

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 506

In the Matter of a Rulemaking to Amend and	)	Second Round
Adopt Permanent Rules in OAR 860,	)	Comments of
Division 024 Regarding Pole	)	Oregon Joint
Attachment Safety	)	Use Association

The OJUA has developed the following position on the retroactive application of the Division 24 regulations and intends, with this filing, to clarify the OJUA position. The OJUA is focused on whether the new rules, particularly the rules regulating the priority of corrections, should apply to violations discovered prior to the rules' effective date.

**OJUA Position on the Retroactive Application of the Division 24 Rules**

Prior to this filing, the OJUA position has been that the Division 24 rules apply prospectively, only to violations *discovered after the effective date* of the rules. However, after listening to concerns from the Oregon Public Utilities Commission staff and policymakers, the OJUA understands the concern that violations discovered prior to the effective date of the rules (termed "legacy violations") have the possibility of remaining uncorrected for long periods of time. Minimally, there would be confusion among operators about the timeline to correct the legacy violations.

The OJUA proposes amending its position on the Prioritization of Repairs (OAR 860-024-0012). The OJUA amendment would create an obligation on

the part of operators/members to correct all legacy violations within 10 years after the effective date of the new rules.

The amendment addresses Staff, Commission, and OJUA member concerns by setting a time certain within which legacy violations must be corrected. Indeed, most will likely be fixed well within the 10-year limit. The 10-year time frame is more stringent than the current and nationally-accepted NESC standards which mandate immediate correction of only those violations which pose an imminent danger and allows all other violations to be recorded until corrected.

This 10-year timeline for legacy violations is critical to OJUA members for the following reasons:

- 1) Some legacy violations have gone uncorrected for very sound reasons. They pose little or no safety risk but require significant time and resource expenditure. For example, Section 217 A.4 of the NESC does not allow signs to be placed on poles without the owners' authorization. Currently PGE is working with the City of Portland to identify which city-owned, city-installed signs will be authorized and which will need to be removed. Once authorized, the noncompliance issue is resolved. There are thousands of stop, caution, and school crossing signs that need to be addressed.
- 2) Many legacy violations require coordinated actions between multiple occupants and the pole owner, frequently in a predetermined order. This requires cooperation, coordination, and a careful balancing of each

entity's own correction timelines and competing priorities. It also requires careful choices regarding the dedication of resources.

- 3) Due to industry's recent ambitious efforts at increasing its inspection schedules, there are now a high number of newly discovered violations in Oregon. Many of these violations pose a low safety risk to the general public. Applying the new rules retroactively to these legacy violations unfairly punishes industry for its good faith, self-initiated efforts to increase inspections.
  
- 4) Some utilities and communications companies have been at the forefront of inspecting their facilities. To apply the corrections mandates retroactively to these companies' legacy violations would have a disproportionate impact and treat similarly situated companies differently. In effect, it would put companies who in good faith rushed to complete their inspections at a severe economic disadvantage to those who chose not to immediately inspect. Some cable companies, to manage potential liability regarding sanctions from pole owners, felt they needed to do service area-wide inspections immediately following the advent of sanction rules. Those companies now have a backlog of violations they are working to resolve. That resolution can be completed sometimes individually, sometimes with the assistance of other licensees, or sometimes requires the assistance of the pole owner to either reconfigure their facilities or replace the pole. Companies that have aggressively inspected their service areas will be especially affected by a retroactive rule that does not take special care to grant additional time to legacy violations.