

ITEM NO. RM1

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: August 25, 2020**

REGULAR  CONSENT  EFFECTIVE DATE \_\_\_\_\_

**DATE:** August 17, 2020

**TO:** Public Utility Commission

**FROM:** Lori Koho

**THROUGH:** Bryan Conway **SIGNED**

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION STAFF:  
(Docket No. AR 638)  
Request to initiate an informal rulemaking for risk-based wildfire protection plans and planned activities consistent with the Governor's Executive Order 20-04.

**STAFF RECOMMENDATION:**

Initiate the informal phase of a rulemaking to address risk-based wildfire protection plans and planned activities consistent with Executive Order 20-04.

**DISCUSSION:**

Issue

Whether the Commission should initiate the informal phase of a rulemaking for risk-based wildfire protection plans and planned activities consistent with Executive Order 20-04.

Applicable Rule or Law

Per ORS 756.040, the Commission has authority to supervise and regulate every public utility in Oregon, and to do all things necessary and convenient in the exercise of such power and jurisdiction. Under ORS 756.060, the Commission may adopt reasonable and proper rules relative to all statutes administered by the Commission.

ORS 757.035(1) provides the Commission with the authority to adopt safety rules and regulations “in such manner as to protect and safeguard the health and safety of all employees, customers and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commission necessary or proper for the protection of the health or safety of all employees, customers or the public.”

The Governor’s Executive Order 20-04 (EO 20-04) generally directs state agencies to take actions to reduce and regulate greenhouse gas emissions. Section 5B(4) directs the Commission 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.”

## Analysis

### *Background*

In the wake of extreme fire seasons, which saw increased destruction of buildings and infrastructure, increased costs to respond to fires and increased health impacts from widespread wildfire smoke, the Governor issued Executive Order 19-01<sup>1</sup> establishing the Governor’s Council on Wildfire Response (Council).

Item number two of the order states:

*The Council shall review Oregon’s current model for wildfire prevention, preparedness and response, analyzing whether or not the current model is sustainable given our increasing wildfire risks. Topics to be considered include, but are not limited to:*

- a. Funding for wildfire response;*
- b. Responses to fires on protected, under-protected, and unprotected lands;*
- c. Wildfire smoke;*
- d. Assisting communities affected by wildfires;*
- e. Prevention, treatment and cost containment of wildfires.*

The Governor directed the Council to present recommendations to her no later than September 30, 2019. In its final report,<sup>2</sup> the Council made several findings and presented 12 recommendations.

---

<sup>1</sup> [https://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_19-01.pdf](https://www.oregon.gov/gov/Documents/executive_orders/eo_19-01.pdf).

<sup>2</sup> [https://www.oregon.gov/gov/policy/Documents/FullWFCReport\\_2019.pdf](https://www.oregon.gov/gov/policy/Documents/FullWFCReport_2019.pdf).

The Council found that climate change, population growth, and record fuel levels are driving a significant portion of the increased cost, frequency, and intensity of wildfires in Oregon, and communities are facing more severe and more frequent economic, health, and safety impacts.<sup>3</sup> The report also discusses the need to reduce human-caused ignitions. Electric infrastructure is one of the sources of human-caused ignitions.

The recommendation from the Council pertaining to electric transmission and distribution system is:

*Recommendation 1: Transmission System Wildfire Plan with the following bullets:*

- *Oregon legislature pass legislation requiring utilities to prepare risk-based, wildfire standards and procedures inclusive of criteria for initiating power outages.*
- *The Oregon Public Utilities Commission (OPUC) use workshops to develop these risk-based standards and procedures.*
- *All utilities and transmission and distribution system owners participate in these workshops.*

On March 10, 2020, Governor Brown issued Executive Order 20-04, which as described above, directs state agencies take actions to reduce and regulate greenhouse gas emissions and directs the Commission 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;*

In order to meet the directive of the Executive Order, Staff finds that a rulemaking proceeding is appropriate. Pursuant to the Commission's process for rulemaking proceedings, as set forth in its Internal Operating Guidelines, Staff seeks Commission approval to initiate the informal phase of a rulemaking proceeding in order to consider policy and procedural issues that should be addressed through a formal rulemaking process.

The informal phase of a rulemaking typically ends with a Staff request to the Commission to begin the formal phase of the rulemaking by filing draft rules with the Oregon Secretary of State and taking formal public comment.

---

<sup>3</sup> [https://www.oregon.gov/gov/policy/Documents/FullWFCReport\\_2019.pdf](https://www.oregon.gov/gov/policy/Documents/FullWFCReport_2019.pdf), p. 2.

### *Proposed Informal Phase Rulemaking Process*

- **Identify Interested Parties:** Staff (including Staff from the Commission Executive Office) have already identified a number of representatives from electric companies, counties, tribes, industry organizations, distributed energy providers and other agencies. Through extensive outreach we will be able to identify more community representatives and individuals whose input will help inform the rulemaking.
- **Provide Participation Guidance:** Many of the stakeholders who may be impacted by this rulemaking have little experience interacting with the Commission. These communities and interested parties will need support to ensure they are kept informed and can effectively participate in a docketed proceeding. Targeted approaches will be developed and tailored to the needs of the interest group. The intent is to encourage all who are impacted to participate, provide input, and shape the final rules.
- **Gather Concerns and Issues:** While identifying interested parties and possibly in an initial workshop, begin creating the list of issues parties believe should be included in the rulemaking.
- **Conduct Public Workshops:** Both the content, sequence, and number of workshops will be determined by the issues identified. For example, experience from the past two years illustrates that concerns about the impact of Public Safety Power Shut-offs (PSPS) are shared by diverse parties. They include, but are not limited to, counties, local jurisdictions, the emergency management community, vulnerable populations, emergency and public communications providers, the Office of Emergency Management, and the Oregon Health Authority. The goal of these workshops is to develop rules that meet the goal of protecting communities while ensuring safe and reliable electric utility service at a reasonable cost.
- **Develop and gather stakeholder feedback on draft rules.**

### Conclusion

In order to implement the requirements EO 20-04, 5B(4), Staff's recommendation is that the Commission adopt administrative rules that set forth the Commission's policy and process for evaluating electric companies' risk-based wildfire protection plans and planned activities, in accordance with EO 20-04. As an initial step in this process, Staff recommends the Commission initiate the informal phase of the Commission's rulemaking process so that Staff may begin the stakeholder outreach necessary to gather information and feedback for a future formal phase of this rulemaking proceeding.

Docket No. AR 638  
August 17, 2020  
Page 5

**PROPOSED COMMISSION MOTION:**

Initiate the informal phase of a rulemaking to address risk-based wildfire protection plans and planned activities consistent with Executive Order 20-04.

AR 638 Request to Open Rulemaking