

ITEM NO. RM1

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: December 27, 2022**

REGULAR CONSENT RULEMAKING X EFFECTIVE DATE N/A
DATE: December 21, 2022

TO: Public Utility Commission

FROM: Katharine Mapes

THROUGH: Nolan Moser and Diane Davis **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. AR 638) In the Matter of Rulemaking for Risk-based Wildfire Protection Plans and Planned Activities Consistent with Executive Order 20-04.

AHD RECOMMENDATION:

Adopt the proposed rule as filed with the Secretary of State and attached as Attachment A.

DISCUSSION:

Issue:

In docket AR 638, the Commission created a new complaint process by which utilities and the owners of third-party facilities on utility systems could quickly and efficiently bring disputes regarding ignition risks created by third-party facilities before the Commission. That was proposed to be codified as OAR 860-024-0061. The Commission approved that rule in its September 8, 2022, order in this docket, Order No. 22-335. However, we subsequently realized that because the complaint process rule was developed during the stakeholder workshops in the formal phase of this rulemaking, it was not included in the notice initially filed with the Secretary of State.

Accordingly, out of an abundance of caution, we filed a notice with the Secretary of State specifically containing proposed rule OAR 860-024-0061 and now ask the Commission to formally adopt that rule.

Applicable Rule or Law:

This proceeding arises out of the rulemaking in docket AR 638, one of a number of proceedings in which the Commission undertook to fulfill the directives of Senate Bill (SB) 762, which was passed by the legislature in 2021. That law lays out standards for utility Wildfire Protection Plans, statewide risk analysis, and wildfire smoke mitigation. Sections 1 through 6(b) of SB 762 list specific requirements to be included in electric utility Wildfire Protection Plans and also direct the Commission to promulgate rules more specifically delineating the requirements for those plans.

Background and Procedural Posture:

On August 25, 2021, to provide additional detail and requirements for wildfire mitigation and planning, the Commission opened its rulemaking proceeding in docket AR 638. On August 4, 2022, the Commission held a Special Public Meeting at which it voted to adopt new rules that were developed during that proceeding, including OAR 860-024-0061, which creates a complaint process for utilities and the owners of foreign equipment on utility systems to enforce the rules. That process specifically concerns situations when utilities find what they believe to be an ignition risk created by foreign-owned equipment or poles on their systems. At that point, the new rules provided that the utility must issue a notice to the owner of the equipment containing a timeframe for remediation. If the ignition risk is not remedied within that timeframe, the utility may either file a complaint with the Commission pursuant to OAR 860-024-0061 or it may remedy the ignition risk itself and charge the pole or equipment owner a 25 percent surcharge. The pole or equipment owner may file a complaint if it believes a notice was sent or a surcharge was assessed in error.

After filing the new notice with the Secretary of State, a rulemaking hearing was held on November 15, 2022, and a workshop was held on November 16, 2022. In addition, written comments were solicited. No participant made written or oral comments advocating that the proposed rule be altered or that it not be adopted.

Analysis:

Because the Commission has already approved the form and substance of this rule and because participants had ample opportunity to raise objections or suggest changes and did not, AHD believes the rule as it is currently formulated should be adopted without changes.

PROPOSED COMMISSION MOTION:

Adopt expedited proposed OAR 860-024-0061 as attached as Attachment A.

ADOPT: 860-024-0061

RULE TITLE: Resolution of Violations of Commission Safety Rules in High Fire Risk Zones

RULE SUMMARY: Procedures for addressing safety violations in high fire risk zones amongst utilities.

RULE TEXT:

- (1) This rule establishes a process to initiate a complaint alleging failure to address a violation consistent with the requirements in OAR 860-024-0018(8).
- (2) The complaint may be filed by an Owner, Occupant, or Operator. The party filing the complaint under this rule is the "Complainant." The other party, against whom the complaint is filed, is the "Respondent." An Operator may file a complaint regarding the failure of an Owner or Occupant to remedy a noticed violation of the Commission's rules. If the Complainant has made the correction itself or the alleged violation remains uncorrected by the Respondent for an additional seven calendar days following the correction timeframe set forth in the notice, the Complainant may then file a complaint with the Commission. Owners, Occupants, and Operators may initiate complaints regarding disputes over payment for remedying violations of the Commission's rules, including if an Occupant or Operator wishes to contest a bill sent by an Operator for remediation of a violation.
- (3) If the Complaint is filed due to the failure of an Owner or Occupant to remedy a violation of the Commission's rules, the following will apply:
 - (a) The Complainant must be able to demonstrate that it issued a written notice of the violation(s) to the Respondent. The notice must contain, at a minimum: notice of each attachment allegedly in violation; an explanation of how the attachment violates Commission Safety Rules including how the violation creates an ignition risk in an HFRZ; the pole number and location; an explanation of where the alleged violation(s) are located within the HFRZ; and the timeframe(s) within which the Respondent was expected to address each attachment allegedly in violation.
 - (b) The Complaint must contain each of the following:
 - (A) A copy of the Complainant's notice of violation, that is in conformance with criteria described in section (3)(a) of this rule;
 - (B) If applicable, a description of any actions taken by the Complainant to address the violation(s), including actions permitted by Chapter 860, Division 028 rules and Chapter 860, Division 024 rules;
 - (C) A description of the relief sought by the Complainant from the Commission; and
 - (D) Any other information the Complainant deems relevant to the complaint.

(4) The Commission will serve a copy of the complaint upon the Respondent. Service may be made by electronic mail if the Commission verifies the Respondent's electronic mail address prior to service of the complaint and a delivery receipt is maintained in the official file. Within seven calendar days of service of the complaint, the Respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the Respondent's position on the alleged violation(s).

(5) If the Commission determines after a hearing that the Respondent failed to address a violation of Commission Safety Rules pursuant to OAR 860-024-0018(8), the Commission may order any relief it deems just and reasonable including

(a) Ordering interim relief where appropriate pending a final resolution;

(b) Ordering Respondent to repair the violation or remove the attachment from the pole within a prescribed timeframe;

(c) Ordering Respondent to take any necessary actions to avoid future non-compliance;

(d) Imposing a penalty upon the Respondent pursuant to ORS 757.990(1); and/or

(e) Ordering reimbursement to Complainant for work it has done to remedy the violation as specified in OAR 860-024-0018(9). If the Commission deems that a party was wrongfully assessed for repairs, it may order such monetary relief as it deems necessary to make that party whole.

(6) If at the conclusion of the Complaint process, the Commission determines that the facilities are not the responsibility of the Respondent and/or that the Respondent is no longer a fiscally solvent entity such that it is capable of remedying the violation, then the Commission may deem the facilities "abandoned" and require the electric Operator of the facilities to remedy the electric ignition hazard in accordance with OAR 860-024-0018(9).

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 757, ORS 758

STATUTES/OTHER IMPLEMENTED: ORS 757.035, ORS 758.280 - 758.286, ORS 757.990