

**OJUA OCT 9 SANCTIONS DRAFT
INCORPORATING COMMENTS FROM THE OCT 5 WORKSHOP**

**WORKSHOP SUGGESTIONS AND OJUA COUNSEL
COMMENTS ARE IN BLUE.**

OAR 028 – Relating to Sanctions

860-028-0120

Duties of Pole Occupants

(1) Except as provided in sections (2) and (3) of this rule, a pole occupant attaching to one or more poles of a pole owner shall:

(a) Have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;

(b) Have a permit issued by the pole owner for each pole on which the pole occupant has attachments;

(c) Install and maintain the attachments in compliance with the written contracts required under subsection (1)(a) of this rule and with the permits required under subsection (1)(b) of this rule; and

(d) Install and maintain the attachments in compliance with Commission safety rules.

(2) A pole occupant that is a government entity is not required to enter into a written contract required by subsection (1)(a) of this rule, but when obtaining a permit from a pole owner under subsection (1)(b) of this rule, the government entity shall agree to comply with Commission safety rules.

(3) A pole occupant may install a service drop without the permit required under subsection (1)(b) of this rule, but the pole occupant must:

(a) Apply for a permit within seven days of installation;

(b) Except for a pole occupant that is a government entity, install the attachment in compliance with the written contract required under subsection (1)(a) of this rule; and

(c) Install the service drop in compliance with Commission safety rules.

(4) Notwithstanding the timelines provided for in OAR 860-028-0120 (5) or (6), pole occupants shall immediately correct violations which cause an imminent danger to life or property. If the pole owner performs the corrections, a pole occupant shall reimburse the pole owner for the actual cost of correction caused by the occupant's non-compliant attachments. Reimbursement charges imposed under this section shall not exceed the actual cost of correction

(5) Notwithstanding OAR 860-028-0120 (4), an occupant must respond to a pole owner's notification of violation within 180 days. If a pole occupant fails to respond within 180 days and if the pole owner performs the correction, the pole occupant shall reimburse the pole owner for the actual cost of correction attributed to the occupant's attachments.

Reimbursement charges imposed under this section shall not exceed the actual cost of correction caused by the occupant's non-compliant attachments.

(a) A pole occupant's response to a notification of violation shall be either a submission of a plan of correction within 60 days or a correction of the violation within 180 days.

(b) Violation of this pole occupant duty to respond is also subject to sanction under OAR 860-028-150 (2).

(6) For violations noticed under OAR 860-028-0120(5), a pole occupant must correct the violation in less than 180 days if the pole owner notifies an occupant that the violation must be corrected in less than 180 days in order to alleviate a significant safety risk to any operator's employees or a potential risk to the general public.

(a) A pole occupant shall reimburse the pole owner for the actual cost of corrections caused by the occupant's non-compliant attachments made under this section if:

- (1) the owner provides reasonable notice of the violation; and
- (2) the occupant fails to respond within timelines provided for in the notice.

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0120 & 860-034-0820

860-028-0130

Sanctions for Having No Contract

(1) Except as provided in sections (2) ~~and (3)~~ of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-~~0060(2)~~. The sanction ~~may be the higher of~~ may not exceed \$500 per pole.

~~(a) \$500 per pole; or~~

~~(b) 60 times the owner's annual rental fee per pole.~~

~~(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 60 percent if the pole occupant complies with OAR 860-028-0120 within the time allowed by OAR 860-028-0170.~~

~~(3) (2) This rule does not apply:~~

~~(a) to a pole occupant that is a government entity; or~~

~~(b) to a pole occupant that is operating under a contract which is expired or terminated and that is participating in good faith efforts negotiate a contract or are engaged in formal dispute resolution, arbitration, or mediation regarding the contract; or~~

~~(c) to a pole occupant that is operating under a contract which is expired if both pole owner and occupant carry on business relations as if the contract terms are mutually-agreeable and still apply ; or~~

~~(3) Sanctions imposed under this section shall be applied no more than once in a 365 day period.~~

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0130 & 860-034-0830

860-028-0140

Sanctions for Having No Permit

(1) Except as provided in sections ~~(2)~~ and (3) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(b), except as provided in OAR 860-028-0120(3). ~~The sanction may be the higher of:~~

~~(a) \$250 per pole; or~~

~~(b) 30 times the owner's annual rental fee per pole.~~

~~(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 60 percent if the pole occupant complies with OAR 860-028-0120 within the time allowed by OAR 860-028-0170.~~

~~(2) Sanctions imposed under this section may not exceed:~~

(a) 5 times the current annual rental fee per pole if the violation is reported by the occupant to the owner or discovered through a joint inspection between the owner and occupant; or

(b) \$100 per pole plus 5 times the current annual rental fee per pole if the violation is reported by the owner.

(3) Sanctions imposed under this section shall not be applied more than once in a 180 day period

(4) Sanctions imposed under this section shall not be re-applied to an occupant once the occupant files a permit application in response to a notice of violation under this section.

(5) This rule does not apply to a pole occupant that is a government entity.

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0140 & 860-034-0840

860-028-0150

Sanctions for Violation of Other Duties

~~(1) Except as provided in sections (2) and (3) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(c) (1)(d), or (3). Sanctions imposed under OAR 860-028-0120 (1)(c) or (1)(d), or (3) may not exceed the higher of: \$200 per pole.~~

~~(b) Twenty times the pole owner's annual rental fee per pole; or~~

~~(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 70 percent if the pole occupant complies with OAR 860-028-0120 within the time allowed by OAR 860-028-0170.~~

(2) A pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120 (5). Sanctions imposed under this section shall not exceed 15 percent of the actual cost of corrections caused by the occupant's non-compliant attachments.

(3) Sanctions imposed under 860-028-0150 (1) and (2) do not apply if:

(a) the occupant submits a plan of correction in compliance with OAR 860-028-0170 within 60 days of notification of a violation; or

(b) the occupant corrects the violation and provides notification of the correction to the owner within 180 days of notification of the violation;

(4) If a pole occupant submits a plan of correction in compliance with OAR 860-028-0170 and fails to adhere to all of the provisions of that plan within the dates provided for within the plan, the pole owner may impose sanctions for the uncorrected violations documented within the plan.

(5) Notwithstanding the timelines provided for in OAR 860-028-0150 (3), a pole owner may immediately impose sanctions for violations:

(a) occurring on attachments which are newly-constructed and newly-permitted by the occupant; or

(b) caused by the occupant's transfer of currently-permitted facilities to new poles; and

(c) if the pole occupant has provided to the pole owner a notice of completion and the notice of completion is no more than 180 days old.

(d) If the pole owner and the occupant agree to a joint post-construction inspection, sanctions under this section shall not be charged to the pole occupant.

~~(3)~~(5) This rule does not apply to a pole occupant that is a government entity.

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0150 & 860-034-0850

860-028-0160

Choice of Sanctions

(1) If a pole owner contends that an attachment of a pole occupant violates more than one rule that permits the pole owner to impose a sanction, then the pole owner may select only one such rule on which to base the sanction.

(2) If a pole owner has a contract with a pole occupant that imposes sanctions that differ from those set out in these rules, then the sanctions in the contract apply unless the pole owner and pole occupant agree otherwise.

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0160 & 860-034-0860

860-028-0170

~~Time Frame for Securing Reduction in Sanctions~~ Plans of Correction

~~(1) Except as provided in section (2) of this rule, a pole owner shall reduce the sanctions provided in these rules, if the pole occupant:~~

~~(a) On or before the 60th day of its receipt of notice, complies with OAR 860-028-0120 and provides the pole owner notice of its compliance; or~~

~~(b) On or before the 30th day of its receipt of notice, submits to the pole owner a reasonable plan of correction, and thereafter, complies with that plan, if the pole owner accepts it, or with another plan approved by the pole owner.~~

~~(2) Notwithstanding section (1) of this rule, a pole owner may, if there is a critical need, or if there is no field correction necessary to comply with OAR 860-028-0120, shorten the times set forth in section (1). A pole occupant that disagrees with the reduction must request relief under OAR 860-028-0220 prior to the expiration of the shortened time period, or within seven days of its receipt of notice of the reduction, whichever is later.~~

~~(3) (1) A plan of correction shall, at a minimum, set out:~~

~~(a) Any disagreement, as well as the facts on which it is based, that the pole occupant has with respect to the violations alleged by the pole owner in the notice;~~

~~(b) The pole occupant's suggested compliance date, as well as reasons to support the date, for each pole that the pole occupant agrees is not in compliance with OAR 860-028-0120.~~

~~(2) If a pole occupant suggests a compliance date of more than ~~60~~ **180** days following receipt of a notice of violation, then the pole occupant must show good cause.~~

~~(3) Upon its receipt of a plan of correction that a pole occupant has submitted under subsection (1)~~(b)~~ of this rule, a pole owner shall give notice of its acceptance or rejection of the plan .~~

~~(a) If the pole owner accepts the plan, then the pole owner shall reduce the sanctions to the extent that the pole occupant complies with OAR 860-028-0120 and provides the pole owner notice of its compliance, on or before the dates set out in the plan;~~

~~(b)~~ (a) If the pole owner rejects the plan, then it shall set out all of its reasons for rejection and, for each reason, shall state an alternative that is acceptable to it;

~~(c)~~ (b) ~~Until the pole owner accepts or rejects a plan of correction, the pole occupant's time for compliance with OAR 860-028-0120 is tolled; T~~ The pole occupant's time for compliance with the timelines provided for within the plan of corrections is not commenced until a plan of correction has been approved by both the pole owner and the occupant.

~~(d)~~ (c) If a plan of correction is divisible and if the pole owner accepts part of it, then the pole occupant shall carry out that part of the plan.

(d) If a pole occupant submits a plan, the pole occupant must carry out all provisions of that plan unless the pole owner consents to a plan amendment.

(4) Pole occupants submitting a plan of correction must report to the pole owner all corrections completed within the timelines provided for within the plan.

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0170 & 860-034-0870

860-028-0180

~~Progressive Increases in Sanctions~~ Removal of Occupant Pole Attachments

~~(1) Except as provided in sections (2) and (3) of this rule, if the pole occupant fails to comply with OAR 860-028-0120 within the time allowed under OAR 860-028-0170, then the pole owner may sanction the pole occupant 1.5 times the amount otherwise due under these rules.~~

~~(2) If the pole occupant has failed to meet the time limitations set out in OAR 860-028-0170 by 30 or more days, then the pole owner may sanction the pole occupant 2.0 times the amount otherwise due under these rules.~~

~~(3)~~ (1) If the pole occupant has failed to meet time limitations set out in OAR 860-028-120, OAR 860-028-130, OAR 860-028-140, or OAR 860-028-150 by ~~60~~ 180 or more days, then the pole owner may request an order from the Commission authorizing removal of the pole occupant's attachments. Nothing in this section precludes a party from pursuing other legal remedies.

~~(4)~~ (2) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0180 & 860-034-0880

860-028-0190

Notice of Violation

A pole owner that seeks, under these rules, any type of relief against a pole occupant for violation of OAR 860-028-0120 shall provide the pole occupant notice of each attachment allegedly in violation of the rule, including ~~the~~ a provision and explanation of the rule each attachment allegedly violates: , the pole number and a description of the location of the pole sufficient to locate the pole. Pole owner shall make available maps and GPS coordinates if possible .

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0190 & 860-034-0890

860-028-0195

Time Frame for Final Action by Commission

The Commission shall issue its final order within 360 days of the date a complaint is filed in accordance with these rules. This rule does not apply to a complaint involving the attachment(s) of an "incumbent local exchange carrier" (as that phrase is defined in 47 U.S.C. Section 251(h) (2002)).

Stat. Auth.: ORS 183, 756, 757 & 759, 47 USC § 224(c)(3)(B)(ii)
Stats. Implemented: ORS 756.040, 757.270-290, 759.045 & 759.650-675
Hist.: PUC 9-2004, f. & cert. ef. 4-21-04

860-028-0200

Joint-Use Association

(1) Pole owners and pole occupants shall establish a Joint-Use Association (JUA). The Association shall elect a Board from the JUA, which shall include representatives of pole owners, pole occupants, and government entities. The Board shall act as an advisor to the Commission with respect to:

(a) Adoption, amendment, or repeal of administrative rules governing pole owners and pole occupants; and

(b) Settlement of disputes between a pole owner and a pole occupant that arise under administrative rules governing pole owners and pole occupants.

(2) In the event a representative is involved in a dispute under subsection (1)(b) of this rule, then the representative shall not participate in resolution of the dispute, and the JUA shall appoint a temporary representative with a similar interest.

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0200 & 860-034-0900

860-028-0210

Resolution of Disputes over Plans of Correction

(1) If a pole occupant and a pole owner have a dispute over the reasonableness of the plan of correction, then either party may request an order from the Commission to resolve the dispute. The party requesting resolution shall provide notice of its request to the Commission and to the other party:

(a) Upon receipt of a request, the Commission Staff shall, within 15 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 15 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission shall, within 15 days, issue an order.

(2) Notwithstanding section (1) of this rule, either the pole owner or pole occupant may request a settlement conference with the Joint-Use Association. The settlement conference shall be in addition to, not in lieu of, the process set forth in section (1).

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0210 & 860-034-0910

860-028-0220

Resolution of Factual Disputes

(1) If a pole occupant and pole owner have a dispute over facts that the pole occupant and pole owner must resolve so that the pole owner can impose appropriate sanctions, or in the event that a pole occupant is alleging that a pole owner is unreasonably delaying the approval of a written contract or the issuance of a permit, then either the pole owner or the pole occupant may request a settlement conference before the Joint-Use Association (JUA). The party making the request shall provide notice to the other party and to the JUA.

(2) If the JUA does not settle a dispute described in section (1) of this rule within 90 days of the notice, then either the pole owner or the pole occupant may request a hearing before the Commission and an order from the Commission to resolve the dispute:

(a) Upon receipt of a request, the Commission Staff shall, within 30 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 30 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission shall, within 30 days, issue an order.

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0220 & 860-034-0920

860-028-0230

Pole Attachment Rental Reductions

(1) Except as provided in section (3), a licensee shall receive a rental reduction.

(2) The rental reduction shall be based on ORS 757.282(3) and OAR 860-028-0110.

(3) A pole owner or the Commission may deny the rental reduction to a licensee, if either the pole owner or the Commission can show that:

(a) The licensee has caused serious injury to the pole owner, another pole joint-use entity, or the public resulting from non-compliance with Commission safety rules and Commission pole attachment rules or its contract or permits with the pole owner;

- (b) The licensee does not have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;
- (c) The licensee has engaged in a pattern of failing to obtain permits issued by the pole owner for each pole on which the pole occupant has attachments;
- (d) The licensee has engaged in a pattern of non-compliance with its contract or permits with the pole owner, Commission safety rules, or Commission pole attachment rules;
- (e) The licensee has engaged in a pattern of failing to respond promptly to the pole owner, PUC Staff, or civil authorities in regard to emergencies, safety violations, or pole modification requests; or
- (f) The licensee has engaged in a pattern of delays, each delay greater than 45 days from the date of invoice, in payment of undisputed fees and charges filed in a timely manner and due the pole owner.

(4) A pole owner that contends that a licensee is not entitled to the rental reduction provided in section (1) of this rule shall notify the licensee of the loss of reduction in writing. The written notice shall:

- (a) State how and when the licensee has violated either the Commission's rules or the terms of the contract;
- (b) Specify the amount of the loss of rental reduction which the pole owner contends the licensee should incur; and
- (c) Specify the amount of any losses that the conduct of the licensee caused the pole owner to incur.

(5) If the licensee wishes to discuss the allegations of the written notice before the Joint-Use Association (JUA), the licensee may request a settlement conference. The licensee shall provide notice of its request to the pole owner and to the JUA. The licensee may also seek resolution under section (6) of this rule.

(6) If the licensee wishes to contest the allegations of the written notice before the Commission, the licensee shall send its response to the pole owner, with a copy to the Commission. The licensee shall also attach a true copy of the written notice that it received from the pole owner.

- (a) Upon receipt of a request, the Commission Staff shall, within 30 days, provide to the parties a recommended order for the Commission;
- (b) Either party may, within 30 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission shall, within 30 days, issue an order.

(7) Except for the rental reduction amount in dispute, the licensee shall not delay payment of the pole attachment rental fees due to the pole owner.

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0230 & 860-034-0930

860-028-0240

Effective Dates

(1) Except as provided in section (2) of this rule, OARs 860-028-0120 through 860-028-0230 are effective on January 1, 200~~4~~⁷.

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

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

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0240 & 860-034-0940

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