

November 19, 2021

Via Electronic Filing

Filing Center

Oregon Public Utilities Commission

201 High Street SE, Suite 100

P.O. Box 1088

Salem, OR 97301

RE: Docket AR 638/648 Draft Wildfire Prevention and Mitigation Rulemakings

Attention: Filing Center

Consumers Power Inc. (CPI) appreciates the opportunity to submit comments concerning the Oregon Public Utilities Commission's (OPUC) draft rules for AR638 and AR648. CPI offers the following feedback, including constructive suggestions, regarding AR638 and AR648.

A. CPI comments on rules that apply to CPI operations.

1. Definition of "High Risk Fire Zone" in OAR 860-024-0001(4) Conflicts with Senate Bill 762.

The definition of "High Risk Fire Zones" is so open ended that it conflicts with the language adopted into law by the Oregon State Legislature. The law states that "The Oregon Wildfire Risk Explorer must be the official wildfire planning and risk classification mapping tool for the State of Oregon". As an agency of the State of Oregon the PUC should specify that the Oregon Wildfire Risk Explorer should be the starting point for identifying high risk fire zones. Adopting a definition that does not provide a minimum compliance criterion creates risks for utilities and for the public as well. The PUC should align the language in this rulemaking to better reflect the laws that prompted the PUC to undertake the rulemaking in the first place.

2. Expiration of Exemption in Subsection 3 of OAR 860-024-0012

Subsection 3 of OAR 860-024-0012 contains an exemption that provides important operational flexibility to electric utilities. Unfortunately, the draft rules terminate that exemption at the end of the year 2027. The exemption allows electric utilities to devise and take advantage of efficiencies and synergies in work processes and conduct minor corrective work while other work is being done. Removing this operational flexibility will negatively impact electric utilities by keeping line crews busy with relatively minor corrections at the expense of more important work such as system hardening upgrades in areas of higher fire risk. The language in the exemption only allows utilities to defer corrections of a nature that do not pose a risk to life or property. It is not clear why the OPUC wants to revoke the exemption in the name of reducing fire risk because it does not apply to safety violations of a nature that could pose a fire risk. CPI

requests that the exemption revocation rule be deleted from the draft rules since it does not have a clear benefit but has easily foreseeable negative consequences.

3. Inclusion of a Statewide Minimum Trim Cycle Requirement to OAR 860-024-0016 – Minimum Vegetation Clearance Requirements.

CPI believes that a statewide trim cycle requirement is unjustified and outside the scope of a rulemaking that is ostensibly focused on reducing wildfire risks. The requirement ignores differences in climate, vegetation growth rates, and especially fire risk found throughout the state. The requirement also serves to denigrate the applicability of the performance-based rules found in OAR 860-024-0016. These existing rules, which the OPUC already has the authority to enforce, elucidate acceptable vegetation proximities to powerlines in different situations. It makes no sense to pass more rules to help enforce rules that already exist. The clear remedy for vegetation encroachment problems is to enforce the existing rules. Further, a prescribed trim cycle reduces the decision-making powers of utilities. The effect that this rule will have would be to force utilities to assign personnel and resources inefficiently (and at cost to rate payers) to trim in areas that are less concerning (or not requiring attention) than others, to meet the specified trim cycle deadline. OPUC staff have stated that they intend that the 3-year trim cycle is meant for utilities that do not have a good vegetation management plan and that utilities can submit plans and request a waiver from the 3-year cycle. This does not make sense for the reasons already stated, and it is likely that in several years there will be staff turnover at the OPUC. Institutional memory is finite, and it is extremely likely that future staff will not interpret the 3-year trim cycle in the same way as current staff and will treat it as an absolute that should not be deviated from. The 3-year trim cycle language is unnecessary due to existing rules, rulemaking scope concerns, needless harm to utility operations and clear potential for different interpretation in the future. For these reasons' CPI recommends that the minimum trim cycle language be jettisoned entirely.

4. Request for removal of detailed "Joint Inspections" of facilities in OAR 860-024-0018 draft language.

Joint Inspections are a methodology not a safety measure. They by themselves do not ensure any higher margin of safety. Joint Inspections are a business decision best left to individual parties to determine if they are in their best interest and can provide greater inspection efficiency. Wildfire Mitigation Plans need to be focused on public safety not joint use relationships which are complex in nature and defined by contractual obligations that can differ significantly amongst the various attaching entities. Pole owners know best who amongst their licensees they have positive working relationships with and those who are a negative drain on time and resources. Mandating joint inspections does not make sense for all pole occupants. Does it make sense to mandate joint inspections for licensees who only have a small number of attachments say less than 100, common with smaller communications companies, requiring all the same administrative burdens and costs as for those with thousands of attachments?

Overlaying High Risk Fire Zones and Detailed Facility Inspection geographic areas, with electric utility and communications operators service territories is highly complex geometry. The above boundaries may overlap uniformly, partially or in multiple disconnected locations. One area may entirely envelope another or encroach minimally into the other. The more parties that are involved the more complex the overlay becomes. Another of the variables involved is that utility

service territories are not uniformly developed or built out so there can be large gaps in where utilities have facilities or engage in joint use of facilities. This complexity would serve to make facility inspection planning so complicated and piecemeal that it would become a burden to wildfire mitigation plan implementation.

In the interest of public safety and the protection of property Wildfire Mitigation Plans need to be simple and efficient in implementation and reactive to experience and changing conditions on the ground. Burdening plans with excessive stakeholder involvement that does not enhance public safety is inefficient, administratively burdensome and would negatively impact public safety. Joint use rules and practices should **not** be mandated through wildfire mitigation rule making. Should OPUC Staff feels there need to be changes made to joint use rules they should be done under a separate rule making within Oregon Administrative Rules Chapter 860, Division 28 Pole and Conduit Attachments. Such a rulemaking should involve all members and stakeholders of the joint use community at large as well as the Oregon Joint Use Association.

5. Lack of Choice of Inspection Methods in OAR 860-024-0018 High Fire Risk Zone Safety Standards.

The draft rules stipulate that the prescribed inspections must be done by climbing poles or using high-powered spotting scopes. CPI believes that this language will stifle innovations that are available or could be available soon. The PUC should broaden the language to allow for other effective methods such as drone-based sensors. This will help meet the intent of other draft rules that require utilities to research and utilize new technologies. An example is OAR 860-300-0003(1)(f) 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.**

6. Clarification of actions expected from Consumer Owned Utilities in OAR 860-024-0050 Incident Reports.

CPI is unclear which actions are required to comply with this ruleset. Parts 1 and 2 and their subparts seem to apply to all electric utilities. Part 3 is clearly applicable to Investor-Owned Utilities, but it contains reporting instructions and procedures of a nature that would be useful for Consumer-Owned Utilities. As the rule is written it is very difficult to understand what Consumer-Owned Utilities need to do to comply with the rules or which rules must be complied with. Further confusion is provided by anecdotal evidence that OPUC staff is expecting some Consumer-Owned Utilities to meet or exceed the rule requirements for Investor-Owned Utilities. Since the overarching ruleset is already open for rulemaking CPI request that OPUC staff take the opportunity to clarify the language in OAR 860-024-0050 so that Consumer-Owned Utilities can more easily understand the requirements and comply with them.

B. CPI comments on rules that do not directly apply to CPI operations. CPI understands that these rules are not directly applicable to Consumer Owned Utilities but is concerned about them and wishes to share comments.

7. Non-Utility Related Expertise and Litigation Probability in OAR 860-300-0004 Risk Analysis.

To properly conduct the required Risk Analysis utility personnel must have thorough knowledge of climatology, and meteorology along with a working knowledge of oceanography. They must also have experience with government relations and local governmental partners who are

interested in the risk analysis process and outcomes. CPI understands that the draft language in OAR 860-300-0004 largely does not apply to Consumer Owned Utilities but believes there are extra-OPUC concerns with these rules. If the OPUC adopts these rules as written it would set a de facto “best practice” for all electric utilities. In this case the draft rules would leave smaller utilities open to civil litigation after a fire. A member of the public could easily make the case that a utility out of scope of the rule should have followed the rules nevertheless because doing so could have prevented a fire.

8. Expanded Role of Electric Utility Operations in OAR 860-300-0005 Wildfire Mitigation Plan Engagement Strategies.

The requirements of this ruleset would impose significant burdens on electric utilities. These burdens would have an outsized impact on smaller systems typical of Consumer Owned Utilities. CPI operates in 6 counties, and it would take staff many hours to host a meeting in each county, gather feedback, and provide educational materials to the public. The rule also requires electrical utilities to perform some functions of Emergency Management and Law Enforcement when it comes to notifying members of the public about PSPS events. This would lead to messaging confusion and conflict. It is too easy to say that these rules do not apply to consumer owned utilities and leave it at that. Most stakeholders, both public and private, do not understand the incorporation differences between utilities and certainly do not understand the jurisdictional limits of the PUC. People will become confused and expect things from consumer owned utilities that are not required or even a good idea. The PUC should not adopt rules that require utilities to perform actions outside of the scope of normal business operations because of the public confusion, and operational conflicts that will result.

An additional concern is the requirement that electric utilities perform nearly year-round liaison activities with local Law Enforcement and Emergency Management agencies. CPI has attempted to coordinate fire mitigation efforts with those agencies in our service area. Many of them do not see the value in coordination activities outside of times of immediate threats or real-world emergencies. In rural counties it is typical for a member of the Sheriff’s Department to assume the role of Emergency Manager. Many of these personnel are overburdened and consequently they ignore communication attempts. If public safety partners will not respond to emails or engage in telephone conversations, it follows that they will not engage in activities related to OAR 860-300-0005(4) and its parts. Without a mechanism to force these agencies to comply with this rule it will be impossible for utilities to meet the regulatory requirements that it imposes.

C. CPI has the following comment to make due to a generalized concern about several of the draft rules.

9. Liaison and Action Requirements Without Effective Mechanisms to Compel Action from Stakeholders.

Throughout these draft rules there are mandatory inspections, remediation actions, meetings, and coordinated activities that electric utilities must engage in with external stakeholders. These stakeholders include telecommunication companies, law enforcement, emergency management, local governments, and other entities. The rules do not include regulatory methods for an electric utility to compel these actions. The net effect is that electric utilities will fall short of these regulatory requirements unless every single identified stakeholder acts

proactively, and in good faith, to meet all utility company requests without deviation. This is an unreasonable expectation that ignores the fact that other entities have their own operational priorities, funding issues, and organizational focuses. CPI believes the draft rules should make allowances through “safe harbor” language for utilities that make good faith efforts to follow the rules but are ignored, rebuffed, or stymied in their efforts to comply.