

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 510

In the matter of a Rulemaking to Amend and)	Final Comments of
Adopt Permanent Rules in OAR 860,)	the Oregon Joint
Division 028 Regarding Sanctions for)	Use Association
Attachments)	

The Oregon Joint Use Association (“OJUA”) appreciates the opportunity to submit our proposed rules regarding sanctions for attachments. OJUA would also like to express our appreciation to the Public Utility Commission Staff for their generous assistance with this docket. We are also grateful to all workshop participants for their input.

I. OJUA Goals

The OJUA’s proposed rules focus on simplifying the current administrative rules regarding sanctions. (See OAR 860-028-120 through 240, attached). The OJUA also focused on providing, wherever possible, parity between the pole owners and pole occupants in the sanctions process.

The OJUA has already presented its proposal in the October 4, 2006 AR 510/AR 506 filing. For this reason, below we provide a summary of selected rules which, through the ongoing negotiation process, have changed significantly since October 4, 2006. It is our intent with this filing to: 1) direct the Commission’s attention to rules for which the OJUA has worked to balance the interests of pole occupants and owners; or 2) note rules or amendments that have not received significant discussion during the workshops.

II. OAR 860-028-0120 Duties of Pole Occupants

Vegetation Management:

The OJUA offers significant amendments to this rule. As explained in our October 4 filing, the OJUA has drafted entirely new Sections (4) and (5). These sections establish occupant duties to correct violations or to create a plan of correction. The OJUA-proposed Section (4) in particular provides that pole occupants shall immediately correct violations which cause an “imminent danger to life or property.” To address additional Staff concerns regarding vegetation trimming duties, the OJUA has, with this filing, expressly specified within the rule the duty to trim vegetation which poses an imminent danger to life or property. This is reflected in the attached proposed rules.

OJUA-proposed Section (5) of this rule establishes an occupant’s duty to respond to a pole owner’s notification of violation. This rule is also detailed in our October 4 filing. The OJUA now recommends adding an additional duty to this rule to address vegetation management. This is the duty of an occupant to respond to a notification of vegetation which poses a “significant safety risk” to life or property. The effect of adding the vegetation trimming duty to this rule is to require an occupant to either submit a plan of correction regarding the vegetation trimming within 60 days or to correct the vegetation violation within 180 days. Violation of these rules are subject to sanction under OAR 860-028-0150(2).

The OJUA believes it has captured Staff’s vegetation trimming concerns with these additions to OAR 860-028-0120 (OJUA also recommends a similar amendment to address pole owner duty to trim vegetation to OAR 860-028-0115 in the AR 506 docket. Certainly, under Section 0120(4) any vegetation which poses an imminent danger to life or any property, including the pole or nearby structures, must be trimmed immediately. Additionally, under Section 0120(5) any vegetation which poses a significant safety risk to life or property must be trimmed within either 180 days or must be included within a plan of correction within 60 days.

The OJUA recognizes that, not unlike the Division 24 prioritization of corrections dilemma, there will be questions regarding what type of vegetation “poses a significant safety risk.” We believe however that this standard offers an appropriately narrow scope for Oregon Administrative Rules; and that the details are properly left to the discretion of a decision-maker at a later date.

In summary, the OJUA heard Staff’s concerns that vegetation trimming must be a mandatory duty of pole occupants and owners. Our proposal ties this mandatory duty to appropriate safety levels: vegetation causing imminent danger must be trimmed immediately and vegetation causing a significant safety risk must be trimmed no later than 180 days or be included within a plan of correction acceptable to both the pole owner and occupant.

III. OAR 860-028-0140 Sanctions for Having No Permit

The OJUA offers minimal substantive amendments to this rule since our October 4, 2006 filing. This rule provides for sanctions for non-permitted attachments to poles. It also provides that sanctions may be applied no more than once in a 60-day period, and that an occupant may not be re-sanctioned after the initial 60-day period if: (1) the occupant has filed a permit application; or (2) the notice of violation involves a large number of poles and the parties negotiate a longer timeframe in which the occupant can complete the permitting process. These provisions are meant to protect the occupant from receiving multiple sanctions in cases where a large volume of work would prevent a timely completion of the permitting process.

IV. OAR 860-028-0150 Sanctions for Violations of Other Duties

Safe Harbor from Immediate Sanctions:

As stated in our October 4, 2006 filing, this rule provides a sanction of \$200 per pole plus an additional charge of 15 percent (15%) of the actual cost of correction done by the pole

owner. This rule also provides a critical safe harbor from immediate sanctions if the occupant submits a plan of correction within 180 days or corrects the violation within 60 days. This provision was a key negotiating point for the OJUA membership. Lastly, the rule provides that if a pole occupant submits a plan of correction and fails to correct violations within that plan, sanctions may be applied.

Immediate Sanctions for New Construction:

The most controversial section within this rule was Section (5). Section (5) provides that pole owner may immediately impose sanctions for violations occurring on newly-constructed and newly-permitted attachments. This rule also applies to occupant's transfer of currently permitted attachments to new poles. (Collectively, the OJUA refers to these situations as "new construction".) The impetus behind Section (5) was the OJUA's collective ideal that new construction should, as much as practical, be violation free.

However, this provision effectively nullified the important 60/180 day safe harbor from immediate sanctions as it pertains to new construction. This was unacceptable to the occupant members of the OJUA. To address occupant concerns, the OJUA drafted limitations on Section (5). They are as follows:

1. Section (5)(a) states that new construction sanctions may only be imposed on a pole occupant if that pole occupant has provided the owner with a notice of completion no more than 90 days old. The purpose of this limitation is to protect the occupant from receiving immediate new construction sanctions before the occupant has completed construction. The effect of this provision is to limit the application of immediate sanctions on new construction to a period within 90 days after a notice of completion is given to a pole owner.
2. Section (5)(b) also serves as a limitation on new construction sanctions. It provides that new construction sanctions shall not be charged to a pole occupant if the violation is discovered in a joint post-construction inspection program and is

corrected by the occupant within 60 days of the inspection. This provision encourages joint post construction inspection programs, which the OJUA understands is a primary goal of PUC Staff. Should the occupant need more than 60 days to correct, this provision provides for the occupant and the pole owner to mutually agree upon a longer timeframe.

3. Section 5(c) also provides occupant protections. If the pole occupant has performed its own inspection and requests a joint post-inspection with the pole owner, this section provides that the pole owner shall not unreasonably withhold its consent to participate in a joint inspection program. This section was drafted because some occupants had concerns that pole owners may refuse to participate in joint post-construction inspection programs. It is meant to set a reasonableness standard for participation in such programs.

V. OAR 860-028-0170 Plans of Correction

This rule sets out standards for the plans of correction submitted by pole occupants. In subsection (2), the OJUA recommends changing the standards for when a pole occupant must show good cause for delayed compliance. OJUA recommends 180 days following receipt of the notice of violation.

In subsection (3) of this rule, OJUA recommends adding a provision that the plan of correction must be mutually agreed upon by both the pole owner and occupant before the timelines within the plan commence. Additionally in subsection (d), the OJUA clarifies that the pole occupant is responsible for carrying out all provisions within the plan of correction unless the pole owner consents to a plan amendment.

Lastly, Section (4) provides an additional duty for pole occupants to report to completed corrections to the pole owner.

**VI. OAR 860-028-0230
Pole Attachment Rental Reductions**

In Section (3)(f) of this rule, the OJUA recommends clarifying the definition of “pattern of delays.” This is important because a licensee engaged in a pattern of delays in payment of fees and charges to the owner may lose its rights to rental reduction. OJUA recommends redefining a delay as greater than 45 days from the date of invoice.

VII. Mandatory Application of OAR 860-028-0120

OJUA agrees with Staff that OAR 860-028-0120 should be considered mandatory for pole occupants.

**OJUA PROPOSED SANCTIONS RULES
NOVEMBER 16, 2006**

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 will:

- (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 will 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 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) Notwithstanding the timelines provided for in OAR 860-028-0120 (5) or (6), pole occupants will immediately correct violations which cause an imminent danger to life or property. This duty includes trimming vegetation which poses an imminent danger to life or property. If the pole owner performs the corrections, a pole occupant will reimburse the pole owner for the actual cost of correction of the occupant's attachments. Reimbursement charges imposed under this section will not exceed the actual cost of correction.

(5) Notwithstanding OAR 860-028-0120 (4), an occupant will respond to a pole owner's notification of violation within 180 days. This duty includes response to a notification of vegetation which poses a significant safety risk to life or property. If a pole occupant fails to respond within 180 days and if the pole owner performs the correction, the pole occupant will reimburse the pole owner for the actual cost of correction attributed to the occupant's attachments. Reimbursement charges imposed under this section will not exceed the actual cost of correction attributed to the occupant's non-compliant attachments.

(a) A pole occupant's response to a notification of violation will be either a submission of a plan of correction within 60 days or a correction of the violation within 180 days.

(b) Violation of the pole occupant duty to respond is also subject to sanction under OAR 860-028-150 (2).

(6) For violations noticed under OAR 860-028-0120(5), a pole occupant must correct the violation in less than 180 days if the pole owner notifies an occupant that the violation must be corrected in less than 180 days in order to alleviate a significant safety risk to any operator's employees or a potential risk to the general public.

(a) A pole occupant will reimburse the pole owner for the actual cost of correction caused by the occupant's non-compliant attachments made under this section if:

- (1) the owner provides reasonable notice of the violation; and
- (2) the occupant fails to respond within timelines provided for in the notice.

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 860-028-0060(2). The sanction ~~may be the higher of~~ may not exceed \$500 per pole.

~~(a) \$500 per pole; or~~

~~(b) 60 times the owner's annual rental fee per pole.~~

~~(2) A pole owner will 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:

(a) to a pole occupant that is a government entity; or

(b) to a pole occupant operating under a contract which is expired or terminated and that is participating in good faith efforts negotiate a contract or is engaged in formal dispute resolution, arbitration, or mediation regarding the contract; or

(c) to a pole occupant operating under a contract which is expired if both pole owner and occupant are unaware that the contract has expired and carry on business relations as if the contract terms are mutually-agreeable and still apply.

(3) Sanctions imposed under this section will be applied no more than once in a 365 day period.

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 860-028-0120(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 will 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 may not exceed:

(a) 5 times the current annual rental fee per pole if the violation is reported by the occupant to the owner and is accompanied by a permit application or is discovered through a joint inspection between the owner and occupant and accompanied by a permit application; or

(b) \$100 per pole plus 5 times the current annual rental fee per pole if the violation is reported by the owner.

(3) Sanctions imposed under this section may be applied no more than once in a 60 day period.

(4) Occupants may not be re-sanctioned after the initial 60 day period if:

(a) the occupant has filed a permit application in response to a notice of violation; or

(b) the notice of violation involves more than the threshold number of poles, as defined in OAR 860-028-0020 (31), and the parties negotiate a mutually-satisfactory, longer timeframe to complete the permitting process.

(5) 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

~~(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)(c), (1)(d), or (3). Sanctions imposed under OAR 860-028-0120 (1)(c), (1)(d), or (3) may not exceed the higher of: \$200 per pole.~~

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

~~(2) A pole owner will 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 owner may impose an additional charge, exclusive of any sanctions imposed under section 1 of this rule, on a pole occupant that is in violation of OAR 860-028-0120 (5). Charges imposed under this section will not exceed 15 percent of the actual cost of corrections caused by the occupant's non-compliant attachments.

(3) Sanctions and charges imposed under 860-028-0150 (1) and (2) do not apply if:

(a) the occupant submits a plan of correction in compliance with OAR 860-028-0170 within 60 days of notification of a violation; or

(b) the occupant corrects the violation and provides notification of the correction to the owner within 180 days of notification of the violation.

(4) If a pole occupant submits a plan of correction in compliance with OAR 860-028-0170 and fails to adhere to all of the provisions of that plan within the dates provided for within the plan, the pole owner may impose sanctions for the uncorrected violations documented within the plan.

(5) Notwithstanding the timelines provided for in OAR 860-028-0150 (3), a pole owner may immediately impose sanctions for violations occurring on attachments which are newly-constructed and newly-permitted by the occupant or are caused by the occupant's transfer of currently-permitted facilities to new poles.

(a) Sanctions may be imposed under this section only if the pole occupant has provided to the pole owner a notice of completion which is no more than 90 days old.

(b) Sanctions under this section will not be charged to the pole occupant if the violation is discovered in a joint post-construction inspection between the pole owner and pole occupant or their respective representatives and is corrected by the pole occupant within 60 days of the joint post-construction inspection or within a mutually-agreed upon time.

(c) If the pole occupant has performed an inspection and requests a joint post-construction inspection, pole owner consent to such inspection will not be unreasonably withheld.

~~(3)~~(6) 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 will 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 will, 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.~~

~~(2) If a pole occupant suggests a compliance date of more than ~~60~~ **180** days following receipt of a notice of violation, then the pole occupant must show good cause.~~

~~(3) Upon its receipt of a plan of correction that a pole occupant has submitted under subsection (1)~~(b)~~ of this rule, a pole owner will give notice of its acceptance or rejection of the plan .~~

~~(a) If the pole owner accepts the plan, then the pole owner will 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 will set out all of its reasons for rejection and, for each reason, will 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; T~~ The pole occupant's time for compliance with the timelines provided for within the plan of corrections is not commenced until a plan of correction has been mutually agreed upon by both the pole owner and the occupant.

~~(d) (c) If a plan of correction is divisible and if the pole owner accepts part of it, then the pole occupant will carry out that part of the plan.~~

(d) If a pole occupant submits a plan, the pole occupant must carry out all provisions of that plan unless the pole owner consents to a submitted plan amendment.

(4) Pole occupants submitting a plan of correction must report to the pole owner all corrections completed within the timelines provided for within 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 Occupant Pole 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 time limitations set out in OAR 860-028-120, OAR 860-028-130, OAR 860-028-140, or OAR 860-028-150 by ~~60~~ 180 or more days, then the pole owner may request an order from the Commission authorizing removal of the pole occupant's attachments. Nothing in this section precludes a party from pursuing other legal remedies.~~

(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 will 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 a description of the location of the pole sufficient to locate the pole. Pole owner will make available maps and GPS coordinates if possible.

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

The Commission will issue its final order within 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 will establish a Joint-Use Association (JUA). The Association will elect a Board from the JUA, which will include representatives of pole owners, pole occupants, and government entities. The Board will 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 will not participate in resolution of the dispute, and the JUA will 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 will provide notice of its request to the Commission and to the other party:

(a) Upon receipt of a request, the Commission Staff will, 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 will, 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 will 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 will 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 will, 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 will, 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 will receive a rental reduction.

(2) The rental reduction will 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 45 days from the date of invoice, in payment of undisputed fees and charges filed in a timely manner and 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 will notify the licensee of the loss of reduction in writing. The written notice will:

(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 will 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 will send its response to the pole owner, with a copy to the Commission. The licensee will 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 will, 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 will, within 30 days, issue an order.

(7) Except for the rental reduction amount in dispute, the licensee will 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, 200~~1~~⁷.

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

Pole and Conduit Attachments

860-028-0020

Definitions for Pole and Conduit Attachment Rules

For purposes of this Division:

(1) “Attachment” has the meaning given in ORS 757.270 and 759.650.

(2) “Authorized attachment space” means the space occupied by one or more attachments on a pole by ~~a licensee an occupant~~ with the pole owner’s permission. ~~pursuant to a pole attachment agreement.~~

(3) “Carrying charge” means the costs incurred by the owner in owning and maintaining poles or conduits regardless of the presence of pole attachments or occupation of any portion of the conduits by licensees. The carrying charge is expressed as a percentage. The carrying charge is the sum of the percentages calculated for the following expense elements, using owner’s data from the most recent calendar year **available**:

(a) The administrative and general percentage is total general and administrative expense as a percent of net investment in total plant.

(b) The maintenance percentage is maintenance of overhead lines expense or conduit maintenance expense as a percent of net investment in overhead plant facilities or conduit plant facilities.

(c) The depreciation percentage is the depreciation rate for gross pole or conduit investment multiplied by the ratio of gross pole or conduit investment to net investment in poles or conduit.

(d) Taxes are total operating taxes, including, [Staff revision 061206]but not limited to, current, deferred, and “in lieu of” taxes, as a percent of net investment in total plant.

(e) The cost of money is calculated as follows:

(A) For a telecommunications utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner’s most recent rate or cost proceeding;

(B) For a public utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner’s most recent rate or cost proceeding; or

(C) For a consumer-owned utility, the cost of money is [Staff revision 061206] equal to the weighted average of the utility’s embedded cost of debt and the most recent cost of equity authorized by the Commission for ratemaking purposes for an electric company as defined in OAR 860-038-0005.

(24) “Commission pole attachment rules” mean OAR 860-028-0110 through 860-028-0240 the rules provided in OAR Chapter 860, Division 028.

(35) “Commission safety rules” mean OAR 860-024-0010 the rules provided in OAR Chapter 860, Division 024.

(46) “Conduit” means any structure, or section thereof, containing one or more ducts, conduits, manholes, or handholes, bolts, or other facilities used for any telegraph, telephone, cable television, electrical, or communications conductors; or cables rights-of-way, owned or controlled, in whole or in part, by one or more public, telecommunications, or consumer-owned utilities.

(57) “Consumer-owned utility” has the meaning given in ORS 757.270.

(7.1) **“Day” means any one day of 365 days in a calendar year, unless otherwise specified.**

(8) “Duct” means a single enclosed raceway for conductors or cables.

(69) “Government entity” means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(710) “Licensee” has the meaning given in ORS 757.270 or ORS 759.650. “Licensee” does not include a government entity.

(11) “Make ready work” means administrative, engineering, or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities. Make ready work costs are nonrecurring costs, and are not contained in carrying charges.

(12) “Net investment” is equal to the gross investment, from which is first subtracted the accumulated depreciation, from which is next subtracted related accumulated deferred income taxes, if any.

(13) “Net linear cost of conduit” is equal to net ~~conduit~~ investment ~~in conduit~~ divided by the total length of conduit in the system ~~multiplied by the number of ducts in the system.~~

(814) “Notice” means written notification sent by mail, electronic mail, telephonic facsimile, or telefax other such means.

(915) “Occupant” means any licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles or within conduits.

(106) “Owner” means a public utility, telecommunications utility, or consumer-owned utility that owns or controls poles, ducts, or conduits or rights-of-way.

(147) “Pattern” means a course pattern of behavior that results in a material breach of a contract, or permits, or in frequent or serious violations of OAR 860-028-0120.

(18) “Percentage of conduit capacity occupied” means the product of the quotient of the number “one” divided by the number of inner ducts multiplied by the quotient of the number “one” divided by the number of ducts in the conduit [i.e. (1/Number of Inner Ducts (≥ 2)) x (1/Number of Ducts in Conduit)].

(19) “Permit” means the written or electronic record or invoice by which an owner authorizes [Staff revision 061206] a licensee or an occupant to attach one or more attachments on a pole or poles, in a conduit, or on support equipment.

(20) “Pole cost” means the depreciated original installed cost of an average bare distribution pole to include support equipment of the pole owner, from which is subtracted related accumulated deferred taxes, if any. There is a rebuttable presumption that the average bare distribution pole is 40 feet and the ratio of bare pole to total pole for a public utility or consumer-owned utility is 85 percent, and 95 percent for a telecommunications utility.

[Staff revision 061206] (21) “Post construction inspection” means work performed to verify and ensure the construction complies with the permit, governing agreement, and Commission safety rules.

~~(21)~~ (22) “Preconstruction [Staff revision 061206] activity” means engineering, survey and estimating work required to prepare cost estimates for an attachment application, ~~by which the applicant may use to permit or re-route. Pre-construction activity includes costs incurred as a result of a occupant request up to but not including make ready or carrying charges.~~

~~(22)~~(1223) “Public utility” has the meaning given in ORS 757.005.

~~(23)~~(1324) “Serious injury” means “serious injury to person” or “serious injury to property” as defined in OAR 860-024-0050.

~~(24)~~(1425) “Service drop” for the purpose of permitting (OAR 860-028-120(3)) means ~~a connection from distribution facilities to a single family, duplex, or triplex residence or similar small commercial facility~~ the overhead conductors between the electric distribution supply or

communication distribution line and the building or structure being served, not to exceed 1,000 feet and not using a separate supporting messenger.

~~(25)~~(26) “Special inspection” means an owner’s field visit ~~made at the request,~~ *[Staff revision 061206]* ~~and for the benefit,~~ of the licensee for all nonperiodic inspections. A special inspection does not include preconstruction activity or post construction inspection.

~~(26)~~(27) “Support equipment” means guy wires, anchoring systems, ~~anchor rods,~~ and other accessories of the pole owner used to support the structural integrity of the pole to which the licensee is attached. ~~by the licensee to support or stabilize pole attachments.~~

~~(27)~~(28) “Support equipment cost” means the average depreciated original installed cost of support equipment.

~~(28)~~(29) “Surplus ducts” means ducts other than: (a) those occupied by the conduit owner or a prior licensee; (b) an unoccupied duct held for emergency use; or (c) other unoccupied ducts that the owner reasonably expects to use within the next 60 months.

~~(29)~~(30) “Telecommunications utility” has the meaning given in ORS 759.005.

~~(30)~~(31) “Threshold number of poles” means 50 poles, or one-tenth of one percent (0.10 percent) of the owner’s poles whichever is less, over any 30 calendar day period.

~~(31)~~(32) “Unauthorized attachment” means an attachment that does not have a valid permit *[Staff revision 061206]* and a governing agreement subject to the provisions of 860-028-0120(1).

~~(32)~~(33) “Usable space” as used in OAR 860-028-110(2) means all the space on a pole, except: the portion below ground level, the 20 feet of safety clearance space above ground level, and the communication worker safety zone ~~safety clearance space~~ between the communications and power circuits. There is a rebuttable presumption that six feet of a pole is ~~buried~~ below ground level.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

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

Hist.: PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); renumbered from OARs 860-022-0110 and 860-034-0810; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)

860-028-0050 General

(1) Purpose and scope of this Division:

(a) OAR Chapter 860 Division 028 governs access to utility poles, conduits, and support equipment by occupants in Oregon, and it is intended to provide just and reasonable provisions when the parties are unable to agree on certain terms.

(b) With the exceptions of OAR 860-028-0060 through OAR 860-028-0080, parties may mutually agree on terms that differ from those in this Division, but in the event of disputes submitted for Commission resolution, the Commission will deem the terms and conditions specified in this Division as presumptively reasonable. In the event of a dispute that is submitted to the Commission for resolution, the burden of proof is on any party advocating a deviation from the rules in this Division to show the deviation is just, fair and reasonable.

(2) Owner correction: After the owner provides reasonable notice to a licensee of a hazard or situation requiring prompt attention, and after allowing the licensee a reasonable opportunity to repair or correct the hazard or situation, and if the hazard or situation remains uncorrected, the

owner may correct the attachment deficiencies and charge the licensee for its costs. [Staff revision 061206] Each licensee will pay the owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur. An Owner may charge a licensee for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur. Note Staff proposal moved to 860-028-0120(5) (Reference Docket #AR 510) [Staff revision 061206] (3) Each operator of communication facilities must trim or remove vegetation that poses a significant risk to their facilities, or through contact with its facilities poses a significant risk to a structure of an operator of a jointly used system.]

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

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

Hist.: NEW

860-028-0060

Attachment Contracts

(1) Any entity requiring pole attachments to serve customers should use poles jointly as much as practicable.

(2) To facilitate joint use of poles, entities must execute contracts establishing the rates, terms, and conditions of pole use in accordance with OAR 860-028-0120.

(3) Parties must negotiate pole attachment contracts in good faith.

(4) Unless otherwise provided for by contract, [Staff revision 061206] when the parties are negotiating a new or amended contract, the last effective contract between the parties will continue in effect until a new [Staff revision 061206] or amended contract between the parties goes into effect.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

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

Hist.: NEW

860-028-0070

Resolution of Disputes for Proposed New or Amended Contractual Provisions

(1) This rule applies to a complaint alleging a violation of ORS 757.273, 757.276, 757.279, 759.660, or 759.665. Except as otherwise required by this rule, the procedural rules generally applicable to proceedings before the Commission also apply to such complaints. The party filing a complaint under this rule is the "complainant." The other party to the contract, against whom the complaint is filed, is the "respondent."

(2) Before a complaint is filed with the Commission, one party must request, in writing, negotiations for a new or amended attachment agreement from the other party.

(3) Ninety (90) calendar days after one party receives a request for negotiation from another party, either party may file with the Commission for a proceeding under ORS 757.279 or ORS 759.660.

(4) The complaint must contain each of the following:

(a) Proof that a request for negotiation was received at least 90 calendar days earlier. The complainant must specify the attempts at negotiation or other methods of dispute resolution

undertaken since receipt of the request date and indicate that the parties have been unable to resolve the dispute.

(b) A statement of the specific attachment rate, term, and condition provisions that are claimed to be unjust or unreasonable.

(c) A description of ~~[Staff revision 061206] each party's~~ the complainant's position on the unresolved provisions.

[Staff revision 061206] (d) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute.

~~(d)~~(e) All information available as of the date the complaint is filed with the Commission that the complainant relied upon to support its claims:

(A) In cases in which the Commission's review of a rate is required, the complaint must ~~provide~~ include all ~~data and~~ information in support of its allegations, in accordance with the administrative rules set forth to evaluate the disputed rental rate.

(B) ~~If the licensee is the party submitting the complaint, t~~The ~~licensee-complainant~~ must request the data and information required by this rule from the ~~[Staff revision 061206] respondent owner~~. The ~~owner~~ respondent must ~~supply provide~~ the ~~licensee the~~ information required in this rule, as applicable, within ~~30~~ 60 calendar days of the receipt of the request. The ~~licensee complainant~~ must submit this information with its complaint.

(C) If the ~~owner-respondent~~ does not provide the data and information required by this rule after a request by the ~~licensee complainant~~, the ~~licensee-complainant~~ will include a statement indicating the steps taken to obtain the information from the ~~owner-respondent~~, including the dates of all requests.

(D) No complaint ~~by a licensee~~ will be dismissed because the ~~owner-respondent~~ has failed to provide the applicable ~~data and~~ information required under subsection (4)(e)(C) of this rule.

(5) Within ~~30~~ 60 calendar days of receiving a copy of the complaint, the respondent will file its response to the complaint with the Commission, addressing in detail each claim raised in the complaint ~~[Staff revision 061206] and a description of the respondent's position on the unresolved provisions.~~

~~(6)~~ Following receipt of the complaint, the Commission may conduct such proceedings as required to resolve disputes under this provision and will resolve the dispute with an order no later than 240 calendar days following receipt of the complaint, which time period may be extended for an additional 60 calendar days for good cause.

~~(6)~~(7) If the Commission determines after a hearing that a rate, term, or condition that is the subject of the complaint is not just, fair, and reasonable, it may reject the proposed rate, term or condition and may prescribe ~~by order~~ a just and reasonable rate, term, or condition.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

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

Hist.: NEW

860-028-0080

Costs of Hearing in Attachment Contract Disputes

(1) When the Commission issues an order in an attachment contract dispute that applies to a consumer-owned utility, as defined by ORS 757.270, the order will also provide for payment by the parties of the cost of the hearing.

(2) The cost of the hearing includes, but is not limited to, the cost of Commission employee time, the use of facilities, and other costs incurred. The rates will be set at cost.

(a) Every 60 calendar days, the Commission will provide to the parties the costs incurred to date in the proceeding.

(3) The Joint Use Association is not considered a party for purposes of this rule. ~~when participating in a case under OAR 860-028-0200(1)(b).~~

(4) The Commission will allocate costs in a manner that it considers equitable. The following factors will be considered in determining payment:

(a) Whether the party was a complainant, respondent, or intervenor;

(b) Merits of the party's positions throughout the course of the proceeding; and

(c) Other factors that the Commission deems relevant.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.279, and 759.660

Hist.: NEW

860-028-0100 [Staff revision 061206] ~~Access for~~ Application Process for New or Modified Attachments

[Staff revision 061206] ~~(1) As used in this rule, "applicant" does not include a government entity. Note: To decrease redundancy, suggest this be moved to 0060.~~

~~(1)(2)~~ An applicant requesting a new or modified attachment will submit an application providing the following information in writing or electronically to the owner:

(a) Information for contacting the applicant.

(b) The pole owner may require the applicant to provide the following ~~technical~~ information:

(A) Location and identifying pole or conduit for which the attachment is requested;

(B) The amount of space ~~required-requested~~;

(C) The number and type of attachment for each pole or conduit;

(D) Physical characteristics of attachments;

(E) Attachment location on pole;

(F) Description of installation;

(G) Proposed route; [Staff revision 061206] and

(H) Proposed schedule for construction.

~~(2)(3)~~ The owner will provide written [Staff revision 061206] or electronic ~~notification notice~~ to the applicant within ~~ten business~~ 14 days of the application receipt date confirming receipt and listing any deficiencies with the application, including missing information. If required information is missing, the owner may suspend processing the application until the missing information is provided.

~~(3)(4)~~ Upon receipt of a completed application, the ~~An~~ owner ~~will~~ will reply in writing by provide notice [Staff revision 061206] or electronically to the applicant ~~as quickly as possible,~~ but no later than ~~30 business~~ 45 calendar days from the date the completed application is received. The owner's reply must state whether the application is approved, approved with [Staff revision 061206] modifications or conditions, or denied.

(a) An approval will be valid for 180 calendar days unless extended by the owner. ~~If the owner approves an application without requiring make ready work, the applicant may begin construction and will notify the owner within 30 business days of completion of construction.~~

(b) The owner may require the applicant to provide notice of completion within 45 calendar days of construction completion.

(b)(c) If the owner approves an application that requires make ready work, the owner will provide a detailed list of the make ready work needed to accommodate the applicant's facilities, an estimate for the time required for the make ready work, and the cost for such make ready work.

(e)(d) The owner may deny access for the following reasons: insufficient capacity, safety reliability, and generally applicable engineering purposes. In denying an application, the owner will state the reasons for the denial.

(d)(e) If the owner does not provide the applicant with notice that the application is approved, ~~or denied, or conditioned~~ within ~~30 business~~ 45 calendar days from its receipt, the application is deemed approved and the applicant may begin installation. Applicant will ~~notify~~ provide notice prior to commencement of installation. Commencement of installation by the occupant will not be construed as completion of the permitting process or as final permit approval. Unpermitted attachments made under this section are not subject to sanctions under OAR 860-028-0140.

~~(5)(4)~~ If the owner approves an application that requires make ready work, the owner will perform such work at the applicant's expense. This work will be completed ~~as quickly in a timely manner and inexpensively as is reasonably possible consistent with applicable legal, safety, and reliability requirements~~ at a reasonable cost. Where this work requires more than ~~30 business~~ 45 calendar days to complete, the parties ~~must~~ will attempt to negotiate a mutually satisfactory longer period to complete the make ready work.

~~(6)(5) For good cause shown, If an owner can not meet an applicant's time frame the time frames for attachment or those~~ established by this rule, application, preconstruction activity, and make ready work may be performed by a mutually acceptable third party.

~~(7)(6) If thean~~ application involves more than the threshold number of poles, the parties must negotiate a mutually satisfactory longer time frame to complete the approval process.

[Staff revision 061206] ~~(7) As used in this rule, "applicant" does not include a government entity.~~

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

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

Hist.: NEW

860-028-0110

Rental Rates and Charges for Attachments ~~by Licensees~~ to Poles Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through ORS 757.290 or ORS 759.650 through ORS 759.675.

(2) In this rule:

(a) "Carrying Charge" means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs attributable to the facilities used by the licensee. The cost of money component will be equal to the return on investment authorized by the Commission in the pole owner's most recent rate proceeding.

(b) "Pole Cost" means the depreciated original installed cost of an average bare pole of the pole owner.

(c) “Support Equipment” means guy wires, anchors, anchor rods, grounds, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments.

(d) “Support Equipment Cost” means the average depreciated original installed cost of support equipment.

(e) “Usable Space” means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole are buried below ground level.

(32) The A disputed pole attachment rental rate per foot will be is computed by taking multiplying the pole cost times by the carrying charge and then dividing the resultant product by the usable space per pole.

(3) The rental rate per pole is computed as the rental rate per foot times multiplied by the licensee’s authorized attachment space. portion of the usable space occupied by the licensee’s attachment.

(4) A disputed support equipment rental rate will be computed by taking the support equipment cost times the carrying charge times the portion of the usable space occupied by the licensee’s attachment.

(5) The minimum usable space occupied by a licensee’s attachment is one foot.

(6~~34~~) The rental rates referred to in sections (3) and (4)(2) of this rule ~~do not cover~~ may include the costs of attachment to support equipment, or permit application processing. ~~Costs associated with attachments to support equipment and permit applications, if not recovered in the annual rent, will be based on actual costs, including administrative costs.~~ Not included are sSpecial inspections, or preconstruction activity, post construction inspection, make ready, change out, and rearrangement work; or the costs related to unauthorized attachments. Charges for those activities will be based on actual (including administrative) costs, including administrative costs, and will be charged in addition to the rental rate.

(7) Licensees will report all attachments to the pole owner. A pole owner may impose sanctions for violations of OAR 860-028-0120. A pole owner may also charge for any expenses it incurs as a result of an unauthorized attachment.

(8) All attachments will meet state and federal clearance and other safety requirements, be adequately grounded, guyed, and anchored, and meet the provisions of contracts executed between the pole owner and the licensee. A pole owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee will pay the pole owner for any fines, fees, damages, or other costs the licensee’s attachments cause the pole owner to incur.

(45) Authorized attachment space for rental rate determination [Staff revision 061206] must comply with the following:

(a) The initial authorized attachment space ~~by a licensee’s attachment~~ on a pole must not be less than 12 inches. The owner may authorize additional attachment space in increments of less than 12 inches.

(b) For each attachment permit, the owner will specify the authorized attachment space on the pole that is to be used for one or more attachments ~~by the licensee~~. This authorized attachment space will be specified in the owner’s attachment permit.

(c) An additional or modified attachment by the ~~licensee-occupant~~ that meets the Commission safety rules and that is placed within the ~~licensee’s-occupant’s~~ existing authorized attachment space will be considered a component of the existing pole permit for rental rate determination purposes. ~~Such attachment additions or modifications may include, but are not limited to,~~

~~cabinets, splice boxes, load coil cases, bonding wires and straps, service drops, guy wires, vertical risers, or cable over-lashings.~~

~~(56) The owner may require reasonable prepayment from a licensee of the owner's estimated costs for any of the work allowed by OAR 860-028-0100. The owner's estimate will be adjusted to reflect the owner's actual cost upon completion of the work. The owner will promptly refund any overcharge to the licensee. The final invoice will reflect actual costs less any prepayment.~~

~~(67) The owner must be able to demonstrate that charges under sections (3) and (5) of this rule have been excluded from the rental rate calculation. The owner will provide notice to the occupant of any change in rental rate or fee schedule a minimum of ninety days prior to the effective date of the change. The occupant has sixty days from the date of the notice to dispute the rate or fee schedule. If no dispute is filed, the rate and fee schedule will be deemed effective for the term of the rental period. This subsection will become effective on January 1, 2008.~~

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

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

Hist.: PUC 9-1984, f. & ef. 4-18-84 (Order No. 84-278); PUC 16-1984, f. & ef. 8-14-84 (Order No. 84-608); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); renumbered from OARs 860-022-0055 and 860-034-0360; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)

860-028-0115 [Staff revision 061206] Duties of Pole 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.~~

~~(3) An owner must maintain its facilities in compliance with Commission Safety Rules for occupants.~~

~~(a) 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.~~

Duties of Electric Supply and Communication Pole Owners

~~(1) An owner will install, maintain, and operate its facilities in compliance with Commission safety rules.~~

~~(2) An owner must establish, maintain, and make available to occupants its joint-use construction standards and practices for attachments to its poles and for joint space in conduits. Standards for attachment must apply uniformly to all operators, including the owner.~~

~~(3) An owner must establish and maintain mutually agreeable protocols for communications between the owner and occupants.~~

~~(4) The owner may charge the occupant actual costs for any fines, fees, damages, the occupant's noncompliant attachments cause the pole owner to incur.~~

~~(5) Pole owners must immediately correct violations which pose imminent danger to life or property. This duty includes trimming vegetation which poses an imminent danger to life or property. In the event that the pole occupant performs the corrections, a pole owner must~~

reimburse the pole occupant for the actual cost of corrections. Charges imposed under this section will not exceed the actual cost of correction.

(6) Pole owners must respond to a pole occupant's requests for assistance to make corrections within 45 days.

(7) Pole owners will ensure the accuracy of inspection data prior to transmitting information to the pole occupant.

(8) If the pole owner intends to invoice the occupant for data collected during a periodic inspection as required by OAR 860-024-0011, the pole owner will notify the occupant regarding the type of data to be collected.

860-028-0310

Rental Rates and Charges for Attachments by Licensees to Conduits Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through ORS 757.290 or ORS 759.650 through ORS 759.675.

(2) As used in this rule:

(a) ~~“Annual Carrying Charge” will be equal to the return on investment authorized by the Commission in the conduit owner's most recent rate proceeding times the conduit cost.~~

(b) ~~“Annual Operating Expense” means annual operating maintenance, administrative, general, depreciation, income tax, property tax, and other tax expenses attributable, on a per-duct basis, to the section of conduit occupied by the licensee.~~

(c) ~~“Conduit Cost” means the depreciated original installed cost, on a per-duct basis, of the section of conduit occupied by the licensee.~~

(d) ~~“Duct” means a single enclosed raceway for conductors or cable.~~

(e) ~~“Surplus Ducts” means ducts other than those occupied by the conduit owner or a prior licensee, one unoccupied duct held as an emergency use spare, and other unoccupied ducts that the owner reasonably expects to use within the next 18 months.~~

(32) The disputed conduit rental rate per linear foot will be computed by adding the annual operating expense to the annual carrying charge and then multiplying by the number of ducts occupied by the licensee multiplying the percentage of conduit capacity occupied by the net linear cost of conduit and then multiplying that product by the carrying charge.

(43) A licensee occupying part of a duct will be deemed to occupy the entire duct.

(54) Licensees will must report all attachments to the conduit owner. A conduit owner may impose a penalty charge for failure to report or pay for all attachments. If a conduit owner and licensee do not agree on the penalty and submit the dispute to the Commission, the penalty amount will be five times the normal rental rate from the date the attachment was made until the penalty is paid. If the date the attachment was made cannot be clearly established, the penalty rate will will apply from the date the conduit owner last inspected the conduit in dispute. The last inspection date will be deemed to be no more than three five years before the unauthorized attachment is discovered. The conduit owner also will may charge for any expenses it incurs as a result of the unauthorized attachment.

(65) The conduit owner will must give a licensee 18 months' notice of its need to occupy licensed conduit and will will propose that the licensee take the first feasible action listed:

(a) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the conduit owner's space needs;

- (b) Pay revised conduit rent based on the cost of new conduit constructed to meet the conduit owner's space needs;
- (c) Vacate ducts that are no longer surplus;
- (d) Construct and maintain sufficient new conduit to meet the conduit owner's space needs.
- ~~(7) When two or more licensees occupy a section of conduit, the last licensee to occupy the conduit will be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all licensees will bear the increased cost.~~
- ~~(8) All conduit attachments will meet local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the conduit owner and the licensee. A conduit owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee will pay the conduit owner for any fines, fees, damages, or other costs the licensee's attachments cause the conduit owner to incur.~~
- (6) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, special inspections, preconstruction [Staff revision 061206] inspection activity, post construction inspection, make ready work, and the costs related to unauthorized attachments. Charges for activities not included in the rental rates will be based on actual costs, including administrative costs, and will be charged in addition to the rental rate.
- (7) The owner may require reasonable prepayments from a licensee of owner's estimated costs for any of the work allowed by OAR 860-028-0100. The owner's estimate will be adjusted to reflect the owner's actual cost upon completion of the [Staff revision 061206] requested tasks ~~work~~. The owner will [Staff revision 061206] promptly refund any overcharge to the licensee.
- (8) The owner must be able to demonstrate that charges under sections (6) and (7) of this rule have been excluded from the rental rate calculation.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

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

Hist.: PUC 2-1986, f. & ef. 2-7-86 (Order No. 86-107); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); renumbered from OARs 860-022-0060 and 860-034-0370; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)