



January 11, 2021

Gregory Smith
Director, Lands Realty Management
Forest Service, United States Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20205

RE: FR Doc. 2020-27104; Forest Service Handbook 2709.11, Chapter 80; Special Uses; Operating Plans and Agreements for Powerline Facilities

Dear Mr. Smith,

The western electric utility organizations¹ respectfully submit comments on the Forest Service, USDA's (Forest Service) proposed directive, *Operating Plans and Agreements for Powerline Facilities*, for implementation of the vegetation management and fire prevention provisions of section 512 of the Federal Land Policy and Management Act, as amended by the Consolidated Appropriations Act of 2018 (the Act).

We are trade associations and joint action agencies representing over 158 consumer-owned electric utilities in the Western United States and British Columbia. In the United States, our members include rural electric cooperatives, municipal utilities, and people's or public utility districts in Alaska, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

Our consumer-owned utility members operate electric facilities on or near U.S. Forest Service lands. These utilities are responsible for ensuring that rights-of-way (ROW) are clear of vegetation that could potentially encounter electric transmission and distribution lines for the safe and reliable operation of electric systems. Challenges arise when approval of special use authorizations to

¹ Northwest Public Power Association, Utah Associated Municipal Power Systems, Oregon Rural Electric Cooperative Association, Northern California Power Agency, Washington Public Utility Districts Association, Oregon Municipal Electric Utilities Association, Idaho Consumer-Owned Utilities Association, and Oregon People's Utility District Association.

implement integrated vegetation management on or near ROW are delayed, when application of standards for approving such work are inconsistently applied, or when requests to cut hazard trees that are in danger of falling onto ROW are held up or denied. When wildfires occur, utilities are routinely held strictly liable for fire suppression costs and damages resulting from vegetation encountering electric lines.

We appreciate the Forest Service's efforts to provide further guidance on how it intends to implement the vegetation management and fire prevention provisions of the Act. As you are aware, wildfire in western states poses a significant risk to the reliability of our members' electric systems and to the safety of their employees and the communities they serve. Our consumer-owned utility members have lost critical electric systems in recent wildfires. In fact, liability for catastrophic wildfires represents the largest financial risk for many of our consumer-owned utility members. As a result, we were outspoken advocates of congressional efforts to improve the federal process for approving special use authorizations for management of hazardous trees and vegetation on or near ROW, and the limitation on liability for fire suppression costs contained in the Act. Our members have highly anticipated implementation of this new law and believe, if implemented as intended by the U.S. Congress, these rules will play a significant role in protecting electric systems, the communities served, and our nation's forests and grasslands from wildfires.

With that in mind, it is imperative that the U.S. Forest Service implements its new authority in the most efficient, consistent, and thoughtful manner, keeping in mind that the primary goal of the new law – the reliability of electric systems and prevention of wildfires – is more important than ever as the risk of catastrophic wildfires increases annually.

Upon review, we appreciate the inclusion in the proposed directives of collaboration with electric utilities and training for agency employees working with electric utilities on the development and approval of operating plans. In addition, we request that the Forest Service revise the proposed directives to do the following:

1. Distinguish between Operating Plans and Operating Agreements as Provided for in the Act.

The proposed directives outline responsibilities and collaborative efforts of the Forest Service and utilities to develop comprehensive operating plans and agreements for the management of vegetation on or near ROW to ensure electric system reliability and fire prevention. Throughout the proposed directives, operating plans and agreements are indistinguishable except for defining that operating agreements, rather than operating plans, may be utilized by "small" utilities (per section 81.2: When Operating Agreements May be Utilized) and have separate limits on liability (\$500,000 per occurrence until March 23, 2028). In all other sections of the proposed directives, operating plans and agreements are subject to the same rules regarding scope, development, content, submission, review, and modification. Operating plans and agreements even share the same definition (page 7 of the proposed directive).

It is our understanding that operating plans and agreements were not intended to be indistinguishable. During development of the Vegetation Management and Fire Prevention legislation, its congressional authors recognized that small utilities – having significantly less staff and resources - needed a process for development of operating plans that was less cumbersome than the process for larger utilities. In addition, as delineated in the proposed directives, small utilities needed more protection from strict

liability than larger utilities as the risk of wildfire posed a significantly larger financial risk to small utilities.

Per our understanding, section 1772(d) of the Act – Certain Owners and Operators – created a consideration for the limited financial resources of small utilities in developing and submitting plans to manage vegetation on or near ROW on federal lands. In that section, the U.S. Congress defined small utilities (subsection (d)(1)) and mandated that (subsection (d)(2)):

“The Secretary concerned shall ensure that the minimum requirements for an agreement under paragraph (1) –

- (A) reflect the relative financial resource of the applicable owner or operator compared to other owners or operators of an electric transmission or distribution facility;*
- (B) include schedules as described in subsection (c)(4)(B); and*
- (C) comply with applicable law.*

Nowhere in the proposed directives is there provision for consideration of the relative financial resources of small utilities. Small utilities under these proposed directives are held to the same rules and processes as larger utilities that sell more electricity and have more financial resources. We request that the Forest Service revise the proposed directives to consider the relative financial resources of smaller utilities and distinguish the development of operating agreements in a manner that provides a less time-consuming and financially costly process.

2. Provide for a Development Process that is More Efficient as the Risk of Catastrophic Wildfire Increases Annually

A key benefit of the vegetation management and fire prevention provisions of the Act was to provide for a more efficient and timely process for the development and approval of utility vegetation management plans to protect the reliability of electric systems and prevent wildfires. Utilities advocated for a more streamlined and consistent process to support routine efforts to remove vegetation and emergency efforts to remove diseased or dead trees that could fuel wildfires.

The schedule for development, review, and approval of proposed operating plans and agreements included in the proposed directive identifies a process that would require 540 days to complete. NWPPA respectfully suggests that 540 days is not efficient or timely and is simply too long a process. The threat of wildfires has increased exponentially and urban areas in the west are now at risk. NWPPA members cannot wait almost 2 years for plans and agreements to be developed and approved to manage vegetation in a timely manner.

As provided for in the proposed directive, limits on liability are tied to submission of operating plans and approval of operating agreements for small utilities. The ability to manage vegetation to prevent wildfires through special use permits and the limits on strict liability provided for in the Act are critical to the reliability of the electric system, the safety of the communities served, and the financial stability of electric utilities. For these reasons, NWPPA requests that the Forest Service revise its proposed directives to provide a shorter process for development, review, and approval of operating plans, and consistent with the request above, provide a separate, less cumbersome, and more efficient process for smaller utilities in the development of operating agreements.

We appreciate the Forest Service's efforts to provide detailed guidance on implementation of the vegetation management and fire prevention provisions of the Act and we look forward to working towards a process that meets the goals of the Act to protect the reliability of electric systems and prevent wildfires.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Corwin". The signature is fluid and cursive, with the first name "Scott" and last name "Corwin" clearly distinguishable.

Scott Corwin
Executive Director
Northwest Public Power Association
On behalf of NWPPA and

Utah Associated Municipal Power Systems
Oregon Rural Electric Cooperative Association
Northern California Power Agency
Washington Public Utility Districts Association
Oregon Municipal Electric Utilities Association
Idaho Consumer-Owned Utilities Association
Oregon People's Utility District Association