



*Submitted electronically*

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**RE: Docket AR 638 – Wildfire Mitigation**

Thank you for the opportunity to provide testimony at the June 2<sup>nd</sup> hearing on this rulemaking. We appreciate the thoughtful progression of the latest redline in response to that testimony. In addition, please accept this feedback on the latest iteration of the rules. For convenience, we have addressed our comments chronologically by section, rather than in order of significance.

**Section 860-024-0001 Definitions for Safety Standards.**

In Section 0001, we appreciate the inclusion of a definition for the term “Good Utility Practice,” which comes from OAR 860-039-0005. Upon further consideration and dialogue with the joint utilities, we think it would be preferable to use the term “Accepted Good Utility Practice,” which comes from the National Electric Safety Code (NESC), General Rule .012 C. The NESC definition provides for consideration of “local conditions known at the time by those responsible for the construction and maintenance of” the electric supply and communications lines and equipment.

We think this definition is more specific and gives due deference to the owner of the equipment. In contrast, the proposed definition of “Good Utility Practice” uses the description “electric industry in a region,” which is ambiguous and may not account for regional differences in approach by consumer-owned utilities (COUs) versus investor-owned utilities (IOUs). As we mentioned in previous comments during the informal phase of this rulemaking, best practices may differ for COUs and IOUs— even in the same region. For example, a COU with a smaller service territory might opt to use an equally effective, but more labor-intensive protocol than a larger IOU.

The NESC definition also factors in consideration of who is responsible for the construction and maintenance of the lines. It makes sense to hold electric operators to a higher standard with respect to our own equipment versus equipment owned by telecommunications or cable attachers. Even if the Commission opts to retain the existing definition of “Good Utility Practice,” in evaluating whether a utility has complied with “Good Utility Practice,” it is proper to consider who has primary responsibility for installation and maintenance of the equipment. The definition should reflect that.

**Section 860-024-0017 Vegetation Pruning Standards.**

The citation to the American National Standard for Tree Care Operations needs further amendment to align with the newer 2017 pruning standards. Specifically, the outdated reference to 2008 remains in this redline immediately following “American National Standard for Tree Care Operations, ANSI A300 (Part 1).” It should match the other redline reference to 2017.

**Section 860-024-0018 High Fire Risk Zone (HFRZ) Safety Standards.**

**0018 (2).** We agree with the joint utilities that proposed (2) belongs in Division 300. As noted in testimony on June 2<sup>nd</sup>, the existing language in (2) is inconsistent with the enabling legislation. For example, although most COUs will likely update their wildfire mitigation plans annually, SB 762 provides that COUs must update their plans regularly “on a schedule the governing body deems consistent with prudent utility practices.” The legislation also provides that the contents of COU plans be “approved by the utility governing body” and that submission to the PUC is meant to facilitate Commission functions regarding statewide wildfire mitigation planning and preparedness.

A provision requiring COUs to detail how our inspection programs and training will be conducted is more properly left to our governing boards. Clearly it is in our best interest to ensure that our training methodologies and protocols are sufficient to address the wildfire risk posed in our service territories and to meet the new Division 24 safety standards. The adequacy of our training programs will also be evident during required PUC safety audits.

**0018 (4).** As noted above, we are suggesting that the term “Accepted Good Utility Practice” be adopted from the NESC in lieu of the term “Good Utility Practice.”

As we mentioned in our testimony on June 2<sup>nd</sup>, we believe the duty of inspection within HFRZs should run with the owner of the facility who has expertise. Due to joint pole use, the owner will not always be the operator of the electric facilities. While we appreciate the language in (13) indicating that nothing in this section is intended to alter liability, because this subsection requires operators of electric facilities in HFRZs to conduct “HFRZ Ignition Prevention Inspections” regardless of equipment ownership, we think the Commission should consider who owns, who has installed, and who has an obligation to maintain the equipment in assessing whether “Good Utility Practice” or “Accepted Good Utility Practice” has been exercised. The rule should note that a reasonable electric operator will not be held to the same standard as telecommunications or cable operators when it comes to the inspection of telecommunications or cable equipment in HFRZs.

**0018 (6).** Given that (4) requires all operators of electric facilities in HFRZs to conduct “HFRZ Ignition Prevention Inspections,” we believe this subsection describing the required frequency of those inspections should also apply to “operators of electric facilities” broadly, not just to “Public Utility Owners of electric supply facilities.”

**0018 (7).** We believe this subsection should be eliminated. This subsection was developed in an earlier version of the rules that contemplated a joint inspection requirement for investor-owned utilities. This subsection (7) was meant to be a complimentary, but permissive concept of “detailed inspection cycle alignment” for COUs. Since the joint inspection requirement has been abandoned,

this subsection should also be eliminated. Nothing prevents COUs from doing this today; in fact, some COUs have joint inspection programs.

**0018 (8) (b) & (9).** Given the safety implications as well as the administrative burden on operators of electric facilities, we agree with the testimony provided by Terry Blanc of PGE at the June 2<sup>nd</sup> hearing that the correction timeframes for violations correlating to a heightened risk of fire ignition within HFRZs should be less than 180 days—provided the electric operator provides reasonable notice to the equipment owner/occupant. As drafted, (9) provides that repairs must be “within the time frame set out in these rules” and (8) (b) requires correction “no later than 180 days after discovery.” This language seems to leave the timeframe for repair up to the third-party equipment owner/occupant so long as it is not later than 180 days after discovery.

Ensuring correction of violations correlating to heightened risk of fire ignition in less than 180 days is particularly critical given the electric operator’s interest in eliminating risks expeditiously in advance of wildfire season. As Mr. Blanc noted, this is permitted in OAR 860-028-0120 (6) and these rules should incorporate the same approach.

**0018 (10).** We agree with the testimony of Billy Terry at the June 2<sup>nd</sup> hearing that operators of electric facilities should be authorized to charge a replacement fee of 25%. As Commissioner Tawney noted, the 15% allowed in Division 28 does not seem to be working. It is important that the Commission communicate urgency for correction of violations that correlate to heightened wildfire risk in HFRZs. This is appropriate given the proposed shift in responsibility to operators of electric facilities to inspect ALL equipment in HFRZs. This significant surcharge will be a meaningful tool to ensure attachers/pole owners act promptly.

**0018 (13).** We appreciate the inclusion of this subsection to clarify that requiring operators of electric facilities to conduct “HFRZ Ignition Prevention Inspections” of equipment they do not own is not intended to create new liabilities. Additionally, we request that language be added indicating, “Nor is anything in this section intended to require additional electric operator training to conduct the HFRZ Ignition Preventions Inspections of equipment not owned by the electric operator.”

### **Section 860-024-0060 Resolution of Violations of Commission Safety Rules in HFRZs.**

**0060 (2).** Allowing complaints to contest bills for remediation of violations seems reasonable. However, the scope of the complaints should be spelled out in the rule. For example, the complainant should not be permitted to dispute or bargain down imposition of the surcharge authorized by 0018 (10).

### **Effective Dates.**

As you know, consumer-owned utilities have an obligation under SB 762 to file wildfire mitigation plans with our governing bodies no later than June 30, 2022. Our utilities have just completed, or are wrapping up, this work. While this has been necessary and valuable work, it has also been very resource intensive. Some COUs spent thousands of dollars in consulting fees to assist in the effort. Due to the timing of this AR-638 rulemaking, as well as the upcoming adoption of the new Oregon

Department of Forestry’s statewide wildfire risk map, some elements of our wildfire mitigation plans may not align perfectly with these new Division 24 requirements.

For example, some COU wildfire plans identify “areas of concern” that may or may not trigger requirements that would apply to High Fire Risk Zones. In a small municipal system with a relatively minimal risk profile for wildfire, these areas of concern may not even register at all if they were contained within the larger service territory of an IOU. After adoption of these AR-638 rules and the new state risk map, COUs may want to re-evaluate the initial categorizations in their plans.

If you adopt the proposed amendment to 0018 (6), to require the HFRZ Ignition Prevention Inspection requirement to begin December 31, 2027 for all operators of electric facilities, that would also be sufficient lead time for COUs to comply the new requirements. Other aspects of the rule, like vegetation clearance updates to 0016 could be implemented sooner. We ask that the Commission closely examine the requirements of each section of these new rules to develop reasonable timeframes for implementation that balance the urgency of the work with our most recent efforts in developing wildfire mitigation plans.

Thank you for your consideration. We appreciate the robust opportunity to participate in this important rulemaking. We are committed to continued engagement as the Commission works to finalize these rules. Please do not hesitate to contact Jennifer Joly at (971) 600-6976 or [jenniferjoly@omeu.org](mailto:jenniferjoly@omeu.org) for clarification or discussion regarding these recommendations.

Sincerely,

*/s/ Jennifer Joly*

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