

VIA ELECTRONIC FILING

June 30, 2022

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

Re: Docket AR 638 – Risk-Based Wildfire Protection Plans/Proposed “Remainder of Rules” in Division 24 and Division 300

Dear Filing Center:

Idaho Power Company (“Idaho Power”), Portland General Electric Company (“PGE”), and PacifiCorp d/b/a Pacific Power (“PacifiCorp”) (collectively, the “Joint Utilities”) are grateful for the ongoing opportunity to offer comments in the Public Utility Commission of Oregon’s (“OPUC” or “Commission”) Docket AR 638. These Joint Utilities comments address the latest redline of wildfire mitigation rules in Division 24 and Division 300 as proposed by the Administrative Hearings Division (“AHD”) in its memorandum issued on June 10, 2022.

As Attachments A and B to these comments, the Joint Utilities provide redline edits of AHD’s proposed rule language in Division 24 and Division 300, respectively. The attachments are built upon the clean version of AHD’s proposed Division 24 and the redline version of Division 300.

Before moving to detailed comments, the Joint Utilities would like to take a moment to thank various parties for their work in AR 638. This rulemaking docket has been extensive, time-consuming, and challenging. The Joint Utilities commend AHD, stakeholders, and the Commission on constructive and productive discussions through written comments, workshops, and public meetings. The latest redlines from AHD reflect months of work by all parties to develop comprehensive rules that seek to meaningfully mitigate wildfire risk.

Comments on Division 24

The sections below provide comments and clarifications on selected parts of Division 24 and offer rationale for the edits in Attachment A.

I. Comment on OAR 860-024-0001 – Definitions for Safety Standards

AHD’s latest redline includes new and modified definitions that are intended to reduce confusion in interpretation of Division 24 rules. Following requests made by stakeholders during the June 2, 2022, public hearing, AHD added “Good Utility Practice,” currently used in net metering rules, as a defined term in Section 24. The Joint Utilities support the use of a defined standard governing the new rules; however, we believe the National Electrical Safety Code (“NESC”) definition of “Accepted Good Practice” is a preferred term for Division 24 and with respect to inspections. The definition of “Good Utility Practice” refers, in part, to “a practice, method, policy, or action engaged in or accepted by a significant portion of the electric industry in a region.” While such a practice may be appropriate for a standardized program such as net metering, it is problematic when applied to the methods and practices used in conducting inspections in a High Fire Risk Zone (“HFRZ”). To be effective, 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. A regional practice—as referenced in the “Good Utility Practice” definition—may not be an appropriate standard for inspections, as each utility’s system is unique in terms of its geographic location, configuration, and characteristics. The NESC currently applies to utility construction and maintenance, making its definition of “Accepted Good Practice” a better fit for the inspections required under Division 24.

AHD has also modified the term “HFRZ Detailed Inspection” to “HFRZ Ignition Prevention Inspection.” AHD notes that this change is intended to distinguish the inspection required in HFRZs from other types of inspections performed by utilities. The Joint Utilities think the “HFRZ” designation already distinguishes the inspections. Nevertheless, the Joint Utilities can support this change if it provides a meaningful distinction for other stakeholders with a clarifying sentence added to the definition that states that these inspections can be performed in combination with other inspections, such as safety patrols or detailed inspections. The Joint Utilities offer an additional clarifying sentence to the definition of “HFRZ Ignition Prevention Inspection” in Attachment A.

II. Comment on OAR 860-024-0011 – Inspections of Electric Supply and Communication Facilities

As noted above, the Joint Utilities support inclusion of a defined standard in 860-024-0011(2)(c), although we propose use of the NESC term “Accepted Good Practice” rather than “Good Utility Practice.” However, we are not supportive of the other additions to this subsection, specifically the new language about “detection quality materially equivalent to on-site inspection.” The Joint Utilities appreciate AHD’s objective of ensuring quality inspections, but the Good Utility Practice or Accepted Good Practice standard will ensure just that. As a result, the “detection quality” language is not only duplicative but adds a layer of complication and required interpretation. The Joint Utilities consider the sole addition of Good Utility Practice or Accepted Good Practice sufficient to ensure that utilities will perform high-quality inspections and, therefore, propose striking the newly proposed language.

III. Comment on OAR 860-024-0012 – Prioritization of Repairs by Operators of Electric Supply Facilities and Operators of Communication Facilities

The Joint Utilities largely support the proposed edits and modifications to OAR 860-024-0012(4), as they allow for limited, but sometimes necessary, deferral ability for circumstances outside of a utility’s reasonable control. The Joint Utilities request a few minor drafting edits to aid in interpretation of the section, as well as a word change from “and” to “and/or” in the list of allowable deferral circumstances. As the circumstances are distinct, the Joint Utilities consider “and/or” preferred over “and” to make it clear that each circumstance, by itself, is an allowable condition for a deferral.

IV. Clarification and Comment on OAR 860-024-0016 – Minimum Vegetation Clearance Requirements

In the latest redline, AHD adds a condition to 860-024-0016(1)(b)(A) to precisely define “readily climbable” as pertaining to materials and other equipment “eight feet from the ground.” The Joint Utilities are surprised by this late-stage addition and do not see a clear connection to wildfire mitigation. The existing rule provides a definition of readily climbable vegetation as a method to mitigate safety risks, not wildfire risks. Additionally, as proposed, the “eight feet” language could be read as only applying to “other special equipment.” If this is the case, such equipment would certainly not be “readily climbable” by children or average people, making the language unnecessary. If AHD’s goal is added specificity, then the “eight feet” threshold seems arbitrary and unnecessary for wildfire mitigation, as the tree will be trimmed from the

top to prevent contact with overhead lines. In any event, the new standard should only be considered with stakeholder discussion about its appropriateness. As far as the Joint Utilities are aware, this section of Division 24 has not been a concern or subject of debate to mitigate wildfire risk and we recommend removing this addition.

The Joint Utilities are supportive of AHD’s effort to reduce redundancy by combining sections (2) and (3). In doing so, however, we believe the two references to section 5—in (2) and the redlined/clean version (3)—should now reference section 4.

With respect to the language about “adverse weather and routine wind conditions,” AHD clarifies that Staff did intend to omit the word “routine.” The word is now stricken from redline section (4) and redline subsection (6)(e). Initially, the Joint Utilities requested that the language remain consistent across rule sections. Now that both instances of the word “routine” have been removed, the Joint Utilities request an explanation for the change at this stage to existing rule language. Previous requests to understand Staff’s thinking were unanswered. If the omission of both instances of the word was Staff’s objective, the Joint Utilities request stakeholder discussion and clarity on how a utility should be expected to reasonably measure “adverse weather and wind conditions.” In the absence of a reasonable explanation for the omission of the word “routine,” the Joint Utilities propose keeping existing rule language and ensuring it is consistent across the rules.

Further in this part of the rules, AHD proposes striking the section on tree trimming authority. The Joint Utilities support AHD’s plan for an extended phase of this rulemaking to address the issue of local tree-trimming ordinances and associated permitting and urge expedited treatment of the issue. The Joint Utilities are working diligently with other stakeholders to propose a speedy resolution, as we consider this an urgent matter that must be addressed with haste to ensure utilities are able to perform required vegetation management in an expeditious manner.

V. Comment on OAR 860-024-0018 – High Fire Risk Zone Safety Standards

Section (2). AHD notes that the text of this section has been added to Division 300 but also remains in this section of Division 24 to solicit comment about the application of rules to consumer-owned utilities. The Joint Utilities reemphasize that all Wildfire Mitigation Plan-related rules should reside exclusively in Division 300. Repetition of Wildfire Mitigation Plan requirements in Division 24 would be redundant and create the potential for confusion.

Alternatively, if the text of this section must remain in Division 24 to address consumer-owned utilities, the Joint Utilities recommend the provision only apply to consumer-owned utilities—such a change will add clarity, minimize confusion, and avoid duplication of requirements across Divisions 24 and 300. Beyond recommending clarification, the Joint Utilities look to the consumer-owned utilities to determine if any further discussion is warranted.

Section (3). In an attempt at concision, the Joint Utilities have modified the language without modifying the intent of this section. The concept of not attaching to trees remains, but we have removed design, strength, and loading requirements as those are covered by other rules.

Section (4). Earlier in these comments, the Joint Utilities stated general support for the modification of “HFRZ Detailed Inspection” to “HFRZ Ignition Prevention Inspection,” providing that the HRFZ Ignition Prevention Inspections can be performed in combination with other types of inspections such as safety patrols or detailed inspections. In Attachment A, the Joint Utilities propose additional edits to this section for clarity. AHD’s other edits to this section are effective at cleaning up ambiguity and intra-section language conflicts. However, the Joint Utilities suggest striking parts of subpart (b). We consider the language about “Commission Safety Rules” beyond the scope of these rules and also not contributing to the objective of ignition prevention. Additionally, the newly added final sentence of (b) is not necessary in light of the “Good Utility Practice” or “Accepted Good Practice” requirement.

Section (5). As noted during the June 2, 2022, public meeting, the Joint Utilities have concerns with the language regarding “right of way access for first responders where feasible given the terrain involved.” While the language appears to offer utilities flexibility, its inclusion creates unintended and unnecessary complications. The Joint Utilities work in geographically and topographically varied settings in which first responders employ multiple modes of ground and air transportation. Ensuring right of way access for first responders—even with the caveat of “where feasible given the terrain”—creates an ambiguous and burdensome rule. For example, would utilities be obligated to provide access for a water truck, a person on foot, an ATV, or all of these and other modes? Given the different circumstances that are encountered across Oregon, the Joint Utilities believe this issue is best addressed individually between the relevant utility and the individual first responder entity. As a result, the Joint Utilities propose striking this language.

Section (6). The Joint Utilities recognize that this rule section has undergone extensive modification over time. With the “Comprehensive Facility Inspection” language removed, the

remaining reference to HFRZ Ignition Prevention Inspections is duplicative of the requirement in section (4). As a result, the Joint Utilities recommend striking this section (6) to eliminate redundancy.

Section (8) (renumbered as Section 7). Under subsection (b), the Joint Utilities suggest clarifying language about correction timelines. The Joint Utilities are concerned that one might argue that the explicit timelines for correction set forth in Section 7 supersede the more general rules regarding correction timeframes found in Division 28 that might have previously applied to HFRZs. The Joint Utilities want to ensure that we can continue to rely on the general rule in OAR 860-028-0120(6) to impose a timeline shorter than 180 days with respect to violations in HFRZs. OAR 860-028-0120(6) provides that a pole Occupant must correct a violation in less than 180 days if the pole Owner notifies an Occupant that the violation must be corrected within that time to alleviate a significant safety risk to any Operator’s employees or a potential risk to the general public. Just as the OPUC Staff requires a 30-day timeframe for the correction of hazardous conditions identified through its audits, pole Owners must also have the ability to require a shorter correction timeframe. In addition to the safety risks referenced in OAR 860-028-0120(6), a shorter correction timeframe may also be appropriate based on the severity of a wildfire ignition risk that is identified by the pole Owner immediately prior to wildfire season.

Section (10) (renumbered as Section 9). The Joint Utilities support and appreciate AHD’s modifications to this section, especially the reinstatement of the 25 percent fee. As articulated previously in comments and the public hearing on June 2, 2022, the higher fee amount reflects the high-priority nature and associated risk of work in HFRZs. Further, the Joint Utilities support the joint comments from OMEU, EWEB, and OPUDA, filed on June 29, 2022, that imposition of the 25 percent fee may not be disputed in the complaint process under OAR 860-024-0060.

To further streamline this section, the Joint Utilities recommend replacing “all costs and expenses” with “work,” the latter of which reasonably implies both costs and expenses.

Section (12) (renumbered as Section 11). The Joint Utilities have several concerns with the proposed changes in this section. First, some of the phrasing, including the term “a going concern,” may be confusing and potentially lead to misinterpretation by those adhering to the rule. Second, and the larger of the two concerns, the section as written has the potential to set troubling precedent. The Joint Utilities feel strongly that the proposed rule language will allow—and potentially even encourage—failing businesses to abandon their property and thereby shift liability to electric utility Operators. To reduce such a perverse incentive, the Joint

Utilities propose changing the “obligation of the Operator” language to more constructive wording in which the Operator “may remove the equipment.” Shifting the language around obligation will help ensure that liability is not unjustly transferred from Owners to Operators but still allow Operators to take action or escalate issues with the Commission if needed. Finally, the Joint Utilities have added language ensuring that they will be able to recover any costs associated with the removal or remedy performed pursuant to this rule.

Section (13) (renumbered as Section 12). While the inclusion of this section is well-intended by AHD, the addition alone does not correct for the transfer of liability established in section (11) as proposed. The Joint Utilities propose preserving this subsection and making the proposed language corrections to section (11) above.

VI. Comments on OAR 860-024-0060 – Resolution of Violations of Commission Safety Rules in High Fire Risk Zones

With edits, the Joint Utilities note two references that need updating: Section (1) should reference OAR 860-024-0018(8) and section (5) should reference OAR 860-024-0018(10).

The Joint Utilities suggest striking references to the word “Operator” in section (2), as we cannot conceive of a situation in which an Operator would not be either an Owner or an Occupant. To add clarity and consistency to the rules, the Joint Utilities suggest striking “Operator” references.

The Joint Utilities have the same concerns with Section (6) that we articulated with respect to OAR 860-024-0018(11). 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 Commission already has a rule in OAR 860-028-0180 that allows a pole Owner to request an order from the Commission authorizing removal of a pole Occupant’s attachments. The Joint Utilities recommend that, in the light of the existing process outlined in OAR 860-028-0180, the proposed language in OAR 860-024-0060(6) be stricken.

Comments on Division 300

The sections below provide comment and clarifications on non-Public Safety Power Shutoff (“PSPS”) parts of Division 300 and offer rationale for the edits in Attachment B.

I. Comment on OAR 860-300-0020 – Public Utility Wildfire Mitigation Plan Filing Requirements

The Joint Utilities support consolidation of all Wildfire Mitigation Plan filing requirements in this section of Division 300. In subsection (1)(g), AHD notes that the reference to OAR 860-024-0016 is a typographical error. The Joint Utilities believe the correct reference is to OAR 860-024-0018. In addition, the Joint Utilities believe a typographical error was made in (1)(h) and that the correct reference should be to OAR-024-0016.

The addition of subsection (1)(k) introduces new inspection-related language regarding information that must be documented in a utility’s Wildfire Mitigation Plan. The Joint Utilities suggest that (k) be stricken, with any necessary language added to the prior reference to inspections in (1)(g). Additionally, the Joint Utilities request alignment between potential rules in Division 24. As drafted, 860-024-0016(1)(k) does not match 860-024-0018(2). The Joint Utilities understand that the intent was to have alignment.

With respect to section (3) and AHD’s corresponding note about flexibility, the Joint Utilities remain unsure what “standards” may be applied that are not already captured in the soon-to-be-finalized permanent rules in this docket. The Joint Utilities seek clarity on applicable standards that may exist separate from this rulemaking.

II. Comment on OAR 860-300-0030 – Risk Analysis

In subsection (1)(a)(A), AHD proposes keeping the reference to “climate” as an example of a condition that may “remain fixed for multiple years.” While the Joint Utilities understand AHD’s perspective, we respectfully disagree. Climate and climate change are widely considered dynamic in nature—government agencies and media outlets often discuss climate as a rapidly changing phenomenon. When considered in light of common reference, “climate” is the outlier in a list of otherwise static items.

Notwithstanding the Joint Utilities concerns with (1)(a)(A), the additional examples in (1)(a)(B) are positive and add clarity to the risk analysis requirements.

III. Comment on OAR 860-300-0040 – Wildfire Mitigation Plan Engagement Strategies

The Joint Utilities appreciate the inserted language in section (1) relating to those “impacted by the Wildfire Mitigation Plan,” as this phrasing sets a reasonable breadth for a utility’s Wildfire Mitigation Plan Engagement Strategy.

Similarly, the Joint Utilities support the modifications to section (2) with respect to “conducting community outreach and public awareness efforts.” This language is sufficiently clear and, as a result, renders unnecessary the originally defined term “Education and Awareness Strategy.”

In subsection (2)(a), the Joint Utilities suggest striking the language relating to providing community training. The purpose of this subsection is to ensure that utilities provide adequate information and awareness about wildfire-related issues, including PSPS. To date, trainings on such information have not been discussed or proposed and, in the Joint Utility’s assessment, this additional language falls outside the reasonable scope the subsection’s intent. As a result, the Joint Utilities propose striking this language, as doing so would not adversely impact the other requirements in the subsection.

(2)(b)(i) with respect to “media platforms” the Joint Utilities support this change as it provides flexibility to leverage these platforms in conducting community outreach and public awareness efforts.

IV. Comment on OAR 860-300-0080 – Cost Recovery

AHD notes that it is not inclined to mirror the cost recovery language of Senate Bill (SB) 762 in this section of the rulemaking. The Joint Utilities recognize AHD’s interpretation of rate recovery law but nevertheless have a different perspective. The cost recovery language in SB 762 references detailed cost recovery mechanisms that may be leveraged for recovering wildfire-related expenditures and investments. Such language should be echoed in the permanent wildfire rules to ensure that the mechanisms afforded by law are readily available tools for utilities.

In conclusion, the Joint Utilities are grateful for the significant effort by AHD to advance these rules and incorporate stakeholder feedback. Much progress has been made with respect to these “remainder of rules,” and the Joint Utilities are confident that the final set of rules will achieve

the intended purpose of effectively reducing wildfire risk and keeping customers and communities safe, as well as aware and educated about utility wildfire mitigation efforts.

Respectfully Submitted,

/s/ Alison Williams

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Cc: OPUC Filing Center

DIVISION 24
CLEAN VERSION

Commented [WA1]: The Joint Utilities' comments and edits are added to AHD's clean version of these rules.

AMEND: 860-024-0000

RULE TITLE: Applicability of Division 24

RULE TEXT:

(1) Unless otherwise noted, the rules in this division apply to every Operator, 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 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, to accomplish the desired result reliably, safely and expeditiously. –"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 lines and equipment.~~

(4) "Government Entity" means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(5) "High Fire Risk Zones" 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.

(7) "Material violation" means a violation that:

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

(b) Poses a significant safety risk to any 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.

Commented [MK*P2]: We have reiterated this definition from 860-039-0005. We could also cross-reference that section in the event the definition is changed there.

Commented [WA3R2]: The Joint Utilities agree with the need for standards of practice but suggest the NESC term "Accepted Good Practice" as a more appropriate alternative. In making such a change, this definition would move to (1) to keep the definitions in alphabetical order.

Commented [MK*P4]: Proposal from Rulemaking Hearing to avoid confusion with other "detailed inspections" mandated in rules.

Commented [WA5R4]: The Joint Utilities support the new term and request additional text as shown for clarity in the inspection process.

(9) "Operator" means every person as defined in ORS 756.010, public utility as defined in 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 Operator as defined in 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.

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

(12) "Reporting Operator" means an 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

AMEND: 860-024-0005

RULE TITLE: Maps and Records

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

AMEND: 860-024-0007

RULE TITLE: Location 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

AMEND: 860-024-0010

RULE TITLE: Construction, Operation, and Maintenance of Electrical Supply 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 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 consistent with ~~Accepted Good Practice~~ ~~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

Commented [WA6]: The Joint Utilities consider this added language redundant with respect to the addition of the defined term Good Utility Practice or Accepted Good Practice. Further, the language is sufficiently vague to require additional discussion and qualification. For simplicity, the Joint Utilities recommend relying on the expectation implicit in Good Utility Practice or Accepted Good Practice.

AMEND: 860-024-0012

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

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, ~~or~~ repairs impacted by planned public works projects, ~~and/or~~ ~~and~~ repairs ~~which 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.

Commented [WAT]: The Joint Utilities offer minor drafting changes for clarity, as well as a shift in language joining the allowed deferral conditions from "and" or "and/or".

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

STATUTES/OTHER IMPLEMENTED: ORS 757.035

AMEND: 860-024-0015

RULE TITLE: Ground Return

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 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.

(b) "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 ~~eight feet from the ground~~; 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 Operator 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 (45) 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 Operator of electric supply facilities must trim or remove readily climbable vegetation as specified in section (45) 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) Under reasonably anticipated operational conditions, as well as adverse weather and routine 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.

Commented [WA8]: The Joint Utilities propose striking this new addition, which has not been discussed by stakeholders in this case. The "eight feet" height is unclear in the context of subsection (A) and also appears misplaced in the broader context of defining "readily climbable" material.

Commented [MK*P9]: We hear concerns regarding this language but believe it is important that the Commission retain flexible jurisdiction to implement additional measures if necessary.

Commented [MK*P10]: Paragraphs combined to reduce redundancy.

Commented [MK*P11]: We have confirmed with Staff that they did intend to make this change and made the conforming change below.

Commented [WA12R11]: While AHD has clarified Staff's intent to remove both instances of the word "routine" (in subsection (4) and in below in (6)(e)), the change was made without justification or explanation. In the absence of discussion of this change, the Joint Utilities propose keeping the existing rule language and ensuring it is consistent across the rules.

(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.

(5) 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.

(6) 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 routine 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.

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

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

AMEND: 860-024-0017

RULE TITLE: Vegetation Pruning Standards

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) 2008 Pruning, approved 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 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.

Commented [MK*P13]: We have limited this subsection to "electric" facilities; subsection 12 below concerns pole attachments that may be deemed "abandoned."

~~(2) Operators of electric facilities will include details regarding their inspection programs and how they determine, and instruct their inspectors to determine, conditions that that could pose an ignition risk in their annual wildfire mitigation plans.~~

Commented [MK*P14]: We have added this to the Division 300 rules as suggested by the parties. However, we leave it here for the time being in order to solicit comment on whether we should require consumer-owned utilities who are not required to get their Wildfire Mitigation Plans approved by the Commission to file and get a document containing this information approved separately.

(3) Utility supply conductors shall not be attached to ~~live trees~~ ~~and should only be attached to utility-owned 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.

Commented [WA15R14]: The Joint Utilities recommend all Wildfire Mitigation Plan requirements exist exclusively in Division 300.

(4) In addition to the requirements set forth in OAR 860-024-0011, Operators of electric facilities in High Fire Risk Zones must:

Commented [WA16]: The Joint Utilities suggest shortening the rule for clarity.

(a) conduct HFRZ Ignition Prevention Inspections that follow ~~Accepted Good Practice 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.~~

Commented [WA17]: The Joint Utilities propose striking this language to ensure that these rules remain focused on ignition prevention.

Commented [WA18]: The Joint Utilities consider the additional language unnecessary in light of the Good Utility Practice or Accepted Good Practice standard.

(5) 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 where feasible given the terrain involved,~~ 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.

Commented [WA19]: The Joint Utilities consider access concerns best addressed between the individual utility and first responders.

~~(6) Beginning on December 31, 2027, Public Utility Owners of electric supply facilities shall conduct HFRZ Ignition Prevention Inspections of facilities in High Fire Risk Zones with a frequency that mitigates fire risk as well as to identify violations of Commission Safety Rules~~

Commented [WA20]: With the language to Comprehensive Facility Inspections removed in place of HFRZ Ignition Prevention Inspections, this language is duplicative of requirements above in subsection (4).

~~(67)~~ If dictated by a consumer-owned utility pole Owner, beginning December 31, 2027 Occupants of poles owned by consumer-owned utilities in High Fire Risk Zones will implement detailed inspection cycle alignment to mitigate fire risk and identify violations of Commission Safety Rules.

(78) 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.

(89) 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.

(94) 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 costs and expenses 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.

(104) If the Operator of electric facilities does not repair equipment as permitted under Section 10 of 860-024-0018, 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.

(112) If an Operator of electric facilities discovers a violation in a HFRZ that correlates to a heightened wildfire risk and is unable to ascertain who the pole owner or equipment ownership is; or if that pole owner or equipment owner is no longer a going concern financially solvent and without a legally responsible successor, then it is the obligation of the Operator may 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.

Commented [WA21]: The Joint Utilities request clarity about whether an Operator can seek a violation correction in fewer than 180 days.

Commented [MK*P22]: Shorter timeframe suggested by OCTA.

Commented [MK*P23]: This will generally leave at least 165 days for the violation to be corrected.

Commented [WA24]: For precision of language, the Joint Utilities suggest "work" instead of "all costs and expenses," as the former implies the latter.

Commented [WA25]: The Joint Utilities appreciate the re-insertion of the 25 percent fee, an amount that best reflects the high-priority nature of corrections in HFRZs.

Commented [WA26]: The Joint Utilities suggest minor word modifications for clarity, including removal of a term of art that may be unfamiliar to Operators and Owners attempting to adhere to the rule.

Commented [WA27]: As written, the rule may encourage failing businesses to abandon their property. Operators should not be "obligated" to take responsibility in these circumstances. At a minimum, the Joint Utilities suggest modifying the rule to state that Operators "may" remove such abandoned equipment.

(123) 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

Commented [MK*P28]: This is intended to address some of the concerns raised by OMEU about creating new liability for operators of electric facilities. We are open to different language that makes this point.

Commented [WA29R28]: While the Joint Utilities appreciate this addition, it is not sufficient to correct for the liability shift and precedent that would be established in edited section (11) as written.

AMEND: 860-024-0020

RULE TITLE: Gas Pipeline Safety

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 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 TEXT:

(1) As used in this rule:

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

(b) "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.

(c) "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 (6) 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.

(4) Except as provided in section (6) 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.

(5) 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.

(6) 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).

(7) 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

+860-024-0060

Resolution of Violations of Commission Safety Rules in High Fire Risk Zones

- (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)~~860-024-0018(8).
- (2) The complaint may be filed by an Owner, ~~or 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 (7) calendar days following the correction timeframe set forth in the notice, the Complainant may then file a complaint with the Commission. Owners, ~~or Occupants, and Operators~~ may initiate complaints regarding disputes over payment for remedying violations of the Commission's rules, including if an Owner or Occupant ~~or Operator~~ wishes to contest a bill sent by an ~~Operator~~Owner or Occupant 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; 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 part (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 (7) 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

Commented [MN30]: In the order authorizing these rules, we will make clear that our division 2 alternative dispute resolution rules will apply to this complaint process.

Commented [WA31]: With new changes, the reference should now be section (8).

Commented [WA32]: The Joint Utilities cannot think of an instance in which an Operator would not be either an Owner or an Occupant. As such, we suggest striking the word "Operator" from this section to avoid redundancy and eliminate confusion.

Commented [MK*P33]: Our intention is to have a simple complaint form and simplified procedures drafted and made available with the rules (but not part of the rules to make it simple to update). The procedures will attempt to create a streamlined and expedited proceeding that will not generally require the complainant to retain counsel but that Commission will need to reserve discretion to call witnesses if need be.

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 \(9\)](#) [OAR 860-024-0018\(10\)](#). If the Commission deems that ~~either~~ a party was wrongfully assessed for repairs, it may order such monetary relief as it deems necessary to make that party whole.

Commented [WA34]: With new changes, the reference should now be section (10).

~~(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 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).~~

Commented [WA35]: This provision is unnecessary in the light of the existing process outlined in OAR 860-028-0180.

DIVISION 300
REDLINE

Division 300

860-300-0001

Scope and Applicability of Rules

(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

860-300-001002

Definitions for this Division

(1) “ESF-12” refers to Emergency Support Function-12 and indicates the Commission’s role in supporting the State Office of Emergency Management for energy utilities issues during an emergency.

(2) “Local Community” means any community of people living, or having rights or interests, in a distinct geographical area.

(3) “Local Emergency Management” means city, county, and tribal emergency management entities.

(4) “Near-term Wildfire Risk” means elements of wildfire risk that are expected to fluctuate on a daily or weekly basis. Examples include temperature, humidity, and wind.

(5) “Public Utility” has the meaning given to an “electric company” in ORS 757.600.

(6) “Public Safety Partners” means ESF-12, Local Emergency Management, and Oregon Department of Human Services (ODHS).

(7) “Public Safety Power Shutoff” or “PSPS” means a proactive de-energization of a portion of a Public Utility’s electrical network, based on the forecasting of and measurement of extreme wildfire weather conditions.

(8) “Tabletop Exercise” means an activity in which key personnel, assigned emergency management roles and responsibilities, are gathered to discuss, in a non-threatening environment, various simulated emergency situations.

(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

Commented [MK*P1]: For reasons pertaining to how the Secretary of State needs rules to be numbered, we will be using the numbers these were noticed as, not the numbers in the Staff proposed rules.

essential socioeconomic activities if their services are interrupted. Telecommunication facilities and infrastructure are to be considered Critical Facilities.

(10) “Wildfire Mitigation Plan” is the same as a “wildfire protection plan” and refers to the document filed with the Commission relating to an electric utility’s risk-based plan designed to protect public safety, reduce the risk of utility facilities causing wildfires, reduce risk to utility customers, and promote electric system resilience to wildfire damage.

Statutory/Other Authority:
Statutes/Other Implemented:

860-300-002003
Public Utility Wildfire Mitigation Plan Filing Requirements

(1) Wildfire 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 860-300-0005 through 860-300-0006.

(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 860-300-0005 and OAR 860-300-0006.

(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 860-024-00168.

Commented [MK*P2]: Typographical error.

Commented [WA3R2]: The Joint Utilities believe the correct reference is 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 860-024-00168.

Commented [WA4]: As this section refers to vegetation management, the Joint Utilities believe the correct reference is 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 develop 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.

Commented [WA5]: The Joint Utilities propose striking this addition and adding any necessary components to (1)(g) above.

(2) 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 -Mitigation -Plans and Wildfire Mitigation 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 Mitigation 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.

Commented [MK*P6]: We think this needs more flexibility than the edits provided by the Joint Utilities would provide for.

(4) Approval of a Wildfire Mitigation 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

860-300-003004

Risk Analysis

(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:
Statutes/Other Implemented:

Commented [MK*P7]: We propose to leave this – climate generally refers to relatively slow-changing conditions (as opposed to, e.g., weather). We have added examples in subsection (B) below to clarify.

Commented [WA8R7]: The Joint Utilities believe climate is largely understood as dynamic and, therefore, suggest striking the word in this context.

860-300-004005

Wildfire Mitigation Plan Engagement Strategies

(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:

Commented [MK*P9]: Proposed by Joint Utilities.

(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 in its Wildfire Mitigation Plan a Wildfire Education and Awareness Strategy. The Education and Awareness Strategy 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.

Commented [MK*P10]: Changed to track statutory language.

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

Commented [MK*P11]: I think there is some flexibility regarding how this information is disseminated but the intent is for utilities to think through and include in their plans effective strategies for the various local communities impacted by their plans.

i. 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.

ii. A description of the Public Utility's wildfire mitigation strategy.

iii. Training Information on emergency kits/plans/checklists.

iv. Public Utility contact and website information.

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

~~(i) Education and preparedness media platforms to inform the public. A description of Mmedia platforms and other communication tools that will be used to disseminate information to the public.~~

~~(ii) Frequency of outreach to inform the public.~~

Commented [WA12]: The Joint Utilities note that (b) above includes the words "description of," making the reference unnecessary in (i).

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

~~(A) Multiple languages prevalent to the area.~~

~~(B) 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 the Wildfire Mitigation Plan Engagement Strategy and Wildfire Education and Awareness Strategy 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 860-300-0006. 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:

Statutes/Other Implemented:

~~860-300-005006~~

~~**Communications Requirements Prior, During, and After a Public Safety Power Shutoff**~~

Commented [MK*P13]: Included with PSPS rules.

~~(1) When a Public Utility determines that a PSPS is likely to occur, it must deliver notification of the PSPS to its Public Safety Partners, operators of utility-identified critical facilities, and adjacent local Public Safety Partners.~~

~~(a) To the extent practicable, the Public Utility must provide priority notification directly to Public Safety Partners, operators of utility-identified critical facilities, and adjacent local Public Safety Partners.~~

~~(b) In notifying Public Safety Partners and utility-identified critical facilities of PSPS events, including adjacent local Public Safety Partners, the utility will communicate the following information, at a minimum:~~

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

(B) Date and time PSPS will be executed;

(C) Estimated duration of PSPS;

(D) Number of customers impacted by PSPS;

(E) When feasible, the Public Utility will support Local Emergency Management efforts to send out emergency alerts;

(F) At a minimum, status updates at 24-hour intervals until service has been restored;

(G) Notice of when re-energization begins and when re-energization is complete; and

(H) Information provided under this rule does not preclude the Public Utility from providing additional information about execution of the PSPS to its Public Safety Partners;

(c) In notifying utility-identified critical facilities, the Public Utility will communicate the following information, at a minimum:

(A) Date and time PSPS will be executed;

(B) Estimated duration of PSPS;

(C) At a minimum, status updates at 24-hour intervals until service has been restored;

(D) Notice of when re-energization begins and when re-energization is complete; and

~~(E)~~ 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;

(d) ESF-12 will notify Oregon Emergency Response System (OERS) partners and Local Emergency Management in coordination with Oregon's Office of Emergency Management.

(2) When a Public Utility determines that a PSPS is likely to occur, the Public Utility must provide advance notice of the PSPS to customers via a PSPS web-based interface on the Public Utility's website and other media platforms, and may communicate PSPS information directly with customers consistent with 860-300-0006(b).

(a) In providing notice to customers about a PSPS, the Public Utility will, at a minimum:

(A) Utilize multiple media platforms to maximize customer outreach, including but not limited to, social media, e-mail, radio, television, and press releases;

(B) Consider the geographic and cultural demographics of affected areas, including but not limited to broadband access, languages prevalent within the utility's service territories, considerations for those who are vision or hearing impaired; and

(C) Display on its website homepage a prominent link to access current information about the PSPS, consistent with OAR 860-300-0007, including a depiction of the boundary. The PSPS information must be easily readable and accessible from mobile devices.

(b) The Public Utility may directly notify its customers through email communication or telephonic notification (e.g., text messaging and phone calls) when it will not impede Local Emergency management alerts due to capacity limitations. If the Public Utility provides direct notification, the Public Utility will communicate the following information, at a minimum:

(A) A statement of impending PSPS execution, including an explanation of what a PSPS is and the risks that the PSPS would be mitigating;

(B) Date and time PSPS will be executed;

(C) Estimated duration of PSPS;

(D) A 24-hour means of contact customers may use to ask questions or seek information;

(E) How to access details about the PSPS via the Public Utility's website, including education and outreach materials disseminated in advance of the annual wildfire season;

(F) After initial notification, the Public Utility will provide, at a minimum, status updates at 24-hour intervals until service has been restored; and

(G) Notice of when re-energization begins and when re-energization is complete.

(3) To the extent possible, the Public Utility will adhere to the following minimum notification prioritization and timeline in advance of a PSPS:

(a) 48-72 hours in advance of anticipated de-energization, priority notification to Public Safety Partners, operators of utility-identified critical facilities, and adjacent local Public Safety Partners;

(a) (b) 24-48 hours in advance of anticipated de-energization, when safe: secondary notification to all other affected customers and other populations;

(c) 1-4 hours in advance of anticipated de-energization, if possible: notification to all affected customers and other populations.

(4) The Public Utility's communications required under this rule do not replace emergency alerts initiated by local emergency response.

(5) Nothing in this rule prohibits the Public Utility from providing additional information about execution of the PSPS to Public Safety Partners, utility-identified critical facilities, or customers.

Statutory/Other Authority:

Statutes/Other Implemented:

860-300-00607

Ongoing Informational Requirements for Public Safety Power Shutoffs

Commented [MK*P14]: Included with PSPS rules.

(1) The Public Utility will create a web-based interface that includes real-time, dynamic information on location, de-energization duration estimates, and re-energization estimates. The web-based interface will be hosted on the Public Utility's website and must be accessible during a PSPS event. The Public Utility will complete the web-based interface before March 31, 2024.

(2) The Public Utility will make its considerations when evaluating the likelihood of a PSPS publicly available on its website. These considerations include, but are not limited to: strong wind events, other current weather conditions, primary triggers in high risk zones that could cause a fire, and any other elements that define an extreme fire hazard evaluated by the Public Utility.

(3) The Public Utility will ensure that its website has the bandwidth capable of handling web traffic surges in the event of a Public Safety Power Shutoff.

(4) The Public Utility will work to provide real-time geographic information pertaining to PSPS outages compatible with Public Safety Partner GIS platforms.

(5) The Public Utility will provide a comprehensive narrative of each subsection of this rule as part of its annual Wildfire Mitigation Plan.

Statutory/Other Authority:
Statutes/Other Implemented:

860-300-007008
Reporting Requirements for Public Safety Power Shutoffs

Commented [MK*P15]: Included with PSPS rules.

(1) The Public Utility is required to file annual reports on de-energization lessons learned, providing a narrative description of all PSPS events which occurred during the fire season. Reports must be filed no later than December 31st of each year.

(2) Non-confidential versions of the reports required under this section must also be made available on the Public Utility's website.

Statutory/Other Authority:
Statutes/Other Implemented:

860-300-00090080
Cost Recovery

Commented [MK*P16]: Noticed only for the purposes of changing the numbering.

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

Commented [MK*P17]: We are not inclined to add additional language here. Rate recovery law applies to the extent and in the way it applies and the language should not need to be reiterated.

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

Commented [WA18R17]: The Joint Utilities strongly encourage the Commission to include the specific cost recovery language used in SB 762. These are mechanisms allowed by law and should be clearly stated in these wildfire rules.

~~OAR 860-300-000-0010~~ ~~0090~~

Consumer-owned Utility Plans

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

Commented [MK*P19]: Noticed only for the purpose of changing the numbering.