



Oregon

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To: Energy Facility Siting Council

From: Christopher M. Clark, Senior Siting Analyst and Rules Coordinator

Date: May 13, 2022

Subject: Agenda Item G (Action Item): Wildfire Prevention and Response Rulemaking, Initiation of Formal Rulemaking Proceedings for the May 26-27, 2022, EFSC Meeting

Attachments: Attachment 1: Issues Document (to be provided in supplemental packet)
Attachment 2: Draft Notice of Proposed Rulemaking (to be provided in supplemental packet)

STAFF RECOMMENDATION

Staff recommends that Council initiate formal proceedings to adopt a new standard for Wildfire Prevention and Risk Mitigation and authorize staff to issue a Notice of Proposed Rulemaking, as presented in Attachment 2.

BACKGROUND

The legislature established the Energy Facility Siting Council to oversee a comprehensive program for the siting, monitoring and regulation of energy facilities in Oregon. To this end, the Council must establish rules and standards to ensure that the siting, construction and operation of energy facilities is accomplished in a manner consistent with the protection of public health and safety and in compliance with Oregon's energy, land use, and environmental protection policies.

Wildfire is one of the most pressing public health and safety issues in Oregon. The 2020 Labor Day weekend fires burned over a million acres in Oregon, resulted in the deaths of at least 11 people, destroyed thousands of homes and structures, and significantly impaired air quality throughout the state.¹ As discussed in the Department's 2020 Biennial Energy Report, the frequency and severity of wildfires in Oregon are expected to increase as a result of climate change in the years ahead.²

¹ Sickinger, Ted. "PacifiCorp could face substantial liability if downed power lines caused Oregon wildfires." The Oregonian. Published October 4, 2020 and updated October 7, 2020.

² See 2020 Biennial Energy Report Policy Brief on Wildfire Mitigation Planning, available from: <https://www.oregon.gov/energy/Data-and-Reports/Documents/2020-BER-Policy-Briefs.pdf#page=50>

Following the Labor Day Fires, the Council directed staff to establish and prioritize a rulemaking project to evaluate whether the Council should adopt standards or requirements related to wildfire prevention, preparedness, or response as part of the siting review process.

In October 2021, based on staff's preliminary analysis and recommendations that a new standard is needed, the Council initiated informal proceedings rulemaking project to develop new standards and implementing rules for the mitigation of wildfire risks associated with energy facilities. The objective of the rulemaking are:

- To establish standards to minimize the risk of an energy facility caused wildfire
- To ensure that sufficient programs and procedures are in place to protect public health and safety in the event that a wildfire does occur at an energy facility site; and
- To maintain consistency with rules adopted by the Oregon Public Utility Commission to the extent possible and avoid the creation of conflicting or inconsistent requirements.

As part of the rulemaking, Council authorized staff to conduct a public workshop to assist in the development of proposed rules and associated fiscal and economic impact statements. The Department conducted the workshop on January 27, 2022. The Council also requested input from the nine federally recognized tribes in Oregon. The input provided during the workshops and from the tribes will be reflected in the Issues Document provided as Attachment 1 to this staff report.

The remainder of this staff report provides an overview of the PUC Wildfire Mitigation rulemaking and the PUC's recent review of the initial Wildfire Mitigation Plans submitted by Oregon's three investor-owned electric utilities; summarizes staff's recommendations for a proposed Council wildfire standards and associated rules; and provides next steps for the rulemaking. The report concludes with a summary of staff's recommendations.

PUC WILDFIRE MITIGATION RULES

In 2019, the Governor's Council on Wildfire Response issued a final report recommending that electric utilities in Oregon be required to prepare risk-based wildfire protection plans subject to standards and procedures developed by the PUC. The Governor's Executive Order 20-04 directed the PUC to take action to implement this recommendation.³

On August 17, 2020, the PUC opened a rulemaking docket based on these requirements and authorized its staff to conduct a series of public workshops on various topics related to wildfire risk mitigation and planning.⁴ Then, during the 2021 session, the legislature enacted SB 762, which established several new programs and requirements related to wildfire prevention and mitigation. The bill established new wildfire standards and planning requirements for electric utilities and required each investor-owned utility to submit a wildfire protection plan to the PUC for approval by December 31, 2021.⁵ The bill also requires consumer-owned utilities to

³ EO 20-04, Section 5.B(4).

⁴ PUC Order 20-272.

⁵ SB 762, section 5.

submit similar risk-based wildfire mitigation plans to their own governing bodies for approval by June 30, 2022.⁶

To meet the timing requirements of SB 762, the PUC modified its rulemaking strategy to include a phased approach. On November 30, 2021, the PUC adopted permanent rules establishing basic standards and planning requirements for investor-owned utility wildfire protection plans and requires the plans to be updated annually.⁷ Specifically, the rules require the plans to include the following elements:

- Identification of areas within the utility service territory or right-of-way for transmission or generating assets that are subject to a heightened risk of wildfire.
- Identification of means of mitigating wildfire risk that reflects a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk.
- Identification of preventative actions and programs that the utility will carry out to minimize the risk of utility facilities causing wildfire.
- Identification of protocols for Public Safety Power Shutoffs and discussion of outreach efforts to regional, state, and local entities regarding the protocol.
- Description of procedures, standards, and time frames that the utility will use to inspect utility infrastructure in areas identified as heightened risk of wildfire.
- Description of the procedures, standards, and time frames that the utility will use to carry out vegetation management in areas the utility identified as heightened risk of wildfire.
- Identification of the development, implementation, and administrative costs for the plan.
- Identification of the community outreach and public awareness efforts that the utility will use before, during, and after a wildfire season.

All three investor-owned utilities submitted their initial wildfire mitigation plans before the statutory deadline of December 31, 2021. The PUC retained an independent evaluator (Bureau Veritas North America, Inc.) to assist in the analysis and review of the plans for compliance and, after additional workshops and public review, approved all three plans at a special meeting on April 21, 2022.⁸

On February 25, 2022, the PUC issued its proposed “Phase 2” rules with more detailed requirements for Public Safety Power Shutoffs, community engagement, risk analysis and safety standards for inspections, vegetation management and system hardening. The PUC adopted permanent rules for the Phase 2 Public Safety Power Shutoff rules on May 5, 2022. The PUC is expected to make a final decision on the remainder of the Phase 2 rules in July. Staff notes that

⁶ SB 762, section 6.

⁷ Administrative Order PUC 10-2021

⁸ See PUC Orders 22-131 (PacifiCorp); 22-132 (Portland General Electric Company); and 22-133 (Idaho Power Company). Note that Idaho Power Company’s plan was approved on the condition that the Company submit additional information about the assumptions used in its 2022 plan, a strategy for maturing their analytical approach in its 2023 Wildfire Mitigation Plan, and data delineating Oregon risk areas and Oregon projects with associated costs by June 28, 2022.

while the Phase 2 rulemaking is ongoing and could result in additional changes to the PUC's wildfire mitigation rules, we believe changes that may impact the Council's rulemaking are likely to be minimal.

STAFF RECOMMENDATIONS FOR COUNCIL RULEMAKING

While the Council was not specifically mandated to adopt wildfire standards or rules, the legislature has explicitly authorized the Council to adopt standards for the protection of public health and safety, including the establishment of requirements for necessary safety devices and procedures.⁹ As described above, wildfire has become one of the most pressing public health and safety issues in Oregon, and the frequency and severity of wildfires are expected to continue to increase.¹⁰ While the wildfire planning and mitigation requirements established by SB 762 and the PUC's implementing rules will likely do much to mitigate the electric-system related wildfire risk, there are some regulatory gaps that could be addressed by a Council standard.

First, the PUC's planning requirements have focused on mitigating wildfire risk from utility transmission and distribution systems, and while the rules do appear to require utilities to analyze wildfire risk within the utility's right-of-way for both generation and transmission assets, the initial wildfire mitigation plans submitted by the investor-owned utilities appear to focus solely on transmission infrastructure. While transmission infrastructure has been the most common ignition source for electric infrastructure caused wildfires in Oregon and California, there are also documented cases of ignition caused by electric power generation facilities, including wind and solar facilities, and the associated transmission lines that transmit electric power from those facilities to the grid.¹¹

Second, the PUC wildfire planning requirements only apply to infrastructure owned and operated by electric utilities, and do not apply to facilities that are owned by independent power producers which are the majority of EFSC jurisdictional facilities. The PUC requirements also do not apply to non-electric facilities such as natural gas pipelines and storage facilities or fuel production facilities. While these types of facilities are currently required to provide information related to fire protection services as part of the siting review process under the Council's Public Services Standard, they are not otherwise subject to wildfire planning or mitigation requirements.

Because all energy facilities carry some level of wildfire risk, staff recommends that a separate Council standard to address wildfire prevention and response is needed. To avoid the creation of conflicting, inconsistent, or duplicative regulatory requirements, staff continues to recommend that the Council seek to maintain consistency with the wildfire mitigation rules adopted by the PUC to the extent possible. Considering both the "Phase 1" rules adopted by the PUC last November, and the proposed "Phase 2" rules that are currently under

⁹ ORS 469.310 and 469.501(1)(g).

¹⁰ See 2020 Biennial Energy Report Policy Brief on Wildfire Mitigation Planning, available from: <https://www.oregon.gov/energy/Data-and-Reports/Documents/2020-BER-Policy-Briefs.pdf#page=50>

¹¹ For and example, see: <https://katu.com/news/local/wind-turbine-sparks-fire-in-arlington>

consideration, staff specifically recommends that Council authorize issuance of a Notice of Proposed Rulemaking containing the following rulemaking actions:

- Adopting a new standard in Division 022 for Wildfire Prevention and Risk Mitigation that specifies that the Council must make the following findings to issue a site certificate for a proposed facility:
 - That the applicant has adequately characterized wildfire risk within the analysis area using current data from reputable sources, based on criteria included in the PUC's proposed OAR 860-300-0030.¹²
 - That the facility can be designed, constructed, and operated in a manner that, taking into account mitigation, is not likely to result in a significant increase in wildfire risk, taking into account both the probability and consequences of a wildfire at the site.
 - If the analysis area includes areas subject to heightened risk of wildfire, or high-fire consequence areas, that the proposed facility will operate in compliance with a Wildfire Mitigation Plan approved by the Council, based on criteria adapted from the current PUC rules under OAR 860-300-0020.¹³
- Establishing an exception from the new standard for facilities that are already subject to an approved Wildfire Protection Plan.
- Amending OAR 345-020-0011 and OAR 345-021-0010 to establish information requirements to support the findings required by the new standard.
- Amending OAR 345-001-0010 to establish a study area for wildfire risk that includes the area within and extending one-half mile from the site boundary.

As recommended by staff, the new standard would apply to all newly proposed energy facilities, and any approved, but not yet constructed, energy facility that filed a request for amendment to extend construction deadlines on or after the effective date of permanent rules. The new standard would not otherwise apply to existing energy facilities unless the Council required its application upon a clear showing of a significant threat to the public health, safety or the environment.¹⁴

Potential Fiscal and Economic Impacts

Imposing new standards and requirements for wildfire prevention and response could result in some increased costs of compliance for energy facility site certificate applicants and certificate holders; however, staff believes that these additional costs would likely be at least partially offset by the benefits to the public of minimizing energy facility related wildfire risk. The extent of potential costs and benefits will vary based on the size and location of proposed facilities. The Department has made efforts to minimize unnecessary administrative burdens by maintaining consistency and avoiding duplication with the requirements of SB 762 and the PUC's rules.

¹² See the PUC's Notice of Proposed Rulemaking for Wildfire Mitigation Rules Phase II Division 300, issued on February 25, 2022. Available from: <https://secure.sos.state.or.us/oard/viewRedlinePDF.action?filingRsn=50172>

¹³ Available from: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=286939>

¹⁴ See ORS 469.401(2).

NEXT STEPS AND PROJECTED RULEMAKING TIMELINE

Staff will provide Council with a full issues analysis and a draft Notice of Proposed Rulemaking prior to the Council meeting on May 27, 2022. If the Council is satisfied with the draft proposed rules, staff will request authorization to issue the Notice of Proposed Rulemaking and initiate formal proceedings to adopt the new standard for Wildfire Prevention and Risk Mitigation. If approved, staff recommends that Council schedule a rulemaking hearing as part of the formal public comment period. The table below presents a projected timeline for this project based on these recommendations.

Projected Rulemaking Timeline

Council approves proposed rules and authorizes Notice of Proposed Rulemaking	May 27, 2022
Rulemaking hearing & comment deadline	June 23, 2022
Council adoption of permanent rules	July 22, 2022