



Oregon Joint Use Association

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June 12, 2006

Oregon Public Utility Commission
Attention: Filing Center
PO Box 2148
Salem, OR 97308-2148

RE: In the Matter of a Rulemaking to Amend and Adopt Permanent Rules
in OAR 860, Division 024, Regarding Pole Attachment Use and Safety
OPUC Docket No. AR 506

Attention PUC Filing Center:

Attached please find the OJUA's supplemental comments relating to
Division 24 in the matter of PUC Docket #AR 506.

Sincerely,

LEAHY & KIERAN
Christy K. Monson

CKM:wmk

Enclosure

cc: Docket No. AR 506

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 506

In the Matter of a Rulemaking to Amend and)	Supplemental
Adopt Permanent Rules in OAR 860,)	Comments of
Division 024 Regarding Pole)	Oregon Joint
Attachment Safety)	Use Association

TALKING POINTS ON DIVISION 24

Comments on 860-024-0001 (1) Definition of “Commission Safety Rules”

(1) “Commission Safety Rules” as used in this section mean the NESC, except where the Commission Safety Rules expressly modify or supplement the NESC in OAR Chapter 860, Division 24.

- **Industry Needs Clear Guidance:** The OJUA strongly believes that the Commission Safety Rules should expressly adopt the NESC as the “umbrella” regulation. The rules may then expressly modify or supplement the standards where the Commission sees it appropriate to do so. This proposal will provide a much-needed congruency between the NESC standards, Commission Safety Rules, and state statutory standards.
- **Proposed Rules Set Very Different Standards:** This “umbrella” adoption of the NESC is critical because, as OPUC Staff concedes, the newly drafted rules do vary- both substantively and in their use of different terminology- from the NESC in several areas (such as the

substance of the rules and the terminology used in the prioritization of repairs and inspections sections). Should the Commission prefer that the Commission Safety Rule definitions apply over the NESC definitions, such variances from the NESC should be expressly noted in the rule for clarity's sake.

- **Oregon Statutes Use the “Umbrella” Framework:** Lastly, Oregon’s legislative drafters also used this same framework. They intended that the NESC would be the state’s minimum standard. That is why they expressly adopted the NESC in ORS 757.035(2). OPUC Staff state that they also have drafted the rules using the presumption that the NESC shall serve as the minimum standard.
- **This is not a lot to ask:** Stating in 860-024-0001 (or elsewhere within the rules) that the NESC will serve as the minimum standard except where the Commission Safety Rules expressly modify or supplement the NESC is not an onerous request.

Comments on 860-024-0001(4): Definition of “Material Violation”
(4) “Material violation” means a violation which: (a) is reasonably expected to endanger life or property; or (b) poses a significant potential safety risk to any operator’s employees or a potential safety risk to the general public.

- **What We’re Asking:** OJUA’s proposal allows a material violation to be found in three instances: 1) where a violation is reasonably expected to endanger life or property; 2) where a violation poses a

significant safety risk to an operator's employee or 3) where it poses a potential safety risk to the general public.

- **This Definition is Critical to Industry:** This definition is important to industry because it is a *deciding factor for when an operator may be placed into shorter inspection cycles*. The shortening of an inspection cycle is an *extremely expensive* endeavor and is a punitive action that should be reserved for irresponsible operators.
- **Definition Could Have Unintended Consequences:** OJUA's concern with Staff's "potential safety risk" language as it applies to employees is that the term could be interpreted to mean something as innocuous as a nail in a pole. Creating a higher standard (the "significant safety risk" standard) for violations which pose a very minor risk to trained, knowledgeable employees will protect responsible operators from being unfairly cited for "material" violations. It also takes into account the difference between our employees and the general public. Employees are highly trained and knowledgeable regarding the risk of their job. Members of the general public are not.
- **Safety Is Still Paramount:** Our proposed standard *would not lessen protection for our operators' employees*. It would not lessen their training or their field conditions. As written, the standard is *only used by the Commission as a factor in deciding whether they should implement a shorter inspection cycle*. *Minor violations, such as nails in poles, may still be cited by the OPUC Staff* as a violation in need of a correction. These types of violations alone, however, would not trigger the punitive shortened inspection cycles.

860-024-0011

Inspections of Electric Supply and Communication Facilities

(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.~~

(b) Conduct detailed inspections of its overhead facilities to identify violations of the Commission Safety Rules. All facilities must be inspected within a ten year period. During the fifth year of the inspection cycle, the operator shall:

~~(A) Report to the Commission that 50 percent or more of its total facilities have been inspected pursuant to this rule; or~~

~~(B) Report to the Commission that less than 50 percent of its total facilities have been inspected pursuant to this rule and provide a plan to inspect the remaining percentage within the next five years.~~

~~The maximum interval between detailed inspections is ten years with a recommended minimum inspection rate of 10 percent of overhead facilities per year. This inspection must cover the geographic area designated in subsection (2)(a) of this rule by the operator of electric supply facilities within the each planned year. Operators of communication facilities are required to inspect, either jointly or independently, the same geographic area~~

~~designated by the operators of the electric supply facilities during the same time designated annual period.~~ Detailed inspections include, but are not limited to, visual checks ~~and-or~~ practical tests of all facilities, to the extent required to identify violations of Commission Safety Rules. Where facilities are exposed to extraordinary conditions or when an operator ~~has demonstrated~~ demonstrates a pattern of noncompliance with Commission Safety Rules, the Commission may require a shorter interval between inspections. ~~In determining whether a pattern of noncompliance exists, the Commission shall apply this rule prospectively for violations discovered after the date of adoption of the Commission Safety Rules.~~
~~Exception: Occupants who are required by the detailed inspection system in this rule to inspect more than 15% of their total Oregon facilities in a single year may appeal to the Commission for an alternate plan.~~

~~(c) Provide notice of intent to inspect its facilities to all operators through timely publication on the Oregon Joint Use Association website. Such notice shall specify the location, date, and type of inspection and shall be provided no later than 12 months before the inspection commences.~~

~~(de) Conduct detailed facility inspections of its underground facilities on a ten-year maximum cycle, with a recommended ~~minimum~~ inspection rate of 10 percent of underground facilities per year.~~

~~(ed) Maintain adequate written records of policies, plans and schedules to show that inspections and corrections are being carried out in compliance with this rule and OAR 860-024-0012. ~~Each operator~~s must make these records available to the Commission upon its request.~~

(2) Each operator of electric supply facilities must:

(a) Designate ~~an annual geographic program~~ areas to be inspected pursuant to subsection (1)(b) of this rule within its service territory.

~~(b) Provide timely notice of the designation of the annual geographic area to all owners and occupants through publication on the Oregon Joint Use Association website of the designation of the annual geographic area. Such notice shall be provided at least 12 months prior to any scheduled inspection of the annual geographic area by the electric supply operator. The schedules for the annual coverage areas for the entire program must be made available in advance and in sufficient detail so that the Commission and~~ Such notice will be provided to allow, on a discretionary basis, ~~all operators with facilities in the electric operator's service territory~~ annual geographic area ~~may to plan or coordinate~~ needed inspection and correction tasks. Unless the parties otherwise agree, operators must be notified of any changes to the established ~~annual geographic area designation no later than 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 patrols is two years, with a recommended ~~minimum~~ rate of 50 percent of lines and facilities per year.

(c) Inspect electric supply stations on a 45 day maximum ~~monthly~~ schedule.

Comments on 860-024-0011: Inspections of Electric Supply and Communication Facilities

- **We Have Addressed Staff and Commission Concerns:** The OJUA listened very carefully to the Commission and Staff concerns regarding the timeliness and regularity of inspections. It appears that the Commission and Staff have three major concerns: 1) that inspections occur in a regular, ongoing, timely, and efficient manner; 2) that there be ample opportunity for operators to coordinate and communicate with each other regarding inspections; and 3) that there be a reasonable time certain within which all areas of the state have been inspected. We've outlined below how the OJUA Inspection Proposal meets each of these concerns.
- *Concern One: Inspections should occur in a regular, timely, and efficient manner:* The OJUA Inspection Proposal mandates that all inspections occur within a minimum ten year time period. It also provides for a "mid-point check in" during the fifth year of the inspection cycle. When the operators reach the fifth year, they must either: 1) show the Commission that they have inspected 50% or more of their entire facilities; or 2) if they have not yet reached the 50% mark, report to the Commission the total percentage of their facilities inspected and provide a plan for inspecting the rest of their facilities within the next five years. This proposal will allow the Commission to ensure that work is occurring in a regular, ongoing fashion.

- *Concern Two: Opportunity for operators to coordinate and communicate:* The OJUA Inspection Proposal also mandates communication between the operators. It specifies that all scheduled inspections must be listed on the OJUA website no later than 12 months prior to commencement of the inspection. It also calls for the electric operators to designate their own inspection areas for each calendar year and to post these areas on the OJUA website no later than 12 months before commencing inspection. This allows all operators the discretionary opportunity to coordinate and communicate regarding the joint inspections. It also encourages the operators to focus on the inspection areas designated by the electricians if circumstances permit, but does not mandate the complete inspection of that area within one year. This proposal has the added benefit of allowing the Commission, Staff, and any interested party to track ongoing and scheduled inspections.
- *Concern Three: A time certain within which the entire state will be inspected:* Under the OJUA Proposal all facilities will be inspected within the same 10 year period that Staff also proposed.
- We have addressed OJUA Concerns
 - The OJUA Proposal also accomplishes a very critical OJUA goal: that the rules focus on the end result and not on the

methods and means to accomplish these results. For example, the Staff's proposal requires all operators to inspect a designated area for all types of violations within the same year. The presumed goal is a fully inspected geographical area, and, eventually, a fully inspected state. However, Staff's chosen means to obtain this goal (the artificial creation of geographic areas and one year timelines), are impractical under either a cost-benefit analysis or an efficiency analysis. Staff's proposal fails to account for the dynamic nature of inspections, the differences in pole densities and terrain throughout the state, existing inspection partnerships and programs, the need to adjust inspections due to inclement weather, the high demand for and inadequate supply of qualified inspectors, and the current inspection cycles now underway.

- **EXAMPLES:** Suppose one operator has purchased trucks outfitted with special equipment to correct certain types of violations. It would be advantageous for the other operators to contract with this operator to fix these types of violations on a statewide basis. Such a program would not fit within the Staff's proposal.
- Following the Staff proposal regarding the 1/10 area, one small Oregon utility would be forced to pay for a yearly inspection of approximately 800 poles. Paying for an

inspection of such a small number of poles is extremely costly and an ineffective management of resources.

- Within just one electric operator's designated area, a communications operator has several thousand poles. Within yet a different electric operator's designated area, the same communications operator may have another several thousand poles. Depending on which areas are designated and when they are inspected, the Staff Proposal could place uneven workloads and unworkable economic and logistical burdens on communication operators with little resulting safety benefit. (While OJUA appreciates Staff's attempt to fix this concern by allowing for a possible waiver application if more than 15% of an operator's facilities must be inspected per year, but the Staff proposal still makes it very difficult to effectively budget resources from year to year.)
- Some entities will have just finished an inspection of all their facilities. These entities would be forced to spend resources re-inspecting or applying for a waiver rather than correcting.

Comments on 860-024-0011(1)(b) Prospective Application of the

Rule: The New Rules Must be Applied Prospectively. OJUA

does not contest the establishment of shorter inspection intervals.

We do request, however, that when the Commission considers

whether to apply a shorter inspection intervals, it look only to material

violations that have been discovered *after* the effective date of the

rule. OJUA's concern is that old violations may be used to establish a pattern of non-compliance. We believe this would be unfair, since before the rule, the NESC standard did not establish timelines (other than those provided for imminent danger) to correct many violations.

860-024-0012

Prioritization of Repairs by Operators of Electric Supply Facilities and Operators of Communication Facilities

(1) 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) A violation of the Commission Safety Rules that poses no imminent danger to life or property must be corrected ~~Except as otherwise provided by this rule, the operator must correct violations of Commission Safety Rules~~ no later than five ~~two~~-years after discovery.

(3) A violation of the Commission Safety Rules that poses little or no foreseeable risk of danger to life or property may qualify for deferral. In no event shall a deferral under this section extend past 10 years.

~~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. To qualify for deferral under this section,~~ the operator must develop a plan detailing how it will remedy each ~~such deferral type of violation.~~ If more than one operator is affected by the deferral, ~~all a majority of all~~ affected operators must agree to the plan or the violation(s) ~~shall not qualify for deferral under this section. may not be a part of the third year deferral~~

(4) For good cause shown and/or 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.

Comments on 860-024-0012: Prioritization of Repairs

- **The OJUA Proposal Addresses Staff Concerns:** The OJUA understands Staff's concerns regarding the need to correct violations in a timely manner. To that end, we propose the following: The establishment of a tiered system of prioritization where the first tier would be fixed immediately, the second tier would be fixed within five years, and the third tier would qualify for an additional deferral, not exceeding 10 years. This part of the proposal only differs from Staff's in two respects: 1) Tier Two is allowed a five year period to correct (rather than a two year) and 2) the deferral is not percentage-based, is capped at a ten year maximum, and requires a majority (not all) of the pole owners and occupants to agree to the plan of correction. The OJUA Proposal has the added benefit of tracking well with the OJUA inspection proposal, which also has a five and 10 year track.

- **Correction Programs must be efficient and easy to manage:** The challenge, however, is naming which violations belong to which tier. OJUA has struggled with this and has concluded that these tiers must be based on safety-values and must be easy to manage while avoiding a laundry list of violations.
- To that end, we propose the following:
 - The “fix it immediately” first tier is a violation that poses an imminent danger to life or property. This is the same as the language proposed by Staff;
 - The “fix it within five years” second tier is a violation which does *not* pose an imminent danger to life or property. This is not different from Staff’s proposal, which provided that the second tier was any violation that did not qualify for Tier One.
 - The “may qualify for further deferral” third tier is a violation which poses little or no foreseeable risk of danger to life or property. (OJUA envisions these types of violations to be things such as nails in poles, stop signs on poles, a 39 ½ inch distance (out of a required 40 inch distance) between communication cables and conductors and electric supply cables, or an exposed ground rod in a rural cow pasture. It is important to note that these Tier Three violations, despite their low safety risk, do not go uncorrected under the OJUA proposal. Tier Three violations must first qualify for deferral, which

entails developing a plan of correction to which a majority of all affected operators agree. The deferral can last no longer than 10 years.

- **Staff Waiver Language Needs One Small Amendment:** The OJUA appreciates the Staff's flexibility in drafting the waiver provision in section (4) and suggests only one change. We suggest replacing the "and" with an "or" to allow the Commission to grant the waiver for either: 1) good cause shown or 2) where equivalent safety is achieved.

860-024-0014

Duties of Electric Supply and Communication Structure Owners

~~(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.~~

~~(1)(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.~~

~~(2)(b) An owner must promptly respond with a reasonable plan of correction for any violation of the Commission Safety Rules if notified in writing of a violation requested by an occupant.~~

~~(1) (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.~~

~~(2)(b) An owner must promptly respond with a reasonable plan of correction for any violation of the Commission Safety Rules if notified in writing of a violation requested by an occupant.~~

NOTE: ALL 0014 CONCEPTS MOVED TO DIVISION 28

Comments on 860-024-0014 Duties of Electric Supply and Communication Structure Owners

OJUA appreciates Staff's flexibility in moving these concepts to Division 28 for further discussion. It is our continuing concern that any rule stating that an occupant may notify an owner of a violation could implicate increased tort liability for either the occupant or the owner. We look forward to further discussing this issue with Staff.

860-024-0016

Minimum Vegetation Clearance Requirements

(1) For purposes of this rule:

~~(a) "Interfere" or "interference" means any flow of electricity from the conductor to the vegetation through direct contact or arcing, or any abrasion to conductor, equipment, or vegetation caused by contact.~~

~~(b) (a) "Readily climbable" means vegetation having both of the following characteristics: having sufficient handholds and footholds to permit a child or an average person to easily climb without using a ladder or other temporarily placed equipment.~~

(1) low limbs, accessible from the ground and sufficiently close together so that the vegetation can be climbed by a child or average person without using a ladder or other special equipment; and
(2) a main stem or major branch that would support a child or average person either within arms reach of an uninsulated energized electric line or within such proximity to the electric line that the climber could be injured by direct or indirect contact with the line.

~~(e)~~ (b) “Vegetation” means trees, shrubs, and any other woody plants.

~~(d)~~ (c) “Volts” means nominal voltage levels, measured phase-to-phase.

(2) The requirements in this rule provide the minimum standards for conductor clearances from vegetation to provide safety for the public and utility workers, reasonable service continuity, and fire prevention. Each operator of electric supply facilities must have a vegetation management program and keep appropriate records to ensure that timely trimming is accomplished to keep the designated minimum clearances. These records must be made available to the Commission upon request.

(3) Each operator of electric supply facilities must trim or remove vegetation to maintain clearances away from electric supply conductors ~~that may cause interference under reasonably anticipated conditions.~~

(4) Each operator of electric supply facilities must trim or remove readily climbable vegetation to minimize the likelihood of direct or indirect access to a high voltage conductor by a member of the public or any unauthorized person.

(5) Under reasonably anticipated operational conditions, an operator of electric supply facilities must maintain the following minimum clearances of vegetation from conductors:

(a) Ten feet for conductors energized above ~~50,000~~ 200,000 volts;

~~(b) Seven and one half feet for conductors energized at 50,001 through 200,000 volts.~~

~~(b)(c)~~ (c) Five feet for conductors energized at 600 through 50,000 volts, except:

(A) Clearances may be reduced to three feet if the vegetation is not readily climbable. ~~(e)~~

~~(B) Infrequent intrusion of small new vegetation growth into these minimum clearance areas is acceptable.~~ (B) Intrusion of limited small branches and new tree growth into these minimum clearance areas is acceptable provided the vegetation does not come closer than six inches to the conductor. ~~Provided the vegetation does not come closer than eighteen inches to the cause interference with a conductor.~~

(6) For conductors energized below 600 volts, an operator of electric supply facilities must trim vegetation to prevent it from causing strain or abrasion on electric conductors. Where trimming or removal of vegetation is not practical, the operator of electric supply facilities must install suitable material or devices to avoid insulation damage by abrasion.

(7) In determining the extent of trimming required to maintain the clearances required in section (5) of this rule, the operator of electric supply facilities must consider at minimum the se following factors for each conductor:

- (a) Voltage;
- (b) Location;
- (c) Configuration;
- (d) Sag of conductors at elevated temperatures and under wind and ice loading; and
- (e) Growth habit, strength, and health of vegetation growing adjacent to the conductor, with the combined ~~movement~~ displacement of the vegetation, supporting structures, and conductors under adverse weather, or high routine high-wind conditions.

~~(8) Each operator of communication facilities must trim or remove vegetation that poses a significant risk to its their facilities, or through contact with its facilities poses a significant risk to a structure of an operator of a jointly used system. Risk to facilities includes, but is not limited to, deflection of cables, wires, or messengers, or those contacts which cause damage to facilities.~~

MOVE THIS CONCEPT TO DIVISION 28.

Comments on 860-024-0016 Minimum Vegetation Clearance Requirements

- **Definition of Readily-Climbable:** OJUA appreciates Staff's flexibility in adopting our recommended definition of "readily climbable" and agreeing to move the tree trimming duty of communications operators to Division 28. Regarding this tree trimming duty, OJUA would like to clarify that it agrees to move the concept to Division 28, but looks forward to the opportunity to further discuss wording with Staff.

- **Need A Workable Trimming Policy:** We also wish to see Section 5(c)(B) reworded to more closely reflect the existing Staff Tree to Power Line Clearance Policy. We appreciate Staff's willingness to replace the term "interference" with a specific and measurable distance, but we think 18 inches is unnecessarily stringent. We recommend a more moderate standard of 6 inches. We understand this standard would raise the current minimum clearance standards, but believe it is a reasonable compromise with Staff's recommendation. Additionally we request an amendment striking the term "high" winds and replacing it with "routine" winds. We believe that Staff has agreed to this amendment.