



Oregon Citizens' Utility Board

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Via Electronic Filing

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RE: AR 638 – CUB Comments on Proposed Division 24 and Division 300 Rules for Risk-based Wildfire Protection Plans

The Oregon Citizens' Utility Board (CUB) submits these Comments in response to the AR 638 Notice of Rulemaking issued on February 25, 2022, and Oregon Public Utility Commission (PUC) Memorandum issued June 10, 2022. CUB appreciates the opportunity to engage in this important rulemaking. CUB expects these rules will help reduce Oregonians' wildfire risk in a cost-effective manner while furthering the goals articulated in SB 762 and Section 5(B)(4)-(5) of Governor Brown's Executive Order 20-04 (EO 20-04).

General Comments on Proposed Rules

CUB reiterates its comments to Staff's scoping survey filed earlier in this docket, including the assertion that this rulemaking in no way obviates the statewide utility requirement to furnish adequate and safe service under ORS § 757.020. The Wildfire Mitigation Plans (WMP) that result from this rulemaking must help ensure safe and adequate service but should not be viewed as a means to have de facto complied with ORS § 757.020. WMPs should be designed to provide real risk mitigation and protection for customers, rather than providing a checklist for utilities to demonstrate compliance to avoid potential liability.

In CUB's response to PUC Staff's scoping survey filed January 8, 2021, in this docket, CUB advocated that utilities' WMPs should:

- Conduct meaningful risk mitigation and protection, not a checklist for utilities to assert compliance;
- Be developed with a survey of each utility's system and its risk profile which would then inform mitigation investments;

- Prioritize areas of highest risk, as well as investments in system hardening and enhanced vegetation management; and
- Conduct analyses based on the best climate science and a fact-based risk analysis should inform investment opportunities; and
- Meaningfully involve stakeholders in determining which investments best mitigate wildfire risk in the most cost-effective manner.

CUB expressed the expectation that these rules will ensure utilities are using fact-based analyses to mitigate wildfire risk in a cost-effective manner, are targeting mitigation in high wildfire risk areas, and offer guidance for utilities to do so. CUB’s comments and proposed rule changes are related to these goals.

CUB is grateful for the efforts Staff, ALJ Katherine Mapes, and stakeholders have put into these rulemaking processes. In general, CUB appreciates Staff’s efforts to find a balance of protecting Oregonians from wildfire risk and empowering electric utilities to use best practices to mitigate wildfires and protect utility assets. CUB has not been able to participate in the informal process of this docket as much as we would have liked. Accordingly, we offer our comments knowing that some of the issues we raise may have been discussed in previous workshops. We appreciate the PUC’s consideration of these comments in this phase of the docket.

Comments on Proposed Division 24 Rules

860-024-0001(4) - “High Fire Risk Zones” and 860-024-0005 - Maps and Records

In CUB’s initial comments in this docket, we expressed the expectation that utilities should be required to utilize the best available science related to climate change and wildfire impacts and should utilize modeling to help predict which areas may be higher risk in the future. SB 762 (2021), section 7(2) identifies the Oregon Wildfire Risk Explorer, which establishes wildfire risk classes, as the official wildfire planning and risk classification mapping tool for the State of Oregon. How, if at all, are utilities expected to utilize this statewide tool in determining wildfire risk zones? Does Staff believe it could be useful to add language that directs utilities to include data from the State’s mapping tool in determining wildfire risk zones, for example in either proposed rule 860-024-0001(4) defining “High Fire Risk Zones” or 860-024-0005 - Maps and Records? Why or why not?

CUB previously expressed the expectation that utilities should engage in quantitative wildfire risk mapping of their transmission and distribution system. While CUB shares concerns with stakeholders that “in a form satisfactory to the Commission Staff” lacks specificity, particularly regarding the quantitative mapping expectation. At this time, CUB is satisfied with Staff’s explanation on this rule captured in Order No. 22-011 in this docket. CUB also expects that the proposed rule in 860-024-0005(1) covers utility transmission and distribution systems’ wildfire risk mapping concerns. It would be helpful to know whether Staff and other stakeholders feel similarly.

860-024-0012 – Prioritization of Repairs by Operators of Electric Supply Facilities and Operators of Communication Facilities

CUB recognizes that section 1 of this rule that any violation that threatens immediate danger to life or property must be remedied immediately. While it might be assumed that this rule covers violations that occur in utility High Fire Risk Zones, that is not guaranteed and may not be the case. However, in cases of violations beyond what is covered in section 1, CUB believes it is reasonable to include language that directs utilities to prioritize violations in areas of highest wildfire risk to life or property. The risks of wildfire ignition in high-risk zones are too high to leave such a large gap between discovery of the violation, which may have been at issue for a while prior to discovery of the violation, and the timeline for remedy. Not only are the risks to human health too great, but also the potential damage to utility infrastructure and homes and businesses, and the financial costs that could have been avoided. A timely remedy of these violations is critical.

While it may be assumed a utility would include support for its reasoning behind why a deferral is warranted, CUB believes the rule should make it clear this explanation is required and that all requests for deferrals and plans for correction must be reviewed, approved, and tracked by the Commission.

Based upon the above comments, CUB proposes the following changes to proposed rule 860-024-0012 in red below:

(2) Except as otherwise provided by this rule, the Operator must correct violations of Commission Safety Rules no later than two years after discovery, prioritizing repairs by zones of highest wildfire risk. This plan is subject to approval by the Commission.

(3)(b) The Operator must develop a request for deferral explaining why the violation poses little or no foreseeable risk of danger and include a plan detailing how it will remedy each such violation.

(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 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.~~

(5) All requests for deferrals and plans for correction must and must be submitted to Commission Staff for review, approval, and tracking

860-024-0018 – High Fire Risk Zone Safety Standards

CUB appreciates that Staff recognizes that wildfire risks are forcing rapid evolution of industry standards, and that it is the Commission’s duty to provide minimum standards, and developed this rule based upon observations made during Staff’s compliance inspections as well as learnings from analysis of other recent wildfires.¹ However, CUB is concerned that 180 days provides for too much time between discovery of a violation and repair, particularly if the summer wildfire season falls within that timeframe. CUB asks PUC staff to consider shortening this deadline for repair to 60 days or in the alternative, a timeline no longer than 90 days. At a minimum, CUB requests that Staff consider setting a shorter deadline in the range of 60-90 days during wildfire season or the summer months. CUB reiterates our earlier comments on proposed rule 860-024-0012 in support for this change. As staff identified in its Report, sometimes “conditions are not corrected until Staff identifies them or a member of the public complains.”² The potential danger to life and property in areas of heightened risk of fire ignition are too high to leave such a large gap between discovery of the violation, especially because this condition may have been occurring for quite some time before discovery. A timely remedy of these violations is critical. Accordingly, CUB proposes the following change to proposed rule 860-024-0018 in red below:

(8)(b) any violation which correlates to a heightened risk of fire ignition shall be corrected no later than ~~180~~ 60 days after discovery.

Comments on Division 300 Rules

Based upon Staff’s reports in the utilities’ 2020 WMP dockets and the Commissioners questions and deliberations at the public hearings in those dockets, these concerns do not appear to have been adequately addressed by utilities in this year’s WMPs. The utilities indicated they did not have enough time this year to do thorough analyses or develop methodology for the analyses since they had a month to file their reports after the rules were adopted. CUB is somewhat understanding of this situation, although the utilities had good reason to expect the rules to be the same as or similar to the requirements set out in SB 762 and Section 5(B)(4)-(5) of Governor Brown’s Executive Order 20-04 (EO 20-04), as well as the rules proposed by Staff in September 2021. However, CUB finds it concerning that the utilities’ failed to conduct and describe robust risk assessments and cost-benefit analyses of the wildfire mitigation strategies proposed in their 2022 WMPs, as well as failing to include discussions of how the overall effectiveness of the plan activities will be measured and information on wildfires in the service territory for the prior year. Just as important, CUB believes a summary of the status of safety violations and repair, as well as a comparison of the previous year’s expected and actual costs should be included in the WMP, as well.

¹ Order 22-011, Appendix A, p 13 (Jan. 20, 2022).

² *Id.* at p 14.

CUB reiterates our previous comments that after highest risk areas within each utility's service territory are identified, real investments in system hardening and enhanced vegetation management need to be made. The survey of each utility's system and the risk profile throughout should help inform where the investments should be made. This will help Oregon ensure that we are not caught flat footed when the next extreme wildfire event comes to our state. However, it is also important to consider the ratepayer impact of wildfire mitigation investments. Care should be taken to ensure that targeted investments be made in highest risk areas rather than overhauling the entire utility system. Wildfire mitigation and preparedness should not be treated as an investor-owned utility investment and profit vessel.

CUB expects utilities to include their evaluation and in-depth description of the cost effectiveness or risk-spend efficiency (RSE) of different mitigation measure risk-assessment methodology in their WMPs. This will allow the Commission, the independent evaluator, and other stakeholders to understand the methodology better and provide input. Utilities should provide RSE calculations at the circuit level and should use RSE to make decisions and prioritize within its WMP. Oregon should be wary of allowing a high RSE to justify a PSPS event where the societal costs of PSPS are not being considered in the calculation. CUB encourages Staff to consider both wildfire ignitions as risks in the RSE analysis, as California has done. Further, CUB believes the rule should require utilities to report ignition data and analyzing that data. This information will help the Commission to better regulate and the utilities to better understand the risks on their systems.

CUB believes our proposed changes to this rule give utilities more direction and focus for developing proposed WMPs, without being too prescriptive, and in alignment with the purpose of SB 762 (2021), EO 20-04, and Commission authority. Based upon the above comments, CUB proposes the following changes to the proposed Division 300 rules in red below:

860-300-0020 – Public Utility Wildfire Mitigation Plan Filing Requirements

(1)(b) An analysis of multiple Identified means of mitigating wildfire risk that reflects a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk, while prioritizing high risk fire zones. Analysis should include but is not limited to: how action protects public safety; considers low-income and vulnerable populations; and promotes energy system resilience, with special attention to areas with high likelihood of PSPS.

(d) Discussion of outreach efforts to regional, state, and local entities, including but not limited to entities identified in Ch. 592, Oregon Laws 2021 (SB 762 (2021)), as well as 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.

(i) Identification of the development, implementation, and administrative costs for the plan, which includes discussion of risk-based cost and benefit analysis of multiple identified

means of mitigating wildfire risk, including consideration of technology that offer co-benefits to the utility's system, and a summary of the previous year's expected costs and actual costs to date.

(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 could pose an ignition risk on its own equipment and on pole attachments

(j) Summary of status of safety violations and repair for the past two years.

860-300-0030 - Risk Analysis

(1)(d) The Public Utility's risk analysis must include a narrative description and analysis of multiple wildfire risk models, a discussion of the wildfire risk model chosen, ignition data, and how the Public Utility's wildfire risk models are used to make decisions concerning the following items:

- (A) Public Safety Power Shutoffs;**
- (B) Wildfire Ignitions;**
- (C) ~~(A)~~ Vegetation Management;**
- (D) ~~(B)~~ System Hardening;**
- (E) ~~(C)~~ Investment decisions; and**
- (F) ~~(D)~~ Operational decisions.**

Again, CUB appreciates Staff's hard work in this docket as well as the level of stakeholder engagement throughout this process. We thank the Commission for its consideration of our comments and look forward to Staff's response.

Respectfully submitted,

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