

NOTICE OF PROPOSED RULEMAKING

CHAPTER 860

PUBLIC UTILITY COMMISSION

FILING CAPTION: Wildfire Mitigation Rules Phase II Division 300

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/21/2022 4:00 PM

HEARING(S):

DATE: 06/02/2022

TIME: 9:30 AM

OFFICER: Katharine Mapes

ADDRESS: By Zoom

See information in Special Instructions

Salem, OR 97308

SPECIAL INSTRUCTIONS:

Join Zoom Meeting

<https://opuc-state-or-us.zoom.us/j/89272731115?pwd=b1lsYTBTYnBNNW94MlVEEd05vaFM3dz09>

731115?pwd=b1lsYTBTYnBNNW94Ml

VEEd05vaFM3dz09

Meeting ID: 892 7273 1115

Passcode: W4S#i.*7JB

One tap mobile

+19712471195,,89272731115#,,,,*1686

503957# US (Portland)

+16692192599,,89272731115#,,,,*1686

503957# US (San Jose)

By phone: +1 971 247 1195 US

(Portland)

Meeting ID: 892 7273 1115

Passcode: 1686503957

NEED FOR THE RULE(S):

2021 Senate Bill (SB) 762, Section 3, requires public electric utilities to submit risk-based wildfire protection plans to the Public Utility Commission (PUC or Commission). Section 3, Subsection 7 requires the PUC to adopt rules for the implementation of the section. These rules are needed to establish procedures and requirements for submission of Wildfire Protection Plans to enable compliance with SB 762. Rules previously numbered as 860-300-0003 (Cost Recovery) and 860-300-0004 (Consumer-owned Utility Plans) were renumbered to 860-300-0080 and 860-300-0090 in an administrative filing to accommodate the rules proposed in this notice and in the notice

pertaining to the public safety power shutoff rules. Please also note that definitions for Division 300 rules were published in the notice for pertaining to the public safety power shutoff rules.

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 March 25, 2022, and a second round of comments by April 21, 2022. The Commission's Administrative Hearings Division will hold a workshop on April 7, 2022 at 1:00 p.m. to discuss comments on the rules to date. Participants who present oral comment at the hearing will be asked to also submit their comments in writing before the comment period closes at 4:00 p.m. on June 21, 2022.

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/Pages/carbonpolicy_climatechange.aspx

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/Documents/executive_orders/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/gov/policy/Documents/FulIWFCReport_2019.pdf

PUC Order No. 21-167, Temporary Rulemaking Regarding Public Safe Power Shut-off PSPS, AR 638, 2021 found online at <https://apps.puc.state.or.us/orders/2019ords/19-254.pdf>

2021 SB 762 found online at <https://www.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB762>

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

These proposed rules are likely to indirectly affect the interests of many different persons and communities throughout the state. Specifically, the Wildfire Protection Plans require public electric utilities to specify how they will engage communities in high wildfire risk zones.

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 300 rules would have a negative effect on racial equity in Oregon.

FISCAL AND ECONOMIC IMPACT:

The passage of Senate Bill (SB) 762 (2021) created requirements for investor owned utilities (IOUs) operating in Oregon to, among other things, prepare a Wildfire Protection Plan (Plan), conduct outreach with their communities on these plans, and submit the plans for approval by the Commission. SB 762, Section 3, Subsection 8 instructs that the costs associated with developing, implementing, or operating a Plan are recoverable in the rates of the Public Utility from all customers.

The rules also include an option to retain an independent evaluator to facilitate review of the Plans within in the 180-day review period as required by SB 762. An independent evaluator was retained for review of the 2022 wildfire plans, but it is not currently possible to determine the need for these evaluators in the future.

Staff time will need to be dedicated to the implementation of the rules and the Commission anticipates that one additional FTE will be required. While SB 762 creates requirements for other state agencies, The Commission does not anticipate that these rules will impose costs on other state agencies.

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 be 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? An Administrative Rule Advisory Committee was not consulted. Instead, the Commission utilized an informal rulemaking process that involved opportunity for public comment and participation through OPUC Docket AR 638, including discussion of economic and other implications of proposed rules.

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RULES PROPOSED:

860-300-0001, 860-300-0020, 860-300-0030, 860-300-0040

AMEND: 860-300-0001

RULE TITLE: Scope and Applicability of Rules

RULE SUMMARY: This rule change details the scope and application of Division 300.

RULE TEXT:

(1) The rules in this division prescribe the filing requirements for risk-based Wildfire Mitigation Plans filed by a Public Utility that provides electric service in Oregon pursuant to ORS 757.005.

(2) Upon request or its own motion, the Commission may waive any of the rules in this division for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the

Commission.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 654, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 757.035, ORS 757.039, ORS 757.649,
ORS 759.030, ORS 759.040, ORS 759.045

AMEND: 860-300-0020

RULE TITLE: Wildfire Protection Plan Filing Requirements

RULE SUMMARY: This rule change reflects the renumbering required to facilitate new proposed rules (renumbered from 860-300-0002 to 860-300-0020) and to add requirements consistent with requirements for Wildfire Mitigation Plans per SB 762 (2021).

RULE TEXT:

(1) Wildfire Protection Plans and Updates must, at a minimum, contain the following requirements as set forth in Section 3(2)(a)-(h), chapter 592, Oregon Laws 2021 and as supplemented below:

(a) Identified areas that are subject to a heightened risk of wildfire, including determinations for such conclusions, and are:

(A) Within the service territory of the Public Utility, and

(B) Outside the service territory of the Public Utility but within the Public Utility's right-of-way for generation and transmission assets.

(b) Identified means of mitigating wildfire risk that reflects a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk.

(c) Identified preventative actions and programs that the Public Utility will carry out to minimize the risk of utility facilities causing wildfire.

(d) Discussion of outreach efforts to regional, state, and local entities, including municipalities regarding a protocol for the de-energization of power lines and adjusting power system operations to mitigate wildfires, promote the safety of the public and first responders and preserve health and communication infrastructure.

(e) Identified protocol for the de-energization of power lines and adjusting of power system operations to mitigate wildfires, promote the safety of the public and first responders and preserve health and communication infrastructure, including a PSPS communication strategy consistent with OAR 860-300-0040 through 860-300-0050.

(f) Identification of the community outreach and public awareness efforts that the Public Utility will use before, during and after a wildfire season, consistent with OAR 860-300-0040 and OAR 860-300-0050.

(g) Description of procedures, standards, and time frames that the Public Utility will use to inspect utility infrastructure in areas the Public Utility identified as heightened risk of wildfire, consistent with OAR 860-024-0018.

(h) Description of the procedures, standards, and time frames that the Public Utility will use to carry out vegetation management in areas the Public Utility identified as heightened risk of wildfire, consistent with OAR 860-024-0018.

(i) Identification of the development, implementation, and administrative costs for the plan, which includes discussion of risk-based cost and benefit analysis, including consideration of technologies that offer co-benefits to the utility's system.

(j) Description of participation in national and international forums, including workshops identified in section 2, chapter 592, Oregon Laws 2021, as well as research and analysis the Public Utility has undertaken to maintain expertise in leading edge technologies and operational practices, as well as how such technologies and operational practices have been used develop implement cost effective wildfire mitigation solutions.

(2) A Public Utility's initial Wildfire Protection Plan was filed in 2021. Wildfire Mitigation Plans must be updated annually and filed with the Commission no later than December 31 of each year. Public Utilities are required to provide a plan supplement explaining any material deviations from the applicable Wildfire Mitigation Plan acknowledged by the Commission.

(3) Within 180 days of submission, Wildfire Mitigation Plans and Wildfire Mitigation Plan Updates may be approved or approved with conditions through a process identified by the Commission in utility-specific proceedings, which may include retention of an Independent Evaluator (IE). For purposes of this section, "approved" means the Commission finds that the Wildfire Mitigation Plan or Update is based on reasonable and prudent practices including those the Public Utility identified through Commission workshops identified in SB 762, Section 2, and designed to meet all applicable rules and standards adopted by the Commission.

(4) Approval of a Wildfire Mitigation Plan or Update does not establish a defense to any enforcement action for violation of a Commission decision, order or rule or relieve a Public Utility from proactively managing wildfire risk, including by monitoring emerging practices and technologies.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 654, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 757.649, 2021 Senate Bill 762, ORS 756.040, ORS 756.105, ORS 757.035

ADOPT: 860-300-0030

RULE TITLE: Risk Analysis

RULE SUMMARY: This rule provides the quantitative and qualitative requirements for utility risk assessment in the context of Wildfire Mitigation Plans.

RULE TEXT:

(1) The Public Utility must include in its Wildfire Mitigation Plan risk analysis that describes wildfire risk within the Public Utility's service territory and outside the service territory of the Public Utility but within the Public Utility's right of way for generation and transmission assets. The risk analysis must include, at a minimum:

(a) Defined categories of overall wildfire risk and an adequate discussion of how the Public Utility categorizes wildfire risk. Categories of risk must include, at a minimum:

(A) Baseline wildfire risk, which include elements of wildfire risk that are expected to remain fixed for multiple years. Examples include topography, vegetation, utility equipment in place, and climate.

(B) Seasonal wildfire risk, which include elements of wildfire risk that are expected to remain fixed for multiple months but may be dynamic throughout the year. Examples include cumulative precipitation and fuel moisture content.

(C) Risks to residential areas served by the Public Utility

(D) Risks to substation or powerline owned by the Public Utility

(b) a narrative description of how the Public Utility determines areas of heightened risk of wildfire using the most updated data it has available from reputable sources.

(c) a narrative description of all data sources the Public Utility uses to model topographical and meteorological components of its wildfire risk as well as any wildfire risk related to the Public Utility's equipment.

(A) The Public Utility must make clear the frequency with which each source of data is updated.

(B) The Public Utility must make clear how it plans to keep its data sources as up to date as is practicable.

(d) The Public Utility's risk analysis must include a narrative description of how the Public Utility's wildfire risk models are used to make decisions concerning the following items:

(A) Public Safety Power Shutoffs

(B) Vegetation Management,

(C) System Hardening,

(D) Investment decisions, and

(E) Operational decisions.

(e) For updated Wildfire Mitigation Plans, the Public Utility must include a narrative description of any changes to its baseline wildfire risk were made relative to the previous plan submitted by the utility, including the Public Utility's response to changes in baseline wildfire risk, seasonal wildfire risk, and Near-term Wildfire Risk.

(2) To the extent practicable, the Public Utility must confer with other state agencies when evaluating the risk analysis included in the Public Utility's Wildfire Mitigation Plan.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 654, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 756.105, ORS 757.035, ORS 757.649

ADOPT: 860-300-0040

RULE TITLE: Wildfire Mitigation Plan Engagement Strategies

RULE SUMMARY: This rule specifies how the utility must engage with communities and public safety partners regarding their Wildfire Mitigation Plans.

RULE TEXT:

(1) The Public Utility must include in its Wildfire Mitigation Plan a Wildfire Mitigation Plan Engagement Strategy. The Wildfire Mitigation Plan Engagement Strategy will describe the utility's efforts to engage and collaborate with Public Safety partners and Local Communities in the preparation of the Wildfire Mitigation Plan and identification of related investments and activities. The Engagement Strategy must include, at a minimum:

(a) Accessible forums for engagement and collaboration with Public Safety Partners, Local Communities, and customers in advance of filing the Wildfire Mitigation Plan. The Public Utility should provide, at minimum:

(A) One public information and input session hosted in each county or group of adjacent counties within reasonable geographic proximity and streamed virtually with access and functional needs considerations.

(B) One opportunity for engagement strategy participants to submit follow-up comments to the public information and input session.

(b) A description of how the Public Utility designed the Wildfire Mitigation Plan Engagement Strategy to be inclusive and accessible, including consideration of multiple languages and outreach to access and functional needs populations as identified with local Public Safety Partners.

(2) The Public Utility must include in its Wildfire Mitigation Plan a Wildfire Education and Awareness Strategy. The Education and Awareness Strategy must be developed in coordination with Public Safety Partners and informed by local needs and best practices to educate and inform communities inclusively about wildfire risk and preparation activities. The Education and Awareness Strategy will include, at a minimum:

(a) Description of PSPS including why one would need to be executed, considerations determining why one is required, and what to expect before, during, and after a PSPS.

(b) A description of the Public Utility's wildfire mitigation strategy.

(c) Training on emergency kits/plans/checklists.

(d) Public Utility contact and website information.

(e) Education and preparedness media platforms to inform the public.

(f) Frequency of outreach to inform the public.

(g) Equity considerations in publication and accessibility, including, but not limited to:

(A) Multiple languages prevalent to the area.

(B) Multiple media platforms to ensure access to all members of a Local Community.

(3) The Public Utility must include in its Wildfire Mitigation Plan a description of metrics used to track and report on whether the Wildfire Mitigation Plan Engagement Strategy and Wildfire Education and Awareness Strategy are effectively and equitably reaching Local Communities across the Public Utility's service area.

(4) The Public Utility must include a Public Safety Partner Coordination Strategy in its Wildfire Mitigation Plan. The Coordination Strategy will describe how the Public Utility will coordinate with Public Safety Partners before, during, and after the fire season and should be additive to minimum requirements specified in relevant Public Safety Power Shut Off requirements described in OAR 860-300-0006. The Coordination Strategy should include, at a minimum:

(a) Meeting frequency and location determined in collaboration with Public Safety Partners.

(b) Tabletop Exercise plan that includes topics and opportunities to participate.

(c) After action reporting plan for lessons learned in alignment with Public Safety Partner after action reporting timeline and processes.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 654, ORS 756, ORS 757, ORS 759

STATUTES/OTHER IMPLEMENTED: ORS 756.040, ORS 756.105, ORS 757.035, ORS 757.649

