

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Public Utility Commission

860

Agency and Division

Administrative Rules Chapter Number

Diane Davis

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Rules Coordinator

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Address

RULE CAPTION

In the Matter of Amending OAR 860-024-0010 Regarding the Arc Flash Protection Rule in 2007 NESC.

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

	Hearing Date (m/d/yyyy)	Time	Location	Hearings Officer
1	11/06/2008	9:30 am	550 Capitol Street NE, Main Hearing Room - 1st Floor, Salem	Traci Kirkpatrick
2				
3				
4				

Auxiliary aids for persons with disabilities are available upon advance request

RULEMAKING ACTION

ADOPT:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND:

860-024-0010

REPEAL:

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority: ORS

183, 756 & 757

Other Authority:

Statutes Implemented: ORS

756.040 & 757.035

Continued on next page

Continuation of ... NOTICE OF PROPOSED RULEMAKING HEARING***RULE SUMMARY**

In its docket AR 513, the Commission adopted the 2007 edition of the National Electric Safety Code (NESC) as the minimum construction, operation, and maintenance standard for Oregon electric supply and communication operators. In its Order No. 08-179 adopting the 2007 edition of the NESC, the Commission also directed its Staff to investigate the new arc hazard rules found in Part 4 of the NESC. The Arc Flash Protection Rule is the only requirement within the 2007 edition of the NESC that has a delayed effective date, becoming effective January 1, 2009. The Arc Flash Protection Rule requires that utilities or employers perform facility assessments and give instruction to their employees as to the level of arc flash protection necessary; the Arc Flash Protection Rule does not mandate whether or not the employer or the employee must supply the personal protective equipment. The proposed rule amendment proposes to delay the implementation of the Arc Flash Protection Rule for 12 months, making its effective date January 1, 2010. Commission Staff noted at the August 26, 2008, Public Meeting before the Commission, that it did not fully appreciate the potential impacts of the Arc Flash Protection Rule when the 2007 NESC was first adopted by the Commission into rule in its Order No. 08-179.

Commission Staff conducted an investigation that included an industry workshop and meetings with affected entities. The majority of the participants in the investigation propose delaying the implementation of the Arc Flash Protection Rule. Proponents of delaying implementation put forth that the delay would allow for development of industry consensus policies and training, and would allow companies more time to complete facility assessments, obtain better guidance from federal and state OSHA agencies, and arrange for funding of the protective clothing and training. Costs of compliance with the NESC Arc Flash Protection rule are significant; for example, Portland General Electric Company estimated that its costs of compliance would be about \$2 million over the next three years. Opponents of delaying implementation state that electrical workers deserve the protection mandated by the Arc Flash Protection Rule, including the arc flash protection training.

Commission Staff contact for technical information is Jerry Murray (jerry.murray@state.or.us).

The Commission encourages participants to file comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 528 on your comments and file them by email to the Commission's Filing Center at PUC.FilingCenter@state.or.us and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon, 97301. For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm> or contact Diane Davis at diane.davis@state.or.us.

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at diane.davis@state.or.us or (503) 378-4372 by close of business November 4, 2008 to request a dial - in number. To present oral comment at the hearing, participants must attend in person.

ORS 183.335(2)(b)(G) 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.

11/13/2008	5:00 pm	Diane Davis	diane.davis@state.or.us	09/12/2008
Last Day (m/d/yyyy) and Time for Public Comment		Printed Name	Email Address	Date Filed
Please enter date as m/d/yyyy or mm/dd/yyyy				

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 920-2003

STATEMENT OF NEED AND FISCAL IMPACT

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

Oregon Public Utility Commission

860

Agency and Division

Administrative Rules Chapter Number

In the Matter of Amending OAR 860-024-0010 Regarding the Arc Flash Protection Rule in 2007 NESC.

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

In the Matter of:

Amending OAR 860-024-0010 Regarding the Arc Flash Protection Rule in 2007 NESC.

Statutory Authority: ORS

183, 756 & 757

Other Authority:

Stats. Implemented: ORS

756.040 & 757.035

Need for the Rule(s):

In follow-up to PUC Order 07-179 and PUC's Staff's investigation, Oregon's electric utilities and contractors are requesting more time to comply with the Arc Flash Protection Rule (Rule 410.A.3.) of the National Electrical Safety Code (NESC). This time is needed to complete facility assessments, establish prudent work practices, select clothing material types and clothing systems, and perform employee training. This time delay would also allow Federal OSHA to provide electric worker guidance about arc flash protection, and it would allow the NESC standards committee to resolve possible errors within the Arc Flash Protection Rule.

Within the NESC, the Arc Flash Protection Rule has an effective date of January 1, 2009. Oregon's electric utilities and electric industry employers state they need six to twelve additional months to implement prudent measures to protect their electrical workers against arc flash serious injury.

Documents Relied Upon, and where they are available:

1. Oregon Revised Statutes (ORS) 757.035(available at <http://www.leg.state.or.us/ors/>) and Oregon Administrative Rules (OAR) in Chapter 860, Divisions 24 (available at http://arcweb.sos.state.or.us/rules/OARS_800/OAR_860/860_024.html)
2. National Electrical Safety Code (NESC), 2007 edition (ANSI C2-2007) (available through <http://standards.ieee.org/nesc/> or <http://www.buildingtechbooks.com>). A copy is also available for reviewing at the Commission's office.
3. Information on PUC Staff's investigation, workshop and follow-up comments (available at <http://www.puc.state.or.us/PUC/safety/nescreview.shtml>).

Continued on next page

Continuation of ... STATEMENT OF NEED AND FISCAL IMPACT**Fiscal and Economic Impact:**

By delaying implementation of the Arc Flash Protection Rule, there should be a neutral impact or potential savings to electrical utilities, contractors, electrical workers, and others. This time delay will afford utilities and other affected parties to make better decisions on the funds they spend for arc flash protective measures. The Arc Flash Protection Rule as adopted in PUC Order 07-179 will cause significant cost impacts to Oregon's electric utilities and employers that perform work on electric utility type facilities. Portland General Electric alone states that over the next three years, it will incur about \$2,000,000 in increased capital and operating costs to comply with the Arc Flash Protection Rule. Wasco Electric Cooperative claims worker clothing program costs vary from \$400 to \$2,000 per employee depending on the utility assessment methodology chosen. Other electric utilities and electrical employers will incur significant costs in providing arc flash protection to their workers. A delay will allow utilities, contractors, and other employers to interact with each other to develop better and more uniform clothing and protection schemes to safeguard electric workers against arc flash serious injury. It should be noted that the Oregon PUC may not have adequate full time employees (FTEs) to review implementation and enforcement of the Arc Flash Protection Rule, and it may need additional staff to conduct verification and enforcement activities to ensure proper implementation of and continuing compliance with Arc Flash Protection Rule.

Statement of Cost of Compliance:**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

There may be savings or no-cost impact to utilities, operators, contractors, and government agencies associated with the delay of the Arc Flash Protection Rule because the delay will allow time to further research requirements and equipment options and allow subject entities adequate time to select cost effective equipment. However, the Commission may need additional staff to ensure that utilities, operators and contractors appropriately implement the new Arc Flash Protection Rule and protect electrical workers accordingly, once it becomes effective.

2. Cost of compliance effect on small business (ORS 183.336):**a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:**

Oregon's electric utilities and employers that perform work on electric utility type facilities are impacted by this proposed rule amendment. The Commission is not able to readily ascertain how many potential small businesses may be subject to the rule.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The National Electric Safety Code and the Commission's adoption of the NESC created potential reporting, recordkeeping and other administrative activities costs of compliance. It is anticipated that this proposed rulemaking may help to mitigate or have no impact on the costs of complying with the Arc Flash Protection by allowing time for requirements to be clarified and allowing time for the impacted parties to thoroughly research their options.

c. Equipment, supplies, labor and increased administration required for compliance:

The National Electric Safety Code and the Commission's adoption of the NESC created potential equipment, supplies, labor and increased administrative costs of compliance. It is anticipated that this proposed rulemaking may help to mitigate or have no impact on the costs of complying with the Arc Flash Protection Rule by allowing time for requirements to be clarified and allowing time for the impacted parties to thoroughly research their options.

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

Representatives of utilities, utility providers and operators, industry associations and others were invited to attend an open-to-the-public workshop on June 17, 2008 on this rulemaking. The members of Oregon Utility Safety Committee (OUSC), Oregon Joint Use Association (OJUA) and other utility industry associations, which represent both small and large entities, participated in the workshop.

Administrative Rule Advisory Committee consulted?:

 Yes No

If not, why?:

An open-to-the-public workshop was hosted by PUC Staff . Numerous interested parties attended this workshop. Participants provided both oral and written comments, which may be viewed at PUC Websites at <http://www.puc.state.or.us/PUC/safety/nescreview.shtml>. The OUSC and OJUA Committees were also consulted.

11/13/2008

5:00 pm

Diane Davis

diane.davis@state.or.us

09/12/2008

Last Day (m/d/yyyy) and Time
for Public Comment

Printed Name

Email Address

Date Filed

Please enter date as m/d/yyyy or mm/dd/yyyy

860-024-0010

Construction, Operation, and Maintenance of Electric Supply and Communication Lines

(1) Except as provided in section (2), Every operator shall construct, operate, and maintain electrical supply and communication lines in compliance with the standards prescribed by the 2007 Edition of the National Electrical Safety Code approved June 16, 2006, by the American National Standards Institute.

(2) Rule 410.A.3 of the 2007 Edition of the National Electrical Safety Code will not become effective until January 1, 2010.

[Publications: Publications referenced are available **for review** from the Commission.]

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

Stats. Implemented: ORS 757.035

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 173, f. & ef. 1-14-76 (Order No. 76-037); PUC 1-1978, f. 1-13-78, ef. 2-13-78 (Order No. 78-076); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 6-1990, f. & cert. ef. 5-25-90 (Order No. 90-833); PUC 11-1993, f. & cert. ef. 6-23-93 (Order No. 93-809; PUC 13-1994, f. & cert. ef. 8-31-94 (Order No. 94-1243); PUC 7-1997, f. & cert. ef. 2-6-97; PUC 9-2002, f. & cert. ef. 2-26-02; PUC 6-2007, f. & cert .ef. 5-14-07 (Order No. 07-179)