BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 506

Rulemaking to Amend and Adopt Permanent Rules in OAR 860, Divisions 024 and 028 Regarding Pole Attachment Use and Safety	)))	Comments of Verizon Northwest, Inc.

Verizon Northwest, Inc. ("Verizon") files these comments addressing primarily the fiscal and economic impact of the proposed addition of new Rules 860-024-0011, 806-024-0012, and 860-024-0016, as well as modifications to existing Rules 860-024-0001 and 860-024-0050 as authorized by the Ruling issued by Administrative Law Judge ("ALJ") Christina Smith dated July 18, 2006.

Verizon will not repeat its arguments contained in its comments filed in this docket on June 29, 2006, and incorporates those arguments and comments by reference here. In addition, Verizon supports the comments filed by the Oregon Joint Use Association ("OJUA") on August 22, 2006, which specifically address the absence of quantifiable benefits supporting adoption of the proposed rules and the inadequacy of the estimate of the cost of compliance that would be incurred if the proposed rules were adopted. Verizon also supports the comments filed by Qwest Corporation ("Qwest") dated August 22, 2006, that address the fiscal impact from Qwest's perspective. Finally, Portland General Electric Company ("PGE") filed comments dated August 22, 2006, that also dispute Staff's assessment of the fiscal impact of proposed rule 860-024-0016 on PGE. Both Qwest and PGE provided specific economic data demonstrating a substantially greater fiscal impact than that generally asserted by Staff.

ORS § 183.335(2)(b)(E) provides in pertinent part that the notice [of proposed rulemaking hearing] must include:

> A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

The record in this proceeding, including the new notice and fiscal impact statement issued after ALJ Smith's ruling, *still* fails to demonstrate any need or benefit for consumers, the industry or other stakeholders that justifies adoption of the proposed revisions to the Division 24 rules. The new fiscal impact statement is woefully inadequate in quantifying the cost impact that the proposed rules *will* have on businesses, government entities and other organizations.[1] The new notice states that the costs "cannot be accurately quantified at this time".[2] It describes the costs as "rough estimates".[3] It concedes "that this rulemaking *will* have a cost impact on applicable small businesses similar to those costs mentioned above."[4] Furthermore, the notice and underlying documents relied upon fail to demonstrate or quantify any specific benefits that might be derived by adopting these rules. Thus, the notice fails to provide a meaningful cost of compliance to project the economic effect of the proposed rules as required by ORS § 183.335(2)(b)(E).

[1] *Fiscal and Economic Impact, including Statement of Cost of Compliance*, page 3
[2] Id.
[3] *Id.* at 4.
[4] *How were small businesses involved in the development of this rule?, page 5*

The new notice states in the section entitled *Need for the Rule(s)* that:

> A significant element of this safety rulemaking effort is to bring extensive, long standing PUC safety policies into Oregon Administrative Rules (OARs). * * * The policies are listed in *items* 3, 4 and 5 (in the section below entitled *Documents Relied Upon*). The Attorney General's Office advised the PUC that the changing times now require the once-effective guidelines and code interpretation to become rules, through a PUC rulemaking process, so these requirements will have appropriate legal authority in this critical safety area.

The safety policies identified in *items* 3, 4 and 5[5] are vastly different from the new rules proposed by the Commission here. A comparison of the relevant safety policies in *items* 3, 4 and 5 with the proposed new rules 860-024-0011, 860-024-0012 and 860-024-0016 demonstrate that what is proposed here is substantially more than incorporating the existing safety policies into the OARs to give them "appropriate legal authority" is proposed here. As stated in the OJUA comments, these changes are much more than clarifications.

Verizon estimates that its costs to comply with the coordinated inspections rules could increase by as much as $2.5 million per year, depending upon how many poles were inspected on a coordinated basis. Verizon has facilities on approximately 124,000 poles in Oregon that are owned by 12 pole owners, including 37,409 poles owned by Verizon. Based upon Verizon's records, these 12 pole owners own a total of approximately 743,900 poles. If the suppliers of electric facilities designated geographic areas that included all of the poles upon which Verizon had facilities attached to them in the same year, Verizon could be involved in as many as 61,457 coordinated inspections under that scenario, whereas under the current policies, Verizon would be required to inspect 12,417 poles per year on a continuing basis. In addition, if Verizon is required to

[5] *Documents Relied Upon, and where they are available*, page 2

be involved in 12 coordinated inspections in a given year, Verizon will be required to expand its staff to meet that additional demand.

Verizon would also likely incur additional costs to negotiate rates, terms and conditions with the suppliers of electric facilities to conduct the required coordinated inspections in a given geographic area including any proposed deferrals under Rule 860-024-0012. Verizon would also incur additional costs if it decided to appeal to the Commission under Rule 860-024-0011 if it were required to inspect more than 15% of its total Oregon facilities in a given year, which under the proposed rules appears to be a likely scenario. That rule states that the appeal would be to the Commission which suggests the appeal would be a formal evidentiary proceeding with no assurance that an alternative plan would be approved. To the extent Verizon was successful in appealing, it is not clear how the 5% or more of its facilities would be inspected in an alternate plan and how the cost to implement that alternate plan would be assessed by operators of electric supply facilities or the affected operator of communication facilities.

Moreover, it is not clear who would develop the alternative plan presented to the Commission – the operator of electric supply facilities designating the geographic area or Verizon. Rule 860-024-0011 requires operators of electric supply facilities to designate the geographic area to be inspected in a planned year and operators of communications facilities are required to inspect the same geographic area during the same designated annual period. It is clear that the requirement to coordinate annual inspections among operators would generate costs to negotiate those coordinated inspections that have not existed in the past.

Under Rule 860-024-0012, violation of the rules that do not pose an imminent danger to life or property must be corrected within two years after discovery. There is no such requirement in the Staff's policies and requiring such corrections within two years must also increase the costs of compliance. Finally, by having coordinated inspections, Verizon could not realistically budget its anticipated expenditures for a given year or determine the necessary size of its facilities staff that it would have to employ in order to conduct the coordinated inspections and maintain its facilities. As a result, Verizon could not proactively manage the inspection of its facilities on its 124,000 poles; rather, it would essentially have to reactively manage those inspections based upon which facilities and geographic areas were selected by the operators of electric supply facilities for coordinated inspections.

CONCLUSION

Simply put, the new rules are inconsistent with the expressed need for the rules to give staff's safety policies appropriate legal authority by bring those policies into the OARs, are not supported by any quantifiable benefit, and have no reliable cost impact data included in the notice. Accordingly, the Commission cannot adopt the proposed revisions to the Division 24 rules because the notice does not comply with the requirements in ORS § 183.335(2)(b)(E) to properly estimate the costs associated with the proposed revisions and should not adopt the proposed rules because they are inconsistent with the expressed need for the rules to give staff's existing safety policies appropriate legal authority and it is unfair to adopt these rules given that absence of an adequate record to support the need, benefits and cost of compliance.

Dated: August 23, 2006

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