

**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 Oregon Joint Use Association appreciates the opportunity to provide a response to Staff’s July 13, 2006 filing of the Amended Statement of Need and Fiscal Impact (“the Amended Statement”).

The Amended Statement fails to provide a clear estimation of the true cost of an adoption of the Staff-proposed rules. Additionally, the Amended Statement offers no meaningful evidence of the increased safety benefit that would result from an adoption of the Staff-proposed rules.

No Increase in Safety Benefits Shown

Any reasoned discussion of the fiscal impact of a regulatory matter must necessarily include an analysis of the *benefits* derived from the cost of regulation – a “cost-benefit” analysis. Here, the benefit would be increased safety. OJUA supports this goal. However, the Staff-proposed rules offer a significant increase in cost with no appreciable safety benefit increase.

The OJUA position is clear: We support increasing the safety of our systems and we do not oppose rules which implement existing NESC standards. However, the Staff-proposed rules go much further than implementing standards; they inefficiently mandate the *methods and procedures* by which industry should meet those standards. (See pages 8 – 12 of OJUA’s May 26, 2006 Replacement Filing for a fuller discussion of reasonable alternatives to Staff’s proposed procedural mandates regarding inspection schedules, geographic inspection areas, and coordination of inspections.) These inefficient methods and procedures add no safety value while needlessly increasing costs.

As OJUA has repeatedly advised, PUC staff should focus on providing the safety standards and allow industry the flexibility to determine the methods and procedures used to attain these safety standards. OJUA’s amendments to the Staff-proposed rules do exactly this—to allow the greatest safety benefit at the least cost.

Staff's Minimized Fiscal Impact Statement

OJUA appreciates Staff's attempt to further quantify the true costs of their proposed rules. However, Staff's analysis remains seriously flawed. Staff has again minimized costs to the detriment of the industry, the regulators, and the ratepayer. Such minimization of the true costs will have serious unintended consequences for the effective management of safety programs throughout Oregon. Such cost minimization has been contrary to repeated advice given by the OJUA, a group of industry experts charged by statute to advise the PUC.

Specifically OJUA disagrees with the following points mentioned in the Amended Statement:

1. Page two: Staff states that the rulemaking effort will focus on *clarifying* minimum operator inspection, coordination, repair, and vegetation management requirements. OJUA disagrees. Many of the Staff-proposed rules set entirely new methods, procedures, and standards. They do not merely "clarify" existing standards. The proposed rules set new mandates at a significant cost with no resulting increased safety benefit.
2. Page three: Staff states that increases in costs are expected for operators who have not been in compliance with existing NESC policies. They also state that operators who have been in compliance will likely see minor costs. OJUA disagrees. The Staff proposed rules will significantly increase costs for the entire industry, *especially* those who have already inspected their facilities per the existing NESC standards. Those who have already inspected would now be subject to new expensive and duplicative mandates. OJUA has repeatedly noted this concern on the record and during meetings with Staff. Staff's Amended Statement fails to acknowledge these duplicative inspection mandates despite OJUA's repeated assertions.
3. Page four: In its Amended Statement, Staff is unclear about both scope of their cost estimates and the subject of their fiscal impact review. In the first full paragraph of page four, Staff notes that their cost estimates do not represent additional costs incurred due to this rulemaking. However, it is OJUA's understanding that the very purpose of the Amended Statement is to estimate the fiscal impact of the rulemaking. Additionally, OJUA is confused regarding the subject of the fiscal estimates. Several times during its analysis, Staff refers to "continuation of existing program" costs. It is OJUA's opinion that the Staff proposed rules mandate new methods and procedures over and above existing programs, so the costs of existing programs cannot validly be used to estimate the fiscal impact of the proposed rules. OJUA also believes that Staff lacks knowledge of the current costs of existing programs. It is in the public interest that fiscal impact statements be clear as to what they are actually studying. Existing

program costs which Staff cannot quantify have little or no evidentiary value when evaluating the Staff proposed rules.

4. Lastly, throughout the entire Amended Statement, Staff laments that the exact costs are nearly impossible to estimate. OJUA disagrees. If Staff had presented industry representatives the opportunity to work cooperatively to study the true costs of the Staff- proposed rules, the Amended Statement would have been more accurate. Instead, Staff presented an 11th hour study of less than one percent of Oregon's poles. No industry representatives were notified regarding the existence of this study prior to its publication; nor were they informed as to the reasoning for the selection of the pole sample or the locations of the poles studied. It is also unknown as to the criteria used in the inspection process; was it a drive-by inspection or a detailed inspection? Without this critical information, it is impossible to assert either the validity or invalidity of the study's conclusions regarding the costs of the proposed regulations.