

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Public Utility Commission

860

Agency and Division

Administrative Rules Chapter Number

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RULE CAPTION**Adopts and amends rules governing attachments to utility poles, conduits and facilities**

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Administrative Law Judge
October 12, 2006	1:30 p.m.	Public Utility Commission Workshop with Commissioners Main Hearing Room, First Floor 550 Capitol Street NE Salem, Oregon	Christina Smith
November 8, 2006	9:00 a.m.	Public Utility Commission Hearing Main Hearing Room, First Floor 550 Capitol Street NE Salem, Oregon	Christina Smith

*Auxiliary aids for persons with disabilities are available upon advance request.***RULEMAKING ACTION**

Secure approval of new rule numbers (adopted or renumbered) with the Administrative Rules Unit prior to filing.

ADOPT: 860-028-0050, 860-028-0060, 860-028-0070, 860-028-0080, 860-028-0100, 860-028-0115**AMEND:** 860-028-0020, 860-028-0110, 860-028-0310**REPEAL:****RENUMBER:****AMEND and RENUMBER:**

ORS Ch. 183, 756, 757 & 759

Section 9 of Enacted House Bill 2271
(1999 Oregon Legislature)

Stat. Auth:

Other Authority

ORS 756.040, 757.035, 757.270 through 757.290, 759.045 & 759.650 through 759.675

Stats. Implemented:

FILED

JUN 15 2006

ARCHIVES DIVISION
SECRETARY OF STATE**RULE SUMMARY**

This rulemaking is the second phase of a two phase effort to establish more comprehensive safety and joint use rules that would apply to electric utilities, telecommunications utilities, telecommunications providers, cable television operators, and other entities that operate electric and communication lines. The purpose of this rulemaking is to ensure that Oregon's utility lines and facilities accommodate competitive changes and are constructed, operated, and maintained in a safe and efficient manner.

This notice, for the second phase, will address new and amended attachment rules applicable to owners and occupants involved in the shared usage of utility poles, conduits and other

**Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 p.m. on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday.

ARC 920-2005

facilities. This phase will address owner-occupant contracts (i.e., presumptively reasonable rates, terms, conditions), dispute resolution processes, attachment installation practices and other provisions.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

November 8, 2006 5:00 p.m.

Last day for Public Comment
Last day to submit written comments to the Commission

Diane Davis

Signature

Diane Davis
Printed Name

6-15-06
Date

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Agency and Division

Administrative Rules Chapter Number

Public Utility Commission

860

In the Matter of Rulemaking on Joint Use and Safety Rules**Rule Caption:** (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Adopts and amends rules governing attachments to utility poles, conduits, and facilities

Statutory Authority: ORS 183, 756, 757 & 759**Other Authority:** Section 9 of enacted House Bill 2271 in 1999 Oregon Legislature**Stats. Implemented:** ORS 756.040, 757.035, 757.270 through 757.290, 759.045 & 759.650 through 759.675**Need for the Rule(s):**

New and amended rules are needed to provide better guidelines that can be used by the Commission in mediating and resolving disputes between owners and occupants in the sharing of utility poles, conduits and facilities. These disputes generally involve the rates, terms and conditions for operators that make attachments to utility poles and other facilities. The operators include electric utilities, telecommunications utilities, telecommunications providers, consumer-owned electric utilities, cable television operators, and others that own or operate electric or communication facilities. Increasing issues related to unsafe practices and unfair costs between utility facility owners and occupants before the Legislature and the Public Utility Commission (PUC or Commission) indicate the need for clear and more comprehensive regulations for joint use attachments.

In the last three decades, telecommunications providers, cable television operators and other operators have been installing additional lines and attachments on utility poles and facilities. In many cases the operators have placed new attachments on poles without permission by the pole owner or in non-compliance with attachment contracts and Commission safety rules. This has resulted in unsafe conditions for the public and utility workers. Also, many pole occupants are claiming that their pole attachment costs are too high and attachment contracts unfair. In 1999, the Legislature enacted House Bill 2271 directing the Commission to establish rules for accommodating changes in the utility industries while maintaining safe and efficient utility poles, rights of way, and attachment installation practices. In response to this legislation, the Commission conducted rulemaking proceedings and adopted sanction and rental rate reduction rules to promote better safety and joint use cooperation by the pole owners and occupants.

With new pole attachment disputes developing in 2003, the PUC Safety Staff recommended additional safety rulemaking action in its report, entitled "The Battle for the Utility Pole and the End-Use Customer." Later, in early 2005, Commission Order No. 05-042 (Docket UM-1087, Central Lincoln vs. Verizon) called for rulemaking to focus on attachment dispute resolution processes, costs, and other issues.

PUC rulemaking AR 506 will address both the safety and joint use recommendations of the Commission and PUC Staff. This rulemaking will be accomplished in two phases. The first phase, which has been substantially completed, will address the minimum safety provisions for operators of electric and communication facilities. The second phase will cover mandatory dispute resolution processes and hearing costs and guidelines for owner-occupant contract provisions, attachment installation practices, and other joint use matters.

This impact statement covers the second phase of the effort, which will address new and amended attachment rules applicable to owners and occupants involved in the shared usage of utility poles, conduits and other facilities.

Documents Relied Upon, and where they are available:

1. Oregon Revised Statutes (ORS) 757.035, 757.270 through 757.290 and 759.650 through 759.675, and Oregon Administrative Rules (OAR) in Chapter 860, Divisions 24 and 28 (available at <http://www.leg.state.or.us/ors/vol15.html> and http://arcweb.sos.state.or.us/rules/OARS_800/OAR_860/860_tofc.html)
2. National Electrical Safety Code, 2002 edition (ANSI C2-2002) as required by OAR 860-024-0010 (available at <http://www.puc.state.or.us/PUC/safety/getnesc.shtml>)
3. PUC Policy entitled "Safety Provisions for Joint-Use of Poles" adopted by PUC on Feb. 18, 1997 (available at <http://www.puc.state.or.us/PUC/safety/jointpol.pdf>)
4. PUC Staff's Policy entitled "Inspection Requirements for Utility Operators" (available at <http://www.puc.state.or.us/PUC/safety/insppole.pdf>)
5. PUC Staff's Policy on Tree Clearances issued in 1982 and revised in 1987 (available at <http://www.puc.state.or.us/PUC/safety/trees.pdf>)
6. Section 9 of Enacted House Bill 2271 in 1999 Oregon Legislature (available at <http://www.leg.state.or.us/99reg/measure/hb2200.dir/hb2271.a.html>)
7. OPUC Staff Report on utility poles and attachments, entitled "The Battle for the Utility Pole", dated 12-15-03, including follow-up industry meeting minutes and industry written responses (report available at <http://www.puc.state.or.us/PUC/safety/staffrpt.pdf> and follow-up industry meetings and comments available at <http://www.puc.state.or.us/PUC/safety/pole.shtml>)

8. Proposed PUC Staff rules along with two rounds of industry responses from four workshops (available at http://www.puc.state.or.us/PUC/admin_rules/workshops/Workshop.shtml)

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The proposed rules will have little overall financial impact on the PUC, other state agencies, units of local governments, businesses, industry, and the public. This rule affects operators of electric and communication facilities. The operators include electric utilities, telecommunications utilities, telecommunications providers, consumer-owned electric utilities, cable television operators, and other entities.

With exception to proposed rules 860-028-0060, -0070, and -0080, owners and occupants may agree on other provisions than the guidelines provided in the proposed rules. The Commission would use these guidelines as reasonable outcomes in the resolution of attachment disputes brought before them.

The physical plant costs for operating electric and communications facilities on Oregon's crowded utility rights of way have been increasing in recent years. The overall effect of these rules would not be to increase costs, but to eliminate the unfair costs that are being charged or caused to operators and their customers. The rules should bring about a more just allocation of costs, which will result in some operators experiencing somewhat higher or lower costs. New rules are essential so that all operators and their customers are not unjustly subsidizing the costs caused by other operators and their customers.

New proposed rule 860-028-0080 addresses the costs that the Commission will impose on parties involved in a dispute associated with a consumer-owned utility as provided in ORS 757.279(3). These costs are to reimburse the Commission for conducting hearings to resolve attachment disputes. At this time it is impossible for the PUC Staff to predict anticipated future hearing costs on parties because it does not know the number nor the complexity of disputes that will be brought to the Commission.

For the other attachment rules, the exact fiscal and economic impact for every operator affected would be extremely difficult, if not impossible, to determine at this time. One factor is variety of practices for making and allowing pole attachments on utility poles by the multitude of various electric utilities (40) and telecommunication utilities. Another complexity is the multitude and variety of confidential contracts that operators have among themselves.

These rules are intended to resolve many safety, operational and joint-use issues between operators, averting increased costs to the disputing operators and to the PUC. The PUC does not desire to set joint use policy on a dispute-by-dispute basis, but rather in a public rulemaking setting where all operators and parties can give input. If these or similar rules are not adopted, many operators and the Commission are likely to experience escalating unreasonable costs because of increasing attachment disputes between operators.

How were small businesses involved in the development of this rule?

It should be noted that this rulemaking has very minimal impact on small businesses. Since September 2005, the PUC held four separate workshops on rules development in Baker City, Eugene, and two in Salem. It invited representatives of utilities, utility providers, operators, and industry associations to attend and participate in the open workshops. The Oregon Joint Use Association (OJUA) and other utility and telecommunications industry associations, which represent both small and large entities, were actively involved in the workshops.

Administrative Rule Advisory Committee consulted?

No

If not, why? The OJUA and electric utilities, telecommunication utilities, cable television operators, telecommunications providers and their associations were invited and involved in the rule development workshops.

<u>Diane Davis</u>	Diane Davis	<u>6-15-06</u>
Authorized Signer	Printed Name	Date

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 ~~telex~~ **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.~~

~~(117)~~ "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.

(3) Each operator of communication facilities must trim or remove vegetation that poses a significant risk to its their facilities, or through contact with its facilities poses a significant risk to a structure of an operator of a jointly used system.

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

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 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 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.

(3) 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. 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)(2) 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)

860-028-0115

Duties of 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) 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.

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

860-028-0310

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** charge for any expenses it incurs as a result of the unauthorized attachment.

~~(65)~~ The conduit owner **shall** give a licensee 18 months' notice of its need to occupy licensed conduit and **shall** 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, 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)