



Oregon

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To: Energy Facility Siting Council

From: Christopher M. Clark, Siting Policy Analyst and Rules Coordinator
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Date: October 8, 2021

Subject: Agenda Item G (Action Item): Update on PUC Wildfire Mitigation Rulemaking and Initiation of Council Rulemaking for the October 22, 2021 EFSC Meeting

Attachments: Attachment 1: PUC Draft Phase I Wildfire Mitigation Rules

STAFF RECOMMENDATION

Staff recommends Council initiate rulemaking to develop new standards and rules in OAR chapter 345 for the mitigation of wildfire risks associated with energy facilities, consistent with rules currently under consideration by the Oregon Public Utility Commission. Staff requests the Council's authorization to conduct one or more public workshops to assist in the development of proposed Council rules and associated fiscal and economic impact statements.

BACKGROUND

The Council authorized staff to begin preliminary work on 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 as part of its 2021 to 2023 Rulemaking Schedule. The Council emphasized the importance of prioritizing the rulemaking project in light of the increasing frequency and severity of wildfire events in Oregon and directed staff to provide the Council with updates on the status of rulemaking being conducted by the Oregon Public Utility Commission (PUC) and wildfire related legislation while preliminary work is underway.¹

As discussed in more detail below, the PUC recently opened formal rulemaking proceedings to adopt permanent rules establishing requirements for investor-owned electric utilities (IOUs) to prepare and submit wildfire protection plans.² A copy of the proposed rules under consideration by the PUC is included as Attachment 1 to this staff report. The proposed rules

¹ See Meeting Minutes for January 22, 2021 EFSC Meeting, Agenda Item C. Available at: <https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/2021-01-22-EFSC-APPROVED-Meeting-Minutes.pdf>

² Oregon's investor-owned electric utilities are Portland General Electric, PacifiCorp, and Idaho Power.

are intended to establish basic wildfire planning requirements and processes so that the utilities may file initial plans by December 31, 2021, as required by Senate Bill (SB) 762 (2021). The PUC is continuing informal rulemaking proceedings to develop more detailed requirements for wildfire mitigation and planning and expects for these more detailed requirements to be in place in early 2022. Staff notes that, consistent with SB 762, the PUC's planning requirements do not apply to Consumer-Owned Utilities (COUs), but COUs must submit similar risk-based wildfire mitigation plans to their own governing bodies for approval and file the approved plans with the PUC.³

Staff have reviewed the PUC's proposed rules and based on the high priority the Council has placed on this project, recommends that the Council initiate its own rulemaking to adopt similar requirements for energy facilities that would not otherwise be subject to the requirements of SB 762 or the PUC's rules. At a minimum, staff recommends that these standards and safety requirements apply to new electric generation facilities, including associated transmission lines and other related or supporting facilities, that are not otherwise subject to a PUC or COU approved plan. Unless the Council directs otherwise, staff will also evaluate whether standards and requirements are needed for other types of energy facilities subject to the Council's jurisdiction during the development of draft rules.

The remainder of this staff report is divided into three sections. The first section provides an overview of the PUC rulemaking, the requirements of SB 762, and the PUC's proposed rules. The second section provides staff's preliminary analysis and recommendations for the conduct of the Council's rulemaking. The report concludes with a request for Council to initiate the rulemaking process. Please note that the Council is not being asked to consider proposed rule amendments or the adoption of permanent rules at this time.

PUC WILDFIRE MITIGATION RULES

In addition to a general directive to certain agencies to reduce and regulate greenhouse gas emissions, Executive Order 20-04 (EO 20-04) directed the PUC to:

“Evaluate electric companies' risk-based wildfire protection plans and planned activities to protect public safety, reduce risks to utility customers, and promote energy system resilience in the face of increased wildfire frequency and severity, and in consideration of the recommendations made by the Governor's Council on Wildfire Response 2019 Report and Recommendations”⁴

The PUC opened a rulemaking docket based on these requirements on August 17, 2020. To assist in the development of proposed rules, the PUC authorized its staff to conduct a series of public workshops on various topics related to wildfire risk mitigation and planning.⁵ After initial scoping activities, PUC staff released plans for proceeding with the rulemaking. The plan recommended the PUC adopt temporary rules related to Public Safety Power Shut-off Protocols

³ Consumer-owned utilities include cooperatives, utility districts, or municipality-owned utilities.

⁴ EO 20-04, Section 5.B(4).

⁵ PUC Order 20-272.

and Ignition Reporting Requirements for the 2021 fire season and continue permanent rulemaking activities through early 2022.⁶

During the 2021 session, the legislature enacted SB 762.⁷ The bill establishes several new programs, requirements, and standards for wildfire protection plans for electric utilities, statewide risk analysis, and wildfire smoke mitigation. Sections 2 to 4 of the bill are the most relevant to this rulemaking. Those sections require IOUs and COUs to operate in compliance with risk-based plans designed to protect public safety, reduce risk to utility customers and promote electrical system resilience to wildfire damage. The bill requires each investor-owned utility to submit a wildfire protection plan to the PUC for approval by December 31, 2021.⁸ The wildfire protection plans are not required to be facility specific; instead, each electric utility is required to establish a system-wide plan that identifies means of minimizing the risk of the utility's facilities causing wildfire. The plans must also identify areas subject to a heightened risk of wildfire that are within the utility's service territory, or outside of its service territory but near transmission or generating assets owned by the utility.⁹ Specific protocols for inspections and vegetation management must be provided for these heightened risk areas. Consumer-owned utilities must submit similar risk-based wildfire mitigation plans to their own governing bodies for approval by June 30, 2022. After the plan is approved, the COU must submit the plan to the PUC.¹⁰

On July 28, 2021, the PUC announced that it was modifying its rulemaking strategy to reflect the timing requirements of SB 762. The revised strategy included a phased approach. Phase 1 would conduct permanent rulemaking to adopt interim rules establishing the basic requirements for wildfire protection plans in advance of the December 31, 2021 filing date. Phase 2 would focus on adding additional detail and guidance to the interim rules, with a goal of adopting final permanent rules in the spring of 2022.¹¹

"Phase 1" - Proposed Wildfire Mitigation Rules

Consistent with the schedule established in the July 2021 announcement, the PUC opened formal rulemaking proceedings on September 7, 2021. The proposed rules under consideration by the PUC largely mirror the requirements for wildfire protection plans required by SB 762. Specifically, the rules require wildfire protection plans to include the following elements:

- Identification of areas 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.

⁶ PUC, AR 638 Scope and Schedule Announcement, March 24, 2021.

⁷ Available from the Oregon Legislative Information System at: <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762>

⁸ SB 762, section 5.

⁹ SB 762, section 3(2).

¹⁰ SB 762, section 6.

¹¹ PUC, AR 638 Docket Strategy Announcement, July 28, 2020.

- 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 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.

The proposed PUC rules also establish filing requirements for consumer-owned utility wildfire mitigation plans and updates, and contain additional provisions for scope, applicability, and cost recovery.

“Phase 2” - Detailed Wildfire Mitigation and Planning Rules

The second phase of the PUC’s rulemaking is intended to provide more detailed guidance for certain areas of the rules. PUC’s staff released their draft Phase 2 rules on September 29, 2021. The Phase 2 rules include modifications to proposed Phase 1 rules, as well as additional modification to the PUC’s Safety Standards for utility facilities under OAR chapter 860, division 024. In particular, the draft rules establish more specific requirements for inspections and vegetation management for utility facilities in high wildfire risk areas, but do not substantively change the requirements for these issues to be addressed in wildfire protection plans.

Staff notes that the Phase 2 rulemaking is ongoing and could result in additional changes to the wildfire mitigation rules; however, we believe changes that may impact the Council’s rulemaking are likely to be minimal. Staff will continue to monitor the PUC’s Phase 2 rulemaking and will provide additional updates to the Council as the process continues.

STAFF RECOMMENDATIONS FOR COUNCIL RULEMAKING

This section provides staff’s preliminary analysis and recommendations for the conduct of the Council’s rulemaking. Specifically, this section provides an overview of:

- The need and authority to adopt rules
- The recommended scope and objectives for the rulemaking, including the policy issues to be addressed
- The potential fiscal and economic impacts on stakeholders
- The recommended method for obtaining stakeholder input in the development of proposed rules

The section concludes with staff’s projected timeline for the rulemaking process.

Need and Authority to Adopt Rules

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. ORS chapter 469 explicitly authorizes the Council to adopt standards for the protection of public health and safety, including the establishment of requirements for necessary safety devices and procedures.¹²

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.¹³ As discussed in the Department’s 2020 Biennial Energy Report, the frequency and severity of wildfires in Oregon, and across the American West, are expected to increase as a result of climate change in the years ahead.¹⁴ The final report and recommendations from the Governor’s Council on Wildfire Response published in November 2019 also noted the importance of managing the risk of wildfire from transmission lines specifically:

As the frequency, intensity and duration of wildfires has increased in the West, electric and utility companies must take additional measures to reduce the risk of transmission-related fire events. Due to [their] often remote location, power line fires have the potential to be larger than fires from other causes. Suppression of these fires during extreme weather conditions has become less effective. Reducing the risk of transmission-caused wildfire will have a direct and positive benefit to Oregon’s effort to reduce human-caused wildfires.¹⁵

As described above, to mitigate the risks of wildfire being caused by transmission lines or other electric utility facilities, and to improve the resilience of the electric system, the legislature enacted SB 762, which requires Oregon’s electric utilities to operate in compliance with risk-based wildfire protection plans. This new law establishes requirements for IOUs and COUs, but there are no corresponding requirements for independent power producers or the owners or operators of non-electric energy facilities. This rulemaking project is needed to address this jurisdictional gap by establishing similar wildfire standards and requirements for electric generation and transmission facilities that are not otherwise subject to the requirements of SB 762 or the PUC’s rules, and evaluating whether standards and requirements are needed for other types of facilities subject to the Council’s jurisdiction.

¹² ORS 469.310 and 469.501(1)(g).

¹³ 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.

¹⁴ 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>

¹⁵ Governor’s Council on Wildfire Response. Report and Recommendations, November 2019. Pg 28. Available from: https://www.oregon.gov/gov/policy/Documents/FullWFCReport_2019.pdf

Recommended Scope and Objectives

Staff recommends that the Council limit the scope of this rulemaking to establishing standards and requirements for wildfire prevention and response. The objective of these standards and requirements should be to minimize the risk of a facility subject to the Council's jurisdiction causing a wildfire, and to ensure that sufficient programs and procedures are in place to ensure the protection of public health and safety in the event that a wildfire does occur at an energy facility site, regardless of the source of ignition.

To avoid the creation of conflicting or inconsistent regulatory requirements, staff further recommends that the Council seek to maintain consistency with the wildfire mitigation rules adopted by the PUC to the extent possible. Staff have identified a number of areas where changes to the rules under consideration by the PUC may be necessary to account for differences between the PUC and Council's regulatory authority and approach. As a result, there are a number of policy questions that should be addressed during the development of proposed rules, including:

- Should a Council rule or standard for wildfire prevention response only apply to electric power generation facilities and transmission lines, or should it also apply to other types of facilities (natural gas pipelines and storage facilities, synthetic fuel plants, etc.)?
- What elements of the wildfire mitigation plans required by SB 762 and the proposed PUC rules should be included in a Council rule or standard? Which should not?
- What are appropriate application and information requirements for identifying and mapping fire risk at energy facility sites?
- Are there specific safety devices or procedures that should be required to protect public health and safety from wildfires caused by or impacting energy facilities?
- Should a Council rule prescribe specific standards or requirements for visual inspections and vegetation management for a generating facility's associated transmission lines?
- Should facilities that are subject to a PUC or consumer-owned utility approved wildfire protection plan be exempt from any or all Council wildfire rules?

In addition to these issues, staff recommends Council consider additional issues and alternatives related to wildfire prevention and response raised by stakeholders. Staff's recommended method of obtaining advice to assist in the identification of these issues is described further below.

Potential Fiscal and Economic Impacts on Stakeholders

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 the risk of energy facility caused wildfires. The extent of potential costs and benefits will depend on the specific policies and requirements included in proposed rules. During the development of draft proposed rules, staff will solicit additional input on the potential fiscal and economic impacts of policy alternatives under consideration, and whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Stakeholder Input

In its proposed 2021-2023 rulemaking schedule, staff recommended that Council appoint a Rules Advisory Committee to assist in the development of proposed wildfire prevention and response rules. Given the extensive engagement with stakeholders by both the legislature and the PUC during the development of SB 762 and the PUC's proposed rules and the limited scope of outstanding policy issues that must be addressed, staff believes that the appointment of a RAC would not be the most efficient method for the Council to solicit additional public input to assist in the development of its own proposed rules. Rather, given the high level of public interest in this topic, staff recommends that the Council authorize staff to conduct one or more public workshops, open to all interested stakeholders, to obtain advice and input on policy alternatives, potential fiscal and economic impacts, and draft rule language.

Projected Timeline

The PUC currently expects to open formal rulemaking proceedings on its Phase 2 rules in November 2021, allowing for permanent rules to be adopted in early 2022. Staff developed the projected timeline below to closely follow that timeline. The timeline may be adjusted to ensure that the Council can base its decision on final rules adopted by the PUC, to avoid conflicts in the event that the PUC makes significant changes to the rules currently under consideration in response to stakeholder advice or public testimony.

Projected Rulemaking Timeline	
Council Initiates Rulemaking	October 22, 2021
Development of Proposed Rules	October – December 2021
Council Considers Draft Proposed Rules and Issues Notice of Proposed Rulemaking	January 2022
Public Comment Period on Proposed Rules	January-March 2022
Consideration of Permanent Rules	April 2022

RECOMMENDED COUNCIL ACTION

Staff recommends that Council initiate rulemaking to establish standards and requirements for wildfire prevention and response for energy facilities that are not otherwise subject to the requirements of SB 762 or the PUC's rules. Staff recommends that the standards or rules be designed to minimize the risk of an energy facility caused wildfire, and to ensure that sufficient programs and procedures are in place to ensure the protection of public health and safety in the event that a wildfire does occur. While some differences may be necessary, staff recommends the Council also seek to adopt rules that are as similar as possible to the PUC's rules to avoid the creation of conflicting or inconsistent requirements. To assist in the development of draft proposed rules, staff requests authorization to conduct one or more public workshops to obtain additional public input. If the Council approves staff's recommendations, staff anticipates that it would present draft proposed rules to the Council for consideration in early 2022.