

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 7, 2006**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: February 24, 2006

TO: Public Utility Commission

FROM: Jerry Murray *JM*

THROUGH: Lee Sparling, Ed Busch, JR Gonzalez and Terry Lambeth *TL*

SUBJECT: AR 506: Initiates a Rulemaking for Joint Use and Safety Rules.

STAFF RECOMMENDATION:

Staff recommends the Commission initiate a formal rulemaking for new and amended rules docketed as AR 506.

DISCUSSION:

In response to OPUC Order No. 05-042 in Docket UM 1087, the increasing number of complaints being brought to the Commission on pole attachment matters, disputes regarding National Electrical Safety Code (NESC) administration, and the correction of safety violations, PUC Staff has conducted industry workshops to develop proposed rules that would resolve these issues. The goal is to establish clear, fair, and more authoritative PUC rules in four areas related to safety and joint use. They are:

- Dispute resolution (e.g., improved and more timely arbitration processes);
- Pole attachment contracts (e.g., default provisions for parties disagreeing on contract provisions);
- Safety (e.g., provisions that clarify responsibilities of utilities and operators, including utility facility owners and occupants, to ensure compliance with the NESC); and
- Operator NESC compliance programs, and violation correction priorities and deadlines.

Staff conducted four industry workshops over a three-month period in Baker City, Eugene, and two in Salem. Interested parties gave considerable time and effort to the workshops and with follow-up written comments. Staff appreciates the thoughtfulness and thoroughness of the comments. In follow-up to the workshops, Staff spent many

hours and meetings reviewing the input and adopted a large number of the suggestions into the proposed rules.

To close the informal rulemaking process, Staff is recommending the proposed rules attached (see Attachments C and D) be used to start the formal rulemaking process conducted by the PUC's Hearings Division. The proposed rules contain both safety and attachment rules that apply to electric utilities, telecommunication utilities, cable television operators, telecommunications providers, and others that operate electric and communications facilities. The proposed Division 24 rules address safety inspections, safety code compliance activities, facility owner responsibilities, and vegetation line clearances and management. The proposed Division 28 rules cover dispute arbitration processes and default rates, terms and conditions for the shared use of poles and conduits.

The Commission has broad authority under ORS 757.035 to adopt the proposed safety rules. Likewise, under ORS 756.040, 757.035, 757.270 through 757.290 and 759.650 through 759.675, the PUC has the authority to adopt the joint use attachment rules proposed.

House Bill 2271, enacted in 1999, directed the Commission to establish rules for accommodating changes in the utility industries while maintaining safe and efficient utility poles, attachment installation practices and rights of way. In follow-up, the PUC, in consensus with an industry task force, adopted rules associated with occupant duties, sanctions, and rental rate reductions for pole attachments. Additionally, the Oregon Joint Use Association (OJUA) was established for pole owners and occupants to resolve differences and to provide advice on regulations that the Commission should adopt. In 2003, UM 1087 & UM 1096 pole attachment disputes demonstrated that there were many pole joint use issues that needed prompt resolution. OPUC Staff's 2003 white paper entitled "The Battle for the Utility Pole" pointed out many of these issues and emphasized the need for adopting existing PUC safety policies into official administrative rules. Also, on January 19, 2005, Commission Order 05-042 (Docket UM-1087, Central Lincoln vs. Verizon) called for rulemaking to clarify PUC rules related to joint use dispute arbitration processes, attachment costs, and other issues.

Well before the 1999 legislation, the Commission adopted at its February 18, 1997, public meeting a much needed policy, entitled "*Safety Provisions for the Joint-Use of Poles.*" This policy covered key safety responsibilities and practices necessary for pole owners and users. Its goal was to head off further joint use safety conflicts and promote cooperation between pole owners and users. The *Tree Clearance Policy* and the *Requirements for Line Inspection by Utility Operators Policy* are two other important policies issued by Staff in 1982 and 1987, respectively, that promote the safe and

efficient use of lines, poles and rights-of-way. The provisions of these policies are sound and valid today and have had wide Oregon utility industry acceptance. All three of these policies were developed with industry involvement and have stood the test of time. It should be emphasized that these policies, with some exceptions, are what is being recommended for adoption in the proposed safety rules.

The proposed rules address the wide variety of interrelated issues that affect the very interconnected electric and communication industries. With increasing competition between and among these industries, it is expected that the issues will become more confrontational if not resolved soon. The issues are complex, and the industries and parties disagree on regulatory solutions because of their competing and varied interests. Staff has attached a list to this memo indicating areas of concern that parties will likely bring up in future workshops and comments. The list is included in Attachment A and should not be assumed to be exhaustive.

The most contentious issue to date is the "prioritization of repairs," covered in proposed rule OAR 860-024-0012. This rule sets the timelines for operator correction of NESC violations after discovery. Some parties have argued that pole owners should have the option of delaying the correction of certain discovered NESC infractions until the pole is visited by a line crew for other purposes or major work is planned. Others assert that only uniform compliance with the required safety code (i.e., NESC) is acceptable. Staff believes the rule as proposed will encourage pole owners and occupants to partner and resolve existing NESC violations on a timely, efficient and coordinated basis. This matter is a key topic and is planned for discussion at a future workshop (see May 18, on Attachment B).

Another example of a significant issue is determining if any nonrecurring costs should be rolled into the pole owner's annual rental rates for licensees. Some licensees making frequent new attachments believe that the administration, engineering, and inspections for new attachments should be rolled into annual rental rates already charged by pole owners. The final rules need to establish a just allocation of all costs. Different operators have conflicting positions on what should be included in the annual rental rate calculations versus charged separately to licensees. Many have argued that licensees must individually pay for the administration, engineering, inspections, and all work necessary to accommodate their new attachments to poles.

We recommend the Commission not delay initiating the formal rulemaking. Staff and industry participants have already invested significant time in discussing and debating the issues involved. Staff has developed what it believes is a "just, fair, and reasonable" proposal that follows and promotes the Oregon Statutes. It should be understood that a decision by the Commission to initiate this formal rulemaking process does not mean

that the Commission, or a Commissioner, endorses the specific language in the proposed rules.

During the formal rulemaking phase, further workshops will be held to discuss the proposed rules. These workshops are tentatively set for May, with the hearing occurring in June. Participants will have the opportunity to provide written and verbal comments and recommendations to the Commission. A key objective is to have the formal rulemaking phase completed for the August 22, 2006, PUC public meeting. Refer to Attachment B for a more detailed proposed schedule.

It should also be understood that some parties may bring up issues that cannot be resolved within the scope of the PUC's existing statutory authority. For example, some parties may argue for a "level playing field" where all occupants, including government entities, are treated the same way under PUC attachment rules. Although the PUC has clear safety jurisdiction over government entities that operate electric and communication lines, the PUC lacks jurisdiction to establish monetary sanctions and rental rates over government entities that attach to utility poles and facilities. Issues like these would need to be resolved by the Oregon Legislature.

PROPOSED COMMISSION MOTION:

Rulemaking be commenced for proposed new and amended safety and attachment rules docketed in AR 506.

Attachments A, B, C, & D

Summary of
Areas of Concern Addressed by the Draft Rules

(Based on previous workshops and industry comments, Staff believes the following questions and others will be debated during the formal rulemaking process. While the proposed rules should address and resolve many of these issues, it seems certain that differing opinions will be expressed.)

1. Must structure owners set construction standards, determine the communication protocols between joint-users, and oversee safety compliance of their structures?
2. Should NESC training for required tasks be mandatory for employees, including evidence of training for employees of contractors?
3. What is the priority and timing of corrective work for facilities to be brought into compliance with the NESC?
4. Must electric and communication operators coordinate and cooperate on NESC inspections and compliance? Must the annual inspection areas be designated by the electric operators within each electric service territory? If not, how can this be coordinated?
5. What vegetation management standards are appropriate?
6. Is it acceptable for an owner to require pre-payment of associated costs when an attachment permit is applied for?
7. Should attachment fees and rents be prohibited for certain equipment attached to an owner's pole? (examples: anchors, equipment in unusable spaces, risers)
8. In calculating rental fees, how should the cost of money component of the carrying charge be determined for consumer-owned utilities?
9. What standard processes and information are required for new or modified permits?
10. What non-recurring costs should be included in the annual rental fee?
11. What non-recurring costs should be included in the permit fee? Should this include administration, pre and post inspections, estimates, make-ready, engineering, mapping, etc.?
12. Should the definition for "service drops" be broadened to include services to businesses and industries?

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Tentative AR 506 Scheduling
(for discussion at Scheduling Workshop on March 7, 2006)

Proposed 2006 schedule:

March 7 (afternoon) – scheduling conference
(See <http://edocs.puc.state.or.us/efdocs/HCD/ar506hcd15535.pdf>)

April 10 – joint proposed issues list, or suggested issues from each party

April 17 – reply comments on issues, if no joint list was agreed to

April 24 – ALJ will set out proposed issues list if there was conflict

May 11 – workshop on Attachment remaining issues (Div. 28) (e.g., carrying charges, attachment processes, attachments in unused space)

May 18 – workshop on Safety remaining issues (Div. 24) (e.g., prioritization & timing of repairs, vegetation management)

May 31 – opening written comments

June 12 – hearing/June 26 - written comments; **OR**
June 19 - written comments/June 30 hearing

August 22 – PUC public meeting

860-024-0001

Definitions for Commission Safety Standards Rules

For purposes of this Division, except when a different scope is explicitly stated:

(1) "Commission Safety Rules" mean the rules included in OAR Chapter 860, Division 024.

(21) "Facility" means any of the following lines or pipelines including associated plant, systems, rights-of-way, supporting and containing structures, equipment, apparatus, or appurtenances:

(a) A gas pipeline subject to ORS 757.039; ~~or~~

(b) A power line or electric supply line subject to ORS 757.035; or

(c) A telegraph, telephone, signal, or communication line subject to ORS 757.035.

(32) "Government entity" means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(4) "Occupant" means any operator that constructs, operates, or maintains attachments on facilities.

(53) "Operator" means every person as defined in ORS 756.010, public utility as defined in ORS 757.005, electricity service supplier as defined in OAR 860-038-0005, telecommunications utility as defined in ORS 759.005, telecommunications carrier as defined in ORS 759.400, telecommunications provider as defined in OAR 860-032-0001(10), consumer-owned utility as defined in ORS 757.270, cable operator as defined in ORS 30.192, association, cooperative, or government entity and their agents, lessees, or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership, or control of any facility within Oregon.

(6) "Owner" means an operator that owns or controls facilities.

(7) "Pattern of noncompliance" means a course of behavior that results in frequent violations of the Commission Safety Rules.

(84) "Reporting Operator" means an operator that:

(a) Serves 20 customers or more within Oregon; or

(b) Is an electricity service supplier as defined in OAR 860-038-0005 and serves more than one retail electricity customer.

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

Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.039, ORS 757.649, ORS 758.215, ORS 759.005 & ORS 759.045

Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 23-2001, f. & cert. ef. 10-11-01

860-024-0011

Inspections and Compliance 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.

(d) Conduct detailed inspections of its overhead facilities to identify violations of the Commission Safety Rules. 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 area designated in subsection (2)(a) of this rule by the operator of electric supply facilities each year. Operators of communication facilities are required to inspect the same area designated by the operators of the electric supply facilities during the same time period. Detailed inspections include, but are not limited to, visual checks and 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 a pattern of noncompliance with Commission Safety Rules, the Commission may require a shorter interval between inspections.

(e) 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.

(f) 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. Operators must make these records available to the Commission upon its request.

(2) Each operator of electric supply facilities must:

(a) Designate program areas to be inspected pursuant to subsection (1)(d) of this rule within its service territory. The schedules for the coverage areas for the entire program must be made available in advance and in sufficient detail so that the Commission and all operators with facilities in that service territory may coordinate needed inspection and correction tasks. Unless the parties otherwise agree, operators must be notified of any changes to the established schedule 12 months before the start of the next year's inspection.

(b) Perform routine safety patrols of overhead electric supply lines and accessible facilities for hazards to the public. The maximum interval between safety 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 monthly schedule.

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

Stats. Implemented: ORS 757.035

Hist.: NEW

860-024-0012

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

(1) A facility with a violation of the Commission Safety Rules that poses an imminent danger to life or property must be repaired, disconnected, or isolated by the operator immediately after discovery.

(2) Except as otherwise provided by this rule, the operator must correct violations of Commission Safety Rules no later than two years after discovery.

(3) An operator may elect to defer for a third year corrections of no more than 5 percent of violations identified during the operator's detailed facility inspection each year. Violations qualifying for deferral under this section cannot reasonably be expected to endanger life or property. The operator must develop a plan detailing how it will remedy each such deferral. If more than one operator is affected by the deferral, all affected operators must agree to the plan or the violation(s) may not be a part of the third year deferral.

(4) For good cause shown and where equivalent safety can be achieved, unless otherwise prohibited by law, the Commission may for a specific installation waive the requirements of OAR 860-024-0012.

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

Stats. Implemented: ORS 757.035

Hist.: NEW

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.

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

(a) Occupants must promptly inform the owner of observed safety violations of the owner and any other occupants.

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

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

Stats. Implemented: ORS 757.035

Hist.: NEW

860-024-0016

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) "Readily climbable" means 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.

(c) "Vegetation" means trees, shrubs, and any other woody plants.

(d) "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 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 volts; or

(b) Five feet for conductors energized at 600 through 50,000 volts, except clearances may be reduced to three feet if the vegetation is not readily climbable.

(c) Infrequent intrusion of small new vegetation growth into these minimum clearance areas is acceptable provided the vegetation does not 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 these 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 of the vegetation, supporting structures, and conductors under adverse weather conditions.

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

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 757.035 & 758.280 through 758.286

Hist.: NEW

AccidentIncident Reports

860-024-0050

AccidentIncident Reports

(1) As used in this rule:

(a) "Serious injury to person" means, in the case of an employee, an injury which results in hospitalization. In the case of a non-employee, "serious injury" means any contact with an energized high-voltage line, or any **accidentincident** which results in hospitalization. Treatment in an emergency room is not hospitalization.

(b) "Serious injury to property" means:

(A) Damage to operator and non-operator property exceeding **\$25,000100,000**; or

(B) In the case of a gas operator, damage to property exceeding \$5,000; or

(C) In the case of an electricity service supplier (ESS) as defined in OAR 860-038-0005, damage to ESS and non-ESS property exceeding **\$25,000100,000** or failure of ESS facilities that causes or contributes to a loss of energy to consumers; or

(D) Damage to property which causes a loss of service to over 500 customers (50 customers in the case of a gas operator) for over two hours (five hours for an electric operator serving less than 15,000 customers) except for electric service loss that is restricted to a single feeder line and results in an outage of less than four hours.

(2) Except as provided in section (5) of this rule, every reporting operator **shallmust** give immediate notice by telephone, by facsimile, by electronic mail, or personally to the Commission, of **accidentincidents** attended by loss of life or limb, or serious injury to person or property, occurring in Oregon upon the premises of or directly or indirectly arising from or connected with the maintenance or operation of a facility.

(3) Except as provided in section (5) of this rule, every reporting operator **shallmust**, in addition to the notice given in section (2) of this rule for an **accidentincident** described in section (2), report in writing to the Commission within 20 days of the occurrence. In the case of injuries to employees, a copy of the **accidentincident** report form that is submitted to Oregon OSHA, Department of Consumer and Business Services, for reporting **accidentincident** injuries,

will normally suffice for a written report. In the case of a gas operator, copies of **accident/incident** or leak reports submitted under 49 CFR Part 191 will normally suffice.

(4) An **accident/incident** report filed by a public or telecommunications utility in accordance with ORS 654.715 cannot be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.

(5) A Peoples Utility District (PUD) is exempt from this rule if the PUD agrees, by signing an agreement, to comply voluntarily with the filing requirements set forth in (2) and (3).

(6) Gas operators have additional incident and condition reporting requirements set forth in OARs 860-024-0020 and 860-024-0021.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Public Utility Commission.]

Stat. Auth.: ORS Ch. 183, 654, 756, 757 & 759

Stats. Implemented: ORS 654.715, 756.040, 756.105, 757.035, 757.039, 757.649, 759.030, 759.040 & 759.045

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 21-1985, f. & ef. 11-25-85 (Order No. 85-1130); PUC 12-1989, f. & cert. ef. 8-11-89 (Order No. 89-946); PUC 4-1992, f. & ef. 2-14-92 (Order No. 92-234); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); renumbered from OARs 860-028-0005 and 860-034-0570; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)

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 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 and that are publicly available to the greatest extent possible:

(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, 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 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.

(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 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 coursepattern 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 by which an owner authorizes 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 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 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.

(21) "Post construction inspection" means work performed to verify and ensure the construction complies with the permit, governing agreement, and Commission safety rules.

(22) "Preconstruction activity" means engineering, survey and estimating work required to prepare cost estimates for an attachment application.

(1223) "Public utility" has the meaning given in ORS 757.005.

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

(1425) "Service drop" means a connection from distribution facilities to a single family, duplex, or triplex residence or similar small commercial facility.

(26) "Special inspection" means an owner's field visit made at the request of the licensee for all nonperiodic inspections. A special inspection does not include preconstruction activity or post construction inspection.

(27) "Support equipment" means guy wires, anchors, anchor rods, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments.

(28) "Support equipment cost" means the average depreciated original installed cost of support equipment.

(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.

(1530) "Telecommunications utility" has the meaning given in ORS 759.005.

(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.

(32) "Unauthorized attachment" means an attachment that does not have a permit and a governing agreement.

(33) "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 the communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground.

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. An Owner may charge a licensee for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.

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, when the parties are negotiating a new or amended contract, the last effective contract between the parties will continue in effect until a new 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 the complainant's position on the unresolved provisions.

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

(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 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, the licensee must request the data and information required by this rule from the owner. The owner must supply the licensee the information required in this rule, as applicable, within 30 calendar days of the receipt of the request. The licensee must submit this information with its complaint.

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

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

(5) Within 30 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 and a description of the respondent's position on the unresolved provisions.

(6) 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 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.

(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

New or Modified Attachments

(1) As used in this rule, "applicant" does not include a government entity.

(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;

(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; and

(H) Proposed schedule for construction.

(3) The owner will provide written or electronic notification to the applicant within ten business 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.

(4) An owner will reply in writing or electronically to the applicant as quickly as possible, but no later than 30 business days from the date the application is received. The owner's reply must state whether the application is approved, approved with modifications or conditions, or denied.

(a) 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) 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.

(c) If the owner denies the application, the owner will state in detail the reasons for its denial.

(d) If the owner does not provide the applicant with notice that the application is approved or denied within 30 business days from its receipt, the application is deemed approved and the applicant may begin construction and will notify the owner within 30 business days of completion of construction.

(5) 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 and inexpensively as is reasonably possible consistent with applicable legal, safety, and reliability requirements. Where this work requires more than 30 business days to complete, the parties must negotiate a mutually satisfactory longer period to complete the make ready work.

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

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

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

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 shall 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-foot-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.

(3) The 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. 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) The rental rates referred to in sections (3) and (4) of this rule do not cover include the costs of attachment to support equipment, permit application processing, special 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 shall be based on actual (including administrative) costs, including administrative costs, and will be charged in addition to the rental rate.

(7) Licensees shall 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 shall 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 shall pay the pole owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.~~

(4) Authorized attachment space for rental rate determination 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 that meets the Commission safety rules and that is placed within the licensee'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.

(5) 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.

(6) 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.

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)

860-028-0310

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" shall 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 A 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 shall be deemed to occupy the entire duct.~~

~~(54) Licensees shall 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 shall will apply from the date the conduit owner last inspected the conduit in dispute. The last inspection date shall be deemed to be no more than three five years before the unauthorized attachment is discovered. The conduit owner also shall may charge for any expenses it incurs as a result of the unauthorized attachment.~~

~~(65) The conduit owner shall must give a licensee 18 months' notice of its need to occupy licensed conduit and shall 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 shall 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 shall bear the increased cost.~~

~~(8) All conduit attachments shall 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,~~

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~~correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall 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 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 work. The owner will 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)