

May 1, 2006

**VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY**

Public Utility Commission of Oregon  
Attn: Filing Center  
550 Capital Street NW, Suite #215  
Salem, Oregon 97308-2148

**Re: In the Matter of a Rulemaking to Amend and Adopt  
Permanent Rules in OAR 860, Divisions 024 and 028,  
Regarding Pole Attachment Use and Safety -- AR 506**

Dear Sir/Madam:

Enclosed please find the original and one copy of the Comments of Verizon Northwest Inc. on Proposed Revisions to Division 24 Rules for filing in the above-referenced proceeding. Please date stamp the copy and return it in the envelope provided at your earliest convenience.

Please contact me with any questions or concerns. Thank you for your assistance.

Sincerely,



Christopher S. Huther

cc: Service List

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

In the Matter of	)	
Rulemaking to Amend and Adopt Permanent	)	AR 506
Rules in OAR 860, Divisions 24 and 28,	)	
Regarding Pole Attachment Use and Safety	)	

**COMMENTS OF VERIZON NORTHWEST INC.  
ON PROPOSED REVISIONS TO DIVISION 24 RULES**

Verizon Northwest Inc. (“Verizon”), through counsel, and pursuant to Administrative Law Judge Christina Smith’s Memorandum dated March 10, 2006, submits the following comments on the proposed amendments and revisions to the Oregon Public Utility Commission’s (“OPUC” or “Commission”) pole and conduit safety rules set forth in OAR, Chapter 860, Division 024 (“Division 24 Rules”). As discussed herein, Verizon supports a number of the proposed amendments and revisions to the Division 24 Rules. However, in several important respects, the changes go too far and would impose costly, burdensome and potentially conflicting obligations on pole owners and attachers, without yielding any appreciable improvements in safety. Set forth in Appendix A to these comments are Verizon’s suggested changes to certain of the proposed revisions, which remedy deficiencies in the Division 24 Rules and/or proposed revisions thereto.

**The Proposed Revisions Are Unnecessary, Repetitive and Confusing**

Pole owners and attachers in Oregon must comply with the National Electrical Safety Code (“NESC”). This nationally recognized and authoritative collection of safety standards provides such thorough and effective safety guidance that safety rates in

Oregon are at an all-time high, and reported incidents remain very low.<sup>1</sup> In fact, Oregon is one of only two states to have incorporated the NESC standards into state law. Many of the proposed revisions to the Division 24 Rules seem to ignore the fact that adherence to the NESC has protected the safety of both utility workers and the general public. Because many of the proposed revisions to the Division 24 Rules betray a lack of understanding, and in some cases conflict directly with, the NESC, they threaten to confuse and potentially weaken safety measures presently implemented. Verizon does not support changes to the Division 24 Rules that would put its employees or the general public at increased risk, or that are in conflict with existing rules or regulations.

**The Proposed Revisions Are Burdensome, Costly and Ineffective**

Pole owners and attachers have forged business relationships, reflected in their joint use agreements, that prioritize safety while simultaneously setting operating protocols that make sound business and financial sense. Certain of the proposed revisions disregard these well-reasoned current practices of operators within Oregon. These same practices were suggested by the Oregon Joint Use Association, which was created by the OPUC in part to provide information regarding business practices and policies within the industry. In addition to creating confusion and possible conflict with existing safety regulations, the draft revisions would require pole owners and attachers to conduct business in commercially irrational ways. The proposed revisions also would force them to coordinate procedures that are already running smoothly throughout Oregon. This forced coordination is likely to increase tension and cause unnecessary and costly disputes between operators, without yielding any appreciable improvement in

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<sup>1</sup> 2006 Utility Electric Contact Report – Personal Injury Electric Contact Incidents to Utility Workers and the Public –Reported to the Oregon Public Utility Commission.

safety. Thus, Verizon does not support the proposed revisions to the extent that they impose inappropriate, costly, and irrational obligations upon pole owners and attachers.

### **The Tree-Trimming Proposals Are Inequitable**

Different legal regimes apply to electricity and telecommunications service providers regarding obligations to trim vegetation surrounding their outside plant. The proposed revisions to the Division 24 Rules, which would impose equivalent tree-trimming obligations on electricity and telecommunications providers, ignore the fact that only unshielded electrical conductors and cables have the capacity to injure seriously workers or passersby should contact occur. Because of this heightened risk, the Oregon legislature has protected electricity providers from civil liability in the event of injury during the tree-trimming process.<sup>2</sup> Telecommunications providers are not granted such protections. The Division 24 Rules should reflect these different realities and incentives. Telecommunications providers should not be required to bear different costs and risks for conducting the same activities as electricity providers. In addition, the proposed rule revisions are at odds with state and local public policies, which favor conservation and protection of trees. Municipalities, in particular, have gone to great lengths to foster urban forests. The proposed tree-trimming rules will unnecessarily impact on the urban landscape. For these reasons, and as explained in more detail in Appendix A, Verizon does not endorse the expansion of tree-trimming obligations on telecommunications providers.

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<sup>2</sup> ORS § 758.284

Respectfully submitted,



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DATED: May 1, 2006

**Appendix A:  
Specific Suggested Rule Changes**

**860-024-0001(7)**

Current proposal:

*(7) “Pattern of noncompliance” means any course of behavior that results in frequent violations of the Commission Safety Rules.*

Suggested change:

*(7) “Pattern of noncompliance” means a course of behavior documented by the OPUC that results in frequent, material violations of the National Electrical Safety Code and is undocumented by the operator.*

The proposed definition of “pattern of noncompliance” is unclear and will promote disagreement and confusion among operators. Verizon’s suggested definition ensures clarity among operators and will increase compliance since operators will be required to document practices. The addition of the term “material” ensures that violations that are not truly significant do not result in extensive penalties. Verizon’s suggested definition also reflects the fact that the NESC represents nationally accepted safety standards. Because these safety standards have already been created by industry members, the OPUC should refrain from creating a separate and potentially conflicting system of violations that will add uncertainty to the pole attachment system in Oregon.

**860-024-0011(1)(b)-(c)**

Current proposal:

*(1) An operator of electric supply facilities or an operator of communication facilities must:*

*(a) Construct, operate, and maintain its facilities in compliance with the Commission Safety Rules.*

*(b) Train its employees in the Commission Safety Rules necessary for the covered tasks.*

*(c) Require contractors to provide evidence of training for their employees in the Commission Safety Rules necessary for the covered tasks.*

Suggested change:

*(1) An operator of electric supply facilities or an operator of communication facilities must construct, operate, and maintain its facilities in compliance with the National Electrical Safety Code.*

As mentioned in comments to 860-024-0001, the NESC applies to electric supply and communications operators and their contractors and supplies the relevant safety standards that ensure certainty and security in the pole attachment arena. NESC Section 410(A)(2) already requires training and certification programs. Instituting an additional training requirement will increase operators' expenses tremendously without providing meaningful benefits to the industry, which has already shown an increased awareness of the application of NESC standard in new construction and an excellent safety record recently.

**860-024-0011(2)**

Current proposal:

- (2) *Each operator of electric supply facilities must:*
- (a) *Designate program areas to be inspected pursuant to subsection (1)(d) of this rule within its service territory. The schedules for the coverage areas for the entire program must be made available in advance and in sufficient detail so that the Commission and all operators with facilities in that service territory may coordinate needed inspection and correction tasks. Unless the parties otherwise agree, operators must be notified of any changes to the established schedule 12 months before the start of the next year's inspection.*
  - (b) *Perform routine safety patrols of overhead electric supply lines and accessible facilities for hazards to the public. The maximum interval between safety patrol is two years, with a recommended minimum rate of 50 percent of lines and facilities per year.*
  - (c) *Inspect electric supply stations on a monthly schedule.*

Suggested change:

- (2) *Each electric supply operator must:*
- (a) *Designate program areas to be inspected pursuant to subsection (1)(d) of this rule within its service territory. The schedules for the coverage areas for the entire program must be made available in advance and in sufficient detail so that the Commission and all operators with facilities in that service territory may coordinate needed inspection and correction tasks. Operators should be notified of any changes to the established schedule a minimum of 12 months before the start of next year's inspection, unless mutually agreed upon.*
  - (b) *Perform routine safety patrols of overhead electric supply lines and accessible facilities for hazards to the public. The maximum interval between safety patrol is two years, with a recommended minimum rate of 50 percent of lines and facilities per year.*
  - (c) *Inspect electric supply stations on a schedule of not more than 45 days.*

While Verizon believes that cooperation and joint inspection provide the greatest value to ratepayers, the practice of sharing costs and resources should be a business decision rather than a regulatory mandate. Cost saving incentives may drive companies to cooperate in joint inspection and correction ventures where feasible, but circumstances may occasionally prevent pole owners and users from doing so, such



as scheduling conflicts and schedule cycle differences. Requiring telecommunications providers, including those who operate statewide and those whose serving areas lay within a power companies' 10 percent inspection area, to adjust their schedules would impose astronomical costs. In addition, those carriers working with as many as thirty different power companies will be unable to coordinate and jointly participate with all of these companies. Existing economic incentives should be sufficient to encourage operators to work together.

**860-024-0012**

Current Proposal:

- (1) A facility with a violation of the Commission Safety Rules that poses an imminent danger to life or property must be repaired, disconnected, or isolated by the operator immediately after discovery.*
- (2) Except as otherwise provided by this rule, the operator must correct violations of Commission Safety Rules no later than two years after discovery.*
- (3) An operator may elect to defer for a third year corrections of no more than 5 percent of violations identified during the operator's detailed facility inspection each year. Violations qualifying for deferral under this section cannot reasonably be expected to endanger life or property. The operator must develop a plan detailing how it will remedy each such deferral. If more than one operator is affected by the deferral, all affected operators must agree to the plan or the violation(s) may not be a part of the third year deferral.*
- (4) For good cause shown and where equivalent safety can be achieved, unless otherwise prohibited by law, the Commission may for a specific installation waive the requirements of OAR 860-024-0012.*

Suggested change:

- (1) Violations of the National Electrical Safety Code (NESC) will be addressed as follows:
  - (a) A violation of the NESC that poses an imminent danger to life or property must be repaired, disconnected, or isolated by the operator immediately after discovery.*
  - (b) Except as otherwise provided by this rule, the operator must correct violations of the NESC no later than five years after discovery.*
  - (c) An operator may elect to defer to a plan of correction those violations that cannot reasonably be expected to endanger life or property and can be corrected during the next major outside plant project conducted by the operator in the area.
    - (1) All violations referenced in section (c) shall require a plan of correction mutually agreed upon by affected occupants.*
    - (2) A plan of correction shall include the pole number and location, the nature of the violation, what will be done to address the violation, who will address it and when.***
- (2) For good cause shown and where equivalent safety can be achieved, unless otherwise prohibited by law, the Commission may for a specific installation waive the requirements of OAR 860-024-0012.*

This proposed revision imposes obligations well beyond the requirements of the NESC. Decisions to repair conditions posing no immediate threat to life or property

should be based on the priorities of the company, recognizing that companies have duties to their ratepayers to spend funds responsibly and create an orderly plan for prioritization and correction of violations. The Division 24 Rules should reflect the fact that the NESC does not impose timeframes because doing so is unnecessarily costly and ineffective. As such, the OPUC should adopt Verizon's proposal, which is endorsed throughout the industry.

**860-024-0014**

*Current Proposal:*

- (1) An owner must establish, maintain, and make available to occupants its joint-use construction standards for attachments to its poles, towers, and for joint space in conduits. Standards for attachment must apply uniformly to attachments by all operators, including the owner.*
- (2) An owner must establish and maintain protocols for communications between the owner and its occupants.*
- (3) An owner must maintain its facilities in compliance with Commission Safety Rules for Occupants.*
  - (a) Occupants must promptly inform the owner of observed safety violations of the owner and any other occupants.*
  - (b) An owner must promptly respond with a reasonable plan of correction for any violation of the Commission Safety Rules if requested by an occupant.*

*Suggested Proposal:*

*Verizon proposes moving this section to Division 28, which governs contractual issues relating to pole attachments.*

Because the provisions in this section pertain to contractual issues that arise between pole owners and attachers, it is more appropriately included in Division 28. This section outlines duties of pole owners; the analogous provision pertaining to pole attachers is contained in Division 28. Thus, this section should be relocated to maintain a parallel and organized structure to the OPUC's regulations.

**860-024-0016(8)**

Current Proposal:

*(8) Each operator of communication facilities must trim or remove vegetation that poses a risk to their facilities. Risk to facilities includes, but is not limited to, deflection of cables, wires, or messengers, or those contacts which cause damage to facilities.*

Suggested change:

*Verizon recommends deletion of this section in its entirety.*

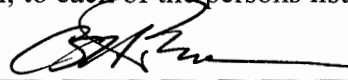
Telecommunications providers should not be subject to the same safety requirements as electricity providers. Electrical wires are uninsulated and charged, and pose significant safety concerns. To provide electricity providers an adequate legal safe harbor from litigation arising from tree-trimming activities necessary to ensure protection of public safety, the Oregon legislature enacted ORS 758.284, thereby indemnifying electricity providers from accidents occurring when they conduct tree-trimming measures. Telecommunications providers enjoy no such immunity when conducting the same activities.

For practical and legal reasons, telecommunication providers should not be required by the OPUC to conduct extensive tree-trimming activities without indemnity from liability. In the absence of such protection, telecommunications providers would be required to bear significantly higher costs than electricity providers should a tree-trimming regime such as this one be imposed. This outcome would be manifestly unfair. Moreover, public safety would not be improved, as telecommunications lines do not pose appreciable harm to the public. In addition, as mentioned earlier, this tree-trimming requirement stands to substantially alter the

urban landscape, which was created with extensive planning and resource investment by local communities.

**CERTIFICATE OF SERVICE**

I, Christopher S. Huther, certify that on May 1, 2006, I caused a copy of the Comments of Verizon Northwest Inc. on Proposed Revisions to Division 24 Rules to be successfully served by electronic and U.S. mail, to each of the persons listed below.



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