

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of

Rulemaking Regarding Electric Utility
Wildfire Mitigation Plan

Docket No. AR 638

**OCTA SECOND SET OF COMMENTS
ON DRAFT SAFETY RULES**

INTRODUCTION

At the May 4, 2022, workshop in this proceeding, Administrative Law Judge (“ALJ”) Mapes stated that the Administrative Hearings Division (“AHD”) intends to issue an updated redline of the draft proposed amendments to the Commission’s Division 24 safety rules by May 20, 2022. ALJ Mapes encouraged stakeholders to file comments regarding the draft rules prior to May 20th.

The Oregon Cable Telecommunications Association (“OCTA”) appreciates this opportunity to provide the following comments regarding the draft rules. These comments reflect the discussion at both the May 4th workshop and the April 29th meeting between electric utilities and communications attachers regarding electric utility inspections in High Fire Risk Zones (“HFRZs”) and the types of communications attachment violations that should be included in such inspections (“4/29 Meeting”). In large measure, those discussions affirm OCTA’s proposed edits to the draft rules in comments it filed on March 25, 2022. Set forth below is a discussion of reasons for the proposed revisions and the draft edits to the rules, shown in redline.

1. Proposed OAR 860-024-0018(5) -- Remove “or Occupants”

The alternative to joint inspections proposed by Portland General Electric, PacifiCorp and Idaho Power (“the Joint IOUs”) contemplated that an Operator of electric facilities would inspect

all of the poles in its HFRZs that it owns or attaches to for the types of violations that could possibly implicate potential wildfire hazards, whether the violation involves electric supply facilities, communications facilities, or the pole itself.¹ The Joint IOU proposal would then have the IOUs notify communications Operators of any such communications facility-related violations discovered during these inspections.²

At the 4/29 Meeting, the investor-owned utilities (“IOUs”) made clear that they are already conducting annual inspections in their HFRZs that are designed to identify a list of approximately 44 types of potential wildfire-related safety violations, including four types of communications attachment violations, specifically: broken lashing, low clearance over roadways, foreign-owned reject poles and broken equipment. The IOUs confirmed that these four communications attachment violations are readily detectable by the inspectors utilized by the IOUs and are not the type of violation that can only be detected by communications inspectors.

However, the current AHD draft rules provide that “Public Utility Owners of electric supply facilities [i.e., IOUs] *or Occupants* shall conduct ‘Comprehensive Facility Inspections’ of facilities in High Fire Risk Zones” OAR 860-024-0018(5) (emphasis added). OCTA recommends deleting the words “or Occupants” for several reasons. First, having these inspection requirements apply to either the IOUs *or Occupants* introduces uncertainty regarding who will conduct these critical inspections. Second, communications attachers do not have inspectors qualified to inspect electric supply facilities on utility poles, as would be required as part of such inspections. Nor are communications attachers permitted to make corrections to electric supply

¹ See Joint Utilities Comments, filed February 1, 2022 (“2/1 Joint IOU Comments”), Attachment A, pp. 5-6; *see also*, Joint Utilities Comments, filed February 23, 2022 (“2/23 Joint IOU Comments”), pp. 5-6.

² *Id.*

facilities because most pole attachment agreements, as well as NESC and OSHA rules,³ prohibit communications attachers from working in the electric space on the pole. This would mean that communications attachers would be unable to immediately repair an electric facility-related violation that poses imminent danger to life or property, as required under proposed rule OAR 860-024-0018(7)(a), let alone properly identify an issue. Third, the Division 28 attachment rules already include the cost of periodic inspections in the “carrying charge” paid by attachers to pole owners.⁴

Requiring the IOUs to conduct the Comprehensive Facility Inspections is also consistent with proposed OAR 860-024-0018(8). In that subsection of the proposed rules, it is clear that the IOUs will conduct the Comprehensive Facility Inspections and then provide notices to attachers if they discover violations created by the attachers. Subsection 8 also provides that the IOU may correct such violations if not timely corrected by the attacher and charge the attacher for doing so. Nothing in subsection 8 contemplates that communications attachers will conduct the Comprehensive Facility Inspections or correct electric facility violations.

Accordingly, OAR 860-024-0018(5) should be modified as follows:

(5) Beginning on December 31, 2027, Public Utility Owners of electric supply facilities shall conduct “Comprehensive Facility Inspections” of facilities in High Fire Risk Zones with a frequency that mitigates fire risk as well as to identify violations of Commission Safety Rules.

³ See NESC Rules 235C4 and 238E (creating Communications Worker Safety Zone at least 40 inches below lowest electrical supply line), and OSHA Rule 1910.268(q)(1)(iii) (limiting work in proximity to energized conductors by anyone other than system operators/owners).

⁴ OAR 860-028-0020(19).

2. OAR 860-024-0018(7) – Add “Comprehensive Facility Inspections”

OAR 860-024-0018(7) sets forth a prioritization scheme for the correction of differing types of safety violations in HFRZs. This rule should provide the same timeframes for correcting violations no matter how the violation was discovered. However, the current draft rules would apply these timeframes only to violations which pose a risk of fire ignition “identified by an HFRZ detailed inspection or safety patrol” but not to such violations identified during a Comprehensive Facility Inspection. OCTA recommends correcting this oversight by simply adding “Comprehensive Facility Inspection” between “HFRZ detailed inspection” and “safety patrol.”

Accordingly, OAR 860-024-0018(5) should be modified as follows:

(7) A violation of Commission Safety Rules which poses a risk of fire ignition identified by an HFRZ detailed inspection, Comprehensive Facility Inspection, or safety patrol shall be subject to the following correction timeframes:

3. OAR 860-024-0018(7)(b) – Correction Timeframe to Run from Notice Receipt

OCTA recommends that the deadline for correcting violations which could potentially correlate to a heightened risk of fire ignition be modified to allow 180 days from discovery or from receipt of notice of the violation pursuant to OAR 860-024-0018(8), whichever is later. This revision recognizes that the IOUs will be conducting the HFRZ Comprehensive Facility Inspections and safety patrols, not communications attachers. If the IOU discovers a violation created by a communications attacher, the IOU must send a notice to the Operator of the communications facility.⁵ While OCTA believes that IOUs will make every effort to send such notices as soon as possible, there could be a delay between the IOU’s discovery of the violation and receipt of the notice by the Operator of the communications facilities. Accordingly, the

⁵ See proposed OAR 860-024-0018(8).

Operator of the communications facilities should be provided 180 days from receipt of the notice to make the correction.

Accordingly, OAR 860-024-0018(7)(b) should be modified as follows:

(b) any violation which correlates to a heightened risk of fire ignition shall be corrected no later than 180 days after discovery or receipt of a notice provided pursuant to OAR 860-024-0018(8), whichever is later.

4. OAR 860-024-0018(8) – Replacement Fee Should Not Apply to Attachments

The proposed rules allow the IOUs to conduct Comprehensive Facility Inspections on poles to which they attach electric supply facilities, but which they do not own, to replace reject poles if not timely replaced by the pole owner, and to recover from the pole owner replacement costs and a replacement fee of 25% of the total amount of work. This is an entirely new set of rights not otherwise addressed in the Commission’s rules.

But IOU inspections of attachments on IOU-owned poles are already addressed in the Commission’s Division 28 attachment rules, which expressly provide that an IOU pole owner may correct attachment violations if not timely corrected by the Occupant and specify what the IOU pole owner may charge for making such corrections, including the actual cost of corrections and a 15% of correction cost sanction.⁶

The proposed rules, however, conflate pole replacement costs and fees with the reimbursement and sanctions for attachment corrections already covered by the Division 28 attachment rules. This creates unnecessary confusion between the Division 24 and Division 28 rules. It could also create the appearance that the new Division 24 rules adopted in this proceeding have, in effect modified the Division 28 rules. The Notice of Rulemaking for AR 638 does not

⁶ See OAR 860-028-0115(4) – (6), OAR 860-024-0120(4) – (6), OAR 860-028-0150(2).

provide sufficient notice of the possibility that the Division 28 rules would be modified, as required under the Administrative Procedures Act.⁷

This unintended overlap of the Division 24 and Division 28 rules can be remedied by making clear that the provisions in proposed OAR 860-024-0018(8) relating to reimbursement costs and fees apply only to replacements by an IOU of reject poles owned by a third party.

Accordingly, the third and fourth sentences in OAR 860-024-0018(8) should be modified as follows:

(8) . . . If the pole owner does not replace the reject pole within the timeframe set forth in the notice, then the Operator of electric facilities shall replace the pole. The Operator of electric facilities may seek reimbursement of all costs and expenses related to replacement of the reject pole 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 a replacement fee of 25% of the total amount of work.

5. OAR 860-024-0018(8) – Expand Rights under Oregon Law and Contract

The final sentence of proposed OAR 860-024-0018(8) makes clear that an Operator of electric facilities is not precluded from exercising any other rights or remedies afforded by Oregon law or contract. OCTA recommends that this sentence be revised to make clear that nothing in proposed section 0018 precludes any Owner, Occupant or Operator from exercising any other rights under Oregon law or contract. Singling out only Operators of electric facilities suggests, by negative implication, that somehow the proposed rule would preclude other entities subject to the rules, such as attachers and non-IOU pole owners, from exercising any of their other rights or remedies under Oregon Law or contract.

Revising this language would also make clear that the rights and remedies afforded to pole owners and Occupants under the Division 28 attachment rules are not diminished by the Division

⁷ See ORS 183.335(2).

24 rules, as discussed above. It would also make clear that, if there are disputes regarding violations discovered as part of a Comprehensive Facility Inspection or safety patrol, Owners, Occupants and Operators could subsequently avail themselves of remedies under the attachment rules, their attachment agreements, and any other relevant Oregon Law to resolve such disputes.

Accordingly, the last sentence in OAR 860-024-0018(8) should be modified as follows:

(8) . . . This provision section does not preclude an Operator, Owner or Occupant from exercising any other rights or remedies afforded by Oregon Law or contract.

CONCLUSION

For the foregoing reasons, OCTA recommends that the AHD revise the draft rules as recommended above.

Respectfully submitted this 13th day of May 2022.

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