

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of

Rulemaking Regarding Electric Utility
Wildfire Mitigation Plan

Docket No. AR 638

**OCTA COMMENTS
ON DRAFT SAFETY RULES**

INTRODUCTION

The Oregon Cable Telecommunications Association (“OCTA”) appreciates this opportunity to provide the following comments regarding the redlined draft proposed rules issued by Administrative Law Judge Mapes on June 10, 2020 (“Draft Rules”). OCTA commends Commission Staff, the Administrative Hearings Division, stakeholders, and the Commissioners for all of the hard work that has gone into crafting updated safety rules designed to ensure the discovery and correction of safety hazards in order to mitigate wildfire risk in the State. In large part, OCTA believes the Draft Rules meet this important goal. OCTA’s comments, therefore, focus on a small number of requested revisions to the Draft Rules prior to their adoption by the Commission.

(1) OAR 860-024-0018(2) – Inclusion of Inspection Program Details in Utility Annual Wildfire Mitigation Plans

OCTA applauds the addition of new OAR 860-024-0018(2), which instructs operators of electric facilities to include in their annual wildfire mitigation plans “details regarding their inspection programs and how they determine, and instruct their inspectors to determine, conditions that could pose an ignition risk” It is unclear, however, whether this rule would also require consumer-owned utilities to include that same information in their wildfire mitigation plans. In order to remove any ambiguity, OCTA recommends the following revision to OAR 860-0018(2):

OCTA COMMENTS ON DAFT SAFETY RULES

Page 1 of 6

(2) Investor-owned and consumer-owned utility 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.

(2) OAR 860-024-0018(10) – Replacement Fee Should Apply to Pole Replacements Only

The Draft Rules provide that an electric operator may repair equipment or replace a pole if the owner of the equipment or pole does not timely correct a violation identified in a High Fire Risk Zone (“HFRZ”) that correlates to a heightened wildfire risk. The Draft Rules also provide that the operator of electric facilities may seek reimbursement of all costs and expenses related to correction or replacement of the reject pole or equipment and impose a “replacement fee of 25% of the total amount of work.”

As OCTA pointed out in its comments filed May 13, 2022,¹ the rights of an electric operator to inspect and replace a foreign-owned pole, and to seek reimbursement of related costs and impose a 25 percent “replacement fee,” are not addressed elsewhere in the Commission’s rules. Thus, with respect to replacement of foreign-owned reject poles, OAR 860-024-0018(10) does not conflict with existing Commission rules, and no other Commission rules would need to be amended if the Commission were to adopt a 25 percent replacement fee applicable to foreign-owned reject poles only.

In contrast, the rights of pole owners to inspect attachments are already addressed in the Commission’s Division 28 attachment rules, which expressly provide that a pole owner may correct attachment violations if not timely corrected by the occupant and specify what the pole owner may charge for making such corrections, including the actual cost of corrections and a 15%

¹ See OCTA Second Set of Comments on Draft Safety Rules, pp. 5-6, filed in docket AR 638 on May 13, 2022.

of correction cost sanction.² Applying the 25 percent “replacement fee” in draft OAR 860-024-0018(10) to occupant equipment replaced by a pole owner would create a conflict with existing Commission rules in Division 28.

OCTA recommends revising draft OAR 860-024-0018(10) to apply the 25 percent replacement fee to electric operator replacement of foreign-owned reject poles only, and to clarify that the sanction provided in OAR 860-028-0150(2) applies to attached equipment replaced by a pole owner, as follows:

(10) 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 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. The Operator of electric facilities is authorized to sanction the equipment owner pursuant to OAR 860-0280-0150(2).

Imposing a higher percentage replacement fee on owners of reject poles is also consistent with the facts that have been presented in this docket. For example, on June 23, 2022, Commission Staff filed an “UPDATE” intended to “help inform Stakeholder comments on this issue,” to which it attached “a map of deteriorated or reject poles located in [high fire risk areas] which were identified recently by Safety Staff during their analysis of Lumen Technologies, Inc., Safety Report E22-48R (Lumen Statewide Deteriorated Poles).” This suggests that the risks posed by foreign-owned reject poles is significant. In contrast, during an April 29, 2022, meeting Portland General Electric convened with stakeholders to discuss the types of violations that electric utility’s focus on in their in annual safety patrols of HFRZs, the utilities stated that they identify a relatively

² See OAR 860-024-0120(4) – (6), OAR 860-028-0150(2).

low number of communications attachments (*e.g.*, broken lashing wires, low road clearances, and broken equipment) that could implicate a heightened risk of fire ignition. This was confirmed on the record during the May 4, 2022, workshop in this docket. Thus, it is appropriate to provide a greater incentive for timely repair of reject poles, while leaving the current sanction percentage in place for attachments.

(3) OAR 860-024-0018(11) – Rights under Oregon Law and Contract for Operators, Owners, and Occupants

An earlier draft of the safety rules under consideration in this docket, provided that an operator of electric facilities is not precluded from exercising any other rights or remedies afforded by Oregon law or contract. In its May 13, 2022, comments, OCTA recommended that the provision be revised to make clear that nothing in proposed OAR 860-024-0018 precludes any Owner, Occupant or Operator from exercising any other rights under Oregon law or contract.³ While the provision in the earlier draft of the rules no longer appears in the Draft Rules, OAR 860-024-0018(11) reflects a similar focus on preserving the existing contractual and other legal rights of operators of electric facilities only. Singling out only operators of electric facilities suggests, by negative implication, that somehow the Draft Rules may preclude other entities subject to the rules, such as attachers and non-IOU pole owners, from exercising any of their other rights or remedies under Oregon Law or contract.

In order to make clear that the Draft Rules are not intended to alter the existing rights of entities other than operators of electric facilities, OCTA recommends adding the following sentence at the end of OAR 860-024-0018(11):

(11) . . . This section does not preclude an Operator, Owner or Occupant from exercising any other rights or remedies afforded by Oregon Law or contract.

³ See OCTA Second Set of Comments on Draft Safety Rules, pp. 6-7, filed in docket AR 638 on May 13, 2022.

(4) OAR 860-024-0018(12) – Reasonable Effort to Identify Owner of Facilities

The Draft Rules allow operators of electric facilities to “remove equipment or otherwise remedy [a] condition correlating to a heightened risk of ignition” where it is unable to ascertain who the pole owner or equipment owner is.” OCTA recommends that the rule be revised to include a requirement that the operator of electric facilities use good faith efforts to identify and contact the pole owner or owner of equipment prior to removing or repairing poles or equipment. OCTA recommends revising OAR 860-024-0018(12) as follows:

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

(5) OAR 860-024-0060(3)(a) – Complaint Must Demonstrate That Alleged Violation Correlates to a Heightened Wildfire Risk

In setting forth what must be demonstrated when an operator of electric facilities files a complaint due to the failure of an owner or occupant to timely remedy a properly noticed violation, the Draft Rules should be amended to require that the complainant demonstrate that the alleged violation correlates to a heightened wildfire risk within an HFRZ. OCTA recommends the following revision to OAR 860-024-0060(3)(a):


(3)

(a) The Complainant must be able to demonstrate that it issued a written notice of the violation(s) to the Respondent and that the alleged violation(s) correlate(s) to a heightened wildfire risk in an HFRZ. 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.

CONCLUSION

For the foregoing reasons, OCTA recommends that the Commission revise the Draft Rules as recommended above.

Respectfully submitted this 30th day of June 2022.

By: 
Mark P. Trincherro
DAVIS WRIGHT TREMAINE LLP
2400 SW Fifth Ave.
Portland, OR 97201
(503) 241-2300
marktrincherro@dwt.com

Attorney for OCTA