They request that the wording be changed to state that the Operator “*may* remove the equipment.”

The Joint Utilities also take issue with the “abandoned facilities” clause in proposed rule OAR 860-024-0060(6). That provision reads:

If at the conclusion of the Complaint process, the Commission determines that the facilities are not the responsibility of the Respondent and/or that the Respondent is no longer a going concern such that it is capable of remedying the violation, than the Commission may deem the facilities “abandoned” and require the electric Operator of the facilities to remedy the electric ignition hazard in accordance with OAR 860-024-0018(10).

The Joint Utilities argue that this provision should be deleted, noting that “it is unclear how a Complaint could be filed against an entity that is not a ‘going concern’ and how an entity that is not a ‘going concern’ could respond to a complaint.” The Joint Utilities also note that the Commission already has a pole attachment rule that allows a pole Owner to request an order from the Commission authorizing removal of a pole Occupant’s attachments that they believe makes this provision unnecessary. That rule is OAR 860-028-0180 and applies to pole occupants that are not government entities; it provides only for requests for authorization to remove pole attachments.

AHD Recommendation:

The language proposed by OCTA is a reasonable clarification and we recommend adopting it.

We do not recommend adopting the Joint Utility’s proposed revisions, which could mean that some ignition hazards are left in place because no entity has an obligation to remedy them. As an alternative to the current language that the Joint Utilities object to,

the term “going concern” could be replaced with a term such as “financially solvent entity” to further clarify the provisions in which it occurs.

Demonstration of Heightened Wildfire Risk

OCTA seeks to amend the proposed rules to require that a Complaint brought under the new process must demonstrate that the “alleged violation(s) correlate(s) to a heightened wildfire risk in an HFRZ.”

The rule currently requires that the Complaint provide the written notice sent to Respondent and that notice must include “an explanation of how the attachment violates the Commission safety rules.” CTIA suggests that this provision be revised to also state “including how the violation is related to increased wildfire risk in the HFRZ.” That, it states, will provide greater clarity for attachers “as to why their attachment was dealt with under the Division 24 HFRZ rules rather than via standard operating procedures under the Commission’s rules.”

AHD Recommendation:

We recommend rejecting OCTA’s request in an effort to keep the complaint process as streamlined as possible so that issues can be queued up quickly for Commission decision. We recommend adopting CTIA’s formulation and requiring the notice of violation itself to include a brief description of the cause of the increased wildfire risk in the HFRZ. Since that notice will subsequently be submitted to the Commission as part of any complaint proceeding, that information will then be before the Commission as necessary.

Scope of Complaint Process

The COUs do not object to the Complaint process being accessible to third-party equipment owners, but do note that “the scope of the complaint should be spelled out in the rule.” For example, the complainant should not be permitted to dispute or bargain down imposition of the surcharge authorized by OAR 860-024-0018(10).

AHD Recommendation:

AHD recommends that the Commission clarify that complaints may contest the *applicability* of the surcharge but not the appropriate percentage in order to keep these proceedings streamlined. However, waiver requests should be entertained for good cause. No change to the rule is necessary, this clarification can be made through the Commission’s order.

Definitions of Safety Standards

The proposed rules reference the concept of “Good Utility Practice,” which is defined in OAR 860-024-0001(3) as:

a practice, method, policy, or action engaged in or accepted by a significant portion of the electric industry in a region, which a reasonable utility official would expect, in light of the facts reasonably discernable at the time, to accomplish the desired result reliably, safely and expeditiously.

That definition appears in at least one other division of the Commission’s rules. Several participants commented stating that they would prefer that the term “Good Utility Practice” be substituted with a term from the National Electric Safety Code (NESC) – “Accepted Utility Practice.” They would take a definition from the NESC for that term; as proposed by each of the participants who commented on this issue, it would read:

“Accepted Good Practice” means a practice based on given local conditions known at the time by those responsible for the construction or maintenance of the communication or supply line and equipment.

Several reasons are cited for this. The COUs argue that the definition of Good Utility Practice “may not account for regional differences in approach by consumer-owned utilities (COUs) vs. investor-owned utilities (IOUs).” They also state that “[i]t makes sense to hold electric operators to a higher standard with respect to our own equipment versus equipment owned by telecommunications or cable attachers.” The Joint Utilities argue that the term Good Utility Practice “is problematic when applied to the methods and practices used in conducting inspections in” an HFRZ given that “a utility must have the ability to tailor such inspections based on local conditions known at the time by those responsible for constructing and maintaining the utility’s lines and equipment.” The Oregon Joint Users Associate (OJUA) is concerned that the term “creates ambiguity” as to what constitutes a “significant portion of the electric industry in a region” and what a “reasonable utility official would expect.”

AHD Recommendation:

We recommend retaining the term “Good Utility Practice” and the associated definition. The definition of “Accepted Good Practice” proposed by commenters is vague and does not contain an operative standard against which the Commission can compare a utility’s actions. We do, however, believe the concept of local conditions could be added to the Good Utility Practice definition so that it references what “a reasonable utility official would expect, in light of the facts reasonably discernable at the time and given applicable local conditions.”

Correction Timelines

First, and most simply, the Joint Utilities and COUs seek to add language to OAR 860-024-0018(8)(b) that would allow them to impose a shorter correction timeframe in their notices to owners of co-located facilities where circumstances require it. More specifically, their new provision would read:

any violation which correlates to a higher risk of fire ignition shall be corrected no later than 180 days after discovery unless an occupant receives notification under OAR 860-028-0120(6) that the violation must be corrected in less than 180 days to alleviate a significant safety risk to any operator's employees or a potential risk to the general public.

CUB offers more substantial revisions to these provisions, to which the Joint Utilities replied in opposition. In particular, CUB would require:

- That repairs be prioritized by zones of highest wildfire risk and that that plan be subject to the Commission's approval.
- That where repairs are deferred, the operator file a request for deferral explaining why the violation poses little or no foreseeable risk of danger and include plan detailing how it will remedy each such violation.

The Joint Utilities note in their opposition that repairs that *do* pose a foreseeable risk are subject to the heightened correction timelines elsewhere in the rules and thus that prioritizing them by zones of highest wildfire risk is unnecessary.

Oregon Citizens' Utility Board (CUB) would change the timeline on which violations that correspond to a heightened risk of ignition shall be corrected from 180 days to no later than 60 days after discovery. The Joint Utilities oppose this as well, stating the proposed rules provide that violations will be corrected *no later than* 180 days and individual operators may establish quicker timeframes.

AHD Recommendation:

The Joint Utilities and COUs offer a reasonable clarification and cross-reference to an existing section of the rules, and we recommend adopting it.

We do not recommend adopting CUB's recommendations at this time. Utilities are already required to correct imminent hazards immediately and we do not think there is sufficient evidence warranting the necessity of a 60-day correction timeframe given the major steps the Commission is already taking. Similarly, given the existing correction timeframes that we recommend the Commission adopt, we do not believe it is

necessary at this time to require Staff to approve deferral requests or prioritization of repairs.

Limitation of Liability

The proposed rules add, at OAR 860-024-0018(12), a provision stating that “[n]othing in this section is intended to alter liability under existing law or under provisions contained in existing contractual arrangements between Owners, Occupants, and Operators.” While the participants generally agree that such a provision should exist, the COUs request that language be added stating “[n]or is anything in this section intended to require additional electric operator training to conduct the HFRZ Ignition Prevention Inspections of equipment not owned by the electric operator.” Similarly, the COUs request that language be inserted into the rules noting that “a reasonable electric operator will not be held to the same standard as telecommunications or cable operators when it comes to the inspection of telecommunications or cable equipment in HFRZs.”

AHD Recommendation:

We recommend rejecting this proposal. In the workshops conducted in this proceeding, participants discussed the type of ignition hazards created by pole attachments at some length. Our proposal for the framework in the current rules was based on an understanding that there are several discrete ways pole attachments can create an ignition hazard and that electric inspectors can and should be trained to recognize those. We believe that is central to ensuring that ignition hazards are spotted and remediated.

Issues Specific to COUs

In the proposed rules, AHD posed the question of whether OAR 860-024-0018(2) should be retained in the Division 24 rules in any form as opposed to being moved to Division 300 in its entirety. To the extent that provision is retained in Division 024, it would apply to consumer-owned utilities whereas the Division 300 provision does not. The provision, as contained in the proposed rules, states:

Operators of electric facilities will include details regarding their inspection programs and how they determine, and instruct their inspectors to determine, conditions that could pose an ignition risk in their annual wildfire mitigation plan.

The COU comments argue that this should be struck from the Division 24 rules and retained only in the Division 300 rules; other commenters concur. In particular, the COUs note that while this provision specifies annual updates, SB 762 states that COUs must update their plans regularly “on a schedule [their] governing body deems consistent with prudent utility practices.” Further, their plans are to be “approved by the

utility governing body” and then submitted to the PUC for informational purposes rather than approved by the PUC.

AHD Recommendation:

We agree with the COUs and others that this provision is more appropriate in the Division 300 rules and that it is not generally applicable to COUs. We recommend deleting it from the Division 24 rules.

“Adverse” vs. “Routine” Wind Conditions

The proposed rules require that minimum line clearances be maintained “[u]nder reasonably anticipated operational conditions, as well as adverse weather and wind conditions.” The Joint Utilities seek to insert the word “routine” before wind conditions in OAR 860-024-0016(4) and (6)(e). The Joint Utilities “request stakeholder discussion and clarity on how a utility should be expected to reasonably measure ‘adverse weather and wind conditions’” and “[i]n the absence of a reasonable explanation for the omission of the word ‘routine,’” propose to include it.

AHD Recommendation:

We recommend rejecting the proposed change by the Joint Utilities. Utilities should plan for certain adverse conditions when designing their system, including adverse wind conditions. However, we also recommend the Commission clarify that minimum line clearances in HFRZs must be maintained during reasonably foreseeable adverse wind conditions rather than any imaginable extreme adverse wind condition.

Inspection Requirements

The Joint Utilities have comments on the proposed rules’ inspection requirements several places. First, in OAR 860-024-0018(4)(b), which concerns HFRZ Ignition Prevention Inspections on transmission systems, the Joint Utilities seek to delete language that would have inspectors look for:

...violations of Commission Safety Rules and other circumstances that could lead to electrical ignition. Inspections must include an in-person component except and to the extent remote technology can conduct an equivalent enhanced inspection.

Second, the proposed OAR 860-024-0011(2)(c) requires electric utility operators to “[p]erform routine safety patrols of overhead electric supply lines and other accessible facilities for hazards consistent with Good Utility Practice and of detection quality materially equivalent to onsite inspection.” The Joint Utilities request that in addition to changing Good Utility Practice to “Accepted Good Practice,” as discussed above, that

the last clause of the quoted sentence—beginning with “and of detection quality”—be deleted.

The Joint Utilities propose striking the clause regarding violations of Commission Safety Rules “to ensure that these rules remain focused on ignition prevention.” They propose striking the in-person inspection requirements in both clauses on the theory that the addition of the term “Good Utility Practice” or “Accepted Good Practice” will be sufficient “to ensure that utilities will perform high-quality inspections.”

AHD Recommendation:

We propose rejecting the suggested deletions. As to the first, utilities are to specifically look for violations of Commission safety rules that could lead to electric ignition. As to the second, we believe in this instance it is important to create additional clarity around what types of inspections are required. Because remote inspection technology is developing and changing rapidly, it is important to clarify that it is allowable only when it does not provide less visibility into ignition hazards than an in-person inspection.

Minimum Vegetation Clearance Requirements

The proposed rules, in OAR 860-024-0016(1)(b)(A), define “readily climbable” as vegetation that, among other things, has limbs within 8 feet from the ground. The Joint Utilities argue that this is arbitrary and unnecessary and that it has not been vetted by stakeholders.

AHD Recommendation:

We agree with the Joint Utilities that the 8-foot standard should be deleted from the rules. While we understand that this was proposed by Staff in accordance with current practice and industry standards, in our opinion, at this point in time there is not sufficient evidence to depart from the current practice under which utilities consider individual circumstances when determining whether vegetation is “readily climbable.”

Right-of-Way Access for First Responders

The Joint Utilities express concerns about a provision addressing right-of-way access for first responders in OAR 860-024-0018(5). That section requires Operators of Electric Facilities to perform annual fire season “safety patrols” to assess potential risks including but not limited to “right of way access for first responders where feasible given the terrain.” The Joint Utilities are concerned that this could require utilities to create new first responder access where doing so would be unduly burdensome.

AHD Recommendation:

The intent of this provision is for fire safety patrols to ensure that *existing* right-of-way access for first responders is generally clear of hazards—*e.g.*, that a large fallen tree is noted and cleared from a route that would have previously been accessible to a fire vehicle. We recommend deleting the clause “where feasible given the terrain” from the provision and clarifying in the order the intent of the provision, which we believe is clear on its face.

Mapping

CUB filed comments discussing ways in which utilities map High Fire Risk Zones. While it does not propose specific changes to the rule language, it does raise questions about how best quantitative risk can be captured in the mapping done by utilities and whether the Commission’s rules have sufficient specificity to determine that process is followed. CUB also asked whether and to what extent the Oregon Wildfire Risk Explorer tool would be used in these plans. The Joint Utilities filed comments in reply stating that that statewide map is useful to understand but not comprehensive or fully reflective of wildfire risk due to the fact that it does not take into account individual utility systems.

AHD Recommendation:

While CUB has not asked for specific rule changes, we acknowledge these comments because we agree that the question of how utilities map fire risk on their systems is an important one going forward and one that should be refined from year-to-year in specific utility plans. We agree with the Joint Utilities that utilities need to consider multiple risk factors outside those on the statewide map, including their individual system configurations, as well as risk factors created by other local conditions that might not be transparent on the state map. Accordingly, we recommend taking no action at this time but that this issue be kept in mind during future Wildfire Mitigation Plan cycles.

Conductors Should Not Be Attached to Trees

Section OAR 860-024-0018(2) prohibits utilities from attaching utility supply conductors to “live trees” in HFRZs. OJUA has two comments on this provision. First, it states that it is “unclear why ‘live trees’ are mentioned but not dead trees.” Second, it states that it is unclear why the provision refers to “utility owned poles” as other entities, such as telecommunications companies or local governments, could also own poles to which utility supply conductors are attached. It recommends changing the language to read “[t]he supporting of supply conductors on trees shall be avoided.”

AHD Recommendation:

We agree that both points OJUA raises create ambiguity and thus recommend striking the words “live” and “utility owned” from the section so that conductors must be attached to poles, generally, rather than to trees. We do not recommend adopting OJUA’s language as that would eliminate any mandate or requirement coming out of the provision which it has not justified. We believe it is important to eliminate conductors attached to trees in HFRZs.

Ratepayer Impacts

In its comments, CUB raised a number of concerns regarding the ratepayer impacts of wildfire mitigation investments and proposed several edits to the Division 300 rules that it believes will mitigate those impacts. In particular, it proposes that the Wildfire Mitigation Plans include analysis of:

how action protects public safety; considers low-income and vulnerable populations; and promotes energy system resilience, with special attention to areas with high likelihood of PSPS.

CUB also would have the Wildfire Mitigation Plans contain a summary of the previous year’s expected costs and actual costs to date. And it would require the plans to include a “summary of safety violations and repair for the past two years.”

The Joint Utilities suggest that docket AR 653 is a better place to address these impacts and that the language in the proposed rules be left as is. It also notes that the safety summary CUB proposes appears to be for the entire state instead of HFRZs only and thus expands the scope of the plans.

Recommendation:

This proposal was made late in this proceeding and was not vetted in the workshops and stakeholder discussions. We recommend not adopting it at this time. Rather, we recommend the Commission clarify that this is an iterative process and that as more annual plans are filed—and as requests for rate relief are made related to those plans by utilities—there will be new issues raised and an evolution of how the issues are handled. The Commission could thus make clear that it is open to an additional rulemaking on this and other issues later when these issues can be fully considered.

Standards to be Applied

Section OAR 860-300-0020(3) of the proposed rules provides that Wildfire Mitigation Plans and Updates must be based on, among other things, “all applicable rules and standards adopted by the Commission.” The Joint Utilities would have the rules provide that only standards *adopted by rule* would be binding under this section.

Recommendation:

We recommend rejecting this proposal. The Wildfire Mitigation Plans and Updates should incorporate other Commission guidance as appropriate. Most basically, regulated electric utilities must file their plans with the Commission for approval. The orders approving those plans or requiring modifications to them may also provide standards that should be incorporated into future plans.

Risk-Analysis Items

First, CUB would require the Wildfire Mitigation Plan to include an analysis of “multiple wildfire risk models, a discussion of the wildfire risk model chosen, ignition data,” and, in addition to other already-specified items, a discussion of how the utility’s risk model makes decisions regarding wildfire ignitions. The Joint Utilities argue that they are already accomplishing these goals but that the proposed language provides an appropriate amount of flexibility as to how that gets done.

Second, OAR 860-300-0030 of the proposed rules requires utilities to account for “baseline” risks which include “elements of risk that are expected to remain fixed for multiple years.” “Climate” is included in that list rather than in the list of items constituting “seasonal wildfire risk.” The Joint Utilities have objected to this on the ground that climate is generally considered dynamic.

AHD Recommendation:

We recommend against including additional language about specific analyses to be performed at this time. This is another item where it might be more appropriate to include future requirements later after we have seen in some plan cycles whether the current analyses are sufficiently robust.

Second, we recommend adopting the two risk analysis lists as they are spelled out in the current proposed rules. While climate is certainly dynamic over time, it is broader than the particular climactic conditions that create wildfire risk in a particular season and which is captured in the “seasonal wildfire risk” category. To the extent necessary, the Commission should clarify that utilities preparing Wildfire Mitigation Plans should consider the dynamic aspects of climate as necessary in their seasonal wildfire risk assessments, and the rule as proposed is intended to capture that.

Wildfire Mitigation Plan Engagement Strategies

In OAR 860-300-0040, subsection (2)(a) requires utilities to “include plans to disseminate informational materials and/or conduct trainings” that cover PSPS issues and emergency preparedness. The Joint Utilities seek to strike the clause “and/or

conduct trainings” because they believe conducting trainings “falls outside the reasonable scope of the subsection’s intent.”

AHD Recommendation:

We recommend rejecting this change. The subsection is intended to require utilities to have an effective plan to disseminate information to the public. As drafted, it gives reasonable discretion to the utilities to develop such a plan that may or may not include in-person or on-line trainings.

Cost Recovery

OAR 860-300-0080 of the proposed rules states:

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

The Joint Utilities would add the following language, which tracks the language of SB 762, passed last year:

The commission shall establish an automatic adjustment clause, as defined in ORS 757.210, or another method to allow timely recovery of the costs.

AHD Recommendation:

We recommend rejecting this addition. While the current rule does reference statutory language, all it does point the utility towards the Commission’s rate setting procedures. Adding additional statutory language is unnecessary and could be confusing given that the question of how rate-related statutes apply is already before the Commission in other proceedings. Another option would be to delete this section altogether.

PROPOSED COMMISSION MOTION:

Adopt new permanent rules as set forth in Appendix A.

Division 300

AMEND: 860-300-0001

RULE TITLE: Scope and Applicability of Rules

RULE SUMMARY: Defines scope of Division 300 rules.

RULE TEXT:

(1) The rules in this division prescribe the filing requirements for risk-based Wildfire **Protection Mitigation** 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.

Statutory/Other Authority: ORS 183, ORS 654, ORS 756, ORS 757 & ORS 759

Statutes/Other Implemented: ORS 756.040, ORS 757.035, ORS 757.039, ORS 757.649, ORS 759.030, ORS 759.040 & ORS 759.045

AMEND: 860-300-0020

RULE TITLE: Public Utility Wildfire ProtectionMitigation Plan Filing Requirements

RULE SUMMARY: Outlines requirements of a plan.

RULE TEXT:

(1) Wildfire ~~Protection~~**Mitigation** Plans and Updates must, at a minimum, contain the following requirements as set forth in Sections 3(2)(a)-(h), chapter 592 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, **including a PSPS communication strategy consistent with OAR 860-300-0040 through 860-300-0006.0050,**

(f) Identification of the community outreach and public awareness efforts that the Public Utility will use before, during and after a wildfire season, **consistent with OAR 860-300-00050040 and OAR 860-300-00060050.**

(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, **consistent with OAR 860-024-0018.**

(h) Description of the procedures, standards and time frames that the Public Utility will use to carry out vegetation management in areas the Public Utility identified as heightened risk of wildfire, **consistent with OAR 860-024-0016.**

(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 to develop and implement cost effective wildfire mitigation solutions.

(k) Description of ignition inspection program, as described in Division 24 of these rules, including how the utility will determine, and instruct its inspectors to determine, conditions that that could pose an ignition risk on its own equipment and on pole attachments.

(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. Wildfire Mitigation Plans must be updated annually and filed with the Commission no later than December 31 of each year. Public Utilities are required to provide a plan supplement explaining any material deviations from the applicable Wildfire Mitigation Plan acknowledged by the Commission. 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.

(3) Within 180 days of submission, Wildfire **ProtectionMitigation** 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 **ProtectionMitigation** Plan or Update is based on reasonable and prudent practices including those the Public Utility identified through Commission workshops **identified in SB 762, Section 2,** and designed to meet all applicable rules and standards adopted by the Commission.

(4) Approval of a Wildfire **ProtectionMitigation** 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.

Statutory/Other Authority: ORS 183, ORS 654, ORS 756, ORS 757 & ORS 759 Statutes/Other Implemented: 2021 Senate Bill 762, ORS 756.040, ORS 756.105, ORS 757.035 & ORS 757.649

ADOPT: 860-300-0030

RULE TITLE: Risk Analysis

RULE SUMMARY: Requirements for the review of risks associated with a plan.

RULE TEXT:

(1) The Public Utility must include in its Wildfire Mitigation Plan risk analysis that describes wildfire risk within the Public Utility's service territory and outside the service territory of the Public Utility but within the Public Utility's right of way for generation and transmission assets. The risk analysis must include, at a minimum:

(a) Defined categories of overall wildfire risk and an adequate discussion of how the Public Utility categorizes wildfire risk. Categories of risk must include, at a minimum:

(A) Baseline wildfire risk, which include elements of wildfire risk that are expected to remain fixed for multiple years. Examples include topography, vegetation, utility equipment in place, and climate;

(B) Seasonal wildfire risk, which include elements of wildfire risk that are expected to remain fixed for multiple months but may be dynamic throughout the year or from year to year; Examples include cumulative precipitation, seasonal weather conditions, current drought status, and fuel moisture content;

(C) Risks to residential areas served by the Public Utility; and

(D) Risks to substation or powerline owned by the Public Utility.

(b) a narrative description of how the Public Utility determines areas of heightened risk of wildfire using the most updated data it has available from reputable sources.

(c) a narrative description of all data sources the Public Utility uses to model topographical and meteorological components of its wildfire risk as well as any wildfire risk related to the Public Utility's equipment.

(A) The Public Utility must make clear the frequency with which each source of data is updated; and

(B) The Public Utility must make clear how it plans to keep its data sources as up to date as is practicable.

(d) The Public Utility's risk analysis must include a narrative description of how the Public Utility's wildfire risk models are used to make decisions concerning the following items:

Public Safety Power Shutoffs

(A) Vegetation Management;

(B) System Hardening;

(C) Investment decisions; and

(D) Operational decisions.

(e) For updated Wildfire Mitigation Plans, the Public Utility must include a narrative description of any changes to its baseline wildfire risk were made relative to the previous plan submitted by the utility, including the Public Utility's response to changes in baseline wildfire risk, seasonal wildfire risk, and Near-term Wildfire Risk.

(2) To the extent practicable, the Public Utility must confer with other state agencies when evaluating the risk analysis included in the Public Utility's Wildfire Mitigation Plan.

Statutory/Other Authority: ORS 183, ORS 756, ORS 757

Statutes/Other Implemented: ORS 756.040, ORS 757.035

ADOPT: 860-300-0040

RULE TITLE: Wildfire Mitigation Plan Engagement Strategies

RULE SUMMARY: Requirements for collaboration with certain public partners.

RULE TEXT:

(1) The Public Utility must include in its Wildfire Mitigation Plan a Wildfire Mitigation Plan Engagement Strategy. The Wildfire Mitigation Plan Engagement Strategy will describe the utility's efforts to engage and collaborate with Public Safety partners and Local Communities impacted by the Wildfire Mitigation Plan in the preparation of the Wildfire Mitigation Plan and identification of related investments and activities. The Engagement Strategy must include, at a minimum:

(a) Accessible forums for engagement and collaboration with Public Safety Partners, Local Communities, and customers in advance of filing the Wildfire Mitigation Plan. The Public Utility should provide, at minimum:

(A) One public information and input session hosted in each county or group of adjacent counties within reasonable geographic proximity and streamed virtually with access and functional needs considerations; and

(B) One opportunity for engagement strategy participants to submit follow-up comments to the public information and input session.

(b) A description of how the Public Utility designed the Wildfire Mitigation Plan Engagement Strategy to be inclusive and accessible, including consideration of multiple languages and outreach to access and functional needs populations as identified with local Public Safety Partners.

(2) The Public Utility must include a plan for conducting community outreach and public awareness efforts in its Wildfire Mitigation Plan. It must be developed in coordination with Public Safety Partners and informed by local needs and best practices to educate and inform communities inclusively about wildfire risk and preparation activities.

(a)The community outreach and public awareness efforts will include plans to disseminate informational materials and/or conduct trainings that cover:

(A) Description of PSPS including why one would need to be executed, considerations determining why one is required, and what to expect before, during, and after a PSPS.

(B) A description of the Public Utility's wildfire mitigation strategy.

(C) Information on emergency kits/plans/checklists.

(D) Public Utility contact and website information.

(b) In formulating community outreach and public awareness efforts, the Wildfire Mitigation Plan will also include descriptions of:

(A) Media platforms and other communication tools that will be used to disseminate information to the public.

(B) Frequency of outreach to inform the public.

(C) Equity considerations in publication and accessibility, including, but not limited to:

(i) Multiple languages prevalent to the area.

(ii) Multiple media platforms to ensure access to all members of a Local Community.

(3) The Public Utility must include in its Wildfire Mitigation Plan a description of metrics used to track and report on whether its community outreach and public awareness efforts are effectively and equitably reaching Local Communities across the Public Utility's service area.

(4) The Public Utility must include a Public Safety Partner Coordination Strategy in its Wildfire Mitigation Plan. The Coordination Strategy will describe how the Public Utility will coordinate with Public Safety Partners before, during, and after the fire season and should be additive to minimum requirements specified in relevant Public Safety Power Shut Off requirements described in OAR 860-300-0050. The Coordination Strategy should include, at a minimum:

(a) Meeting frequency and location determined in collaboration with Public Safety Partners.

(b) Tabletop Exercise plan that includes topics and opportunities to participate.

(c) After action reporting plan for lessons learned in alignment with Public Safety Partner after action reporting timeline and processes.

Statutory/Other Authority: ORS 183, ORS 756, ORS 757
Statutes/Other Implemented: ORS 756.040, ORS 757.035

ADOPT: 860-300-0080
RULE TITLE: Cost Recovery

Docket No. AR 638

August 2, 2022

Page 8

RULE SUMMARY: Review of cost recovery standard

RULE TEXT:

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.

Statutory/Other Authority: ORS 183, ORS 654, ORS 756, ORS 757 & ORS 759 Statutes/Other Implemented: 2021 Senate Bill 762 & ORS 757.020

ADOPT: OAR 860-300-0090

RULE TITLE: Consumer-owned Utility Plans

Docket No. AR 638

August 2, 2022

Page 9

RULE SUMMARY: Applicability of rules to Consumer-owned utilities

RULE TEXT:

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.

Statutory/Other Authority: ORS 183, ORS 654, ORS 756, ORS 757 & ORS 759

Statutes/Other Implemented: 2021 Senate Bill 762 & ORS 757.035

Docket No. AR 638

August 2, 2022

Page 10

AMEND: 860-024-0000

RULE TITLE: Applicability of Division 24

RULE SUMMARY: Rules applicable to operators.

RULE TEXT:

(1) Unless otherwise noted, the rules in this division apply to every oOperator, as defined in OAR 860-024-0001.

(2) Upon request or its own motion, the Commission may waive any of the division 24 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 757.035, ORS 757.039, ORS 757.649, ORS 759.030, ORS 759.040, ORS 759.045

AMEND: 860-024-0001

RULE TITLE: Definitions for Safety Standards

RULE SUMMARY: Defines terms used in Division 24.

RULE TEXT:

For purposes of this Division, except when a different scope is explicitly stated:

(1) “Commission Safety Rules,” as used in this section, mean the National Electric Safety Code (NESC), as modified or supplemented by the rules in OAR chapter 860, division 024.

(2) “Facility” means any of the following lines or pipelines including associated plant, systems, supporting and containing structures, equipment, apparatus, or appurtenances:

(a) A gas pipeline subject to ORS 757.039;

(b) A power line or electric supply line subject to ORS 757.035; or

(c) A telegraph, telephone, signal, or communication line subject to ORS 757.035.

(3) “Good Utility Practice” means a practice, method, policy, or action engaged in or accepted by a significant portion of the electric industry in a region, which a reasonable utility official would expect, in light of the facts reasonably discernable at the time and given applicable local conditions, to accomplish the desired result reliably, safely and expeditiously.

(34) “Government Entity” means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(5) "High Fire Risk Zones" or “HFRZ” are geographic areas identified by Operators of electric facilities in their risk-based wildfire plans.

(6) "HFRZ Ignition Prevention Inspection” means an inspection that identifies potential sources of electrical ignition on any utility pole, structure, duct, or conduit owned by either the Owner or an Occupant in a High Fire Risk Zone. The inspection can be combined with other safety or detailed inspections as required by rule.

(47) “Material violation” means a violation that:

(a) Is reasonably expected to endanger life or property; or

(b) Poses a significant safety risk to any ~~o~~Operator's employees or a potential risk to the general public.

(8) "Occupant" means any licensee, Government Entity, or other entity that constructs, operates, or maintains attachments on poles, structures or within conduits.

~~(59)~~ "Operator" means every person as defined in ORS 756.010, public utility as defined in **ORS** 757.005, electricity service supplier as defined in OAR 860-038-0005, telecommunications utility as defined in ORS 759.005, telecommunications carrier as defined in 759.400, telecommunications provider as defined in OAR 860-032-0001, consumer-owned utility as defined in ORS 757.270, cable ~~O~~operator as defined in **ORS** 30.192, association, cooperative, or government entity and their agents, lessees, or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership, or control of any facility within Oregon.

(10) "Owner" means a public utility, telecommunications utility, or consumer-owned utility that owns or controls poles, structures, ducts, conduits, right of way, manholes, handholes or other similar facilities.

~~(611)~~ "Pattern of non-compliance" means a course of behavior that results in frequent, material violations of the Commission Safety Rules.

~~(712)~~ "Reporting ~~O~~operator" means an ~~O~~operator that:

(a) Serves 20 customers or more within Oregon; or

(b) Is an electricity service supplier as defined in OAR 860-038-0005 and serves more than one retail electricity customer.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 757.035, ORS 757.039, ORS 757.649, ORS 758.215, ORS 759.005, ORS 759.045, Oregon Laws 2021, ch. 592, sect. 1-6b

Docket No. AR 638

August 2, 2022

Page 13

AMEND: 860-024-0005

RULE TITLE: Maps and Records

RULE SUMMARY: Requirements for development and keeping of maps.

RULE TEXT:

(1) Each utility shall keep on file current maps and records of the entire plant showing size, location, character, and date of installation of major plant items.

(2) Upon request, each utility shall file with the Commission an adequate description or maps to define the territory served. **Maps must include all recently identified High Fire Risk Zones.** All maps and records which the Commission may require the utility to file shall be in a form satisfactory to the Commission **Staff**.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 757.020

Docket No. AR 638

August 2, 2022

Page 14

AMEND: 860-024-0007

RULE TITLE: Location of Underground Facilities

RULE SUMMARY: Standard for management of underground facilities.

RULE TEXT:

An Operator and its customers shall comply with requirements of OAR chapter 952 regarding the prevention of damage to underground facilities.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 757.542 - 757.562, ORS 757.649, ORS 759.045

Docket No. AR 638

August 2, 2022

Page 15

AMEND: 860-024-0010

RULE TITLE: Construction, Operation, and Maintenance of Electrical Supply and Communication Lines

RULE SUMMARY: Standards for electric and communication lines.

RULE TEXT:

Every Operator shall construct, operate, and maintain electrical supply and communication lines in compliance with the standards prescribed by the 2017 Edition of the National Electrical Safety Code approved April 26, 2016, by the American National Standards Institute.

[Publications: Publications referenced are available for review from the Commission.]

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 757.035

AMEND: 860-024-0011

RULE TITLE: Inspections of Electric Supply and Communication Facilities

RULE SUMMARY: Requirements for inspections of electric and communication equipment.

RULE TEXT:

- (1) An Operator of electric supply facilities or an Operator of communication facilities must:
 - (a) Construct, operate, and maintain its facilities in compliance with the Commission Safety Rules; and
 - (b) Conduct detailed inspections of its overhead facilities to identify violations of the Commission Safety Rules.
 - (A) The maximum interval between each detailed inspection cycle is ten years, with a recommended inspection rate of ten percent of overhead facilities per year. During the fifth year of each detailed inspection cycle, the Operator must:
 - (i) Report to the Commission that 50 percent or more of its total facilities have been inspected pursuant to this rule; or
 - (ii) Report to the Commission that less than 50 percent of its total facilities have been inspected pursuant to this rule and provide a plan for Commission approval to inspect the remaining percentage within the next five years. The Commission may modify the plan or impose conditions to ensure sufficient inspection for safety purposes.
 - (B) Detailed inspections include, but are not limited to, visual checks, **pole test and treat programs (only required for pole Owners)** or practical tests of all facilities, to the extent required to identify violations of Commission Safety Rules. Where facilities are exposed to extraordinary conditions **(including High Fire Risk Zones)** or when an Operator has demonstrated a pattern of non-compliance with Commission Safety Rules, the Commission may require a shorter interval between inspections.
 - (c) Conduct detailed facility inspections of its underground facilities on a ten-year maximum cycle, with a recommended inspection rate of 10 percent of underground facilities per year.
 - (d) Maintain adequate written records of policies, plans and schedules to show that inspections and corrections are being carried out in compliance with this rule and OAR 860-024-0012. Each Operator must make these records available to the Commission upon its request.

(2) Each Operator of electric supply facilities must:

(a) Designate an annual geographic area (**including High Fire Risk Zones if identified by Operators of electric supply facilities**) to be inspected pursuant to subsection (1)(b) of this rule within its service territory;

(b) Provide timely notice of the designation of the annual geographic area to all Owners and Occupants. The annual coverage areas for the entire program must be made available in advance and in sufficient detail to allow all Operators with facilities in that service territory to plan needed inspection and correction tasks. Unless the parties otherwise agree, Operators must be notified of any changes to the established annual geographic area designation no later than 12 months before the start of the next year's inspection. **For High Fire Risk Zones, Operators must be notified of any changes to the designation of a High Fire Risk Zone no later than 60 days before the start of the year's inspection;** and

(c) Perform routine safety patrols of overhead electric supply lines and other accessible facilities for hazards ~~to the public~~ **consistent with Good Utility Practice and of detection quality materially equivalent to onsite inspection**. The maximum interval between safety patrols is two years, with a recommended rate of 50 percent of lines and facilities per year.

(d) Inspect electric supply stations on a 45 day maximum schedule.

~~(3) Effective Dates~~

~~(a) Subsection (2)(a) of this rule is effective January 1, 2007.~~

~~(b) Subsection (1)(b) of this rule is effective January 1, 2008.~~

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757, ORS 759
STATUTES/OTHER IMPLEMENTED: ORS 757.035

AMEND: 860-024-0012

RULE TITLE: Prioritization of Repairs by Operators of Electric Supply Facilities and Operators of Communication Facilities

RULE SUMMARY: Guidance for how operators prioritize certain repairs.

RULE TEXT:

(1) A violation of the Commission Safety Rules that poses an imminent danger to life or property must be repaired, disconnected, or isolated by the Operator immediately after discovery.

(2) Except as otherwise provided by this rule, the Operator must correct violations of Commission Safety Rules no later than two years after discovery.

(3) An Operator may elect to defer correction of violations of the Commission Safety Rules that pose little or no foreseeable risk of danger to life or property to correction during the next major work activity.

(a) In no event shall a deferral under this section extend for more than ten years after discovery.

(b) The Operator must develop a plan detailing how it will remedy each such violation.

(c) If more than one Operator is affected by the deferral, all affected operators must agree to the plan. If any affected operators do not agree to the plan, the correction of violation(s) may not be deferred.

(4) After December 31, 2027, the only allowable conditions for deferrals as set forth in section (3) are as follows: repairs that accommodate schedules for permitting issues, repairs impacted by planned public works projects, and/or repairs that cannot be performed within the two-year correction timeframe due to circumstances outside the Operator's reasonable control. Plans for correction for deferrals due to these conditions must be submitted to Commission Staff for review and tracking.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 757.035

Docket No. AR 638

August 2, 2022

Page 19

AMEND: 860-024-0015

RULE TITLE: Ground Return

RULE SUMMARY: Power line ground return guidance.

RULE TEXT:

Every Operator with either alternating or direct current power lines or equipment within Oregon may use a connection to ground only for protection purposes. A ground connection shall not be used for the purpose of providing a return conductor for power purposes.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 757.035, ORS 757.649, ORS 759.045

AMEND: 860-024-0016

RULE TITLE: Minimum Vegetation Clearance Requirements

RULE SUMMARY: Operator requirements for vegetation management.

RULE TEXT:

(1) For purposes of this rule:

(a) "Cycle Buster" means vegetation that will not make it through the routine trim cycle without encroaching on the required minimum clearances and, therefore require pruning midterm before the routine cycle is completed.

(ab) "Readily climbable" means vegetation having both of the following characteristics:

(A) Low limbs, accessible from the ground and sufficiently close together so that the vegetation can be climbed by a child or average person without using a ladder or other special equipment; and

(B) A main stem or major branch that would support a child or average person either within arms' reach of an uninsulated energized electric line or within such proximity to the electric line that the climber could be injured by direct or indirect contact with the line.

(c) "Vegetation" means trees, shrubs, and any other woody plants.

(d) "Volts" means nominal voltage levels, measured phase-to-phase.

(2) The requirements in this rule provide the minimum standards for conductor clearances from vegetation to provide safety for the public and utility workers, reasonable service continuity, and fire prevention. Each **O**perator of electric supply facilities must have a vegetation management program and keep appropriate records to ensure that timely trimming is accomplished to keep the designated minimum clearances **in section (4) below**. These records must be made available to the Commission upon request. **If clearances are not being maintained, the Commission may require the Operator to implement an alternative vegetation management program and/or specific trim cycles.**

(3) Each **O**perator of electric supply facilities must trim or remove **readily climbable** vegetation ~~to maintain clearances from electric supply conductors as specified in section (4) of this rule to minimize the likelihood of direct or indirect access to a high voltage conductor by a member of the public or any unauthorized person.~~

~~(4) Each operator of electric supply facilities must trim or remove readily climbable vegetation as specified in section (5) of this rule to minimize the likelihood of direct or indirect access to a high voltage conductor by a member of the public or any unauthorized person.~~
(5) Under reasonably anticipated operational conditions, as well as adverse weather and wind conditions, an Operator of electric supply facilities must maintain the following minimum clearances of vegetation from conductors:

(a) Ten feet for conductors energized above 200,000 volts.

(b) Seven and one-half feet for conductors energized at 50,001 through 200,000 volts.

(c) Five feet for conductors energized at 600 through 50,000 volts.

(A) Clearances may be reduced to three feet if the vegetation is not readily climbable.

(B) Intrusion of limited small branches and new tree growth into this minimum clearance area is acceptable provided the vegetation does not come closer than six inches to the conductor.

~~(6)~~ For conductors energized below 600 volts, an Operator of electric supply facilities must trim vegetation to prevent it from causing strain or abrasion on electric conductors. Where trimming or removal of vegetation is not practical, the Operator of electric supply facilities must install suitable material or devices to avoid insulation damage by abrasion.

~~(7)~~ In determining the extent of trimming or vegetation removal required to maintain the clearances required in section (5) of this rule, the Operator of electric supply facilities must consider at minimum the following factors for each conductor:

(a) Voltage;

(b) Location;

(c) Configuration;

(d) Sag of conductors at elevated temperatures and under wind and ice loading;

(e) Growth habit, strength, and health of vegetation (including rates of tree mortality) growing adjacent to the conductor, with the combined displacement of the vegetation, supporting

structures, and conductors under adverse weather or wind conditions; and

(f) The amount of trimming or vegetation removal required to minimize Cycle Buster vegetation interference of energized conductors.

(7) Each Operator of communications facilities must ensure vegetation around communications lines do not pose a foreseeable danger to the pole or electric supply Operator's facilities.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757, ORS 758

STATUTES/OTHER IMPLEMENTED: ORS 757.035, ORS 758.280 - 758.286

Docket No. AR 638

August 2, 2022

Page 23

AMEND: 860-024-0017

RULE TITLE: Vegetation Pruning Standards

RULE SUMMARY: Standards for pruning.

RULE TEXT:

An Operator that is an electric utility as defined in ORS 758.505 must perform tree and vegetation work associated with line clearance in compliance with the American National Standard for Tree Care Operations, ANSI A300 (Part 1) Pruning, approved ~~May 1, 2008~~2017, by the American National Standards Institute.

[Publications: Publications referenced are available from the Agency.]

STATUTORY/OTHER AUTHORITY: ORS Ch. 756, ORS 757, ORS 758

STATUTES/OTHER IMPLEMENTED: ORS 757.035, ORS 758.280-758.286

ADOPT: 860-024-0018

RULE TITLE: High Fire Risk Zone Safety Standards

RULE SUMMARY: Operator requirements for high fire risk zones.

RULE TEXT:

(1) Operators of electric facilities must, in High Fire Risk Zones, remove or de-energize permanently out of service or abandoned electrical equipment as determined by the Operator during fire season.

(2) Utility supply conductors shall not be attached to trees and should only be attached to poles and structures designed to meet the strength and loading requirements of the National Electrical Safety Code. This section does not apply to customer-supplied equipment at the point of delivery. Compliance with this section must be achieved prior to December 31, 2027.

(3) In addition to the requirements set forth in OAR 860-024-0011, Operators of electric facilities in High Fire Risk Zones must: (a) conduct HFRZ Ignition Prevention Inspections that follow Good Utility Practice as required to mitigate fire risk; and (b) for transmission systems energized at or above 50,001 volts, perform and document HFRZ Ignition Prevention Inspections that may include, but are not limited to, onsite climbing, drone or high-powered spotting scope to identify structural and conductor defects, as well as violations of Commission Safety Rules and other circumstances that could lead to electrical ignition. Inspections must include an in-person component except and to the extent remote technology can conduct an equivalent or enhanced inspection.

(4) In addition to the requirements set forth in 860-024-0011, Public Utility Operators of electric facilities must conduct annual fire season “safety patrols” in High Fire Risk Zones. Public Utility Operators of electric facilities shall perform and document fire safety patrols of overhead electric supply lines and accessible facilities for potential fire risks, including but not limited to, off right of way hazard trees, right of way access for first responders, seasonal vegetation damage, vegetation Cycle Buster clearance conditions as defined in 860-024- 0016(1)(a), potential equipment failures, and deteriorated supply or communication facilities.

(7) A violation of Commission Safety Rules which poses a risk of fire ignition identified by an HFRZ Ignition Prevention Inspection or safety patrol in an HFRZ shall be subject to the following correction timeframes:

(a) any violation that poses imminent danger to life or property must be repaired, disconnected, or isolated by the Operator immediately after discovery. If in doing so, the Operator disconnected or isolated equipment belonging to a third-party, the Operator will notify the equipment Owner as soon as practicable.

(b) any violation which correlates to a heightened risk of fire ignition shall be corrected no later than 180 days after discovery unless an occupant receives notification under OAR 860-028-120(6) that the violation must be corrected in less than 180 days to alleviate a significant safety risk to any operator's employees or a potential risk to the general public.

(c) all other violations requiring correction under Section 2 of 860-024-0012 shall be corrected consistent with OAR 860-024-0012.

(8) If an Operator of electric facilities discovers a violation identified in an HFRZ that correlates to a heightened wildfire risk, notice shall be provided to the pole owner or equipment owner within 15 days of discovering the violation. That notice shall state that the violation must be repaired within the time frame set out in these rules; that time frame will begin on the day the violation was discovered or 15 days before the notice was sent, whichever is later.

(9) If the pole owner or equipment owner does not replace the reject pole or repair the equipment within the timeframe set forth in the notice, then the Operator of electric facilities may repair the equipment or replace the pole and seek reimbursement of all work related to correction or replacement of the reject pole or equipment including, but not limited to, administrative and labor costs related to the inspection, permitting, and replacement of the reject pole. The Operator of electric facilities is also authorized to charge the pole owner or equipment owner a replacement fee of 25% of the total amount of work.

(10) If the Operator of electric facilities does not repair equipment as permitted under Section 10 of this rule, the operator must pursue a remedy under Oregon law, contract, or through a Complaint before the Commission as specified in OAR 860-024-0060. Nothing in this provision precludes the Operator of electric facilities from pursuing remedies through multiple forums. This Section does not preclude an Operator, Owner or Occupant from exercising any other rights or remedies afforded by Oregon Law or contract.

(11) If an Operator of electric facilities discovers a violation in a HFRZ that correlates to a

heightened wildfire risk and is unable after good faith efforts to ascertain pole or equipment ownership or to contact that owner; or if that pole or equipment owner is no longer financially solvent and is without a legally responsible successor, then it is the obligation of the Operator to remove that equipment or otherwise remedy the condition correlating to a heightened risk of ignition. An electric utility or telecommunications utility Operator may recover the prudently incurred costs of any actions performed pursuant to this subsection in its rates.

(12) Nothing in this section is intended to alter liability under existing law or under provisions contained in existing contractual arrangements between Owners, Occupants, and Operators.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757, ORS 758

STATUTES/OTHER IMPLEMENTED: ORS 757.035, ORS 758.280-758.286

AMEND: 860-024-0020

RULE TITLE: Gas Pipeline Safety

RULE SUMMARY: Safety standards applicable to gas pipelines.

RULE TEXT:

Every gas Operator must construct, operate, and maintain natural gas and other gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 27 — Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 1, 2020.

(2) 49 CFR, Part 192, and amendments through No. 126 — Transportation of Natural and Other Gas by Pipeline; Minimum Safety Standards in effect on July 1, 2020.

(3) 49 CFR, Part 199, and amendments — Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on April 23, 2019.

(4) 49 CFR, Part 40, and amendments — Procedure for Transportation Workplace Drug and Alcohol Testing Programs in effect on April 23, 2019.

[Publications: Publications referenced are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757

STATUTES/OTHER IMPLEMENTED: ORS 757.039

AMEND: 860-024-0021

RULE TITLE: Liquefied Natural Gas Safety

RULE SUMMARY: Safety standards applicable to liquefied gas pipelines.

RULE TEXT:

Every gas Operator must construct, operate, and maintain liquefied natural gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 27 — Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 1, 2020.

(2) 49 CFR, Part 193, and amendments through No. 25 — Liquefied Natural Gas Facilities; Minimum Safety Standards in effect on March 6, 2015.

(3) 49 CFR, Part 199, and amendments — Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on April 23, 2019.

(4) 49 CFR, Part 40, and amendments – Procedure for Transportation Workplace Drug and Alcohol Testing Programs in effect on April 23, 2019.

[Publications: Publications referenced are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757

STATUTES/OTHER IMPLEMENTED: ORS 757.039

AMEND: 860-024-0050

RULE TITLE: Incident Reports

RULE SUMMARY: Requirements for reporting of serious injuries and losses.

RULE TEXT:

(1) As used in this rule:

(a) "Self-propagating fire" means a fire that is self-fueling and will not extinguish without intervention.

(ab) "Serious injury to person" means, in the case of an employee, an injury which results in hospitalization. In the case of a non-employee, "serious injury" means any contact with an energized high-voltage line, or any incident which results in hospitalization. Treatment in an emergency room is not hospitalization.

(bc) "Serious injury to property" means:

(A) Damage to operator and non-operator property exceeding \$100,000; or

(B) In the case of a gas operator, damage to property exceeding \$5,000; or

(C) In the case of an electricity service supplier (ESS) as defined in OAR 860-038-0005, damage to ESS and non-ESS property exceeding \$100,000 or failure of ESS facilities that causes or contributes to a loss of energy to consumers; or

(D) Damage to property which causes a loss of service to over 500 customers (50 customers in the case of a gas operator) for over two hours (five hours for an electric operator serving less than 15,000 customers) except for electric service loss that is restricted to a single feeder line and results in an outage of less than four hours.

(2) Except as provided in section **(5b)** of this rule, every reporting operator must give immediate notice by telephone, by facsimile, by electronic mail, or personally to the Commission, of incidents attended by loss of life or limb, or serious injury to person or property, occurring in Oregon upon the premises of or directly or indirectly arising from or connected with the maintenance or operation of a facility.

(3) As soon as practicable following knowledge of the occurrence, all investor-owned electric utilities must report by telephone, by facsimile, by electronic mail, or personally to

the Commission fire-related incidents:

(a) that are the subject of significant public attention or media coverage involving the utility's facilities or is in the utility's right-of-way; or

(b) where the utility's facilities are associated with the following conditions:

(A) a self-propagating fire of material other than electrical and/or communication facilities; and

(B) the resulting fire traveled greater than one linear meter from the ignition point.

(34) Except as provided in section **(56)** of this rule, every reporting operator must, in addition to the notice given in sections **(2)** and **(3)** of this rule for an incident described in sections **(2)** and **(3)**, report in writing to the Commission within 20 days of **knowledge of** the occurrence **using Form 221 (FM 221) available on the Commission's website**. In the case of injuries to employees, a copy of the incident report form that is submitted to Oregon OSHA, Department of Consumer and Business Services, for reporting incident injuries, will normally suffice for a written report. In the case of a gas operator, copies of incident or leak reports submitted under 49 CFR Part 191 will normally suffice.

(45) An incident report filed by a public or telecommunications utility in accordance with ORS 654.715 cannot be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.

(56) A Peoples Utility District (PUD) is exempt from this rule if the PUD agrees, by signing an agreement, to comply voluntarily with the filing requirements set forth in sections (2) and (3).

(67) Gas operators have additional incident and condition reporting requirements set forth in OARs 860-024-0020 and 860-024-0021.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 654, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 654.715, ORS 756.040, ORS 756.105, ORS 757.035, ORS 757.039, ORS 757.649, ORS 759.030, ORS 759.040, ORS 759.045

ADOPT: 860-024-0061

RULE TITLE: **Resolution of Violations of Commission Safety Rules in High Fire Risk Zones**

RULE SUMMARY: **Procedures for addressing safety violations in high fire risk zones amongst utilities.**

RULE TEXT:

(1) This rule establishes a process to initiate a complaint alleging failure to address a violation consistent with the requirements in OAR 860-024-0018(7).

(2) The complaint may be filed by an Owner, Occupant, or Operator. The party filing the complaint under this rule is the "Complainant." The other party, against whom the complaint is filed, is the "Respondent." An Operator may file a complaint regarding the failure of an Owner or Occupant to remedy a noticed violation of the Commission's rules. If the Complainant has made the correction itself or the alleged violation remains uncorrected by the Respondent for an additional seven calendar days following the correction timeframe set forth in the notice, the Complainant may then file a complaint with the Commission. Owners, Occupants, and Operators may initiate complaints regarding disputes over payment for remedying violations of the Commission's rules, including if an Occupant or Operator wishes to contest a bill sent by an Operator for remediation of a violation.

(3) If the Complaint is filed due to the failure of an Owner or Occupant to remedy a violation of the Commission's rules, the following will apply:

(a) The Complainant must be able to demonstrate that it issued a written notice of the violation(s) to the Respondent. The notice must contain, at a minimum: notice of each attachment allegedly in violation; an explanation of how the attachment violates Commission Safety Rules including how the violation creates an ignition risk in an HFRZ; the pole number and location; an explanation of where the alleged violation(s) are located within the HFRZ; and the timeframe(s) within which the Respondent was expected to address each attachment allegedly in violation.

(b) The Complaint must contain each of the following:

(A) A copy of the Complainant's notice of violation, that is in conformance with criteria described in section (3) of this rule;

(B) If applicable, a description of any actions taken by the Complainant to address the violation(s), including actions permitted by Chapter 860, Division 028 rules and Chapter 860, Division 024 rules;

(C) A description of the relief sought by the Complainant from the Commission; and

(D) Any other information the Complainant deems relevant to the complaint

(4) The Commission will serve a copy of the complaint upon the Respondent. Service may be made by electronic mail if the Commission verifies the Respondent's electronic mail address prior to service of the complaint and a delivery receipt is maintained in the official file. Within seven calendar days of service of the complaint, the Respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the Respondent's position on the alleged violation(s).

(5) If the Commission determines after a hearing that the Respondent failed to address a violation of Commission Safety Rules pursuant to OAR 860-024-0018 (8), the Commission may order any relief it deems just and reasonable including

(a) Ordering interim relief where appropriate pending a final resolution;

(b) Ordering Respondent to repair the violation or remove the attachment from the pole within a prescribed timeframe;

(c) Ordering Respondent to take any necessary actions to avoid future non-compliance;

(d) Imposing a penalty upon the Respondent pursuant to ORS 757.990(1); and/or

(e) Ordering reimbursement to Complainant for work it has done to remedy the violation as specified in OAR 860-024-0018 (9). If the Commission deems that a party was wrongfully assessed for repairs, it may order such monetary relief as it deems necessary to make that party whole.

(6) If at the conclusion of the Complaint process, the Commission determines that the facilities are not the responsibility of the Respondent and/or that the Respondent is no longer a fiscally solvent entity such that it is capable of remedying the violation, than the Commission may deem the facilities "abandoned" and require the electric Operator of the facilities to remedy the electric ignition hazard in accordance with OAR 860-024-0018 (10).