

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
 A Statement of Need and Fiscal Impact accompanies this form.

Public Utility Commission	860
Agency and Division	Administrative Rules Chapter Number
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Rules Coordinator	Address
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	Telephone

RULE CAPTION

Amends rules relating to sanctions for attachments to utility poles and facilities

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Administrative Law Judge
October 12, 2006	1:30 p.m.	Public Utility Commission Workshop with Commissioners Main Hearing Room, First Floor 550 Capitol Street NE Salem, Oregon	Christina Smith
November 8, 2006	9:00 a.m.	Public Utility Commission Hearing Main Hearing Room, First Floor 550 Capitol Street NE Salem, Oregon	Christina Smith

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (adopted or renumbered) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: 860-028-0120 through 860-028-0240

REPEAL:

RENUMBER:

AMEND and RENUMBER:

ORS Ch 183, 756, 757 and 759

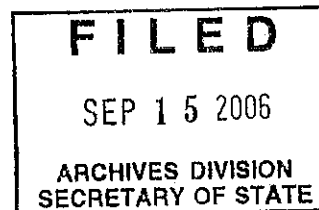
Section 9(3) of House Bill 2271, enacted as
Oregon Laws 1999, Chapter 832, Section 9

Stat. Auth:

Other Authority

ORS 756.040, 757.035, 757.270 through 757.290, 759.045 & 759.650 through 759.675

Stats. Implemented:



RULE SUMMARY

This rulemaking is intended to be an expansion of existing rulemaking docket AR 506 of the Public Utility Commission to establish more comprehensive joint use rules that would apply to electric utilities, telecommunications utilities, telecommunications providers, cable television operators, and other entities that operate electric and communication lines.

The purpose of this rulemaking is to expand or amend PUC rules related to the sanctions amounts and sanctioning processes for violations of PUC rules regarding pole attachments and duties of pole occupants. Specifically, this rulemaking will address both pole occupant and pole owner duties, sanctions amounts, sanctions maximums, and sanctions processes, sanctions for

**Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 p.m. on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday.

lack of contracts and lack of a permit, sanctions for violation of terms of a contract between the parties, sanctions for violation of OAR Chapter 860, Division 024, the interrelation between PUC rules and existing contracts between parties, the creation of a sanction grace periods, the elimination of sanctions escalators, rental rate reductions, sanctions notification procedures between pole owners and pole occupants, and permitted use of sanction funds.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

November 8, 2006, 5:00 p.m.

Last day for Public Comment
Last day to submit written comments to the Commission

Diane Davis

Signature

Diane Davis
Printed Name

9-15-06
Date

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Agency and Division

Administrative Rules Chapter Number

Public Utility Commission

860

In the Matter of Permanent Rules regarding Sanctions related to Pole Attachments

Rule Caption: Amends rules relating to sanctions for attachments to utility poles and facilities.
(Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Statutory Authority: ORS 183, 756, 757 & 759

Other Authority: Section 9(3) of House Bill 2271, enacted as Oregon Laws 1999, chapter 832, section 9, and appearing in the Oregon Revised Statutes in the Note after ORS 757.290.

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

Need for the Rule(s): The Board of the Oregon Joint Use Association (OJUA) is recommending that the rules and provisions relating to sanctions in OAR Chapter 860, Division 028 be amended as covered in *item 1* (referred to as "draft rules") in the *Documents Relied Upon* below. The OJUA, which represents utility pole owners and pole occupants and other interested parties per OAR 860-028-0200, advises the Commission on needed attachment rulemaking and policy. More information about this organization and its membership can be found at its website <http://ojua.org>. The OJUA has requested that the draft rules be considered simultaneously with existing PUC rulemaking docket AR 506, which is currently underway with public hearings scheduled for later this year.

The OJUA has stated "that greater specificity and consistency is needed with regard to the sanctions processes" covered in Division 28 rules. OJUA believes that the sanction amounts, processes, and timelines should be amended and in some cases repealed. It further states "clearer guidelines are needed by the Commission to mediate and resolve disputes between owners and occupants" in an expedited manner. These disputes generally involve conditions for sanctions, sanction amounts, methodology, and sanction processes.

PUC Staff and its attorneys with the Oregon Department of Justice have not had sufficient time to review or comment on the OJUA's draft rules, which were submitted on September 11 and 12. To consider OJUA's draft rules simultaneously with AR 506 rulemaking proceedings, to the extent possible, the OJUA's draft is being presented by staff as the initial proposal for public comment and Commission rulemaking action.

It should be noted that QWEST challenged certain provisions of the PUC's sanction rules before the Oregon Court of Appeals in Case A123511. This year the court upheld the PUC's sanction rules in Division 028. QWEST is now continuing its challenge with the Oregon Supreme Court. Some pole occupants have filed complaints with the PUC (in dockets UM 1087, 1096, UM 1241 and others) about unfair sanctions being imposed by pole owners. The OJUA believes that there has been enough controversy around the PUC's sanction rules that they should be reviewed by the Commission concurrently with AR 506 rulemaking proceedings, which are now underway.

Documents Relied Upon and where they are available for review:

1. OJUA draft rules submitted to PUC Staff on September 11 and 12, 2006 (available at http://www.puc.state.or.us/PUC/admin_rules/proposed/ojuadrll.pdf).
2. Oregon Administrative Rules Chapter 860, Divisions 24 and 28 (available at http://arcweb.sos.state.or.us/rules/OARS_800/OAR_860/860_tofc.html).
3. Oregon Revised Statutes (ORS) 757.035, 757.270 through 757.290 and 759.650 through 759.675, and Oregon Administrative Rules (OAR) in Chapter 860, Divisions 24 and 28 (available at <http://www.leg.state.or.us/ors/vol17.html>).
4. OPUC Docket AR 506 rulemaking filings (available at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=13128>).
5. National Electrical Safety Code, 2002 Edition (ANSI C2-2002) as required by OAR 860-024-0010 (available at <http://www.puc.state.or.us/PUC/safety/getnesc.shtml>).

Fiscal and Economic Impact

The OJUA states the proposed rules will have a direct impact on businesses, industry, some local government entities, and the public. These rules will affect operators of electric and communication facilities and their costs of operations. The operators include electric utilities, telecommunications utilities, telecommunications providers, consumer-owned electric utilities, cable television operators, and other entities. The scope of changes in costs and on impact will vary for each pole occupant and pole owner; depending upon the type, frequency, and severity of the rule violations; application of sanctions; and current pole rental rates. In some cases, sanction costs will be lowered, thus lowering the cost burden on certain pole occupants and potentially decreasing revenue for some pole owners. The total impact of the rules is variable for different operators and any additional costs cannot be accurately quantified at this time.

The physical plant costs for operating electric and communications facilities on Oregon's crowded utility rights of way have been increasing in recent years. This process is a proposal to amend the rules governing sanctions and sanctions costs that are being charged to pole occupants. It should be emphasized that parties can agree to different rates, terms, conditions, including sanctions, by private contracts under ORS 757.285.

How were small businesses involved in the development of this rule?

This rulemaking will have cost impact on applicable small business similar to that mentioned above. The OJUA, which represents both small and large entities, was actively involved with its members in developing the draft rules.

Administrative Rule Advisory Committee consulted?

The OJUA, which is recognized under OAR 860-028-0200 as an advisor to the PUC, has led this effort.

Diane Davis
Authorized Signer

Diane Davis
Printed Name

9-15-06
Date

**Oregon Joint Use Association
Draft Rules for Amending
PUC Division 028 Sanction Rules**

Dated: September 12, 2006

Page 1 of 12

On September 11 and 12, Oregon Joint Use Association (OJUA) submitted to PUC Staff the following draft rules for rulemaking purposes. The draft rules cover OJUA proposed amendments to existing PUC sanction rules for pole attachments. The OJUA draft rules have not been modified by PUC Staff except for the following:

- Titles and numbers in page headers
- Minor formatting changes, including bolding and underlining for new language additions; and bolding and strikeouts for deletions.
- Other modifications as denoted.

If you have questions or need clarification about the attached OJUA draft rules, contact the OJUA. The OJUA's contact information may be found at website: <http://www.ojua.org>

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 **calendar** 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) Failure of an Occupant to Promptly Respond to a Notification of Violation: If an occupant fails to respond to a notification of violation of the Commission Safety Rules within 60 calendar days after notification, the pole owner may perform the corrections or have the corrections performed by a third party. Such corrections shall be performed at the occupant's expense and shall be charged to the occupant at cost, plus an additional 15%. An occupant's response to a notification of violation shall consist of either a submission of a plan of correction or actual correction of the violation.

(5) Failure of Occupant to Promptly Repair, Disconnect or Isolate Hazardous Conditions: A pole owner may correct deficiencies which cause hazardous conditions and charge the costs of the correction to the occupant if:

- (a) the owner provides reasonable notice of a hazard or situation requiring prompt attention, including vegetation posing an imminent threat to the supporting structure; and**
- (b) the occupant is allowed a reasonable opportunity to repair or correct the hazard or situation.**
- (c) In the event of an emergency, notice or pre-authorization shall not be required.**

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 860-028-0120(1)(a). The sanction ~~may be the higher of~~ shall be \$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 to a pole occupant that is a government entity or to entities operating under a recently expired or terminated contract who are participating in good faith efforts to renegotiate a contract.

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 860-027-0120(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 shall be:

(a) 5 times the owner's current annual rental fee per pole for each violation which is self-reported by the occupant or discovered through a joint, cooperative inspection between the pole owner and pole occupant; or

(b) 5 times the owner's current annual rental fee per pole in addition to a sanction of \$100 per pole for each violation which is reported by the pole owner.

(3) 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~~ Commission Safety Rules and Terms of Contract ~~(1) Except as provided in sections (2) and (3) of this rule, a~~ 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). The sanction shall be ~~the higher of:~~ \$200 per pole.

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

~~(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 occupant is not liable for sanctions under this section if :

(a) the violation is corrected by the pole occupant within 180 days of notification of the violation; or

(b) the pole occupant submits a plan of correction, as provided for in OAR 860-028-0170, within 60 days of notification of a violation.

(3) If a pole occupant submits a plan of correction, as provided for in OAR 860-028-0170, the pole occupant must adhere to the provisions of that plan unless the pole owner consents to a plan amendment.

(3) 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.

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

(5) Upon its receipt of a plan of correction that a pole occupant has submitted under subsection (1)~~(b)~~ **(a)** 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; **Until the pole owner accepts or rejects a plan of correction, the pole occupant's time for compliance with the timelines dictated by the plan of corrections is not commenced.**

~~(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.

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 Pole Occupant 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 the time limitation set out in OAR 860-028-0170 0150 by 60 or more days, then the pole owner may request an order from the Commission authorizing removal of the pole occupant's attachments.

(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 location, including pole owner maps and GPS coordinates if available.

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

Notwithstanding the timelines provided for in OAR 860-028,0070, ~~t~~The Commission shall issue its final order within 180 ~~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 60 days from the date of billing**, in payment of fees and charges 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, 2001.
- (2) OAR 860-028-0150 does not apply to attachments installed on or before December 31, 2000, until January 1, 2003.

(3) These changes are effective on January 1, 2007 or upon issuance of the Commission Order, which ever is later. The new rules apply only to attachments about which a pole owner or occupant is notified on or after the effective date. (PUC Staff made slight revisions to this subsection for clarity.)

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