



Oregon

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To: Energy Facility Siting Council

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

Date: July 8, 2022

Subject: 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

Attachments: 1. Notice of Proposed Rulemaking
2. Public Comments
3. Staff Summary of Comments & Recommended Responses

RECOMMENDED ACTION

Staff recommends that the Council adopt permanent rules adopting a new energy facility siting standard for wildfire prevention and risk mitigation after fully considering public comments and making any necessary changes to the proposed rules in response. All written comments must be received by 5:00 pm on July 21, 2022, to be considered by the Council.

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. The objectives 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 the Oregon Public Utility Commission's rules implementing SB 762 (2021) and to avoid the creation of conflicting or inconsistent requirements to the extent possible.

PROCEDURAL HISTORY

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

During the 2021 legislative session, the passage of SB 762 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 submit similar risk-based wildfire mitigation plans to their own governing bodies for approval by June 30, 2022.⁶

In October 2021, the Council initiated informal proceedings rulemaking project to develop new standards and implementing rules for the mitigation of wildfire risks associated with energy facilities. 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.

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 is included as **Attachment 1** to this staff report.

³ EO 20-04, Section 5.B(4).

⁴ PUC Order 20-272.

⁵ SB 762, section 5.

⁶ SB 762, section 6.

The Notice of Proposed Rulemaking began a public comment period on the proposed rules. A rulemaking hearing was held as part of the public comment period at the Council's meeting on June 23, 2022. The Notice also established 5:00 pm on July 21, 2022, as the deadline for written comments.

SUMMARY OF PROPOSED RULES

The proposed rules include the adoption of a new standard which would require the Council to find that 1) an Applicant for a site certificate has adequately characterized wildfire risk within a specified analysis area using current data from reputable sources; and 2) that any proposed facility will be operated in compliance with a Council-approved wildfire mitigation plan. The rules also provide that the Council may approve a facility without making these findings if the facility is subject to a wildfire protection plan approved by the Public Utility Commission or the governing body of a consumer-owned utility.

Like the PUC rules, the proposed rules do not prescribe particular data sources or methods used to model and identify risks. Instead, the applicant is required to use current and reputable sources and disclose those sources and methods as part of the application. Staff notes that there are some fire risk analyses and mapping tools that are available for public use, including the recently updated Oregon Wildfire Risk Explorer that was prepared by the Oregon Department of Forestry and Oregon State University Institute of Natural Resources to meet the statewide wildfire risk mapping requirements of SB 762.⁷

As proposed, 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. The new standard would not 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.⁸

PUBLIC COMMENTS AND RULEMAKING HEARING

The Notice of Proposed Rulemaking established a public comment period on the proposed rules and scheduled a rulemaking hearing for June 23, 2022.

Oral Comments Provided at Rulemaking Hearing

One person provided comments specific to this rulemaking at the hearing:

Jake Stephens, NewSun Energy: Mr. Stephens recommended that the contribution that solar facilities make to wildfire risk reduction by creating large firebreaks should be considered and credited in the application of the rules.

Written Comments

The Council will accept written comments on the proposed rules until 5:00 pm on July 21, 2022.

⁷ The Oregon Wildfire Risk Explorer is available at:

https://tools.oregonexplorer.info/oe_htmlviewer/index.html?viewer=wildfire

⁸ See ORS 469.401(2).

Any comments received prior to this deadline, including any testimony provided by the Department, will be provided to the Council before it considers the adoption of permanent rules. As of the date of this staff report, the Council had received one written comment. This Comments have been included in **Attachment 2**. The attachment will be updated before the Council's meeting on July 22. All comments will also be added to the online "[Siting Docket](#)" as they are received by the Department.

ADOPTION OF PERMANENT RULES

The Council may adopt permanent rules after fully considering all oral and written comments provided before the deadline. The Council may adopt the proposed rules as presented in the Notice of Proposed Rulemaking or may make changes to the proposed rules in response to the comments received.

Staff will provide a summary of major issues raised in public comments and recommended responses as **Attachment 3** to this staff report prior to the Council's consideration of Permanent Rules.