

Before the
OREGON PUBLIC UTILITY COMMISSION

In the Matter of Rulemaking for Risk-Based)
Wildfire Protection Plans and Planned) Docket No. AR 638
Activities Consistent with Executive Order)
20-04.)

COMMENTS OF CTIA

Following the Oregon Public Utility Commission’s (“Commission’s”) April 14, 2021 Workshop in the instant proceeding, CTIA¹ respectfully submits its comments in response to the Commission Staff’s Draft Temporary Rules on Ignition Reporting and Public Safety Power Shut-offs issued April 6, 2021 (“Draft Temporary Rules”).

I. INTRODUCTION

Wireless consumers rely on their mobile devices every day, and even more so during emergencies. In the event of an emergency or natural disaster, such as a wildfire, wireless services play a very significant role in facilitating and promoting public safety, including mobile access to 9-1-1, Wireless Emergency Alert notifications,² wireless services provided to public safety entities, news dissemination, and communications among family members. For those reasons, CTIA and its member companies have been active participants in proceedings regarding

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st -century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984.

² See CTIA.org, “Wireless Emergency Alerts,” <https://www.ctia.org/wireless-emergency-alerts> (last accessed May 3, 2021).

resiliency both at the Federal Communications Commission and in states across the nation, including proceedings specifically addressing wildfire mitigation in California and Nevada.³

De-energization may be a useful tool in protecting public safety if appropriately implemented. However, de-energization can also create or exacerbate a host of significant risks to public safety by disrupting critical services, such as those provided by first responders, medical facilities, water companies and – of particular relevance to CTIA’s wireless carrier members - communications companies. To assess the full impact of a de-energization event, the impact on wireless communications needs to be taken into consideration as well.

Accordingly, any decision by an electric investor-owned utility (“IOU”) to de-energize must involve the careful and deliberate balancing of the potential impacts to all stakeholders, particularly critical infrastructure providers like wireless providers that are relied on by the public safety community and the general public, to ensure that a decision to de-energize will truly advance public safety overall. An electric IOU’s decision to de-energize is only reasonable if the public safety benefits of de-energization outweigh the public safety risks of de-energization, and the Commission and electric IOUs should do everything in their power to ensure that de-energization events are only invoked as a last resort, and when truly necessary.

CTIA appreciates that the Commission’s Draft Temporary Rules appear to take into account that timely and efficient advance notification is crucial for wireless providers to mitigate, to the extent possible, the impact of a de-energization event on consumers. Experience has taught that early, efficient provision to wireless providers of essential information regarding a potential de-energization event ensures better outcomes for impacted consumers. The Commission should

³ See, e.g., California Public Utilities Commission R. 18-12-005 (Order Instituting Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions); Public Utilities Commission of Nevada Docket No. 19-06009 (Investigation and rulemaking to implement Senate Bill 329 (2019)).

not, however, lose sight of the fact that the Draft Temporary Rules are a stopgap measure being crafted on an accelerated timeframe to put them in place in time for the 2021 wildfire season, and should ensure that the forthcoming permanent rulemaking takes a fresh look at all issues for which there is not a unanimously agreed-to resolution.

Herein, CTIA offers targeted changes to the Draft Temporary Rules that reflect some of the lessons learned from experience with de-energization events.

II. THE COMMISSION SHOULD ENSURE THAT THE FORTHCOMING WORKSHOP PROCESS INVESTIGATES ALL ASPECTS OF DE-ENERGIZATION EVENTS BROADLY AND WITHOUT UNDUE RELIANCE ON THE TEMPORARY RULES AS A FOUNDATION

CTIA cautions that the rapid pace at which the Draft Temporary Rules will be developed and adopted all but ensures that the Commission will not be able to address all relevant issues at this time. For example, a number of issues raised at the April 14 Workshop, such as the form of notice requirements and the way in which the Commission facilitates cross-industry planning and communication, will likely not be settled prior to adoption of temporary rules.

CTIA is particularly concerned that the Draft Temporary Rules, by nature of their adoption and implementation, could be treated as a foundation for permanent rules rather than what they ought to be considered: a stopgap measure designed to ensure at least a minimal level of coordination and information gathering on de-energization events happens as soon as possible.

The Commission should ensure that every aspect of wildfire mitigation for which there is not unanimous agreement is considered with a fresh eye during the upcoming process to develop permanent rules, and that the adoption of Draft Temporary Rules should not prejudice that process or be considered a stakeholder endorsement of all the provisions found therein.

III. THE COMMISSION SHOULD MAKE TARGETED CHANGES TO IMPROVE THE DRAFT TEMPORARY RULES

Based on industry experience with de-energization events, and with the understanding that a full permanent rulemaking is yet to come, CTIA suggests the following targeted changes to the Draft Temporary Rules.

A. The Commission Should Establish Criteria for Declaration of a De-Energization Event as a Last Resort

The Draft Temporary Rules address, to some extent, what should happen after a de-energization event is initiated by an electric IOU. They do not, however, address the important question of how and when the decision to de-energize is, or ought to be, made by an electric IOU. Mechanically, this blunts the efficacy of the notification timeline set forth in the Draft Temporary Rules, which provides that notifications must begin “as early as the electric investor-owned utilities reasonably believe de-energization is likely,” and “when a decision to de-energize has been made.” With no criteria for these decisions, there is no guarantee that utilities will have the time to adhere to the minimum notification timeline in the Draft Temporary Rules, which call for first notifications “whenever possible [...] 48-72 hours in advance of anticipated de-energization.”

More crucially, without set criteria for a de-energization event, there is no way for the Commission to ensure consistency and predictability of such decisions. Nor is it possible for the Commission to create the accountability necessary to ensure that de-energization events are only employed as a last resort, which should be the main principle guiding any temporary or permanent Commission rules regarding these events.

CTIA appreciates that determining criteria for reasonable de-energization events involves many complex factors, and the Commission will have to determine if the best approach for such

criteria involves a Commission mandate for all electric IOUs, or allowing those IOUs to set their own consistent and reasonable criteria for such determinations. To the extent that the Commission can establish basic criteria in the Draft Temporary Rules, such criteria would help to provide clarity for all stakeholders. But if it cannot, the Commission should at least ensure that clear and effective criteria for de-energization events are an integral part of the Commission's permanent rules, and that the forthcoming workshop process for the permanent rules allocates ample time for the Commission and stakeholders to develop those criteria.

B. The Commission Should Ensure Wireless Carriers are Timely Notified of De-Energization Events

As noted previously, wireless carriers need significant advance notice of de-energization events to mitigate, as much as possible, the impact on those who rely on their networks. The Draft Temporary Rules should ensure such notice to the greatest extent possible.

The "Requirement to Notify" section of the Draft Temporary Rules states that IOUs "must, whenever possible, provide advance notification to all populations potentially affected by a de-energization event" (emphasis added). Discussion during the April 14 Workshop seemed to indicate that the equivocation, "whenever possible," was inserted largely due to a lack of clarity around the appropriate contacts for affected entities and the definitions of "vulnerable populations," among others. But that should not impact the fact that electric IOUs should be communicating with public safety partners well in advance of de-energization events and have appropriate contact information for, among others, all impacted wireless providers. To better reflect this responsibility, CTIA asks that the qualifier "whenever possible" be replaced in the Draft Temporary Rules wherever it appears by "except for circumstances beyond an electric IOU's control."

Additionally, the Draft Temporary Rules currently lack clarity regarding the priority of notifications. Presently, the Draft Temporary Rules delineate populations potentially affected by a de-energization event as including, but not limited to, “public safety partners, critical facilities and infrastructure, vulnerable populations, and jurisdictions that are not at threat of a utility-caused wildfire but may lose power as a result of de-energization elsewhere on the system.” They also state that “Whenever possible, priority notification should occur to the following entities, at a minimum: public safety partners, as defined herein, and including adjacent local jurisdictions that may lose power as a result of de-energization.” But a number of entities, including communications providers, are defined as both “public safety partners” and “critical facilities,” creating confusion given the Draft Temporary Rules’ delineation of those two separate populations. This leads to further confusion when combined with the timeline of the procedure for notifications, which requires 48-72 hour advance notification for “public safety partners/priority notification entities,” but only 24-48 hours for “all other affected customers/populations.” The Commission should clarify the Draft Temporary Rules to address these issues and ensure that wireless carriers and other public safety partners receive notice as early as possible.

C. The Commission Should Standardize and Streamline Notices As Much As Possible in the Draft Temporary Rules

While CTIA appreciates that advance notification from electric IOUs is a part of the Draft Temporary Rules, the proposed rules require greater specificity regarding the information that must be provided with those notifications. Without such specificity, notices provided may not maximize wireless carriers’ ability to prepare for de-energization events and minimize consumer impacts.

One of the significant lessons learned by wireless providers from de-energization events in California is that while the sequence and timeliness of notifications from electric IOUs is important, so too is the efficiency of that notification. Large de-energization events in California have sometimes led to hundreds of separate notices being sent to wireless providers, from different electric IOUs, in different formats, making it extremely difficult for wireless providers to quickly and efficiently parse this information to marshal an appropriate response.⁴

While the Commission should ensure that more specific content requirements for notifications are developed as part of the permanent rulemaking (including a formatting template), CTIA asks that the Draft Temporary Rules include the following minimum requirements for information and formatting:

- *In the header of the email:* Each notification should have a constant naming convention that is universal among utilities, or at minimum, a requirement that each electric IOU use a consistent, clear naming convention for each of their own notifications.
- *In the body of the email:* Each notification should contain the estimated date and time of de-energization start and re-energization completion; the area/location/address, including county/meter details, of all of the recipient's impacted meters; and either as attachments or secure links to access downloadable (1) geographic information system ("GIS") shapefiles and (2) all county/location/meter details on an electric IOU's portal for the de-energization event.

⁴ See Joint Communications Parties' Opening Comments on Phase 3 Staff Proposal, Cal. Pub. Util. Commission R. 18-12-005 (Mar. 29, 2021) at 6-7.

- Notifications from each electric IOU at each required step of the timeline should be consolidated and consist of a single email with as much known data at that time as possible rather than individual emails for each meter or area affected.
- If a later e-mail in the timeline of notifications differs in content from a previous notification because, for example, new information has come to light or estimates have been updated, any changes should be highlighted to make it immediately clear for the recipient to know what substance has changed without having to spend time comparing it to previous notifications.

D. The Commission Should Review All De-Energization Event Reports and Make Them Available for Public Comment

As previously noted, de-energization events have wide impacts on public safety, critical infrastructure providers, and the general public. If and when a de-energization event takes place in Oregon, the Commission should ensure that it takes the opportunity to review all aspects of the event so that any lessons learned can be applied before another such event may be necessary. The “Reporting Requirements” set out in the Draft Temporary Rules are a good first step. However, the Draft Temporary Rules should also mandate timely Commission review of the reports submitted. Additionally, given the broad impacts of de-energization events, the required reports may not provide a full picture of the event. Accordingly, following Commission review of a report, a public version should be issued for comment so that all stakeholders are given the opportunity to provide their feedback regarding the efficacy and impacts of the de-energization event.

IV. CONCLUSION

It is crucial that the Commission designs its rules governing de-energization events, both these temporary rules and the permanent ones that will be developed later, with the core principle that such disruptive events should be employed only as a last resort to protect public safety. Advance, efficient communication of forthcoming de-energization events from electric IOUs to wireless carriers is of the utmost importance, given the reliance of consumers on wireless networks during emergencies. CTIA looks forward to working with the Commission and stakeholders to help craft rules that best minimize the impact of de-energization events for public safety partners, wireless consumers, and all other affected parties.

Respectfully submitted,

By: s/ Timothy R. Volpert
Timothy R. Volpert, OSB #814074
Email: tim@timvolpertlaw.com
Telephone: (503) 703-9054
Of Attorneys for CTIA

Benjamin Aron
Matt DeTura
1400 16th Street, Suite 600
Washington, DC 20036
(202) 736-3200

May 3, 2021