

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 860
PUBLIC UTILITY COMMISSION

FILED

10/07/2022 6:54 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Resolution of Violations of Commission Safety Rules in High Fire Risk Zones AR 638)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/22/2022 3:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Diane Davis
971-375-5082
diane.davis@puc.oregon.gov

PO Box 1088
Salem, OR 97308

Filed By:
Diane Davis
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/15/2022

TIME: 1:30 PM

OFFICER: Katharine Mapes

ADDRESS: Virtual

By Zoom

Salem, OR 97301

SPECIAL INSTRUCTIONS:

See below for Zoom participation information

DATE: 11/16/2022

TIME: 1:00 PM

OFFICER: Katharine Mapes

ADDRESS: Virtual

By Zoom

Salem, OR 97301

SPECIAL INSTRUCTIONS:

See below for Zoom participation information

NEED FOR THE RULE(S)

Oregon Senate Bill (SB) 762, Section 3(7) (2021) requires the PUC to adopt rules related to risk-based wildfire protection plans, which includes rules for procedures and standards regarding vegetation management, as well as procedures and standards for facility inspections and corrections. OAR-860-024-0061 is a new rule in Division 24 that creates a complaint process for utilities and the owners of foreign equipment on utility systems to enforce the rules and which was developed by participants in earlier phases of AR 638.

The Commission encourages participants to file written comments as early as practicable in the proceeding so that

other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 638 on comments and attach them to an e-mail to the Commission's Filing Center at PUC.FilingCenter@puc.oregon.gov. The Commission would like to receive initial comments by November 17, 2022.

The Commission's Administrative Hearings Division will hold a Rulemaking Hearing to receive comments on November 15, 2022 at 1:30 p.m. The participation information is:

Topic: AR 638 Rulemaking Hearing - ALJ Mapes

Time: Nov 15, 2022 01:30 PM Pacific Time (US and Canada)

Join ZoomGov Meeting

<https://puc-oregon-gov.zoomgov.com/j/1606889743?pwd=MnVvdTVROHVta0lKQjRnUWISUWtUZz09>

Meeting ID: 160 688 9743

Passcode: 3efS3*k7PN

One tap mobile

+16692545252,,1606889743#,,,,*4903405191# US (San Jose)

+16692161590,,1606889743#,,,,*4903405191# US (San Jose)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 669 216 1590 US (San Jose)

Meeting ID: 160 688 9743

Passcode: 4903405191

Find your local number: <https://puc-oregon-gov.zoomgov.com/u/aeHSDhp3iP>

Participants who present oral comment at the rulemaking hearing may be asked to also submit their comment in writing before the comment period closes at 3:00 p.m. on November 22, 2022.

The Commission's Administrative Hearings Division will hold a workshop on November 16, 2022 at 1:00 p.m. to discuss comments on the rules to date. The participation information is:

Topic: AR 638 Rulemaking Hearing - Workshop

Time: Nov 16, 2022 01:00 PM Pacific Time (US and Canada)

Join ZoomGov Meeting

<https://puc-oregon-gov.zoomgov.com/j/1600039826?pwd=ZS9SK21VdW1NclVKMGczZnBSbjdBdz09>

Meeting ID: 160 003 9826

Passcode: wceD4S\$=x3

One tap mobile

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Dial by your location

+1 669 254 5252 US (San Jose)

+1 669 216 1590 US (San Jose)

Meeting ID: 160 003 9826

Passcode: 7018320764

Find your local number: <https://puc-oregon-gov.zoomgov.com/join/916111111111>

Interested persons may review all filings online at

<https://apps.puc.state.or.us/edockets/DocketNoLayout.asp?DocketID=22341> . For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=4027>.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

The Governor's Executive Order No. 20-04 (EO 20-04), Executive Order on Climate Action, March 20, 2020, found online at https://www.oregon.gov/gov/Documents/executive_orders/eo_20-04.pdf

The Governor's Executive Order No. 19-01, Establishing the Governor's Council on Wildfire Response, Jan. 30, 2019, found online at https://www.oregon.gov/gov/eo/eo_19-01.pdf

Final Report and Recommendations of the Governor's Council on Wildfire Response, Nov. 2019, found online at <https://www.oregon.gov/osp/Docs/GovWildfireCouncilRpt-FinalRecs.pdf>

PUC Order No. 22-335, Order, AR 638, 2022 found online at <https://apps.puc.state.or.us/orders/2022ords/22-335.pdf>

PUC Order No. 21-167, Temporary Rulemaking Regarding Public Safety Power Shut-off (PSPS), AR 638, 2021 found online at <https://apps.puc.state.or.us/orders/2021ords/21-167.pdf>

2021 SB 762 found online at

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762/Enrolled>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Commission anticipates that new rule as described in this notice will have little to no impact on racial equity in Oregon. To ensure that racial equity issues were considered, prior to issuing this Notice, the Commission engaged in an informal rulemaking process prior to its decision to open a formal rulemaking process and order this Notice of Proposed Rulemaking to be filed. As part of that informal process, the Commission provided notice to its electric industry service list, which includes a broad range of stakeholders. Among those invited to workshops are:

- The Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians
- Coquille Indian Tribe
- Confederated Tribes of Grand Ronde
- The Klamath Tribes
- Confederated Tribes of Siletz Indians
- Confederated Tribes of the Umatilla Indian Reservation
- Cow Creek Band of Umpqua Tribe of Indians
- Confederated Tribes of Warm Springs
- Northwest Energy Coalition
- Community Energy Project

Individual Commission Staff members also submitted the notice to the Office of Emergency Management with a request to circulate the notice to its lists, which would include the Oregon State Fire Marshal, Oregon Department of Forestry, other state agencies and county/tribal emergency managers. Rogue Climate provided comments that their mission is to empower Southern Oregon communities most impacted by climate change, including low-income, rural, youth, seniors, and communities of color, to win climate justice by organizing for clean energy, sustainable jobs, and a healthy environment. No party provided comments that the Commission's proposed Division 24 rules would have a negative effect on racial equity in Oregon.

FISCAL AND ECONOMIC IMPACT:

The complaint process laid out in the new rule is intended to streamline and make more efficient existing processes and economic impacts are not anticipated. The Commission does not anticipate any economic impacts to small businesses.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. No other state agency is likely to be economically affected by the rules. There are no anticipated economic impacts on local government or to members of the public.

2. There are no small businesses that will subject to these proposed rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Though the workshops and stakeholder comments were open to the public at large, small businesses were not individually involved in the development of the proposed rules. This rulemaking is responsive to the requirements articulated in SB 762, and the state legislative process provided the forum for interested parties to comment.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Participants worked collaboratively to craft the language of this rule throughout the AR 638 rulemaking process.

ADOPT: 860-024-0061

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

CHANGES TO RULE:

860-024-0061

Resolution of Violations of Commission Safety Rules in High Fire Risk Zones

(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