

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of

Rulemaking Regarding Electric Utility
Wildfire Mitigation Plan.

Docket No. AR 638

**OCTA FIRST ROUND COMMENTS
ON PROPOSED PSPS RULES**

INTRODUCTION

Pursuant to the schedule set forth in the Ruling issued February 15, 2022, the Oregon Cable Telecommunications Association (“OCTA”) submits these First Round Comments on the Oregon Public Utility Commission’s (“OPUC” or “Commission”) proposed Public Safety Power Shutoff (“PSPS”) Rules. OCTA appreciates this opportunity to provide the Commission with input regarding the proposed PSPS rules, which would amend the Commission’s existing rules set forth in Oregon Administrative Rules (OAR) Chapter 860, Division 300.

OCTA commends the Commission and its Staff on all of the work that has gone into the drafting of the proposed PSPS rules. OCTA generally supports the proposed PSPS rules. However, there is a minor, but essential, wording change that is needed in order to achieve the Commission’s intent to ensure that *all* operators of communications facilities and infrastructure in a PSPS zone will receive priority notification of and detailed information regarding a PSPS event, including Geographic Information System (“GIS”) shapefiles with as much specificity as possible. As more fully discussed below, this can be achieved by simply replacing the word “telecommunications” with the word “communications” in both the definition of “Utility-identified Critical Facilities” in proposed OAR 860-300-0010(9) and in the description of required information to be provided to specified “utility-identified critical facilities” in proposed OAR 860-

300-0050(1)(c)(E) and by adding a comprehensive definition of the term “communications” in OAR 860-300-0010.

**MODIFICATIONS TO ENSURE ALL OPERATORS OF
COMMUNICATIONS FACILITIES AND INFRASTRUCTURE
RECEIVE PRIORITY NOTIFICATION AND GIS INFORMATION**

Throughout this proceeding, OCTA has emphasized the need for operators of communications facilities and infrastructure, including OCTA member companies, to receive priority notification of PSPS events, including GIS files of the PSPS zone, as well as status reports and notice of when re-energization will begin and when re-energization is complete. The Temporary Rules adopted by the Commission on May 27, 2021, achieved this result by including communications providers in the definitions of both “Critical Facilities” and “Public Safety Partners.”¹

In contrast, the Staff’s draft permanent rules, filed September 29, 2021, did not expressly include communications providers in the definitions of either “Public Safety Partners” or “Utility-identified Critical Facilities.”² In discussions at the workshops regarding the draft permanent rules, Staff indicated that it intended for all communications providers’ facilities and infrastructure to be identified and treated as Critical Facilities and would consider revising the draft permanent rules to ensure the same. In comments filed November 19, 2021, OCTA proposed that Staff revise to OAR 860-300-0002(9) of the draft permanent rules to add the following sentence:

Public Utilities shall identify as critical facilities all communication infrastructure (e.g., wireless towers and support infrastructure, communication carrier infrastructure including selective routers, central offices, head ends, cellular switches, and remote terminals).³

¹ See OAR 860-024-0060(2) and (7), effective May 28, 2021 through November 23, 2021.

² See Staff Draft Permanent Rules, OAR 860-300-0002(6) and (9).

³ See OCTA Comments on Staff’s Draft Permanent Rules, filed November 19, 2021, p. 2.

OCTA also recommended that OAR 860-300-0006(1)(c) of the draft permanent rules be revised to require public utilities to provide to operators of critical facilities the following:

(A) The PSPS zone, which would include Geographic Information System shapefile(s) depicting current boundaries of the area subject to de-energization;⁴

Together, these proposed revisions would ensure that all communications providers will receive priority notification and GIS files depicting the PSPS Zone. Similar proposals were proffered in comments filed by the Oregon Joint Use Association (“OJUA”) and CTIA.⁵

In response to these comments, Staff did, in fact, revise the draft permanent rules in an attempt to ensure that operators of communications facilities and infrastructure would receive both priority notification of PSPS events and GIS information.⁶ However, in doing so, instead of using the term “communications,” as recommended in the OCTA, OJUA and CTIA comments, Staff revised the proposed permanent rules using the term “telecommunication.” In the definition of “Utility-identified Critical Facilities” in OAR 860-300-0010(9), the proposed permanent rules state that: “*Telecommunication* facilities and infrastructure are to be considered Critical Facilities.” (Emphasis added). Similarly, in setting forth the information that public utilities must provide during a PSPS, OAR 860-300-0050(1)(c)(E) of the proposed permanent rules states:

In addition to the above requirements, utilities will also provide Geographical Information Files with as much specificity as possible to Operators of *telecommunication* facilities in the area of the anticipated PSPS.

⁴ *Id.* at p. 3.

⁵ See OJUA Comments, filed November 19, 2021, p. 6; see also CTIA Comments, filed November 19, 2021, pp. 3-4.

⁶ See Staff Report, filed January 11, 2022, pp. 5 and 8.

(Emphasis added). While perhaps not readily apparent, the distinction between the term “communications” and “telecommunications” in this context is material because the term “telecommunications” is less inclusive than the term “communications.” Use of the less inclusive term “telecommunication” could result in potential confusion that may lead to the unintended exclusion of cable operators, wireless carriers and other broadband providers from those entities that would be required to receive priority notification and GIS information under the rules.

Under Oregon law, the term “telecommunications” is defined as:

. . . the transmission of information chosen by a person, between or among points specified by the person, without change in the form or content of the information sent or received.⁷

And “telecommunications service” is defined as:

. . . telecommunications that are offered for a fee to the public, or to such class of users as to be effectively available to the public, without regard to the facilities used to provide the telecommunications. “Telecommunications service” does not include:

- (a) Services provided by radio common carrier.
- (b) One-way transmission of television signals.
- (c) Private telecommunications networks.
- (d) Communications of the customer that take place on the customer side of on-premises equipment.⁸

These definitions do not cover broadband Internet access service, Voice over Internet Protocol (“VoIP”) service, commercial mobile radio service, or cellular backhaul service. Yet, these services all rely on power provided by electric utilities and would be impacted during a PSPS event. OCTA believes that the Commission (as well as Commission Staff) intends that all

⁷ ORS 759.005(7).

⁸ ORS 759.005(8).

operators of facilities and infrastructure used to provide such services should receive priority notification of a PSPS event and GIS files with as much specificity as possible.

In order to ensure that this intent is reflected in the rules, the narrow term “telecommunication” should be replaced with the broader term “communications.”⁹

OCTA proposes the following modifications to the rules:

OAR 860-300-0010 should be revised to include the following definition of the term “communications”:

(1) “Communications” means media that communicate voice, data, text, or video over a distance using electrical, electronic, radio, microwave, or light wave transmissions.

OAR 860-300-0010(9) should be amended to read:

(9) “Utility-identified Critical Facilities” refers to the facilities the Public Utility identifies that, because of their function or importance, have the potential to threaten life safety or disrupt essential socioeconomic activities if their services are interrupted. Communications facilities and infrastructure are to be considered Critical Facilities.

And OAR 860-300-0050(1)(c)(E) should be amended to read:

⁹ Several statutes use the term “communications” in referring to wireless and broadband services. *See, e.g.*, ORS 759.005(5)(defining “radio common carrier”) and ORS 276A.406(defining “broadband”).

(E) In addition to the above requirements, utilities will also provide Geographical Information Files with as much specificity as possible to operators¹⁰ of Communications facilities in the area of the anticipated PSPS.

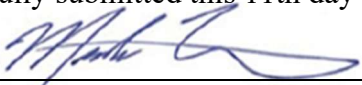
With these minor changes, the proposed PSPS rules will require public utilities to include all relevant operators of communications facilities and infrastructure with the requisite priority notification of and GIS information regarding PSPS events.

CONCLUSION

For the foregoing reasons, OCTA urges the Commission to revise the proposed permanent rules as recommended above. OCTA looks forward to participating in the scheduled rulemaking hearing regarding the PSPS rules and can answer any questions the Commission or the Administrative Hearings Division may have concerning these recommended revisions.

Respectfully submitted this 11th day of March 2022.

By:



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¹⁰ “Operator” is not a defined term in Division 300 of the Commission’s rules and should not, therefore, be capitalized in OAR 860-300-0050(1)(c)(E).