

Before the
OREGON PUBLIC UTILITY COMMISSION

In the Matter of Rulemaking for Risk-Based)
Wildfire Protection Plans and Planned) Docket No. AR 638
Activities Consistent with Executive Order)
20-04.)

FURTHER COMMENTS OF CTIA

CTIA offers the following comment on the Oregon Public Utility Commission’s (“Commission’s”) Draft Phase II Rules in Docket No. AR 638, as issued on September 29, 2021 (the “Draft Rules”).

CTIA appreciates Staff’s work to address concerns raised in this proceeding regarding the appropriate advance notifications of de-energization or Public Safety Power Shutoff (“PSPS”) events for wireless and other communications service providers. Herein, CTIA proposes amendments to the Draft Rules aimed at correcting the issues identified.

Other sections of the Draft Rules – in particular, the section on “High Fire Risk Zone Safety Standards” – would benefit from further stakeholder discussion and feedback. CTIA therefore asks Staff to schedule additional workshops following this round of comments to refine the Draft Rules further.

I. THE DRAFT RULES SHOULD BE AMENDED TO INCLUDE PRIORITY ADVANCE NOTIFICATION OF DE-ENERGIZATION EVENTS FOR COMMUNICATIONS PROVIDERS

Timely advance notification of de-energization events from utilities to communications providers, including wireless carriers, is crucial. As noted in previous CTIA comments in this proceeding, such notice is necessary for wireless carriers to mitigate, as much as possible, the

impact on consumers and others (including public safety entities) who rely on their networks.¹

However, as written, the Draft Rules do not guarantee adequate notice of de-energization events for communications service providers.

The Draft Rules call for priority notification, to the extent possible, for “utility-identified critical facilities,” which are defined as “the facilities the Public Utility identifies that, because of their function or importance, have the potential to threaten life safety [*sic*] or disrupt essential socioeconomic activities if their services are interrupted.” This definition departs from both the federal definition for critical infrastructure² and the Oregon statutory definition that mirrors it: “... infrastructure that is so vital to this state or the United States that the incapacity or destruction of the infrastructure would detrimentally affect the personal and economic security, health, or safety of residents of this state....”³

While the inconsistency with the state and federal definitions may cause confusion, the bigger issue is that the “utility-identified” clause undercuts the definition completely, putting the end determination of what constitutes “critical infrastructure” wholly in the hands of each utility. This could frustrate the previous state and federal determinations of what infrastructure is critical, as well as lead to situations where different utilities define the term differently.⁴ This issue is compounded by the lack of any requirement in the Draft Rules for utilities to identify any

¹ See Comments of CTIA, Docket No. AR 638 (May 3, 2021) at 1-3.

² See 42 U.S.C. §5195c(e) (“the term “critical infrastructure” means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.) Presidential directive establishes 16 defined sectors for critical infrastructure, including communications facilities. See Presidential Policy Directive 21: Critical Infrastructure Security and Resilience (2013), available at <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil> (last accessed Nov. 19, 2021).

³ ORS 276A.500(1) (defining “critical infrastructure information.”)

⁴ Moreover, allowing utilities the final determination of what constitutes a “critical facility” under the Commission’s rules may constitute improper delegation of the Commission’s authority. See, e.g., *Corvallis Lodge No. 1411 Loyal Order of Moose v. OLCC*, 67 Or. App 15, 22, 677 P2d 76 (1984).

critical facilities in advance. Nor are utilities required to describe any outreach to critical facilities operators in their Wildfire Mitigation Strategy Plans.

Further, the Draft Rules do not require utilities to provide GIS shapefiles of the impacted areas to critical facilities operators, as they do for public safety partners. These shapefiles are crucial for communications providers to efficiently identify impacted areas. Moreover, because utilities are already required in the Draft Rules to provide shapefiles to public safety partners, there would be minimal additional effort required for utilities to disseminate them for critical facilities operators as well.

At the October 2021 workshop in this proceeding, multiple parties, including CTIA, expressed concern with the lack of notification for communications service providers in the Draft Rules. Staff noted that this was a result of a general move away from proscriptive utility regulations in the Draft Rules, but acknowledged that the importance of these notifications makes this an area where more proscriptive regulation may be warranted.

CTIA appreciates Staff's willingness to work with stakeholders to address issues in the Draft Rules and improve the de-energization notification procedures for communications service providers. Accordingly, CTIA recommends the following changes to the Draft Rules:

First, and consistent with the definition already established in Oregon statute, in Draft Rule 860-300-0002 (Definitions for this Division), Definition (9) ("Utility-identified Critical Facilities") should be deleted and replaced with a definition for "Critical Infrastructure":

"'Critical Infrastructure' refers to infrastructure that is so vital to this state or the United States that the incapacity or destruction of the infrastructure would detrimentally affect the personal and economic security, health, or safety of residents of this state." The terms "critical facilities" or

“utility-identified critical facilities” should be replaced by “critical infrastructure” throughout the Draft Rules.

Second, in Draft Rule 860-300-0005 (Wildfire Mitigation Plan Engagement Strategies), a clause should be added at (5) to require utilities to include in their Wildfire Mitigation Plans a Critical Infrastructure Coordination Strategy, describing a utility’s efforts to identify all critical infrastructure operators that could be impacted by a PSPS event in the utility’s service area.

Additionally, in Draft Rule 860-300-0006 (Communications Requirements Prior, During, and After a Public Safety Power Shutoff), a requirement should be added to (c) for the public utility to communicate to impacted critical infrastructure operators the PSPS zone, including the pertinent GIS shapefile.

To assist Staff in its work to revise the Draft Rule, CTIA has attached a proposed redline containing the changes to the Draft Rule discussed above (Attachment A).

II. STAFF SHOULD SCHEDULE FURTHER WORKSHOPS ON THE DRAFT RULES FOLLOWING THIS ROUND OF COMMENTS

At the October workshop in this proceeding, parties were able to quickly identify and offer improvements for the issues with the notification procedures, but other sections of the Draft Rules took significantly more time and discussion, and lasted until the end of the workshop. Accordingly, some sections of the Draft Rules may require further refinement prior to the start of the formal rulemaking process.

For example, Draft Rule 860-024-0018(7) calls for safety violations “as identified by the Operator of electric facility, shall be corrected no later than 180 days after discovery, regardless of pole ownership.” But this section assigns no responsibility for that correction – and to the

extent it implies that operators are responsible for all such corrections, functions on the incorrect assumption that the operator must be to blame for all such violations.

Similarly, Draft Rule 860-024-0018(5) (High Fire Risk Zone Safety Standards) requires owners of electric supply facilities and pole occupants in High Fire Risk Zones to conduct “Joint Inspections” to identify violations of Commission Safety Rules. But the Draft Rule provides no further details – for example, how often these must occur, or what party is responsible for the costs of the inspection (or the remedy, if the responsible party cannot be identified or contacted). At best, this makes the Draft Rule impermissibly vague – and at worst, this subsection of the rule imposes a burden on communications service providers without furthering the public safety goal of improving safety in High Fire Risk Zones.

It is difficult to justify the impact of the costs involved in conducting joint inspections. As noted by OCTA and other parties at the October workshop, it is not uncommon for communications service providers to find, when confirming the results of a joint inspection, that the inspector hired by the electric utility provider did not focus on aspects related to the communications attachments. Issues involved in inspecting electric supply facilities do not significantly overlap with those needed during inspection of communications attachments, and thus each party needs to arrange for an inspector that has the relevant expertise. This coordination is particularly challenging (and leads to increased inspection costs) as there is a shortage of qualified personnel and aligning their schedules adds an additional burden. Moreover, this requires additional staffing by the communications service provider, which will have to have a project manager for each inspection that requires coordination, further diverting resources. An additional challenge results from the mismatch between the ten-year inspection

cycle followed by each electric utility within the communication service provider's footprint,⁵ many of which cover multiple electric utility service areas, and that of the communications service provider, which is subject to its own ten-year inspection cycle. These issues suggest that the joint inspection requirements should be removed from the Draft Rules, but at a minimum, they would need significantly more clarity and streamlining prior to implementation.

These are areas of the Draft Rules that may benefit from more refinement, as overly vague requirements could increase confusion, burdens and expenses for stakeholders. To that end, CTIA encourages Staff to hold another workshop (or workshops) following this round of comments and prior to the January 6, 2022 target date for final draft rules to allow stakeholders to further discuss these sections so that Staff can refine them further based on feedback.

III. CONCLUSION

CTIA looks forward to working with the Commission and stakeholders to continue refining the Draft Rules.

Respectfully submitted,

By: s/ Timothy R. Volpert
Timothy R. Volpert, OSB #814074
Email: tim@timvolpertlaw.com
Telephone: (503) 703-9054
Attorneys for CTIA

Benjamin Aron
Matt DeTura
1400 16th Street, Suite 600
Washington, DC 20036
(202) 736-3200

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⁵ OAR 860-024-0011(1)(b)(A).

**ATTACHMENT A – CTIA PROPOSED RULE REDLINES FOR PSPS
NOTIFICATIONS**

860-024-0001

Definitions for Safety Standards

~~(5) “Joint Inspection” means an inspection that includes both the Owner and Occupant(s) of any utility pole, structure, duct or conduit.~~

860-024-0018

High Fire Risk Zone Safety Standards

~~(5) Public Utility Owners of electric supply facilities and pole Occupants in High Fire Risk Zones shall participate in “Joint Inspections” of facilities to identify violations of Commission Safety Rules and mitigate fire risk.~~

860-300-0002

Definitions for this Division

~~(1) “Critical Infrastructure” refers to infrastructure that is so vital to this state or the United States that the incapacity or destruction of the infrastructure would detrimentally affect the personal and economic security, health, or safety of residents of this state.~~

[...]

~~(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.~~

860-300-0003

Public Utility Wildfire Mitigation Plan Filing Requirements

~~(1) [...] (j) Description of the efforts that the Public Utility has undertaken to ensure that it has identified critical infrastructure operators within its service area.~~

860-300-0006

Communications Requirements Prior, During, and After a Public Safety Power Shutoff

(1) When a Public Utility determines that a PSPS is likely to occur, it must deliver notification of the PSPS to its Public Safety Partners, operators of ~~utility-identified~~ critical ~~infrastructure~~ facilities ~~within the area subject to de-energization~~, and adjacent local Public Safety Partners.

(a) To the extent practicable, the Public Utility must provide priority notification directly to Public Safety Partners, operators of ~~utility-identified~~ critical ~~infrastructure~~ facilities ~~within the area subject to de-energization~~, and adjacent local Public Safety Partners.

[...] (c) In notifying ~~operators of utility-identified~~ critical **infrastructure** 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;

~~(A)~~ (B) Date and time PSPS will be executed;

~~(B)~~ (C) Estimated duration of PSPS;

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

~~(D)~~ (E) Notice of when re-energization begins and when re-energization is complete;

[...] (3) To the extent possible, the Public Utility will adhere to the following minimum notification prioritization and timeline in advance of a PSPS:

(a) 48-72 hours in advance of anticipated de-energization, priority notification to Public Safety Partners, operators of ~~utility-identified~~ critical **infrastructure** facilities **within the area subject to de-energization**, and adjacent local Public Safety Partners;

[...] (5) Nothing in this rule prohibits the Public Utility from providing additional information about execution of the PSPS to Public Safety Partners, ~~operators of utility-identified~~ critical **infrastructure** facilities, or customers.