



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

May 11, 2006

RE: AR 506 Division 24 Administrative Rules

The Oregon Rural Electric Cooperative Association wishes to express its support for the comments made by the Oregon Joint Use Association (OJUA) in this first phase of docket 506 dealing with administrative rules for the enforcement of the National Electric Safety Code.

We are in agreement with the OJUA's position with respect to the list of fifteen Division 24 issues to be addressed during the rulemaking process and would like to add some additional comments.

Issue 1: Pattern of Noncompliance

We agree with the OJUA position on this issue dealing with OAR 860-024-011. However we would also add the word "workers" to the last sentence of the OJUA recommendation, which defines material violation. The section would now read:

As used in this section "material violation" shall mean a violation which: 1) is reasonably expected to endanger life or property; or 2) poses a potential risk of exposure to workers and the general public.

Issues 2 through 7

We agree with the positions taken by OJUA on the issues dealing with training of employees; prioritization and timing of corrective work; cooperation of electric and communication operators on joint inspections and compliance; duties of electric supply and communication structure owners; duties of structure owners to set communication standards,

determine communication protocols and oversee safety compliance; and duties of electric supply and communication structure owners. We wish to stress our support for the OJUA-recommended position with respect to the prioritization and timing of corrective work. We agree with the concept of providing more flexibility in the timing of corrective actions for NESC violations that do not pose a significant safety threat but which can involve considerable costs and consequent ratepayer impacts.

Issue 8: Communication Operator Tree Trimming

OAR 860-024-0016(8) requires each operator of communication facilities to trim or remove vegetation that poses a risk to their facilities. We believe that operators of communication facilities should “remove vegetation that produces a strain on support structures.” In these situations, where safety and reliability are impacted, all attaching parties should share the financial responsibility for vegetation management.

Issue 9: Impact of ORS 758.284 – Safe Harbor

Issue 15: Liability Parity between Investor-owned and Publicly-owned Utilities

These issues involve the immunity from civil liability that electric utilities enjoy when pruning or removing vegetation posing a threat to electric facilities. We agree with the OJUA’s position that public and private providers of electric services be afforded the same relief from civil liability as private providers.

However, we question the stated assumption that public entities, such as PUDs and municipal utilities, do not share this safe harbor. In 2001, the Oregon legislature passed HB 2493, granting immunity from lawsuit to “electric utilities” for trimming trees under certain circumstances. The legislative measure specifies that “electric utility has the meaning given in ORS 758.505.” That statute defines "electric utility" as a "nonregulated utility or a public utility." It seems, therefore, that this applies to all consumer-owned and investor-owned electric utilities. If this is not the case, then we would agree that legislative action be initiated to correct this inequity.

Issues 10 through 14:

We agree with the OJUA's recommendations dealing with cost benefit/justification of implementation of rules which regulate beyond NESC standards; wordsmith definition; inclusion of the word "compliance"; generic waivers; and application of accident reports.

Conclusion:

We are appreciative of the ongoing hard work of PUC staff and the OJUA in attempting to resolve these critical issues. We look forward to participating in this important docket and to the continued exploration of regulatory solutions that are reasonable and realistic.

Sincerely,

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