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February 23, 2022

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
P.O. Box 1088
Salem, OR 97308-1088

RE: AR 638 – Risk-Based Wildfire Protection Plan Proposed Rules

Dear Filing Center,

In response to the Commission’s request for Portland General Electric Company (“PGE”), PacifiCorp d/b/a Pacific Power (“PacifiCorp”), and Idaho Power Company (“Idaho Power”) (collectively referred to as the “Joint Utilities”), to provide further explanations of their proposed edits to the proposed wildfire mitigation rules in AR 638, the Joint Utilities submit Attachment A. Attachment A includes the Joint Utilities’ proposed edits to Staff’s proposed rules (in redline/strikeout format) and discussions that provide the rationale behind each recommended change.

The Joint Utilities reiterate our commitment to wildfire mitigation efforts that protect the safety of the public, increase our systems’ resiliency to wildfire damage, and reduce the risk of utility facilities causing a wildfire. This is important work, and we recognize electric utilities are one of the many critical partners needed for the state to be successful in its pursuit of holistic and effective wildfire risk mitigation efforts.

We hope that the explanations advance the dialog on this critical issue and look forward to working collaboratively with the Administrative Hearings Division, Staff, and the other parties to develop actionable wildfire mitigation rules that can be in effect for the 2023 fire season and PSPS rules that can be adopted prior to the 2022 fire season.

Sincerely,

/s/ William M. Messner

William M. Messner, Esq.
Director, Wildfire Mitigation & Resiliency
Portland General Electric

/s/ Amy McClusky

Amy McClusky
Managing Director, Wildfire Safety & Asset Management
Pacific Power

/s/ Alison Williams

Alison Williams
Regulatory Policy & Strategy Advisor
Idaho Power

Comments/Explanation of Joint Utility Changes to Proposed OAR 860, Division 24 Rules

The below document is structured to reflect the proposed redline of the Joint Utilities, followed by an explanation or “discussion” of why the Joint Utilities are proposing the redlined changes.

860-024-0001

Definitions for Safety Standards

~~(5) "Joint Inspection" means an inspection of all equipment on any utility pole, structure, duct or conduit, owned by either the Owner or an Occupant(s).~~

Discussion:

The Joint Utilities have significant concerns that the proposed joint inspection mandate will result in added administrative burden and reduce critical efficiency by taking additional resources in both time and personnel. The proposal is counter to the goal of expeditiously mitigating and managing wildfire risk, which is core to utilities being responsive in light of increased impacts of climate change.

Some examples of why we believe there will be reduced efficiencies include: the inability of parties to schedule joint inspections due to unresponsive third parties and/or lack of availability; and parties determining administration, cost-sharing, responsibilities, and applicability of existing contract provisions.

An alternative to joint inspections has been proposed in Section 860-024-0018(7), which focuses on facilitating corrections on an accelerated timeline.

We note that other stakeholders have also expressed concern in regard to the joint inspection mandate. The Oregon Joint Use Association and the Oregon Cable Telecommunications Association filed comments in AR 638 opposing mandated joint inspections. The Oregon Telecommunications Association and CTIA publicly expressed concern about mandated joint inspections at the Commission Workshop on February 8, 2022.

860-024-0011

Inspections of Electric Supply and Communication Facilities

~~(c) Perform onsite-routine safety patrols of overhead electric supply lines and accessible facilities for hazards to the public. The maximum interval between safety patrols is two years, with a recommended rate of 50 percent of lines and facilities per year.~~

Discussion:

The Joint Utilities' intention behind deleting “onsite” is to provide flexibility in the rules so that electric utilities would be *allowed* to conduct remote (rather than mandate in-person) inspections *once technology advances* sufficiently to support remote inspections. The Joint Utilities support use of proven industry best practices for inspections, whether that is in-person inspections, remote inspections via technology, or a combination thereof.

860-024-0012

Prioritization of Repairs by Operators of Electric Supply Facilities and Operators of Communication Facilities

(4) After December 31, 2027, the only allowable conditions for deferrals as set forth in subsection (3) are ~~those as follow: repairs~~ that accommodate schedules for ~~local jurisdiction permitting issues~~ or repairs impacted by planned public works or planned road construction projects; and repairs which 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.

Discussion:

The Joint Utilities position is that Staff's proposed language unduly limits the exemption to delays due to local permitting issues or planned road construction or other public works project. The Joint Utility language allows an exemption due to *all* permitting issues, rather than just *local* permitting issues, for planned public works beyond road construction, and other circumstances beyond our control.

Examples that would justify an exemption include: a municipality request that an Operator/Owner ("Operator") of electric facilities convert its distribution facilities from overhead to underground; planned improvements to a sidewalk; or new facilities in the right of way. Customer driven work, which is outside an electric utility's control, that require relocations include frontage improvements (adding vehicle, bike, or pedestrian lanes), new access roads (entrances/exits), and Municipality undergrounding requirements.

In these instances, an exemption to the correction timeline would improve operational efficiencies, and, as a result, reduce costs. An exemption would allow a single relocation to meet Municipal or customer needs and correct the violation in parallel.

Correcting violations discovered during an inspection is not always straightforward or within the utility's control. For example, correcting some violations involves extensive design work, coordination with property owners and local jurisdictions, scheduling of construction crews, pre-requisites, coordination with customers concerning their electric service entrance equipment, and outage coordination.

860-024-0016

Minimum Vegetation Clearance Requirements

(5) 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:

Discussion:

The insertion of “routine” in 860-024-0016(5) is simply to reflect the current rules and make it clear that “reasonably anticipated operational conditions” include “routine wind conditions”, not “adverse wind conditions”. This approach is consistent with existing Division 24 language in 860-024-0016(7)(e), which states “Growth habit, strength, and health of vegetation growing adjacent to the conductor, with the combined displacement of the vegetation, supporting structures, and conductors under **adverse weather or routine wind conditions.**” [emphasis added].

(9) Electric utilities performing vegetation management work in High Fire Risk Zones in accordance with this Section are exempt from compliance with any applicable local law governing tree trimming and removal.

Discussion:

The addition of 860-024-0016(9) is meant to eliminate, in HFRZs, the patchwork of local ordinances and permitting requirements on tree trimming and removal that would contradict the new requirement issued by the State. Since wildfire mitigation rules are statewide rules, ordinances around tree trimming and removal in HFRZs should be consistent and not undercut or conflict with State regulation. Adding this language to the rule will reduce the time needed to obtain permits, eliminate confusion around which tree trimming and removal practices are allowed, avoid delays for citations, notices for non-compliance, or other enforcement matters associated with defending wildfire vegetation work and most importantly, allow consistent tree trimming and removal practices in an electric Operator’s HFRZs.

860-024-0018

High Fire Risk Zone Safety Standards

*(1) Operators of electric facilities must, in High Fire Risk Zones, **remove or de-energize permanently** out of service ~~abandoned and non-critical supply~~ equipment as determined by the Operator during fire season permanently out of service equipment.*

Discussion:

The Joint Utilities’ edits to 860-024-0018(1) are intended to provide clarity on what equipment must be removed or de-energized in an HFRZ. For example, under Staff’s language, it is unclear whether equipment that supplies irrigation pumps or vacation property that has the power turned off in the off season is considered “out of service”. The Joint Utilities’ edits clarify that only *permanently* out of service equipment must be removed or de-energized. The edits add “remove or” to the proposed rule to allow for removal of equipment, rather than have de-energization as the only option. The edit also removes uncertainty related to the phrase “non-critical supply equipment”. The Joint Utilities are concerned that the language as proposed would force the removal of necessary equipment. To be clear, “non-critical supply equipment” does not mean that the equipment is not used and useful. For example, one could argue that redundancy designed into the grid is “non-critical supply equipment”, but that redundancy is essential for a resilient grid and the benefit of our customers. The proposed edits do not change

the existing requirements for electric utilities to inspect and maintain energized facilities until removed from service or permanently de-energized.

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

(a) *conduct at a minimum, ~~enhanced~~ “detailed inspections”, that may include ~~ing~~, but are not limited to, in person, onsite visual checks, or practical tests of all facilities, to the extent required to mitigate fire risk and identify violations of Commission Safety Rules.*

(b) *for transmission systems energized at or above 50,001 volts, perform and document, ~~at a minimum~~, detailed inspections, that may include, but are not limited to, ~~via~~ onsite climbing, drone or high-powered spotting scope to identify structural and conductor defects, as well as violations of Commission Safety Rules.*

(4) *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 patrols, that may include, but are not limited to, in person, 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, 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.*

~~(5) The requirements set forth in (3) and (4) above do not preclude the use of technology developments that may improve the ease of and quality of inspections. The use of technologies does not eliminate the need for in-person fire safety patrols described above.~~

~~(6) Beginning in December 31, 2027, Public Utility Owners of electric supply facilities and Occupants shall participate in “Joint Inspections” of facilities in High Fire Risk Zones to mitigate fire risk as well as identify violations of Commission Safety Rules.~~

Discussion:

As with the deletion of 860-024-0001(5), edits to 860-024-0018(3) and (4) were made to allow for remote inspection once the technology advances, and to not *require* in-person inspections. “Enhanced” was deleted as “enhanced detailed inspections” is not defined and “enhanced” does not add anything to “detailed inspections”.

With the edits to these paragraphs, paragraphs (5) and (6) [in Staff’s proposed rules] become superfluous and not needed.

~~(68) A violation which poses a risk of fire ignition identified by an HFRZ detailed inspection or safety patrol shall be subject to the following correction timeframes 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, regardless of pole ownership.~~

(a) any violation that poses imminent danger to life or property must be repaired, disconnected, or isolated by the Operator immediately after discovery.

(b) any violation which correlates to a heightened risk of fire ignition shall be corrected no later than 180 days after discovery.

(c) all other violations requiring correction under Section 2 of 860-024-0012 shall be corrected no later than consistent with OAR 860-024-0012.

Discussion:

The Joint Utilities' edits to paragraph 6 [Staff (8)] are designed to **accelerate correction timelines for fire ignition risks** with the higher ignition risk violations corrected first. To achieve that, this revised rule includes hierarchical or tiered correction windows. Violations in an HFRZ identified as an "imminent" danger to life or property would need to be corrected immediately after discovery. Violations identified as "heightened" risk of ignition in an HFRZ would need to be corrected within 180 days. All remaining violations that may impact ignition risk in an HFRZ would need to be corrected within the timeframe specified in OAR 860-024-0012.

Each electric utility should define in its internal policies which violations are "imminent" or "heightened". In order to provide transparency, those definitions could be included in Wildfire Mitigation Plans (WMPs). Including the definitions of "imminent" and "heightened" in WMPs, rather than in an Oregon Administrative Rule, allows flexibility to update the definitions (with Commission approval) as understanding or circumstances change over time.

(7) If an Operator of electric facilities discovers a foreign-owned reject pole or a violation that correlates to a heightened wildfire risk, notice shall be provided to the pole owner or equipment owner. 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. This provision does not preclude the Operator of electric facilities from exercising any other rights or remedies afforded by Oregon Law or contract.

Discussion:

The addition of 860-024-0018(7) further reflects the Joint Utilities' goal to address what we understand is the core issue behind Staff's proposal to mandate Joint Inspection; namely, the correction, in a timely manner, of violations in HFRZs that impact wildfire risk. Under this paragraph, an Operator of electric facilities would inspect all of the poles in its HFRZs that it owns or attaches to for violations that could lead to a fire ignition. The electric utility, in general, would not inspect poles to which electric utility is not attached.

If an electric utility discovers a violation during an inspection in an HFRZ involving a communication facility that poses an “imminent” danger, the electric utility would repair, disconnect, or isolate the violation if the communication Operator was unable to promptly respond. A post work notice would be sent to the communication Operator following this action to mitigate. The Notice could also be sent to Safety Staff.

For violations that pose a “heightened” risk of ignition and all other ignition violations in an HFRZ related to communication equipment, the electric Operator would issue a Notice to the communication Operator to correct the violation by a date certain. It should be noted that the date will be determined by the condition of the violation that is identified.

For all communication facility violations discovered during its inspection in an HFRZ (including those that could cause an ignition), the electric Operator would issue a Notice to the communication Operator describing the violation, the location, and the timeframe in which it needs to be corrected. The Notice could also be sent to Safety Staff.

If the communication Operator did not correct the violation within the timeframe listed in the Notice, the electric Operator may correct the violation and obtain reimbursement.

The intent of the 25% replacement fee is to provide additional incentive to the communication Operator to correct the violation on a timely basis. The Joint Utilities recognize that a sanction of 15% above the actual cost of correct is included in 860-028-0150(2). The higher, 25% sanction is appropriate given that this proposed language would exist in the High Fire Risk Zone subsection of rules, where a stronger sanction is intended to reflect areas of higher priority and urgency.

Again, the primary objective of the Joint Utilities is the timely correction of all the ignition related violations in HFRZs. Stated differently, the Joint Utilities believe that these rules **provide a clear path for reject poles to be replaced and lashing wire violations to be corrected** – regardless of ownership. Specifically, paragraph (7) provides new provisions for electric utilities to correct violations than currently contained in Division 28. The new provisions allow electric utilities to correct violations on foreign owned poles and allow electric utilities to move “faster” to mitigate wildfire risk if the Owner does not correct the violation within the Notice timeframe.

The Joint Utilities could implement this rule in 2023.