

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

Pole and Conduit Attachments

860-028-0020

Definitions for Pole and Conduit Attachment Rules

For purposes of this Division:

(1) "Attachment" has the meaning given in ORS 757.270 and 759.650.

(2) "Authorized attachment space" means the space occupied by one or more attachments on a pole by ~~a licensee an occupant~~ with the pole owner's permission. ~~pursuant to a pole attachment agreement.~~

(3) "Carrying charge" means the costs incurred by the owner in owning and maintaining poles or conduits regardless of the presence of pole attachments or occupation of any portion of the conduits by licensees. The carrying charge is expressed as a percentage. The carrying charge is the sum of the percentages calculated for the following expense elements, using owner's data from the most recent calendar year **available, adjusted for inflation: *(NOTE: The OJUA recommends this issue be deferred to workshop.) [Staff revision 061206] and that are publicly available to the greatest extent possible:***

(a) The administrative and general percentage is total general and administrative expense as a percent of net investment in total plant.

(b) The maintenance percentage is maintenance of overhead lines expense or conduit maintenance expense as a percent of net investment in overhead plant facilities or conduit plant facilities.

(c) The depreciation percentage is the depreciation rate for gross pole or conduit investment multiplied by the ratio of gross pole or conduit investment to net investment in poles or conduit.

(d) Taxes are total operating taxes, including, *[Staff revision 061206]*but not limited to, current, deferred, and "in lieu of" taxes, as a percent of net investment in total plant.

(e) The cost of money is calculated as follows:

(A) For a telecommunications utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding;

(B) For a public utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding; or

(C) For a consumer-owned utility, the cost of money is *[Staff revision 061206]* equal to the weighted average of the utility's embedded cost of debt and the most recent cost of equity authorized by the Commission for ratemaking purposes for an electric company as defined in OAR 860-038-0005.

(24) "Commission pole attachment rules" mean ~~OAR 860-028-0110 through 860-028-0240~~ the rules provided in OAR Chapter 860, Division 028.

(35) "Commission safety rules" mean ~~OAR 860-024-0010~~ the rules provided in OAR Chapter 860, Division 024.

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

(46) “Conduit” means any structure, or section thereof, containing one or more ducts, ~~conduits,~~ manholes, or handholes, ~~bolts, or other facilities~~ used for any ~~telegraph,~~ telephone, cable television, electrical, or communications conductors, or cables ~~rights-of-way,~~ owned or controlled, in whole or in part, by one or more public, telecommunications, or consumer-owned utilities.

(57) “Consumer-owned utility” has the meaning given in ORS 757.270.

(7.1) “Day” means any one day of a 365 days in a calendar year, unless otherwise specified.

(8) “Duct” means a single enclosed raceway for conductors or cables.

(69) “Government entity” means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(710) “Licensee” has the meaning given in ORS 757.270 or ORS 759.650. **“Licensee” does not include a government entity or wireless carriers.**

(11) “Make ready work” means administrative, engineering, or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities. Make ready work costs are nonrecurring costs, and are not contained in carrying charges.

(12) “Net investment” is equal to the gross investment, from which is first subtracted the accumulated depreciation, from which is next subtracted related accumulated deferred income taxes, if any.

(13) “Net linear cost of conduit” is equal to net ~~conduit~~ investment ~~in conduit~~ divided by the total length of conduit in the system ~~multiplied by the number of ducts in the system.~~

(814) “Notice” means written notification sent by mail, electronic mail, telephonic facsimile, or telefax other such means.

(915) “Occupant” means any licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles or within conduits.

(106) “Owner” means a public utility, telecommunications utility, or consumer-owned utility that owns or controls poles, ducts, or conduits ~~or rights-of-way.~~

(147) “Pattern” means a coursepattern of behavior that results in a material breach of a contract, or permits, or in frequent or serious violations of OAR 860-028-0120.

(18) “Percentage of conduit capacity occupied” means the product of the quotient of the number “one” divided by the number of inner ducts multiplied by the quotient of the number “one” divided by the number of ducts in the conduit [i.e. (1/Number of Inner Ducts (≥2)) x (1/Number of Ducts in Conduit)].

(19) “Permit” means the written or electronic record or invoice by which an owner authorizes *[Staff revision 061206] a licensee or an occupant to attach one or more attachments on a pole or poles, in a conduit, or on support equipment.*

(20) “Pole cost” means the depreciated original installed cost of an average bare distribution pole to include support equipment of the pole owner, from which is subtracted related accumulated deferred taxes, if any. There is a rebuttable presumption that the average bare distribution pole is 40 feet and the ratio of bare pole to total pole for a public utility or consumer-owned utility is 85 percent, and 95 percent for a telecommunications utility.

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.

[Staff revision 061206] (21) “Post construction inspection” means work performed to verify and ensure the construction complies with the permit, governing agreement, and Commission safety rules.

(21) (22) “Preconstruction [Staff revision 061206] activity” means engineering, survey and estimating work required to prepare cost estimates for an attachment application, by which the applicant may use to permit or re-route. Pre-construction activity includes costs incurred as a result of a occupant request up to but not including make ready or carrying charges.

(22)(1223) “Public utility” has the meaning given in ORS 757.005.

(23)(1324) “Serious injury” means “serious injury to person” or “serious injury to property” as defined in OAR 860-024-0050.

(24)(1425) “Service drop” for the purpose of permitting (OAR 860-028-120(3)) means a connection from distribution facilities to a single family, duplex, or triplex residence or similar small commercial facility the overhead conductors between the electric distribution supply or communication distribution line and the building or structure being served, not to exceed 1,000 feet and not using a separate supporting messenger.

(25)(26) “Special inspection” means an owner’s field visit made at the request, [Staff revision 061206] and for the benefit, of the licensee for all nonperiodic inspections. A special inspection does not include preconstruction activity or post construction inspection.

(NOTE: The OJUA recommends this issue be deferred to workshop.)

(26)(27) “Support equipment” means guy wires, anchoring systems, anchor rods, and other accessories of the pole owner used to support the structural integrity of the pole to which the licensee is attached. by the licensee to support or stabilize pole attachments.

(27)(28) “Support equipment cost” means the average depreciated original installed cost of support equipment.

(28)(29) “Surplus ducts” means ducts other than: (a) those occupied by the conduit owner or a prior licensee; (b) an unoccupied duct held for emergency use; or (c) other unoccupied ducts that the owner reasonably expects to use within the next 60 months.

(29)(1530) “Telecommunications utility” has the meaning given in ORS 759.005.

(30)(31) “Threshold number of poles” means 50 poles, or one-tenth of one percent (0.10 percent) of the owner’s poles whichever is less, over any 30 calendar day period.

(31)(32) “Unauthorized attachment” means an attachment that does not have a valid permit [Staff revision 061206] and a governing agreement subject to the provisions of 860-028-0120(1).

(32)(33) “Usable space” as used in OAR 860-028-110(2) means all the space on a pole, except: the portion below ground level, the 20 feet of safety clearance space above ground level, and the communication worker safety zone safety clearance space between the communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045 & 759.650 through 759.675

Hist.: PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); renumbered from OARs 860-022-0110 and 860-034-0810; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)

860-028-0050

General

(1) Purpose and scope of this Division:

(a) OAR Chapter 860 Division 028 governs access to utility poles, conduits, and support equipment by occupants in Oregon, and it is intended to provide just and reasonable provisions when the parties are unable to agree on certain terms.

(b) With the exceptions of OAR 860-028-0060 through OAR 860-028-0080, parties may mutually agree on terms that differ from those in this Division, but in the event of disputes submitted for Commission resolution, the Commission will deem the terms and conditions specified in this Division as presumptively reasonable. In the event of a dispute that is submitted to the Commission for resolution, the burden of proof is on any party advocating a deviation from the rules in this Division to show the deviation is just, fair and reasonable.

(2) Owner correction: After the owner provides reasonable notice to a licensee of a hazard or situation requiring prompt attention, and after allowing the licensee a reasonable opportunity to repair or correct the hazard or situation, and if the hazard or situation remains uncorrected, the owner may correct the attachment deficiencies and charge the licensee for its costs. [Staff revision 061206] Each licensee will pay the owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur. An Owner may charge a licensee for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur. **Note Staff proposal moved to 860-028-0120(5) (Reference Docket #AR 510)**

[Staff revision 061206] (3) Each operator of communication facilities must trim or remove vegetation that poses a significant risk to their facilities, or through contact with its facilities poses a significant risk to a structure of an operator of a jointly used system.]

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045 & 759.650 through 759.675

Hist.: NEW

860-028-0060

Attachment Contracts **or Agreements**

(1) Any entity requiring pole attachments to serve customers should use poles jointly as much as practicable.

(2) To facilitate joint use of poles, entities must execute contracts **or agreements establishing the rates, terms, and conditions of pole use in accordance with OAR 860-028-0120.**

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

(3) Parties must negotiate pole attachment contracts and agreements in good faith.
(4) Unless otherwise provided for by contract or agreement, [Staff revision 061206] when the parties are negotiating a new or amended contract or agreement, the last effective contract or agreement between the parties will continue in effect until a new [Staff revision 061206] or amended contract or agreement between the parties goes into effect.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045, 759.650 through 759.675

Hist.: NEW

860-028-0070

Resolution of Disputes for Proposed New or Amended Contractual Provisions

(1) This rule applies to a complaint alleging a violation of ORS 757.273, 757.276, 757.279, 759.660, or 759.665. Except as otherwise required by this rule, the procedural rules generally applicable to proceedings before the Commission also apply to such complaints. The party filing a complaint under this rule is the “complainant.” The other party to the contract, against whom the complaint is filed, is the “respondent.”

(2) Before a complaint is filed with the Commission, one party must request, in writing, negotiations for a new or amended attachment agreement from the other party.

(3) Ninety (90) calendar days after one party receives a request for negotiation from another party, either party may file with the Commission for a proceeding under ORS 757.279 or ORS 759.660.

(4) The complaint must contain each of the following:

(a) Proof that a request for negotiation was received at least 90 calendar days earlier. The complainant must specify the attempts at negotiation or other methods of dispute resolution undertaken since receipt of the request date and indicate that the parties have been unable to resolve the dispute.

(b) A statement of the specific attachment rate, term, and condition provisions that are claimed to be unjust or unreasonable.

(c) A description of [Staff revision 061206] ~~each party's~~ the complainant's position on the unresolved provisions.

[Staff revision 061206] (d) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute.

(~~d~~) (e) All information available as of the date the complaint is filed with the Commission that the complainant relied upon to support its claims:

(A) In cases in which the Commission's review of a rate is required, the complaint must ~~provide~~ include all ~~data and~~ information in support of its allegations, in accordance with the administrative rules set forth to evaluate the disputed rental rate.

(B) ~~If the licensee is the party submitting the complaint, ¶~~ The ~~licensee-complainant~~ must request the data and information required by this rule from the [Staff revision 061206] ~~respondent owner~~. The ~~owner~~ respondent must ~~supply~~ provide the ~~licensee-the~~ information

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

required in this rule, as applicable, within ~~30~~ 60 calendar days of the receipt of the request. The ~~licensee-complainant~~ must submit this information with its complaint.

(C) If the ~~owner-respondent~~ does not provide the data and information required by this rule after a request by the ~~licensee complainant~~, the ~~licensee-complainant~~ will include a statement indicating the steps taken to obtain the information from the ~~owner-respondent~~, including the dates of all requests.

(D) No complaint ~~by a licensee~~ will be dismissed because the ~~owner-respondent~~ has failed to provide the applicable ~~data and~~ information required under subsection (4)(e)(C) of this rule.

(5) Within ~~30~~ 60 calendar days of receiving a copy of the complaint, the respondent will file its response to the complaint with the Commission, addressing in detail each claim raised in the complaint [*Staff revision 061206*] and a description of the respondent's position on the unresolved provisions.

(6) The Commission shall refer applicable issues of the dispute to the Oregon Joint Use Association for advice.

(7) Following receipt of the complaint, the Commission may conduct such proceedings as required to resolve disputes under this provision and will resolve the dispute with an order no later than 180 calendar days following receipt of the complaint, which time period may be extended for an additional 60 calendar days for good cause.

~~(6)~~(8) If the Commission determines after a hearing that a rate, term, or condition that is the subject of the complaint is not just, fair, and reasonable, it may reject the proposed rate, term or condition and may prescribe **by order** a just and reasonable rate, term, or condition.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045, 759.650 through 759.675

Hist.: NEW

860-028-0080

Costs of Hearing in Attachment Contract Disputes

(1) When the Commission issues an order in an attachment contract dispute that applies to a consumer-owned utility, as defined by ORS 757.270, the order will also provide for payment by the parties of the cost of the hearing.

(2) The cost of the hearing includes, but is not limited to, the cost of Commission employee time, the use of facilities, and other costs incurred. The rates will be set at cost.

(a) Every 60 calendar days, the Commission shall provide to the parties the costs incurred to date in the proceeding.

(3) The Joint Use Association is not considered a party for purposes of this rule when participating in a case under OAR 860-028-0200(1)(b).

(4) The Commission will allocate costs in a manner that it considers equitable. The following factors will be considered in determining payment:

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

- (a) Whether the party was a complainant, respondent, or intervenor;**
- (b) Merits of the party's positions throughout the course of the proceeding; and**
- (c) Other factors that the Commission deems relevant.**

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.279, and 759.660

Hist.: NEW

860-028-0100

[Staff revision 061206] Access for **Application Process for New or Modified Attachments**

[Staff revision 061206] ~~(1) As used in this rule, "applicant" does not include a government entity. Note: To decrease redundancy, suggest this be moved to 0060.~~

~~(1)(2)~~ An applicant requesting a new or modified attachment will submit an application providing the following information in writing or electronically to the owner:

(a) Information for contacting the applicant.

(b) The pole owner may require the applicant to provide the following **technical information:**

(A) Location and identifying pole or conduit for which the attachment is requested;

(B) The amount of space **requiredrequested;**

(C) The number and type of attachment for each pole or conduit;

(D) Physical characteristics of attachments;

(E) Attachment location on pole;

(F) Description of installation;

(G) Proposed route; [Staff revision 061206] and

(H) Proposed schedule for construction.

~~(2)(3)~~ The owner will provide written [Staff revision 061206] or electronic **notification notice to the applicant within ~~ten business~~ **14 calendar** days of the application receipt date confirming receipt and listing any deficiencies with the application, including missing information. If required information is missing, the owner may suspend processing the application until the missing information is provided.**

~~(3)(4)~~ Upon receipt of a completed application, the ~~An~~-owner ~~will must reply in writing by provide notice~~ [Staff revision 061206] ~~or electronically~~ to the applicant ~~as quickly as possible, but~~ no later than ~~30 business~~ **45 calendar days from the date the **completed** application is received. The owner's reply must state whether the application is approved, approved with [Staff revision 061206] modifications or conditions, or denied.**

(a) ~~An approval shall be valid for 180 calendar days unless extended by the owner. If the owner approves an application without requiring make ready work, the applicant may begin construction and will notify the owner within 30 business days of completion of construction.~~

(b) The owner may require the applicant to provide notice of completion within **45 calendar days.**

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

~~(b)(c)~~ **(c)** If the owner approves an application that requires make ready work, the owner will provide a detailed list of the make ready work needed to accommodate the applicant's facilities, an estimate for the time required for the make ready work, and the cost for such make ready work.

~~(e)(d)~~ **(d)** If the owner denies [Staff revision 061206] ~~access the application~~, the owner will state in detail the reasons for ~~its~~ denial.

~~(d)(e)~~ **(e)** If the owner does not provide the applicant with notice that the application is approved, ~~or denied, or conditioned~~ within ~~30 business~~ **45 calendar** days from its receipt, the ~~application is deemed approved and the applicant may begin installation. Applicant shall notify provide notice prior to commencement of installation. Commencement of installation shall not terminate the permitting process.~~

~~(5)(4)~~ **(4)** If the owner approves an application that requires make ready work, the owner will perform such work at the applicant's expense. This work will be completed ~~as quickly in a timely manner and inexpensively as is reasonably possible consistent with applicable legal, safety, and reliability requirements~~ at a reasonable cost. Where this work requires more than ~~30 business~~ **45 calendar** days to complete, the parties must negotiate a mutually satisfactory longer period to complete the make ready work.

~~(6)(5)~~ **(5)** ~~For good cause shown, If an owner can not meet an applicant's time frame the time frames for attachment or those~~ established by this rule, preconstruction activity, application, and make ready work may be performed by a mutually acceptable third party.

~~(7)(6)~~ **(6)** If the application involves more than the threshold number of poles, the parties must negotiate a mutually satisfactory longer time frame to complete the approval process.

[Staff revision 061206] (7) As used in this rule, "applicant" does not include a government entity.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045 & 759.650 through 759.675

Hist.: NEW

860-028-0110

Rental Rates and Charges for Attachments ~~by Licensees~~ to Poles Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(NOTE: The OJUA recommends that this issue be deferred to workshop. The OJUA agrees that this section applies to distribution poles; however, there is no consensus on access requirements, rates or attachments with regard to transmission poles.)

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through ORS 757.290 or ORS 759.650 through ORS 759.675.

(2) In this rule:

(a) "Carrying Charge" means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs attributable to the facilities

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the October 2 meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

~~used by the licensee. The cost of money component shall be equal to the return on investment authorized by the Commission in the pole owner's most recent rate proceeding.~~

~~(b) "Pole Cost" means the depreciated original installed cost of an average bare pole of the pole owner.~~

~~(c) "Support Equipment" means guy wires, anchors, anchor rods, grounds, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments.~~

~~(d) "Support Equipment Cost" means the average depreciated original installed cost of support equipment.~~

~~(e) "Usable Space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole are buried below ground level.~~

~~(32) The A disputed pole attachment rental rate per foot will be is computed by taking multiplying the pole cost times by the carrying charge and then dividing the resultant product by the usable space per pole.~~

(3) The rental rate per pole is computed as the rental rate per foot times multiplied by the licensee's authorized attachment space, portion of the usable space occupied by the licensee's attachment.

~~(4) A disputed support equipment rental rate will be computed by taking the support equipment cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.~~

~~(5) The minimum usable space occupied by a licensee's attachment is one foot.~~

(634) The rental rates referred to in sections (3) and (4)(2) of this rule ~~do not ever~~ may include the costs of attachment to support equipment, or permit application processing. **Costs associated with attachments to support equipment and permit applications, if not recovered in the annual rent, shall be based on actual costs, including administrative costs. (NOTE: The OJUA recommends this issue be deferred to workshop.) **Not included are****

~~s~~**Special inspections, or preconstruction activity, post construction inspection, make ready, change-out, and rearrangement work; or the costs related to unauthorized attachments.**

~~Charges for those activities shall beare based on actual (including administrative) costs, including administrative costs, and will be charged in addition to the rental rate. (NOTE: Consensus not reached. The OJUA recommends this issue be deferred to workshop.)~~

~~(7) Licensees shall report all attachments to the pole owner. A pole owner may impose sanctions for violations of OAR 860-028-0120. A pole owner may also charge for any expenses it incurs as a result of an unauthorized attachment.~~

~~(8) All attachments shall meet state and federal clearance and other safety requirements, be adequately grounded, guyed, and anchored, and meet the provisions of contracts executed between the pole owner and the licensee. A pole owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the pole owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.~~

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

(45) Authorized attachment space for rental rate determination [Staff revision 061206] must comply with the following:

(a) The initial authorized attachment space ~~by a licensee's attachment~~ on a pole must not be less than 12 inches. The owner may authorize additional attachment space in increments of less than 12 inches.

(b) For each attachment permit, the owner will specify the authorized attachment space on the pole that is to be used for one or more attachments ~~by the licensee~~. This authorized attachment space will be specified in the owner's attachment permit.

(c) An additional or modified attachment by the ~~licensee-occupant~~ that meets the Commission safety rules and that is placed within the ~~licensee's-occupant's~~ existing authorized attachment space will be considered a component of the existing pole permit for rental rate determination purposes. ~~Such attachment additions or modifications may include, but are not limited to, cabinets, splice boxes, load coil cases, bonding wires and straps, service drops, guy wires, vertical risers, or cable over lashings.~~

(56) The owner may require ~~reasonable~~ prepayment ~~from a licensee~~ of the owner's estimated costs for any of the work allowed by OAR 860-028-0100. ~~The owner's estimate will be adjusted to reflect the owner's actual cost upon completion of the work. The owner will promptly refund any overcharge to the licensee.~~ The final invoice will reflect actual costs less any prepayment.

(67) ~~The owner must be able to demonstrate that charges under sections (3) and (5) of this rule have been excluded from the rental rate calculation.~~ The owner shall provide notice to the occupant of any change in rental rate or fee schedule a minimum of ninety days prior to the effective date of the change. The occupant has sixty days from the date of the notice to dispute the rate or fee schedule. If no dispute is filed, the rate and fee schedule shall be deemed effective for the term of the rental period.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.270 through 757.290, 759.045 & 759.650 through 759.675

Hist.: PUC 9-1984, f. & ef. 4-18-84 (Order No. 84-278); PUC 16-1984, f. & ef. 8-14-84 (Order No. 84-608); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); renumbered from OARs 860-022-0055 and 860-034-0360; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)

860-028-0115 [Staff revision 061206] Duties of Pole Owners

(1) An owner must establish, maintain, and make available to occupants its joint-use construction standards for attachments to its poles, towers, and for joint space in conduits. Standards for attachment must apply uniformly to attachments by all operators, including the owner.

(2) An owner must establish and maintain protocols for communications between the owner and its occupants.

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.

~~**(3) An owner must maintain its facilities in compliance with Commission Safety Rules for occupants.**~~

~~**(a) An owner must promptly respond with a reasonable plan of correction for any violation of the Commission Safety Rules if notified in writing of a violation requested by an occupant.**~~

Duties of Electric Supply and Communication Pole Owners

(1) An owner shall install, maintain, and operate its facilities in compliance with Commission safety rules.

(2) An owner must establish, maintain, and make available to occupants its joint-use construction standards and practices for attachments to its poles and for joint space in conduits. Standards for attachment must apply uniformly to all operators, including the owner.

(3) An owner must establish and maintain mutually agreeable protocols for communications between the owner and occupants.

(4) The owner may charge the occupant actual costs for any fines, fees, damages, the occupant's noncompliant attachments cause the pole owner to incur.

(5) Pole owners must immediately correct violations which cause an imminent danger to life or property. In the event that the pole occupant performs the corrections, a pole owner must reimburse the pole occupant for the actual cost of corrections. Charges imposed under this section shall not exceed the actual cost of correction.

(6) Pole owners must respond to a pole occupant's requests for assistance to make corrections within 45 days.

(7) Pole owners shall ensure the accuracy of inspection data prior to transmitting information to the pole occupant.

860-028-0310

Rental Rates and Charges for Attachments by Licensees to Conduits Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through ORS 757.290 or ORS 759.650 through ORS 759.675.

~~**(2) As used in this rule:**~~

~~**(a) "Annual Carrying Charge" shall be equal to the return on investment authorized by the Commission in the conduit owner's most recent rate proceeding times the conduit cost.**~~

~~**(b) "Annual Operating Expense" means annual operating maintenance, administrative, general, depreciation, income tax, property tax, and other tax expenses attributable, on a per-duct basis, to the section of conduit occupied by the licensee.**~~

~~**(c) "Conduit Cost" means the depreciated original installed cost, on a per-duct basis, of the section of conduit occupied by the licensee.**~~

~~**(d) "Duct" means a single enclosed raceway for conductors or cable.**~~

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

~~(e) “Surplus Ducts” means ducts other than those occupied by the conduit owner or a prior licensee, one unoccupied duct held as an emergency use spare, and other unoccupied ducts that the owner reasonably expects to use within the next 18 months.~~

~~(32) The~~ **A disputed** conduit rental rate **per linear foot will be** computed by **adding the annual operating expense to the annual carrying charge and then multiplying by the number of ducts occupied by the licensee multiplying the percentage of conduit capacity occupied by the net linear cost of conduit and then multiplying that product by the carrying charge.**

~~(43) A licensee occupying part of a duct shall be~~ deemed to occupy the entire duct.

~~(54) Licensees shall~~ **must** report all attachments to the conduit owner. A conduit owner may impose a penalty charge for failure to report or pay for all attachments. If a conduit owner and licensee do not agree on the penalty and submit the dispute to the Commission, the penalty amount will be five times the normal rental rate from the date the attachment was made until the penalty is paid. If the date the attachment was made cannot be clearly established, the penalty rate **shall** apply from the date the conduit owner last inspected the conduit in dispute. The last inspection **date shall be** deemed to be no more than ~~three~~ **five** years before the unauthorized attachment is discovered. The conduit owner also **shall** charge for any expenses it incurs as a result of the unauthorized attachment.

~~(65) The conduit owner shall~~ **must** give a licensee 18 months’ notice of its need to occupy licensed conduit and **shall** propose that the licensee take the first feasible action listed:

(a) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the conduit owner’s space needs;

(b) Pay revised conduit rent based on the cost of new conduit constructed to meet the conduit owner’s space needs;

(c) Vacate ducts that are no longer surplus;

(d) Construct and maintain sufficient new conduit to meet the conduit owner’s space needs.

~~(7) When two or more licensees occupy a section of conduit, the last licensee to occupy the conduit shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all licensees shall bear the increased cost.~~

~~(8) All conduit attachments shall meet local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the conduit owner and the licensee. A conduit owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the conduit owner for any fines, fees, damages, or other costs the licensee’s attachments cause the conduit owner to incur.~~

(6) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, special inspections, preconstruction [Staff revision 061206] inspection activity, post construction inspection, make ready work, and the costs related to unauthorized attachments. Charges for activities not included in the rental rates will be

OJUA comments on OAR 860 Division 28 (as updated on June 12 by the safety staff), relating to Conduit Attachments, following the **October 2** meeting of the OJUA Board of Directors, Docket # AR 506. **OJUA revisions appear in red.** *Safety staff revisions that do not reflect previous OJUA comments are italicized and noted.*

based on actual costs, including administrative costs, and will be charged in addition to the rental rate.

(7) The owner may require reasonable prepayments from a licensee of owner's estimated costs for any of the work allowed by OAR 860-028-0100. The owner's estimate will be adjusted to reflect the owner's actual cost upon completion of the [Staff revision 061206] requested tasks ~~work~~. The owner will [Staff revision 061206] promptly refund any overcharge to the licensee.

(8) The owner must be able to demonstrate that charges under sections (6) and (7) of this rule have been excluded from the rental rate calculation.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.270 through 757.290, 759.045 & 759.650 through 759.675

Hist.: PUC 2-1986, f. & ef. 2-7-86 (Order No. 86-107); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); renumbered from OARs 860-022-0060 and 860-034-0370; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)