

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 STAFF’S DRAFT
PERMANENT RULES**

INTRODUCTION

The Oregon Cable Telecommunications Association (“OCTA”) appreciates this opportunity to provide the Oregon Public Utility Commission (“OPUC” or “Commission”) with comments on OPUC Staff’s Draft Permanent Rules, filed September 29, 2021, which propose amendments to the Commission’s rules set forth in Oregon Administrative Rules (OAR) Chapter 860, Divisions 300 and 24.

1. DIVISION 300 – WILDFIRE MITIGATION PLANS

In its May 3, 2021 comments regarding the draft temporary Public Safety Power Shut-off (“PSPS”) rules, OCTA emphasized the need for clear and advance notification to communications providers, including OCTA member companies, of PSPS events. The Commission subsequently adopted temporary rules¹ that include communications providers in the definitions of both “Critical Facilities” and “Public Safety Partners.”² This ensures that communications providers would receive the most advance and robust PSPS notification provided for under the rules.³

¹ The Commission adopted the temporary rules on May 27, 2021 in Order No. 21-167.

² See OAR 860-024-0060(2) and (7).

³ See OAR 860-024-0070(1(a) and (3), 0080(1)(a), 0090(1)(a), and (2).

In contrast, the draft permanent rules do not expressly include communications providers in the definitions of either “Public Safety Partners” or “Utility-identified Critical Facilities.”⁴ As a result, it is unclear what notification priority and type of information would be provided to communications providers under the draft permanent rules. While, ostensibly, the Public Utilities would likely identify communications infrastructure as Critical Facilities, OCTA would prefer that this be explicit in the draft permanent rules.

In discussions at the workshops regarding the draft permanent rules, Staff indicated that it intended for communications providers’ infrastructure to be identified and treated as Critical Facilities and would consider revising the draft permanent rules to ensure the same. Accordingly, OCTA recommends the following revisions to OAR 860-300-0002 of the draft permanent rules:

(9) “Utility-identified Critical Facilities” refers to the facilities the Public Utility identifies that, because of their function or importance, have the potential to threaten life safety or disrupt essential socioeconomic activities if their services are interrupted. Public Utilities shall identify as critical facilities all communication infrastructure (*e.g.*, wireless towers and support infrastructure, communication carrier infrastructure including selective routers, central offices, head ends, cellular switches, and remote terminals).

This will ensure that communications providers will receive priority notification under OAR 860-300-0006 of the draft permanent rules.

⁴ See Draft Permanent Rules, OAR 860-300-0002(6) and (9).

Under the temporary rules, Investor-Owned Utilities ("IOUs") are also required to provide communications providers, as Public Safety Partners, relevant geographic information system ("GIS") data.⁵ As owners of Critical Facilities, under the draft permanent rules, however, communications providers would not have access to GIS information.⁶ This geographically specific information is essential for OCTA's members to identify which of their equipment and facilities are located in the area that will be affected by the PSPS event. In order to ensure that communications providers will be provided this crucial GIS information, OCTA recommends the following revision to OAR 860-300-0006(1)(c) of the draft permanent rules:

(c) In notifying utility-identified critical facilities, the Public 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;

(C) Date and time PSPS will be executed;

(D) Estimated duration of PSPS;

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

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

This change will ensure that communications providers will receive the needed GIS data.

⁵ See OAR 860-024-0090(1)(a).

⁶ See Draft Permanent Rules, OAR 860-30-0006(1)(c).

2. DIVISION 024 – SAFETY RULES

Unlike the temporary rules, the draft permanent rules also include a number of significant revisions to the Commission’s safety rules set forth in Division 24. While OCTA appreciates the Staff’s desire to introduce additional safety-related measures in “High Risk Fire Zones,” there are two aspects of the draft permanent rule amendments to Division 24 that OCTA recommends be modified.

First, the draft permanent rules seek to mandate “joint inspections” in High Risk Fire Zones.⁷ For all of the reasons set forth in the comments of the Oregon Joint Use Association (“OJUA”), OCTA urges the Staff to eliminate this requirement. Joint inspections should continue to be voluntary only. The Commission has previously rejected proposals to mandate joint inspections, stating:

We recognize that utilities and licensees will perform attachment work on an ongoing basis, so that an area will likely never be completely violation-free. We also believe that market forces and other incentives in the rules will motivate companies to work together when it is reasonable. Staff’s goal is laudable, and we support the goal. But we will not mandate it by rule. We encourage owners, licensees, and other operators to coordinate their inspections when possible.⁸

In addition to the complications cited in the OJUA comments, OCTA notes the following problems with mandating joint inspections:

- OCTA’s members have network footprints that intersect with those of numerous Public Utilities on whose poles OCTA members attach facilities. With 10-year inspection cycles, each attacher and each pole owner will likely have inspected a different ten

⁷ Draft Permanent Rules, OAR 860-024-0018(5).

⁸ *In the Matter of Rulemaking to Amend and adopt Permanent Rules in OAR 860, Divisions 024 and 028, Regarding Pole Attachment Use and Safety*, Order No. 06-547 at 4 (Docket AR 506, July 26, 2006).

percent (10%) of their network footprints. Mandating joint inspections will, therefore, likely require OCTA member companies to reinspect attachments in areas that have only recently been inspected – a redundant exercise that only serves to increase costs and utilize limited resources unnecessarily.

- There is a lack of qualified inspectors to carry out all of the joint inspections that would be required if the draft rule were to be adopted. Furthermore, most inspectors have specialized expertise and training inspecting either electrical facilities or communications facilities, not both. This renders even more severe the shortage of needed inspectors.
- OCTA members that have participated in joint inspections have found them to be extremely difficult to coordinate. In addition, when these member companies have conducted follow up inspections, they have discovered numerous items that have not been done correctly, requiring duplicative corrective action.

In short, the additional costs and complications associated with joint inspections far outweigh any particular benefit. As the OJUA comments astutely point out, joint inspections will not enhance safety or wildfire mitigation and should not be required.

Second, the draft permanent rules seek to shorten to 180 days after discovery the correction period for certain violations of Commission safety rules in High Risk Fire Zones.⁹ OCTA supports the goal of ensuring that safety violations in High Risk Fire Zones with a heightened risk of wildfire that affect energized conductors be corrected in a timely manner. The draft rule requires

⁹ Draft Permanent Rules, OAR 860-024-0018(7).

correction “no later than 180 days after discovery, regardless of pole ownership.”¹⁰ In practice, however, the entity responsible for performing the corrective action may well not be the entity that discovers the violation and may not receive immediate notice of the violation and the need to correct it within 180 days of its discovery. OCTA, therefore, recommends the following revision to OAR 860-024-0018(7) of the draft permanent rules:

(7) A violation of Commission Safety Rules in High Fire Risk Zones affecting energized conductors and a heightened risk of wildfire, as identified by the Operator of electric facility, shall be corrected no later than 180 days after discovery notice to the responsible party, regardless of pole ownership.

CONCLUSION

For the foregoing reasons, OCTA urges Staff to revise the draft permanent rules as recommended above. OCTA looks forward to participating in future workshops and proceedings to help the Commission to achieve its goal of protecting Oregonians while also ensuring that the new costs and burdens imposed on the industry are sensible and justified to achieve that goal.

Respectfully submitted this 19th day of November 2021.

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¹⁰ *Id.*