

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 648

In the Matter of

Wildfire Mitigation Plan Rulemaking,
Phase I.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our September 7, 2021 Regular Public Meeting, to adopt Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

Made, entered, and effective Sep 15 2021.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: September 7, 2021

REGULAR ___ CONSENT ___ RULEMAKING X EFFECTIVE DATE N/A

DATE: August 30, 2021

TO: Public Utility Commission

FROM: Lori Koho

THROUGH: Bryan Conway **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. AR 648)
Request to open formal rulemaking for Phase I wildfire mitigation rules.

STAFF RECOMMENDATION:

Approve the request to open a formal rulemaking without informal proceedings and issue a notice of proposed rulemaking to adopt permanent rules addressing risk-based Wildfire Protection Plans consistent with Senate Bill (SB) 762 (2021).

DISCUSSION:

Issue

Whether the Commission should open a formal rulemaking without informal proceedings and issue a notice of proposed rulemaking to adopt permanent rules addressing risk-based Wildfire Protection Plans consistent with SB 762.

Applicable Rule or Law

Per ORS 756.040, the Commission has authority to supervise and regulate every public utility in Oregon, and to do all things necessary and convenient in the exercise of such power and jurisdiction. Under ORS 756.060, the Commission may adopt reasonable and proper rules relative to all statutes administered by the Commission.

ORS 757.035(1) provides the Commission with the authority to adopt safety rules and regulations "in such manner as to protect and safeguard the health and safety of all employees, customers and the public, and to this end to adopt and prescribe the

Docket No. AR 648
August 30, 2021
Page 2

installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commission necessary or proper for the protection of the health or safety of all employees, customers or the public.”

Executive Order 20-04 (EO 20-04), Section 5(B)(4) directs the Commission to evaluate electric companies’ risk-based wildfire protection plans and planned activities to protect public safety, reduce risks to utility customers, and promote energy system resilience in the face of increased wildfire frequency and severity, and in consideration of the recommendations made by the Governor’s Council on Wildfire Response 2019 Report and Recommendations.

Senate Bill 762 is a comprehensive bill establishing standards for Wildfire Protection Plans for electric utilities, statewide risk analysis, and wildfire smoke mitigation. Relevant sections of SB 762 are discussed below and included here as Attachment B. Sections 1 through 6(b) of SB 762 are specific to requirements to be included in electric utility Wildfire Protection Plans (Plans) and the requirement for the Commission to promulgate rules related to the requirements of those plans. The bill also set December 31, 2021, as the deadline for investor owned utilities (IOU) to file plans with the Commission.

Analysis

Background

The Commission is currently in the informal phase of rulemaking for Wildfire Protection plans (Docket Number AR 638) based on requirements set forth by the Governor’s Executive Order 20-04. This rulemaking was opened on August 17, 2020. Executive Order 20-04 directed certain state agencies to take specific actions to “reduce and regulate greenhouse gas emissions.” Wildfires are a contributor to greenhouse gas emissions and the Commission was ordered to promulgate rules requiring IOUs develop Wildfire Protection Plans. In recognition of the complexity of the rulemaking and requirement for extensive public involvement, Staff developed a schedule with adoption of rules in the spring of 2022.

Spurred by the needs to have near-term protections in place and gather vital information during the 2021 wildfire season, the Commission adopted temporary rules in Order No. 21-167 governing Public Safety Power Shutoff (PSPS) protocols and ignition reporting requirements.

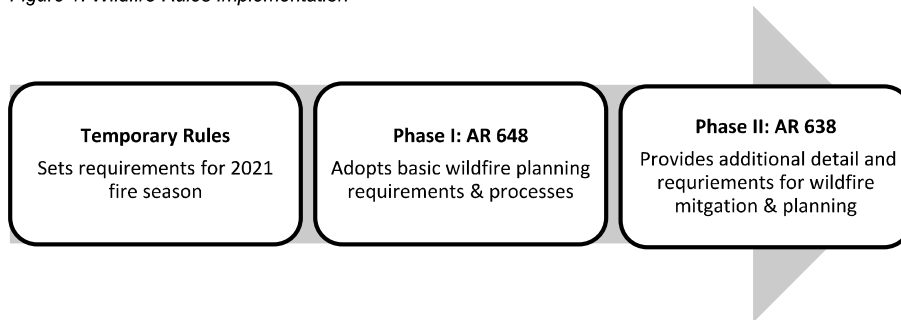
The opening of a second rulemaking will result in two dockets proceeding in parallel. The draft rules Staff is presenting today address the specific requirements in SB 762

Docket No. AR 648
 August 30, 2021
 Page 3

and articulates the process and procedure for submitting wildfire protection plans. We are identifying the proposed rulemaking as Phase I, as shown in Figure 1 below. The existing rulemaking (AR 638) will proceed as Phase II and will provide more specificity. Phase II will build off the temporary rules, the Phase I rules, and work that Staff and stakeholders have completed to date.

The request to open formal rulemaking now is driven by the need to have rules in place so the utilities can file their plans by December 31, 2021, as required by SB 762. Staff's draft rules are discussed below and contained in full, in sequential order, in Attachment A.

Figure 1: Wildfire Rules Implementation



Discussion of Proposed Rules

Staff has proposed the Wildfire Mitigation Plan Phase I rules be covered in a new division of Chapter 860 of the Commission's Administrative Rules, Division 300. These rules mirror the statutory requirements put forth in SB 762. In some instances, the proposed rules include the same wording as in statute. The following is a description of the draft rules for Phase I, mapping the proposed rules to the requirements laid out in SB 762.

General Requirements of a Wildfire Mitigation/Protection Plan

OAR 860-300-002(1)(a) - (c): maps to SB 762 Section (3)(2)(a) – (c).

(1) Wildfire Protection Plans and Updates must, at a minimum, contain the following requirements as set forth in [SB 762 Section 3(2)(a)-(h)] 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*

Docket No. AR 648
August 30, 2021
Page 4

(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.

Requirements for Community Engagement

OAR 860-300-002(1)(d) – (e): maps to SB 762 Section 3(2)(d)

(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 deenergization 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.

OAR 860-300-002(1)(i): maps to SB 762 Section 3(2)(h)

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

Requirements for Vegetation Management and System Operations

OAR 860-300-002(1)(f) – (g): maps to SB 762 Section 3(2)(e) – (f)

(f) 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.

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

Requirement to Describe Process Used to Develop Administrative Costs

OAR 860-300-002(1)(h): maps to SB 762 Section 3(2)(g)

Docket No. AR 648
August 30, 2021
Page 5

Staff's proposed rule also suggests adding consideration of co-benefits to the rule.
(h) 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.

Requirement to Participate in Workshops and Includes Staff's Proposal for Commission Standards

OAR 860-300-002(1)(j): maps to SB 762 Section 2

(j) Description of participation in national and international forums, including workshops identified in [SB 762, Section 2], as well as research and analysis the Public Utility has undertaken to maintain expertise in leading edge technologies and operational practices, as well as how such technologies and operational practices have been used develop implement cost-effective wildfire mitigation solutions.

Timing For a Utility to File Its Wildfire Mitigation/Protection Plan

OAR 860-300-002(2): maps to SB 762 Section 5

(2) A Public Utility's initial Wildfire Protection Plan must be filed no later than December 31, 2021. Wildfire Protection Plans must be updated annually and filed with the Commission.

Process to Review a Utility's Wildfire Mitigation/Protection Plan

OAR 860-300-002(3): maps to SB 762 Section 3(4) – (5)

(3) Within 180 days of submission, Wildfire Protection Plans and Wildfire Protection Plan Updates may be approved or approved with conditions through a process identified by the Commission in utility-specific proceedings, which may include retention of an Independent Evaluator (IE). For purposes of this section, "approved" means the Commission finds that the Wildfire Protection Plan or Update is based on reasonable and prudent practices including those the Public Utility identified through Commission workshops identified in [SB 762, Section 2], and designed to meet all applicable rules and standards adopted by the Commission.

Docket No. AR 648
August 30, 2021
Page 6

OAR 860-300-002(4): maps to SB 762 Section 3(6)

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

Cost Recovery

OAR 860-300-0003(1): maps to SB 762 Section 3(8)

(1) 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.

Filing Requirements for Consumer Owned Utilities

OAR 860-300-0004(1): maps to SB 762 Section 6

(1) 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 Protection Plan or Plan update within 30 days of approval from its governing body.

Conclusion

Staff recommends the Commission open a formal rulemaking without informal proceedings and issue a notice of proposed rulemaking to adopt permanent rules addressing risk-based Wildfire Protection Plans consistent with SB 762.

PROPOSED COMMISSION MOTION:

Approve the request to open a formal rulemaking without informal proceedings and issue a notice of proposed rulemaking to adopt permanent rules addressing risk-based Wildfire Protection Plans consistent with Senate Bill 762 (2021).

RM1 – AR 648 Wildfire Protection Plans

AR 648

Phase I Wildfire Mitigation Rules

Note: References use [SB 762] as placeholders in the below draft until such time that SB 762 is incorporated into Oregon Revised Statutes.

OAR 860-300-0001

Scope and Applicability of Rules

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

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

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

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

OAR 860-300-0002

Wildfire Protection Plan Filing Requirements

(1) Wildfire Protection Plans and Updates must, at a minimum, contain the following requirements as set forth in [SB 762 Section 3(2)(a)-(h)] 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 deenergization of power lines and adjusting of power system operations to mitigate wildfires, promote the safety of the public and first responders and preserve health and communication infrastructure.

(f) 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.

(g) 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.

(h) 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.

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

(j) Description of participation in national and international forums, including workshops identified in [SB 762, Section 2], as well as research and analysis the Public Utility has undertaken to maintain expertise in leading edge technologies and operational practices, as well as how such technologies and operational practices have been used develop implement cost-effective wildfire mitigation solutions.

(2) A Public Utility's initial Wildfire Protection Plan must be filed no later than December 31, 2021. Wildfire Protection Plans must be updated annually and filed with the Commission.

(3) Within 180 days of submission, Wildfire Protection Plans and Wildfire Protection Plan Updates may be approved or approved with conditions through a process identified by the Commission in utility-specific proceedings, which may include retention of an Independent Evaluator (IE). For purposes of this section, "approved" means the Commission finds that the Wildfire Protection Plan or Update is based on reasonable and prudent practices including those the Public Utility identified through Commission workshops identified in [SB 762, Section 2], and designed to meet all applicable rules and standards adopted by the Commission.

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

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

Statutes/Other Implemented: SB 762, ORS 756.040, ORS 756.105, ORS 757.035, & ORS 757.649

OAR 860-300-0003

Cost Recovery

(1) 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, 654, 756, 757, 759

Statutes/Other Implemented: SB 762 & ORS 757.020

OAR 860-300-0004

Consumer-owned Utility Plans

(1) 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, 654, 756, 757, 759

Statutes/Other Implemented: SB 762 & ORS 757.035

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

Enrolled
Senate Bill 762

Sponsored by COMMITTEE ON NATURAL RESOURCES AND WILDFIRE RECOVERY (at the request of Senate Committee on Natural Resources and Wildfire Recovery, Governor Kate Brown)

CHAPTER

AN ACT

Relating to wildfire; creating new provisions; amending ORS 197.716, 205.130, 401.025, 477.015, 477.025, 477.027, 477.281 and 526.360; repealing ORS 477.017, 477.018, 477.023, 477.029, 477.031, 477.052, 477.054, 477.057, 477.059, 477.060 and 477.061; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

ELECTRIC SYSTEM PLANS

SECTION 1. Sections 2 to 4 of this 2021 Act are added to and made a part of ORS chapter 757.

SECTION 2. The Public Utility Commission shall periodically convene workshops for the purpose of helping public utilities that provide electricity, municipal electric utilities, people's utility districts organized under ORS chapter 261 that sell electricity, electric cooperatives organized under ORS chapter 62 and operators of electrical transmission and distribution systems to develop and share information for the identification, adoption and carrying out of best practices regarding wildfires, including, but not limited to, risk-based wildfire protection and risk-based wildfire mitigation procedures and standards.

SECTION 3. (1) A public utility that provides electricity must have and operate in compliance with a risk-based wildfire protection plan that is filed with the Public Utility Commission and has been evaluated by the commission. The plan must be based on reasonable and prudent practices identified through workshops conducted by the commission pursuant to section 2 of this 2021 Act and on commission standards adopted by rule. The public utility must design the plan in a manner that seeks to protect public safety, reduce risk to utility customers and promote electrical system resilience to wildfire damage.

(2) A public utility that provides electricity shall regularly update a risk-based wildfire protection plan on a schedule determined by the commission. The plan must, at a minimum:

(a) Identify areas that are subject to a heightened risk of wildfire and are:

(A) Within the service territory of the public utility; and

(B) Outside the service territory of the public utility but within a reasonable distance, as determined by the commission, of the public utility's generation or transmission assets.

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

(c) Identify preventive actions and programs that the public utility will carry out to minimize the risk of utility facilities causing a wildfire.

(d) After seeking information from regional, state and local entities, including municipalities, identify a protocol for the deenergizing 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.

(e) Describe the procedures, standards and time frames that the public utility will use to inspect utility infrastructure in areas that the public utility identifies under paragraph (a) of this subsection.

(f) Describe the procedures, standards and time frames that the public utility will use to carry out vegetation management in areas that the public utility identifies under paragraph (a) of this subsection.

(g) Identify the development, implementation and administration costs for the plan.

(h) Identify the community outreach and public awareness efforts that the public utility will use before, during and after a wildfire season.

(3) To develop a plan described in subsection (2) of this section, a public utility may consult with and consider information from regional, state and local entities, including municipalities.

(4) The commission, in consultation with the State Forestry Department and local emergency services agencies, shall evaluate a public utility's wildfire protection plan and plan updates through a public process.

(5) Not more than 180 days after receiving a wildfire protection plan or plan update from a public utility, the commission shall approve or approve with conditions the plan or update if the commission finds that the plan or update is based on reasonable and prudent practices identified through workshops pursuant to section 2 of this 2021 Act and designed to meet all applicable rules and standards adopted by the commission.

(6) The commission's approval of a wildfire protection plan 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.

(7) The commission shall adopt rules for the implementation of this section. The rules may include, but need not be limited to, procedures and standards regarding vegetation management, public power safety shutoffs and restorations, pole materials, circuitry and monitoring systems.

(8) All reasonable operating costs incurred by, and prudent investments made by, a public utility to develop, implement or operate a wildfire protection plan under this section are recoverable in the rates of the public utility from all customers through a filing under ORS 757.210 to 757.220. The commission shall establish an automatic adjustment clause, as defined in ORS 757.210, or another method to allow timely recovery of the costs.

SECTION 3a. (1) In addition to all other penalties provided by law, violation of section 3 of this 2021 Act or a rule adopted pursuant to section 3 of this 2021 Act is subject to a civil penalty not to exceed \$10,000.

(2) Notwithstanding ORS 183.315 (6), 183.745 (7)(d) and 756.500 to 756.610, civil penalties under this section must be imposed by the Public Utility Commission as provided in ORS 183.745.

(3) Civil penalties collected under this section must be paid into the General Fund and credited to the Public Utility Commission Account as described in ORS 756.990 (7).

SECTION 4. (1) As used in this section, "consumer-owned utility" and "governing body" have the meanings given those terms in ORS 757.600.

(2) A consumer-owned utility must have and operate in compliance with a risk-based wildfire mitigation plan approved by the governing body of the utility. The plan must be designed to protect public safety, reduce risk to utility customers and promote electrical system resilience to wildfire damage.

(3) The consumer-owned utility shall regularly update the risk-based wildfire mitigation plan on a schedule the governing body deems consistent with prudent utility practices.

(4) A consumer-owned utility shall conduct a wildfire risk assessment of utility facilities. The utility shall review and revise the assessment on a schedule the governing body deems consistent with prudent utility practices.

(5) A consumer-owned utility shall submit a copy of the risk-based wildfire mitigation plan approved by the utility governing body to the Public Utility Commission to facilitate commission functions regarding statewide wildfire mitigation planning and wildfire preparedness.

SECTION 5. A public utility that provides electricity shall submit the first risk-based wildfire protection plan required of the public utility under section 3 of this 2021 Act for Public Utility Commission evaluation no later than December 31, 2021.

SECTION 6. A consumer-owned utility shall submit the first risk-based wildfire mitigation plan required under section 4 of this 2021 Act to the utility governing body no later than June 30, 2022.

SECTION 6a. (1) As used in this section, "electric utility" has the meaning given that term in ORS 757.600.

(2) Sections 3 and 4 of this 2021 Act do not affect the terms or conditions of easement held by an electric utility over private land as of the effective date of this 2021 Act.

SECTION 6b. Sections 3 and 3a of this 2021 Act do not apply to municipally owned utilities organized under ORS chapter 225.

STATEWIDE MAP OF WILDFIRE RISK

SECTION 7. (1) The State Forestry Department shall oversee the development and maintenance of a comprehensive statewide map of wildfire risk that displays the wildfire risk classes described in subsection (4) of this section and populates the Oregon Wildfire Risk Explorer.

(2) The Oregon Wildfire Risk Explorer must be the official wildfire planning and risk classification mapping tool for the State of Oregon.

(3) The State Board of Forestry shall establish by rule criteria by which the map must be developed and maintained, including criteria concerning the use of the most current wildfire assessments.

(4) In consultation with Oregon State University, the department shall establish five statewide wildfire risk classes of extreme, high, moderate, low and no risk. The classes must be:

(a) Consistent with ORS 477.027.

(b) Based on weather, climate, topography and vegetation.

(5) The department shall enter into an agreement with the university that provides that the university will develop and maintain the map and make the map publicly available in electronic form through the Oregon Wildfire Risk Explorer.

(6) The board shall adopt rules that:

(a) Provide opportunities for public input into the assignment of properties to the wildfire risk classes described in subsection (4) of this section.

(b) Require the department to provide notice and information about how a property owner may appeal an assignment of the property owner's property to the extreme or high wildfire risk classes.

(c) Allow affected property owners and local governments to appeal the assignment of properties to the wildfire risk classes after the map is developed, after any updates to the map and within a reasonable time after delivery of the notice and information described in paragraph (b) of this subsection.