

BEFORE THE ENERGY FACILITY SITING COUNCIL OF OREGON

**In the Matter of the Proposed Adoption of an
Energy Facility Siting Standard for Wildfire
Prevention and Risk Mitigation.**

Public comments received as of
5:00 PM on July 21, 2022

At its meeting on May 27, 2022, the Council initiated formal proceedings for the adoption of a new energy facility siting standard for wildfire prevention and risk mitigation. Staff issued a Notice of Proposed Rulemaking containing the proposed rules under consideration by the Council on June 1, 2022.

The Notice of Proposed Rulemaking began a public comment period on the proposed rules. An opportunity for oral comments was provided at a rulemaking hearing on June 23, 2022. The Notice also established 5:00 pm on July 21, 2022, as the deadline for written comments. The Council will not consider comments provided after the deadline unless the comment period is extended for everyone.

This Document contains all written comments received on this rulemaking as of the deadline.

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Exhibit	Date	Commenter	Pages
1	6/2/2022	Martha Dibblee	1
2	7/21/2022	Portland General Electric Company, PacifiCorp d/b/a Pacific Power, and Idaho Power Company	2-5

VIA COMMENT PORTAL – 6/2/2022

From: Martha Dibblee

In (6)(d) All measurements must be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.¶

There is no definition (actual or referenced) for "appropriate instruments".

Mr. Christopher Clark
Rules Coordinator
Energy Facility Siting Council
Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301

RE: Notice of Proposed Rulemaking, Wildfire Prevention and Risk Mitigation

Dear Mr. Clark,

Portland General Electric Company, PacifiCorp d/b/a Pacific Power, and Idaho Power Company (collectively referred to as the "Joint Utilities") submit the following comments in the above-referenced rulemaking and request that the Energy Facility Siting Council (EFSC) consider them in their deliberation in this matter. The Joint Utilities appreciate the opportunity to provide our perspective on the proposed rules and their relationship to the implementation of the utility component of Senate Bill (SB) 762¹, the state's omnibus wildfire mitigation roadmap.

Unlike the Oregon Public Utility Commission (OPUC), EFSC is not subject to a specific mandate to adopt wildfire standards or rules but, considering the anticipated increase in the frequency and intensity of wildfires, it has endeavored to do so for protection of public health and safety. EFSC's interest in ensuring that facilities under their jurisdiction are considering wildfire risk is appreciated and understood, especially for those facilities that would not otherwise be subject to a wildfire mitigation plan per SB 762. EFSC's rulemaking effort is intended to address potential regulatory gaps related to wildfire risk and mitigation with a stated objective of maintaining consistency with the OPUC's rules to avoid the creation of conflicting or inconsistent requirements.² To this end, proposed OAR 345-022-0115 borrows language from the OPUC's corresponding wildfire mitigation rules. Because the OPUC's rulemaking effort is ongoing, however, there is the potential that the language in the OPUC rules could change. As such, the Joint Utilities believe that the interest of consistency and congruity would best be served by EFSC delaying a final rulemaking until after the OPUC has adopted its final wildfire mitigation rules.

SB 762, adopted by the Oregon Legislature in the 2021 legislative session, directed utilities in the state to develop and operate under wildfire mitigation plans (WMP) filed with and approved by the OPUC. The WMPs incorporate a utility-specific wildfire risk analysis that looks at both a utility's service territory, as well as within a reasonable distance of generation and transmission assets. Generally, the risk assessments conducted by utilities are focused on the entirety of an area and its subsequent perceived level of wildfire risk caused by utility equipment/facilities. While individual generation, transmission, and distribution assets may not be specifically identified in a WMP, these facilities are necessarily considered and included in the broader risk analysis. Mitigation efforts, including a range of techniques and investments, are then planned and implemented to reduce wildfire risk within areas determined to be at higher risk.

The Joint Utilities submitted their first WMPs to the OPUC at the end of 2021 with OPUC approval received in 2022. While the OPUC wildfire rulemaking (AR 638) is still underway, these plans are intended to be iterative and will be updated every year to reflect the ever-changing nature of the wildfire landscape within the state. The Joint Utilities will file their respective plans for 2023 with the

¹ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB762/Enrolled>

² See Agenda Item B (Action Item): Wildfire Prevention and Response Rulemaking - Review of Public Comments and Consideration of Permanent Rules for the July 22, 2022, EFSC Meeting, Staff Report at 2 (Jul. 8, 2022).

OPUC by the end of 2022. These plans will be guided by the OPUC rulemaking in AR 638 once finalized. Updates to the plans could include consideration of new data such as the state's wildfire risk map, updated information about weather/climate conditions within the utility's plan area during the previous year, and implementation of utility infrastructure investments that reduce the threat of wildfire from utility assets within a specific area.

In order to minimize disruption to Application for Site Certificate (ASC) proceedings that are already far along in the review process, the Joint Utilities appreciate EFSC Staff's acknowledgment that the proposed rules will apply prospectively. As noted in the July 8, 2022 Staff Report: "the new standard would apply to the review of any application for site certificate or request for amendment of a site certificate that is filed on or after the effective date of permanent rules."³ The proposed Division 22 rule revision, OAR 345-022-0115(3), states: "This Standard does not apply to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 on or before the effective date of this rule."⁴ The Joint Utilities believe the provision could be more clearly stated by replacing "This Standard" with "The requirements of this section".

In addition, for added clarity and consistency, the Joint Utilities recommend that EFSC extend the approach in the Division 22 rules to the other associated rule revisions being considered and add similar language regarding the applicability of the new rules to proposed OAR 345-001-0010, OAR 345-020-0011, and OAR 345-021-0010.⁵ In the event EFSC declines to adopt this proposal, the Joint Utilities respectfully request that EFSC provide clarity that rule definitions, notice of intent, and ASC information requirements do not apply to currently pending projects and explain its rationale either in its rulemaking order or on the record during its deliberation.

The Joint Utilities appreciate Staff's and EFSC's recognition that utilities are already subject to and operating under approved WMPs filed with the OPUC. Each utility's WMP is a complex operating manual that is used to drive mitigation activities and investments. The Joint Utilities have devoted significant time and resources to developing and implementing their respective OPUC-approved plans to reduce wildfire risk and are concerned with the potential for uncertainty, inefficiencies, and increased costs if we are subject to separate, coexisting wildfire mitigation plan requirements. In addition, conflicting requirements and/or separate wildfire mitigation plans for different utility facilities have the potential to create further confusion and introduce additional costs for customers. Consequently, an approach requiring discrete WMPs may reduce the amount of capital and operational dollars available for wildfire reduction activities and conflict with timelines and processes underway.

With that lens applied, the Joint Utilities support the section in the proposed rule that would allow EFSC to "issue a site certificate without making the findings under section (1) if it finds that the facility is subject to a Wildfire Protection Plan that has been approved in compliance with OAR chapter 860, division 300." While existing facilities with a site certificate would already be accounted for in a utility's OPUC-filed WMP within the associated wildfire mitigation risk assessment, it is feasible that applications for new site certificates would not be, depending on their location. The Joint Utilities propose to meet the exemption requirement by revising proposed rule 345-021-0010(1)(v), Contents of an Application, to provide for submittal of either an OPUC-approved Wildfire Protection Plan that addresses the specific facility at issue or a wildfire risk assessment within the utility's application for a new site certificate that maps back to corresponding risk-based mitigation efforts within existing

³ This position is also consistent with a concurrent EFSC rulemaking regarding OAR 345-022-0040 (Protected Areas, Scenic Resources, and Recreation Standards).

⁴ See, e.g., Notice of Proposed Rulemaking Regarding Adoption of New Energy Siting Standard for Wildfire Prevention and Risk Mitigation and Associated Rule at 28 (May 27, 2022).

⁵ See Appendix to these comments for proposed rule language.

mitigation plans for comparable areas that would be used to address potential identified risk. Under the latter scenario , the proposed facility would then be formally added into the utility's WMP prior to construction commencing, thereby capturing additional risk mitigation measures prior to the facility becoming operational.

The Joint Utilities thank EFSC and Staff for the opportunity to provide comments on the proposed rulemaking. We are committed to reducing wildfire risk within our respective areas of operation and recognize the importance that these efforts have toward reducing overall wildfire risk within the communities in which we operate and live. Please do not hesitate to reach out should there be any questions we can answer.

Sincerely,

/s/ W.M. Messner
Director of Wildfire Mitigation and Resiliency
Portland General Electric Company

/s/ Amy McCluskey
Amy McCluskey
Managing Director, Wildfire Safety & Asset Management
PacifiCorp

/s/ Alison Williams
Regulatory Policy and Strategy Leader
Idaho Power

**APPENDIX TO JOINT UTILITY COMMENTS REGARDING EFSC PROPOSED RULEMAKING
Adoption of New Energy Facility Siting Standard for Wildfire Prevention and Risk Mitigation**

The Joint Utilities suggest that EFSC adds language to proposed OAR 345-001-0010, OAR 345-020-0011, and OAR 345-021-0010 consistent with OAR 345-022-0115(3) regarding the applicability of the new rules as illustrated below:

- General Definitions, OAR 345-001-0010(59): “(h) Consistent with OAR 345-022-0115(3), the Council shall apply the definition of “Study area” included in the rule adopted under Administrative Order EFSC X-XXXX, filed and effective [DATE], to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule.”
- Contents of a Notice of Intent, Exhibit J, OAR 345-020-0011(1)(j): “Consistent with OAR 345-022-0115(3), the Council shall apply the Notice of Intent provisions for Exhibit J included in the rule adopted under Administrative Order EFSC X-XXXX, filed and effective [DATE], to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule.”
- Contents of an Application, Exhibit V, OAR 345-021-0010(1)(v): “Consistent with OAR 345-022-0115(3), the Council shall apply the information requirements for Exhibit V included in the rule adopted under Administrative Order EFSC X-XXXX, filed and effective [DATE], to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule.”