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July 21, 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,

On July 6, 2022, 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”) submitted a request to extend the comment period in the Public Utility Commission of Oregon’s (“OPUC” or “Commission”) docket AR 638 solely to respond to a submittal by the Oregon Citizens’ Utility Board (“CUB”) regarding the Division 24 and Division 300 rules as proposed by the Administrative Hearings Division (“AHD”). CUB’s comments and redlines to the proposed rules were filed with the Commission on June 30, 2022. On July 7, 2022, Administrative Law Judge (“ALJ”) Mapes granted the Joint Utilities’ request and extended the comment period in this docket to July 21, 2022. The Joint Utilities appreciate the opportunity to respond to CUB’s comments, which include many recommended edits to the proposed rules not previously raised in discussions with other stakeholders.<sup>1</sup> The Joint Utilities additionally

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<sup>1</sup> The Joint Utilities are simultaneously filing a separate response to comments filed by the City of Portland.

appreciate CUB's engagement in this critical docket and have provided responsive comments and proposed redlines to CUB's submittal.

Sincerely,

/s/ W.M. Messner  
Director of Wildfire Mitigation and Resiliency  
Portland General Electric Company

/s/ Amy McCluskey  
Amy McCluskey  
Managing Director, Wildfire Safety & Asset Management  
PacifiCorp

/s/ Alison Williams  
Regulatory Policy and Strategy Leader  
Idaho Power

## **CUB's redlines and comments to proposed Division 24 and Division 300 rules and the Joint Utilities' response**

For ease of review, please note that CUB's redlines to the proposed rules are indented and shown in red font. No language modifications have been made to CUB's proposed redlines. The Joint Utilities' responses are not indented.

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

In its comments on this section of the proposed rule, CUB questioned how the newly developed Oregon Wildfire Risk Explorer statewide map would be considered by utilities in determining wildfire risk zones. The Joint Utilities recognize that the statewide wildfire risk map has some elements that are useful to understand and manage wildfire risk throughout the state. However, it is not comprehensive, nor fully reflective of wildfire risk in its entirety due the lack of visibility into individual utility systems. It will be a valuable data point for utilities to consider in analyzing wildfire risk but cannot be the only consideration.

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

(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**

The Joint Utilities note that over the course of the AR 638 docket, rule 860-024-0012 has been subject to very minimal revision. Moreover, the revisions were limited to that part of the rule that governs circumstances in which corrections extend beyond two years following the discovery

of a violation.<sup>2</sup> In contrast to the course of the docket, however, CUB proposes to revise substantially several aspects of the rule and introduce at least three new requirements for Operators. The Joint Utilities appreciate CUB's concerns about addressing violations within high fire risk zones and agree that those violations should be remedied quickly. The existing proposed rules provide those clear corrective timelines; therefore, the Joint Utilities do not believe CUB's proposed revisions to 860-024-0012 are helpful in creating a better process or in mitigating wildfire risk.

*1. CUB's revisions to 860-024-0012 add unnecessary complication and potential delays to the Commission review process*

In Section (2), CUB proposes prioritizing repairs by zones of highest wildfire risk. Section (3) only allows deferral of violations that "pose little or no foreseeable risk of danger to life or property". As such, CUB's proposed additions to Section (2) are unnecessary. Further, 860-024-0018(8), as reflected in AHD's June 10 redline, requires that violations that pose a risk of fire ignition in an HFRZ are subject to accelerated correction schedules, which provides the correction timeframe methodology. The Joint Utilities note that correction protocols and timeframes have been the subject of extensive comments by stakeholders in the docket to date and reflect general stakeholder agreement.

Regarding CUB's proposed edits to 860-024-0012(3) and (4), section (3) states that only violations that "pose little or no foreseeable risk of danger to life or property" may be deferred as noted above. Per section (4), Staff will review and track plans for correction. The Joint Utilities' understanding is that Staff's role is to review and make recommendations to the Commission, not to "approve" requests for deferrals or plans for correction. Accordingly, moving language from section (4) to a new section (5) and adding "approval" as CUB recommends is not warranted. Section (3)(b) already states that the Operator must develop a plan detailing how it will remedy each violation. The Joint Utilities further understand that Staff's review of a deferral plan would include an examination of whether the violation posed an imminent risk. Further, it is unclear how CUB's proposed approval process would work in a manner that provides for expeditious resolution and due process rights. Imposing a formal approval process could, in fact, serve to lengthen the time in which repairs are made.

Finally, the Joint Utilities note that 860-024-0012(4) as reflected in the June 10 redline, reflects agreement that was reached after several months of dialogue between Staff and other stakeholders in AR 638. The Joint Utilities recommend retaining the current ALJ language with the relatively minor drafting edits to aid in interpretation submitted by the Joint Utilities on June 30, 2022.

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<sup>2</sup> See, the Division 024 redline version that was circulated by the AHD on June 10, 2022.

2. *860-024-0012 was promulgated through extensive stakeholder collaboration in AR 506*

The existing sections of 860-024-0012 were promulgated through docket AR 506 and involved extensive stakeholder comment and collaboration.<sup>3</sup> Moreover, OPUC Order No. 06-547 contains a discussion concerning the various stakeholder positions on the issue of prioritization of repairs and describes the issue as “contentious” in the context of the docket.<sup>4</sup> Notwithstanding the contentious nature of that rulemaking, stakeholders ultimately reached an agreement that is reflected in the existing rule section that governs prioritization of repairs. The Joint Utilities note that the rule has been in place for over 15 years and has been implemented by Operators to reduce the overall number of violations located within the State of Oregon. Because the rule is working effectively, the Joint Utilities do not find cause to make new changes to 860-024-0012. However, if substantive changes are to be made to this section, the Joint Utilities recommend that stakeholders who participated in AR 506 be given a meaningful opportunity to participate in the process.

3. *The Commission’s existing prioritization of repairs regime is based on the National Electrical Safety Code, making CUB’s proposals a departure from established and well-functioning policy*

The National Electrical Safety Code (“NESC”) is globally recognized and contains the basic provisions that are considered the standard for safeguarding the public, utility workers, and utility facilities.<sup>5</sup> The Commission has adopted by rule the NESC.<sup>6</sup> Similar to 860-024-0012(1), the NESC requires the prompt correction of conditions that would reasonably be expected to endanger human life or property. However, with respect to changes being advocated by CUB, the NESC does not prescribe a correction timeframe.<sup>7</sup> Rather, the NESC states that other conditions or defects shall be *designated for correction* and no correction timeframe is specified.

Oregon’s Division 024 rules contain prescriptive correction timeframes that exceed the requirements of the NESC in two respects. First, 860-024-0012(2) provides for a general correction timeframe of no later than two years after discovery. Second, 860-024-0012(3) provides for a correction timeframe of no later than ten years after discovery (if certain provisions are met). The Commission’s existing rules are functioning, by all accounts, and are more stringent than those of the NESC. As a result, the Joint Utilities do not believe any additional changes to 860-024-0012 are warranted or necessary.

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<sup>3</sup> See, OPUC ORDER NO. 06-547 at 2: “After weighing all of the comments in this docket, we adopt the rules set forth in Appendix A for Division 024.”

<sup>5</sup> See, NESC Rule 010B.

<sup>6</sup> See, ORS 757.035 and OAR 860-024-0010.

<sup>7</sup> See, NESC Rule 214A5b: “Other conditions or defects shall be designated for correction.”

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

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

While the Joint Utilities appreciate CUB’s recommendation to correct violations that pose a heightened risk of fire ignition sooner than 180 days, the Joint Utilities do not support changing the requirement from 180 days to 60 days, as certain repairs may require the extended timeframe to allow for coordination with other parties. As drafted in the June 10 redline, 860-024-0018(8)(b) is deliberately worded to state “no later than” which recognizes that 180 days is a *maximum* correction timeframe for this category of violations. Operators of electric facilities will adopt wildfire mitigation plans that will govern how each utility will accomplish its corrections to achieve a correction timeframe of 180 days or less. As the Joint Utilities have stated on a number of occasions in this proceeding, our objective is to address corrections as quickly as possible. But flexibility is necessary, as the characteristics of the violation, operational resources necessary to achieve the correction, field circumstances, and time of the year may all be factors that influence individual correction timing. Each Operator may establish internal correction timeframes (e.g., 30 days, 90 days, etc.); however, in all instances the 180-day timeframe will be met. Consistent with our recommendation throughout this docket, the Joint Utilities emphasized the importance of individual correction timelines in our June 30 comments, which proposed an edit to 860-024-0018(8)(b) to clarify that the pole Owner may require a pole Occupant to correct a violation in less than 180 days pursuant to 860-028-0120(6).

### **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

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

The Joint Utilities appreciate CUB’s concerns about ensuring utility risk assessments are robust and that proposed mitigation strategies are thoughtful and targeted to areas with the highest risk. However, the Joint Utilities are concerned CUB’s proposed edits to 860-300-0020(1)(b) change the purpose and focus of Wildfire Mitigation Plans (“WMPs”) from an *identification of means to mitigating wildfire risk* that reasonably balances costs of mitigating wildfire risk to requiring an *analysis of multiple means of mitigating wildfire risk*. WMPs are holistic and include mitigation across a portfolio of investments and competencies. Prioritization includes but is not limited to only HRFZs and is a dynamic variable. In addition, the Commission’s regular convenings of utilities from across the state also provide for discussion of shared best practices that can help to identify cost-effective and meaningful wildfire mitigation methods. All three of the Joint Utilities’ plans include a variety of mitigation strategies, as there is not a one-size-fits-all approach to effective wildfire mitigation. Requiring the inclusion of multiple solutions within a plan – when only one may be the right approach for a given risk – would not only be costly without proven benefit but would also substantially expand the scope and purpose of utility WMPs.

CUB’s proposed edits to (1)(b) would further require that a utility’s WMP include analysis of public safety, consideration of low-income and vulnerable populations, and promotion of energy resiliency with special attention to likely PSPS zones. The Oregon Legislature’s intent as articulated in Senate Bill 762) of requiring utility WMPs was to provide a clear plan to mitigate fire risk, especially in HFRZs, with the clear directive that the plan must be designed to “protect public safety, reduce risk to utility customers, and promote electrical system resilience to wildfire damage.” Therefore, inserting language regarding the prioritization of HRFZs or likely PSPS zones is redundant.

The Joint Utilities are committed to serving all of our customers and recognize the need to offer additional measures of protection for our most vulnerable communities. The consideration of low-income and vulnerable populations was discussed at the beginning of this docket. During the Commission’s July 12, 2021, PSPS Work Group Meeting, the Oregon Department of Human Services (“ODHS”) expressed a general theme that identification and support for vulnerable populations should be the responsibility of ODHS, not the utilities, as ODHS is

responsible for identifying these populations and can provide support and service for a broader set of situations and emergencies. ODHS, supported by Commission Staff, recommended that the utilities focus, instead, on electrical operations and notifications during emergencies, including notifications to key Public Safety Partners such as ODHS. Issues related to wildfire displacement, disconnections, and outages—with special consideration of low-income customers—are already being contemplated in AR 653. The Joint Utilities consider AR 653 the best venue for addressing low-income impacts of wildfire displacement and PSPS. Considering the history and evolution of this docket with respect to vulnerable populations and the ongoing work in AR 653, the Joint Utilities recommend that the rule language remain as proposed in AHD’s most recent redline.

CUB proposes to insert 860-300-0020(i), which would impose a requirement to include a summary of safety violations and repairs. CUB appears to intend for the requirement to apply across an electric utility’s entire Oregon service territory, which would expand the WMP beyond its intended purpose. OAR 860-300-0034 allows for the discussion of safety violations and repairs that have a bearing on a public utility’s wildfire risk analysis.

### **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.**

The Joint Utilities generally agree with CUB that WMPs should include a discussion of fire risk modeling utilized, which they already do – see UM 2207, 2208, 2209 for PacifiCorp’s, PGE’s, and Idaho Power’s 2022 WMPs, respectively. We have appreciated the flexibility that both the Legislature and the Commission have provided in allowing utilities to utilize modeling that is best suited to their organization’s needs and circumstances. The Joint Utilities recognize



that providing information on modeling used to evaluate risk allows stakeholders and Commission Staff to better understand how each utility is assessing risk. The Joint Utilities believe that the existing AHD language throughout 860-300-0030 will accomplish this. Wildfire risk mapping is predominantly done by consultants that specialize in this type of risk analysis. CUB's proposal to require analysis of multiple wildfire risk models would be incredibly costly and significantly expand the time needed to produce WMPs without providing a clear value to customers, the utility, or the state of Oregon. The Joint Utilities are also unclear of CUB's intention with the addition of "Wildfire Ignitions" in 860-300-0030(1)(d), as wildfire risk models are not used to assess or make decisions about actual fire ignitions. The Joint Utilities recommend maintaining the existing AHD language.