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**BEFORE THE PUBLIC UTILITY COMMISSION**  
**OF OREGON**

AR 401

In the Matter of a Rulemaking to Amend )  
Oregon Administrative Rules Relating to ) ORDER  
Safety and Attachment Standards. )

**DISPOSITION: RULES AMENDED**

On June 15, 2001, the Commission opened a rulemaking proceeding to revise Oregon Administrative Rules relating to standards for safety and pole and conduit attachments. Proposed rule changes are contained in OAR Chapter 860, Divisions 22, 24, 28, 32, 34, 36, 37, and 38. The proposed rule amendments do not change the intent or application of the rules, but add cross-references to them and reorganize them to make related rules easier to find.

The Commission filed a Notice of the Proposed Rulemaking with the Secretary of State on June 15, 2001, and subsequently served it on all interested parties. The notice set out the amendments proposed by Commission Staff, and included a Statement of Need, Statutory Authority, Principal Documents Relied Upon, and Fiscal and Economic Impact. The notice was published in the July 1, 2001, Oregon Bulletin.

On July 24, 2001, the Oregon Telephone Association's Small Company Committee (OTA) filed comments addressing the proposed rules changes. On August 3, 2001, Commission Staff filed a response to the OTA comments. OTA then decided not to pursue in this docket the matters addressed in its comments.

At its September 25, 2001, public meeting, the Commission adopted the proposed rules changes as set forth in Appendix A.

**ORDER**

IT IS ORDERED that the Oregon Administrative Rules set forth in Appendix A are adopted. Changes to the rules shall be effective upon filing with the Secretary of State.

Made, entered, and effective \_\_\_\_\_.

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**Roy Hemmingway**  
Chairman

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**Lee Beyer**  
Commissioner

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**Joan H. Smith**  
Commissioner

A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

Pole and Conduit Attachments

**860-022-0055**

**[ED. NOTE: Former OAR 860-022-0055 was combined with 860-034-0360 and renumbered to 860-028-0110]**

**860-022-0060**

**[ED. NOTE: Former OAR 860-022-0060 was combined with 860-034-0370 and renumbered to 860-028-0310]**

**860-022-0065**

**Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities**

**Pole and conduit attachments shall comply with the rules set forth in OAR Chapter 860, Division 028.**

**Stat. Auth.: ORS Ch. 183, 756, 757, 758 & 759**

**Stats. Implemented: ORS 757.035, 757.542 through 757.562, 758.215, 759.045 & 759.650 through 759.675**

**Hist: NEW**

**860-022-0110**

**[ED. NOTE: Former OAR 860-022-0110 was combined with 860-034-0810 and renumbered to 860-028-0020]**

**860-022-0120**

**[ED. NOTE: Former OAR 860-022-0120 was combined with 860-034-0820 and renumbered to 860-028-0120]**

**860-022-0130**

**[ED. NOTE: Former OAR 860-022-0130 was combined with 860-034-0830 and renumbered to 860-028-0130]**

**860-022-0140**

**[ED. NOTE: Former OAR 860-022-0140 was combined with 860-034-0840 and renumbered to 860-028-0140]**

**860-022-0150**

**[ED. NOTE: Former OAR 860-022-0150 was combined with 860-034-0850 and renumbered to 860-028-0150]**

**860-022-0160**

**[ED. NOTE: Former OAR 860-022-0160 was combined with 860-034-0860 and renumbered to 860-028-0160]**

**860-022-0170**

**[ED. NOTE: Former OAR 860-022-0170 was combined with 860-034-0870 and renumbered to 860-028-0170]**

**860-022-0180**

**[ED. NOTE: Former OAR 860-022-0180 was combined with 860-034-0880 and renumbered to 860-028-0180]**

**860-022-0190**

**[ED. NOTE: Former OAR 860-022-0190 was combined with 860-034-0890 and renumbered to 860-028-0190]**

**860-022-0200**

**[ED. NOTE: Former OAR 860-022-0200 was combined with 860-034-0900 and renumbered to 860-028-0200]**

**860-022-0210**

**[ED. NOTE: Former OAR 860-022-0210 was combined with 860-034-0910 and renumbered to 860-028-0210]**

**860-022-0220**

**[ED. NOTE: Former OAR 860-022-0220 was combined with 860-034-0920 and renumbered to 860-028-0220]**

**860-022-0230**

**[ED. NOTE: Former OAR 860-022-0230 was combined with 860-034-0930 and renumbered to 860-028-0230]**

**860-022-0240**

**[ED. NOTE: Former OAR 860-022-0240 was combined with 860-034-0940 and renumbered to 860-028-0240]**

## **DIVISION 024**

### **CONSTRUCTION AND SAFETY STANDARDS, GENERAL**

#### **General**

**860-024-0000**

#### **Exemptions Applicability of Division 024**

~~\_\_\_\_\_ The rules contained in this Division do not apply to:~~

~~\_\_\_\_\_ (1) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).~~

~~\_\_\_\_\_ (2) Unincorporated associations and cooperative corporations which only provide telecommunications services (see Division 034 requirements).~~

~~\_\_\_\_\_ (3) Water utilities (see Division 036 requirements).~~

~~\_\_\_\_\_ (4) Water/wastewater utilities (see Division 037 requirements).~~

**Unless otherwise noted, the rules in this Division apply to every operator, as defined in OAR 860-024-0001.**

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

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

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 14-2000, f. & ef. 8-23-00 (Order No. 00-458)

**860-024-0001**

**Definitions for Safety Standards**

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

**(1) “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.**

**(3) “Utility” means all energy and telecommunications utilities, as defined in sections (1) and of this rule.**

**(1) “Energy utility” means a public utility as defined in ORS 757.005 except a water utility;**

**(2) “Telecommunications utility” has the meaning as defined in ORS 759.005, unless it is partially exempt from regulation under ORS 759.040; and**

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

**(3) “Operator” means every person as defined in ORS 756.010, public utility as defined in ORS 757.005, 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, 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.**

**(4) “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 Ch. 183, 756, 757 & 759

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

Hist.: PUC 2-1996, f. & ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

**860-024-0007**

**Location of Underground Facilities**

~~A utility~~ **An operator** and its customers shall comply with requirements of OAR ~~952-001-0010 through and including OAR 952-001-0090~~ **Chapter 952** regarding ~~identification and notification of the prevention of damage to~~ underground facilities.

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

Stat. Implemented: ORS ~~757.452~~ **757.542 through 757.562, 757.649 & 759.045**

Hist.: PUC 5-1988, f. & cert. ef. 3-8-88 (Order No. 88-244); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); PUC 12-1999, f. & ef. 11-18-99 (Order No. 99-709)

#### **860-024-0015**

##### **Ground Return**

~~Every person, company, agency, municipality, or association, their agents, lessees or acting trustees or receivers, appointed by any court, engaged in the management, operation, ownership, or control of operator with~~ either alternating or direct current power lines or equipment within Oregon may use a connection to ground only for protection purposes. A ground connection shall not be used for the purpose of providing a return conductor for power purposes.

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

Stat. Implemented: ORS 757.035, **757.649 & 759.045**

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

#### **860-024-0025**

##### **Steam Heat - Construction, Operation, and Maintenance of Steam and Hot Water Transmission and Distribution Systems**

~~The construction, operation, and maintenance of A steam heat public utility shall~~ **construct, operate, and maintain** steam and hot water transmission and distribution systems ~~shall be~~ in accordance with the American Society of Mechanical Engineers Code for Pressure Piping, Section B31.1, 1989 Edition, an American National Standard. ~~The code may be obtained from the American National Standards Institute, 1430 Broadway, New York, NY 10018.~~

[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 & 756

Stat. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 11-1991, f. & ef. 12-5-91 (Order No. 91-1603); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

#### **860-024-0050**

##### **Accident 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 nonemployee, "serious injury" means any contact with an

energized high-voltage line, or any accident which results in hospitalization. Treatment in an emergency room is not hospitalization.

(b) "Serious injury to property" means:

(A) Damage to ~~utility or nonutility operator and nonoperator~~ property exceeding \$25,000 (~~\$5,000 in the case of gas utilities~~); 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 \$25,000 or failure of ESS facilities that causes or contributes to a loss of energy to consumers; or**

**(BD)** Damage to property which causes a loss of service to over 500 ~~utility~~ customers (50 customers in the case of a gas utilities operator) for over two hours (five hours for an electric utilities operator serving less than 15,000 customers); ~~however, "serious injury to property" does not include damage which except for electric service loss that~~ is restricted to a single feeder line and results in an ~~electric~~ outage of less than four hours.

~~—— (e) "Utility" means every person, municipality, public utility, or telecommunications utility as defined in ORS 756.010 except telecommunications utilities, cooperatives, and associations, that are subject to Division 034 or Division 036 requirements, their agents, lessees, or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership, or control of gas pipelines or telegraph, telephone, signal, or power lines and serving 20 customers or more within Oregon.~~

(2) Except as provided in section (5) of this rule, every ~~utility reporting operator~~ shall give immediate notice by telephone, by facsimile, by ~~telegraph~~ electronic mail, or personally to the Commission, of accidents 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 utility facility.

(3) Except as provided in section (5) of this rule, ~~accidents 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 utility shall, in addition to the immediate notice given by telegraph, by telephone, or personally to the Commission, be reported every reporting operator shall, in addition to the notice given in section (2) of this rule for an accident 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 accident report form that is submitted to Oregon OSHA, Department of ~~Insurance and Finance~~ Consumer and Business Services, for reporting accident injuries, will normally suffice for a written report. In the case of a gas utilities operator, copies of accident or leak reports submitted under 49 CFR Part 191 will normally suffice.

(4) An accident 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

## DIVISION 028

### REPORTS AND RECORDS POLE AND CONDUIT ATTACHMENTS

#### **860-028-0000**

##### **Exemptions Applicability**

The rules contained in this Division ~~do not~~ apply to: every pole or conduit owner and every pole or conduit occupant, as defined in OAR 860-028-0020.

~~———— (1) Telecommunications utilities partially exempt from regulation under ORS 759.040 (see Division 034 requirements).~~

~~———— (2) Water utilities, cooperatives, and associations (see OAR 860-036-0760 requirements).~~

~~———— (3) Unincorporated associations and cooperative corporations who only provide telecommunications services (see requirements in OARs 860-034-0570 and 860-034-0580).~~

~~———— (4) Water/wastewater utilities (see Division 037 requirements).~~

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

Stats. Implemented: ORS ~~654.715, 756.040, 756.105, 757.035, 759.030, 759.040, 757.270, & 759.045~~ & 759.650

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & ef. 11-20-97 (Order No. 97-442); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 14-2000, f. & ef. 8-23-00 (Order No. 00-458)

#### **860-028-0005**

**[ED. NOTE: Former OAR 860-028-0005 was combined with OAR 860-034-0570 and renumbered to 860-024-0050]**

#### **860-028-0020**

##### **Definitions for Pole and Conduit Attachment Rules**

~~The following definitions apply to OAR 860-022-0120 through 860-022-0240~~ **For purposes of this Division:**

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

~~———— (2) “Commission pole attachment rules” mean OAR 860-022-0055 and OAR 860-022-0110 through OAR 860-022-0240~~ **860-028-0110 through 860-028-0240.**

~~———— (3) “Commission safety rules” mean OAR 860-024-0010 and OAR 860-034-0430.~~

~~———— (4) “Conduit” means any structure, or section thereof, containing one or more~~ **ducts, conduits, manholes, handholes, bolts, or other facilities used for any telegraph,**



**telephone, cable television, electrical, or communications conductors, or cable rights-of-way, owned or controlled, in whole or in part, by one or more public, telecommunications, or consumer-owned utilities.**

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

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

**(7) “Licensee” has the meaning given in ORS 757.270 or ORS 759.650.**

**(48) “Notice” means written notification sent by mail, electronic mail, or telefax.**

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

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

**(511) “Pattern” means a pattern of behavior that results in a material breach of a contract, or permits, or in frequent or serious violations of OAR ~~860-022-0120~~ 860-028-0120.**

**(12) “Public utility” has the meaning given in ORS 757.005.**

**(813) “Serious injury” means “serious injury to person” or “serious injury to property” as defined in OAR ~~860-028-0005~~ 860-024-0050.**

**(914) “Service drop” means a connection from distribution facilities to a single family, duplex, or triplex residence or similar small commercial facility.**

**(15) “Telecommunications utility” has the meaning given in ORS 759.005.**

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

### **Pole Attachments**

#### **860-028-0110**

#### **Attachments by Licensees to Poles Owned by Public, Telecommunications, 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) A disputed pole attachment rental rate will be computed by taking the pole cost times the carrying charge times the 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 the costs of special inspections or preconstruction, make ready, change out, and rearrangement work. Charges for those activities shall be based on actual (including administrative) costs.

(7) Licensees shall report all attachments to the pole owner. A pole owner may impose sanctions for violations of OAR ~~860-022-0120~~ 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.

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**

### **860-028-0120**

#### **Duties of Pole-Users Occupants**

(1) Except as provided in sections (2) and (3) of this rule, a pole-~~user~~ **occupant** attaching to one or more poles of a pole owner shall:

(a) Have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;

(b) Have a permit issued by the pole owner for each pole on which the pole-~~user~~ **occupant** has attachments;

(c) Install and maintain the attachments in compliance with the written contracts required under **sub**section (1)(a) of this rule and with the permits required under **sub**section (1)(b) of this rule; and

(d) Install and maintain the attachments in compliance with Commission safety rules.

(2) A pole-~~user~~ **occupant** that is a government entity is not required to enter into a written contract required by **sub**section (1)(a) of this rule, but when obtaining a permit from a pole owner under **sub**section (1)(b) of this rule, the government entity shall agree to comply with Commission safety rules.

(3) A pole-~~user~~ **occupant** may install a service drop without the permit required under **sub**section (1)(b) of this rule, but the pole-~~user~~ **occupant** must:

(a) Apply for a permit within seven days of installation;

- (b) Except for a pole-**user occupant** that is a government entity, install the attachment in compliance with the written contract required under **sub**section (1)(a) of this rule; and
- (c) Install the service drop in compliance with Commission safety rules.

Stat. Auth.: ORS Ch. 183, 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 860-022-0120 and 860-034-0820**

### **860-028-0130**

#### **Sanctions for Having No Contract**

(1) Except as provided in sections (2) and (3) of this rule, a pole owner may impose a sanction on a pole-**user occupant** that is in violation of OAR-~~860-022-0120~~ **860-028-0120**(1)(a). The sanction may be the higher of:

- (a) \$500 per pole; or
- (b) 60 times the owner's annual rental fee per pole.

(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 60 percent if the pole-**user occupant** complies with OAR-~~860-022-0120~~ **860-028-0120** within the time allowed by OAR-~~860-022-0170~~ **860-028-0170**.

(3) This rule does not apply to a pole-**user occupant** that is a government entity.

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

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

Hist.: PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); **renumbered from OARs 860-022-0130 and 860-034-0830**

### **860-028-0140**

#### **Sanctions for Having No Permit**

(1) Except as provided in sections (2) and (3) of this rule, a pole owner may impose a sanction on a pole-**user occupant** that is in violation of OAR-~~860-022-0120~~ **860-028-0120**(1)(b), **except as provided in OAR 860-027-0120(3)**. The sanction may be the higher of:

- (a) \$250 per pole; or
- (b) 30 times the owner's annual rental fee per pole.

(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 60 percent if the pole-**user occupant** complies with OAR-~~860-022-0120~~ **860-028-0120** within the time allowed by OAR-~~860-022-0170~~ **860-028-0170**.

(3) This rule does not apply to a pole-**user occupant** that is a government entity.

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

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

Hist.: PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); **renumbered from OARs 860-022-0140 and 860-034-0840**

### **860-028-0150**

**Sanctions for Violation of Other Duties**

(1) Except as provided in sections (2) and (3) of this rule, a pole owner may impose a sanction on a pole-**user occupant** that is in violation of OAR-~~860-022-0120~~ **860-028-0120**(1)(c), (1)(d), or (3). The sanction may be the higher of:

- (a) \$200 per pole; or
- (b) Twenty times the pole owner's annual rental fee per pole.

(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 70 percent if the pole-**user occupant** complies with OAR-~~860-022-0120~~ **860-028-0120** within the time allowed by OAR-~~860-022-0170~~ **860-028-0170**.

(3) This rule does not apply to a pole-**user occupant** that is a government entity.

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

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

Hist.: PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); **renumbered from OARs 860-022-0150 and 860-034-0850**

**860-028-0160****Choice of Sanctions**

(1) If a pole owner contends that an attachment of a pole-**user occupant** violates more than one rule that permits the pole owner to impose a sanction, then the pole owner may select only one such rule on which to base the sanction.

(2) If a pole owner has a contract with a pole-**user occupant** that imposes sanctions that differ from those set out in these rules, then the sanctions in the contract apply unless the pole owner and pole-**user occupant** agree otherwise.

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 860-022-0160 and 860-034-0860**

**860-028-0170****Time Frame for Securing Reduction in Sanctions**

(1) Except as provided in section (2) of this rule, a pole owner shall reduce the sanctions provided in these rules, if the pole-**user occupant**:

(a) On or before the 60<sup>th</sup> day of its receipt of notice, complies with OAR-~~860-022-0120~~ **860-028-0120** and provides the pole owner notice of its compliance; or

(b) On or before the 30<sup>th</sup> day of its receipt of notice, submits to the pole owner a reasonable plan of correction, and thereafter, complies with that plan, if the pole owner accepts it, or with another plan approved by the pole owner.

(2) Notwithstanding section (1) of this rule, a pole owner may, if there is a critical need, or if there is no field correction necessary to comply with OAR-~~860-022-0120~~ **860-028-0120**, shorten the times set forth in section (1). A pole-**user occupant** that disagrees with the reduction must request relief under OAR-~~860-022-0220~~ **860-028-0220** prior to the expiration of the shortened time period, or within seven days of its receipt of notice of the reduction, whichever is later.

(3) A plan of correction shall, at a minimum, set out:

(a) Any disagreement, as well as the facts on which it is based, that the pole-~~user~~ **occupant** has with respect to the violations alleged by the pole owner in the notice;

(b) The pole-~~user~~ **occupant**'s suggested compliance date, as well as reasons to support the date, for each pole that the pole-~~user~~ **occupant** agrees is not in compliance with OAR-~~860-022-0120~~ **860-028-0120**.

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

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

(a) If the pole owner accepts the plan, then the pole owner shall reduce the sanctions to the extent that the pole-~~user~~ **occupant** complies with OAR-~~860-022-0120~~ **860-028-0120** and provides the pole owner notice of its compliance, on or before the dates set out in the plan;

(b) If the pole owner rejects the plan, then it shall set out all of its reasons for rejection and, for each reason, shall state an alternative that is acceptable to it;

(c) Until the pole owner accepts or rejects a plan of correction, the pole-~~user~~ **occupant**'s time for compliance with OAR-~~860-022-0120~~ **860-028-0120** is tolled;

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

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 860-022-0170 and 860-034-0870

### **860-028-0180**

#### **Progressive Increases in Sanctions**

(1) Except as provided in sections (2) and (3) of this rule, if the pole-~~user~~ **occupant** fails to comply with OAR-~~860-022-0120~~ **860-028-0120** within the time allowed under OAR-~~860-022-0170~~ **860-028-0170**, then the pole owner may sanction the pole-~~user~~ **occupant** 1.5 times the amount otherwise due under these rules.

(2) If the pole-~~user~~ **occupant** has failed to meet the time limitations set out in OAR-~~860-022-0170~~ **860-028-0170** by 30 or more days, then the pole owner may sanction the pole-~~user~~ **occupant** 2.0 times the amount otherwise due under these rules.

(3) If the pole-~~user~~ **occupant** has failed to meet the time limitation set out in OAR-~~860-022-0170~~ **860-028-0170** by 60 or more days, then the pole owner may request an order from the Commission authorizing removal of the pole-~~user~~ **occupant**'s attachments.

(4) This rule does not apply to a pole-~~user~~ **occupant** that is a government entity.

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

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

Hist.: PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); renumbered from OARs 860-022-0180 and 860-034-0880

**860-028-0190****Notice of Violation**

A pole owner that seeks, under these rules, any type of relief against a pole-~~user~~ **occupant** for violation of OAR ~~860-022-0120~~ **860-028-0120** shall provide the pole-~~user~~ **occupant** notice of each attachment allegedly in violation of the rule, including the provision of the rule each attachment allegedly violates.

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 860-022-0190 and 860-034-0890**

**860-028-0200****Joint-Use Association**

(1) Pole owners and pole-~~users~~ **occupants** shall establish a Joint-Use Association (JUA). The Association shall elect a Board from the JUA, which shall include representatives of pole owners, pole-~~users~~ **occupants**, and government entities. The Board shall act as an advisor to the Commission with respect to:

(a) Adoption, amendment, or repeal of administrative rules governing pole owners and pole-~~users~~ **occupants**; and

(b) Settlement of disputes between a pole owner and a pole-~~user~~ **occupant** that arise under administrative rules governing pole owners and pole-~~users~~ **occupants**.

(2) In the event a representative is involved in a dispute under **subsection** (1)(b) of this rule, then the representative shall not participate in resolution of the dispute, and the JUA shall appoint a temporary representative with a similar interest.

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 860-022-0200 and 860-034-0900**

**860-028-0210****Resolution of Disputes over Plans of Correction**

(1) If a pole-~~user~~ **occupant** and a pole owner have a dispute over the reasonable ness of the plan of correction, then either party may request an order from the Commission to resolve the dispute. The party requesting resolution shall provide notice of its request to the Commission and to the other party:

(a) Upon receipt of a request, the Commission Staff shall, within 15 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 15 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission shall, within 15 days, issue an order.

(2) Notwithstanding section (1) of this rule, either the pole owner or pole-~~user~~ **occupant** may request a settlement conference with the Joint-Use Association. The settlement conference shall be in addition to, not in lieu of, the process set forth in section (1).

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 860-022-0210 and 860-034-0910**

### **860-028-0220**

#### **Resolution of Factual Disputes**

(1) If a pole-~~user~~ **occupant** and pole owner have a dispute over facts that the pole-~~user~~ **occupant** and pole owner must resolve so that the pole owner can impose appropriate sanctions, or in the event that a pole-~~user~~ **occupant** is alleging that a pole owner is unreasonably delaying the approval of a written contract or the issuance of a permit, then either the pole owner or the pole-~~user~~ **occupant** may request a settlement conference before the Joint-Use Association (JUA). The party making the request shall provide notice to the other party and to the JUA.

(2) If the JUA does not settle a dispute described in section (1) of this rule within 90 days of the notice, then either the pole owner or the pole-~~user~~ **occupant** may request a hearing before the Commission and an order from the Commission to resolve the dispute:

(a) Upon receipt of a request, the Commission Staff shall, within 30 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 30 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission shall, within 30 days, issue an order.

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 860-022-0220 and 860-034-0920**

### **860-028-0230**

#### **Pole Attachment Rental Reductions**

(1) Except as provided in section (3), a licensee shall receive a rental reduction.

(2) The rental reduction shall be based on ORS 757.282(3) and ~~on OAR 860-022-0055~~ **860-028-0110**.

(3) A pole owner or the Commission may deny the rental reduction to a licensee, if either the pole owner or the Commission can show that:

(a) The licensee has caused serious injury to the pole owner, another pole joint-use entity, or the public resulting from non-compliance with Commission safety rules and Commission pole attachment rules or its contract or permits with the pole owner;

(b) The licensee does not have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;

- (c) The licensee has engaged in a pattern of failing to obtain permits issued by the pole owner for each pole on which the pole-~~user~~ **occupant** has attachments;
  - (d) The licensee has engaged in a pattern of non-compliance with its contract or permits with the pole owner, Commission safety rules, or Commission pole attachment rules;
  - (e) The licensee has engaged in a pattern of failing to respond promptly to the pole owner, PUC Staff, or civil authorities in regard to emergencies, safety violations, or pole modification requests; or
  - (f) The licensee has engaged in a pattern of delays in payment of fees and charges due the pole owner.
- (4) A pole owner that contends that a licensee is not entitled to the rental reduction provided in section (1) of this rule shall notify the licensee of the loss of reduction in writing. The written notice shall:
- (a) State how and when the licensee has violated either the Commission's rules or the terms of the contract;
  - (b) Specify the amount of the loss of rental reduction which the pole owner contends the licensee should incur; and
  - (c) Specify the amount of any losses that the conduct of the licensee caused the pole owner to incur.
- (5) If the licensee wishes to discuss the allegations of the written notice before the Joint-Use Association (JUA), the licensee may request a settlement conference. The licensee shall provide notice of its request to the pole owner and to the JUA. The licensee may also seek resolution under section (6) of this rule.
- (6) If the licensee wishes to contest the allegations of the written notice before the Commission, the licensee shall send its response to the pole owner, with a copy to the Commission. The licensee shall also attach a true copy of the written notice that it received from the pole owner.
- (a) Upon receipt of a request, the Commission Staff shall, within 30 days, provide to the parties a recommended order for the Commission;
  - (b) Either party may, within 30 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;
  - (c) Upon receipt of written comments, the Commission shall, within 30 days, issue an order.
- (7) Except for the rental reduction amount in dispute, the licensee shall not delay payment of the pole attachment rental fees due to the pole owner.

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 860-022-0230 and 860-034-0930

### 860-028-0240

#### **Effective Dates**

(1) Except as provided in section (2) of this rule, ~~OAR 860-022-0110 through 860-022-0230~~ OARs 860-028-0120 through 860-028-0230 are effective on January 1, 2001.

(2) OAR ~~860-022-0150~~ 860-028-0150 does not apply to attachments installed on or before December 31, 2000, until January 1, 2003.



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 860-022-0240 and 860-034-0940

### Conduit Attachments

**860-034-0370**

**[ED. NOTE: Former OAR 860-034-0370 was combined with 860-022-0060 and renumbered to 860-028-0310]**

**860-028-0310**

#### **Attachments by Licensees to Conduits Owned by Public, Telecommunications, 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 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, ~~and~~ income tax, property tax, and other tax expenses attributable, on a per-duct basis, to the section of conduit occupied by the licensee.

~~—— (c) “Attachment” means any attachment defined in ORS 757.270(1) or ORS 759.650, except attachments to poles.~~

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

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

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

~~—— (g) “Licensee” means any entity defined to be a licensee by ORS 757.270(2) or ORS 759.650(2).~~

~~—— (h) “Public utility” means a public utility as defined in ORS 757.005.~~

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

(3) A disputed conduit rental rate 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.

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

(5) Licensees shall 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 apply from the date the conduit owner last inspected the conduit in dispute. The last inspection shall be deemed to be no more than three 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.

(6) 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 ~~utility's~~ **conduit owner's** space needs;

(b) Pay revised conduit rent based on the cost of new conduit constructed to meet the ~~utility's~~ **conduit owner's** space needs;

(c) Vacate ducts that are no longer surplus;

(d) Construct and maintain sufficient new conduit to meet the ~~utility's~~ **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.

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**

### **Safety and Attachment Standards for Telecommunications Providers**

#### **860-032-0410**

##### **Location of Underground Facilities**

**A telecommunications provider and its customers shall comply with requirements of OAR Chapter 952 regarding the prevention of damage to underground facilities.**

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

**Stats. Implemented: ORS 756.040 & 757.542 through 757.562**

**Hist.: NEW**

#### **860-032-0420**

##### **Construction, Safety, and Reporting Standards for Telecommunications Providers**

A telecommunications provider shall comply with the construction, safety, and reporting standards set forth in OAR Chapter 860, Division 024.

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

Stat. Implemented: ORS 757.035

Hist.: NEW

**860-032-0430**

Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities

Pole and conduit attachments shall comply with the rules set forth in OAR Chapter 860, Division 028.

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

Stats. Implemented: ORS 757.270 through 757.290 & 759.650 through 759.675

Hist.: NEW

**860-034-0360**

[ED. NOTE: Former OAR 860-034-0360 was combined with 860-022-0055 and renumbered to 860-028-0110]

**860-034-0370**

[ED. NOTE: Former OAR 860-034-0370 was combined with 860-022-0060 and renumbered to 860-028-0310]

**860-034-0420**

**Location of Underground Facilities**

A small telecommunications utility or telecommunications cooperative and its customers shall comply with requirements of ~~OAR 952-001-0010 through and including OAR 952-001-0090~~ Chapter 952 regarding ~~identification and notification of the prevention of damage to~~ underground facilities.

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

Stats. Implemented: ORS ~~757.452~~ 757.542 through 757.562 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188); PUC 12-1999, f. & ef. 11-18-99 (Order No. 99-709)

**860-034-0430**

Construction, Operation, and Maintenance of Electrical Supply and Signal Lines, Safety, and Reporting Standards for Small Telecommunications Utilities and Telecommunications Cooperatives

~~Construction, operation, and maintenance of electrical supply and signal lines shall comply with the standards prescribed by the 1997 Edition of the American National Standard, National Electrical Safety Code approved June 6, 1996, by the American National Standards Institute.~~

**Every small telecommunications utility and telecommunications cooperative shall comply with the construction, safety, and reporting standards set forth in OAR Chapter 860, Division 024.**

[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, 757.035, ~~758.215~~ & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 3-1994, f. & ef. 1-14-94 (Order No. 94-074); PUC 13-1994, f. & ef. 8-31-94 (Order No. 94-1243); PUC 7-1997, f. & ef. 2-6-97 (Order No. 97-032); **combined with OAR 860-034-0400**

**860-034-0505**

**Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities**

**Pole and conduit attachments shall comply with the rules set forth in OAR Chapter 860, Division 028.**

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

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

**Hist.: NEW**

**860-034-0570**

**[ED. NOTE: Former OAR 860-034-0570 was combined with 860-028-0005 and renumbered to 860-024-0050]**

**860-034-0810**

**[ED. NOTE: Former OAR 860-034-0810 was combined with 860-022-0110 and renumbered to 860-028-0020]**

**860-034-0820**

**[ED. NOTE: Former OAR 860-034-0820 was combined with 860-022-0120 and renumbered to 860-028-0120]**

**860-034-0830**

**[ED. NOTE: Former OAR 860-034-0830 was combined with 860-022-0130 and renumbered to 860-028-0130]**

**860-034-0840**

**[ED. NOTE: Former OAR 860-034-0840 was combined with 860-022-0140 and renumbered to 860-028-0140]**

**860-034-0850**

**[ED. NOTE: Former OAR 860-034-0850 was combined with 860-022-0150 and renumbered to 860-028-0150]**

**860-034-0860**

**[ED. NOTE: Former OAR 860-034-0860 was combined with 860-022-0160 and renumbered to 860-028-0160]**

**860-034-0870**

**[ED. NOTE: Former OAR 860-034-0870 was combined with 860-022-0170 and renumbered to 860-028-0170]**

**860-034-0880**

**[ED. NOTE: Former OAR 860-034-0880 was combined with 860-022-0180 and renumbered to 860-028-0180]**

**860-034-0890**

**[ED. NOTE: Former OAR 860-034-0890 was combined with 860-022-0190 and renumbered to 860-028-0190]**

**860-034-0900**

**[ED. NOTE: Former OAR 860-034-0900 was combined with 860-022-0200 and renumbered to 860-028-0200]**

**860-034-0910**

**[ED. NOTE: Former OAR 860-034-0910 was combined with 860-022-0210 and renumbered to 860-028-0210]**

**860-034-0920**

**[ED. NOTE: Former OAR 860-034-0920 was combined with 860-022-0220 and renumbered to 860-028-0220]**

**860-034-0930**

**[ED. NOTE: Former OAR 860-034-0930 was combined with 860-022-0230 and renumbered to 860-028-0230]**

**860-034-0940**

**[ED. NOTE: Former OAR 860-034-0940 was combined with 860-022-0240 and renumbered to 860-028-0240]**

**860-036-0345**

**Location of Underground Facilities**

A water utility and its customers shall comply with requirements of OAR ~~952-001-0010~~ **through and including OAR 952-001-0090 Chapter 952** regarding ~~identification and notification of the prevention of damage to~~ underground facilities.

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

Stats. Implemented: ORS 756.040 & ~~757.452~~ **757.542 through 757.562**

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 12-1999, f. & ef. 11-18-99 (Order No. 99-709)

**860-036-0350**

**Construction, Safety, and Reporting Standards for Water Utilities**

**If a water utility engages in the management, operation, ownership, or control of gas pipelines or communication, signal, or electrical supply lines within Oregon, the water utility shall comply with the construction, safety, and reporting standards set forth in OAR Chapter 860, Division 024.**

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

**Stats. Implemented: ORS 756.040 & 757.020, 757.035 & 757.039**

**Hist.: NEW**

**860-036-0360**

**Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities**

**Pole and conduit attachments shall comply with the rules set forth in OAR Chapter 860, Division 028.**

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

**Stats. Implemented: ORS 756.040, 757.270 through 757.290 & 759.650 through 757.675**

**Hist.: NEW**

**860-037-0320**

**Location of Underground Facilities**

~~(1) A wastewater utility and its customers shall comply with requirements of OAR **952-001-0010 through and including OAR 952-001-0090 Chapter 952** regarding **identification and notification of the prevention of damage to** underground facilities.~~

~~(2) **Colors for marking location of underground facilities shall be listed as indicated:**~~

~~(a) **Red – Electric power lines, cables or conduit, and lighting cables;**~~

~~(b) **Yellow – Gas, oil, steam, petroleum, or other hazardous liquid or gaseous materials;**~~

~~(c) **Orange – Communications, cable televisions, alarm or signal lines, cables, or conduits;**~~

~~(d) **Blue – Water, irrigation, and slurry lines;**~~

~~(e) **Green – Wastewater and drain lines; and**~~

~~(f) **White – For voluntary premarking of the outer limits of the proposed excavation of marking the centerline of proposed lineal installations of pipe, cables, conduits, or other items where the trench will not exceed 24 inches in width.**~~

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

**Stats. Implemented: ORS 756.040, 757.005 & ~~757.561~~ **757.542 through 757.562****

**Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194)**

**860-037-0325**

**Construction, Safety, and Reporting Standards for Wastewater Utilities**

**If a wastewater utility engages in the management, operation, ownership, or control of gas pipelines or communication, signal, or electrical supply lines within Oregon, the wastewater utility shall comply with the construction, safety, and reporting standards set forth in OAR Chapter 860, Division 024.**

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

**Stats. Implemented: ORS 756.040 & 757.020, 757.035 & 757.039**

**Hist.: NEW**

**860-037-0330**

**Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities**

**Pole and conduit attachments shall comply with the rules set forth in OAR Chapter 860, Division 028.**

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

**Stats. Implemented: ORS 756.040, 757.270 through 757.290 & 759.650 through 757.675**

**Hist.: NEW**

**860-038-0005**

**Definitions for Direct Access Regulation**

As used in this Division:

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.

(2) "Advisory committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Office of Energy, and the following:

- (a) Local governments;
- (b) Electric companies;
- (c) Residential consumers;
- (d) Public or regional interest groups; and
- (e) Small nonresidential consumers.

(3) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services. "Aggregator" means an entity that aggregates.

(4) "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.

(5) "Commission" means the Public Utility Commission of Oregon.

(6) "Common costs" means costs that cannot be directly assigned to a particular function.

(7) "Consumer-owned utility" means a municipal electric utility, a people's utility district or an electric cooperative.

(8) “Default supplier” means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.

(9) “Direct access” means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.

(10) “Direct service industrial consumer” means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(11) “Distribution” means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(12) “Distribution utility” means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(13) “Divestiture” means the sale of all or a portion of an electric company’s ownership share of a generation asset to a third party.

(14) “Economic utility investment” means all Oregon allocated investments made by an electric company prior to the date the electric company offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. “Economic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(15) “Electric company” means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(16) “Electric cooperative” means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(17) “Electric utility” means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(18) “Electricity” means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(19) “Electricity services” means electricity distribution, transmission, generation or generation-related services.

(20) “Electricity service supplier” or “ESS” means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. “Electricity service supplier” does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(21) “Emergency default service” means a service option provided by an electric company to a nonresidential consumer that requires less than five business days’ notice by the consumer or its electricity service supplier.

(22) “Functional separation” means separating the costs of the electric company’s business functions and recording the results within its accounting records, including allocation of common costs.

(23) “Large nonresidential consumer” means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-



month period, or any different level of consumption as may be established by the Commission pursuant to the proceeding identified in OAR 860-038-0080(5)(a).

(24) “Load” means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(25) “Local energy conservation” means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.

(26) “Low-income weatherization” means repairs, weatherization and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(27) “Market transformation” means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(28) “Multi-state electric company” means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.

(29) “Municipal electric utility” means an electric distribution utility owned and operated by or on behalf of a city.

(30) “Net system power mix” means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Office of Energy.

(31) “New” as it refers to energy conservation, market transformation and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company.

(32) “New renewable energy resource” means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation on or before July 23, 1999. “New renewable energy resource” does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

(33) “Nonresidential consumer” means a retail electricity consumer who is not a residential consumer.

(34) “Office of Energy” means the Oregon Office of Energy created under ORS 469.030.

(35) “Ongoing valuation” means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at forecast market prices for a one-year period to an estimate of the revenue requirement of the asset for the same time period.

(36) “One-time administrative valuation” means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

(37) “One average megawatt” means 8,760,000 kilowatt-hours of electricity per year.

(38) “Oregon share” means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.

(39) “People’s utility district” has the meaning given that term in ORS 261.010.

(40) “Portfolio” means a set of product and pricing options for electricity.

(41) “Qualifying expenditures” means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Office of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(42) “Registered dispute” means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission’s Consumer Services Division but is not the subject of a formal complaint.

(43) “Regulated charges” means charges for services subject to the jurisdiction of the Commission.

(44) “Regulatory assets” means assets that result from rate actions of regulatory agencies.

(45) “Renewable energy resources” means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; and

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(46) “Residential consumer” means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. “Residential consumer” does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, “dwelling” includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.

(47) “Retail electricity consumer” means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric company on or after July 23, 1999, whether or not each end user purchases the electricity from the electric company. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after October 1, 2001, at the site.

(48) “Self-directing consumer” means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Office of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company’s tariff regarding public purpose credits.

(49) “Serious injury to person” ~~means, in the case of an employee, any injury that results in hospitalization. In the case of a nonemployee, “serious injury” means any contact with an energized high-voltage line, or any incident that results in hospitalization. Treatment in an emergency room is not hospitalization~~ has the meaning given in OAR 860-024-0050.

(50) “Serious injury to property” ~~means damage to ESS and non-ESS property exceeding \$25,000 or failure of ESS facilities that causes or contributes to a loss of energy to consumers~~ has the meaning given in OAR 860-024-0050.

(51) “Site” means a single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, or buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter.

(52) “Small nonresidential consumer” means a nonresidential consumer that is not a large nonresidential consumer.

(53) “Special contract” means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.

(54) “Structural separation” means separating the electric company’s assets by transferring assets to an affiliated interest of the electric company.

(55) “Total transition amount” means the sum of an electric company’s transition costs and transition benefits.

(56) “Traditional allocation methods” means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company’s last Oregon rate proceeding completed prior to December 31, 2000.

(57) “Transition benefits” means the value of the below-market costs of an economic utility investment.

(58) “Transition charge” means a charge or fee that recovers all or a portion of an uneconomic utility investment.

(59) “Transition costs” means the value of the above-market costs of an uneconomic utility investment.

(60) “Transition credit” means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

(61) “Transmission grid” means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries.

(62) “Unbundling” means the process of assigning and allocating a utility’s costs into functional categories.

(63) “Uneconomic utility investment” means all Oregon allocated investments made by an electric company prior to the date the electric company offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. “Uneconomic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.

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

Stat. Implemented: ORS 756.040 & 757.600-~~to~~ through 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00 (Order No. 00-596)

## **860-038-0400**

### **Electricity Service Supplier Certification Requirements**

(1) An electricity service supplier (ESS) must be certified by the Commission to sell electricity services to consumers.

(2) An ESS must be certified as either scheduling or nonscheduling as prescribed in OAR 860-038-0410.

(3) The initial certification fee is \$400.

(4) The annual renewal fee is \$200.

(5) At a minimum, an ESS applicant must provide the following information:

(a) Name of applicant, including owners, directors, partners, and officers, with a description of the work experience of key personnel in the sale, procurement, and billing of energy services or similar products;

(b) Name, address, and phone number of the ESS applicant's regulatory contact;

(c) Proof of authorization to do business in the state of Oregon;

(d) Dun and Bradstreet number, if available;

(e) Confirmation that the applicant (including owners, directors, partners, and officers) has not violated consumer protection laws or rules in the past three years;

(f) Financial statements and credit reports;

(g) Information documenting technical competence;

(h) Identification of the services and products intended to be offered; and

(i) Identification of targeted customer class(es) and geographical area;

(j) A statement as to whether the ESS is applying for certification as a scheduling or nonscheduling ESS and information documenting an ability to comply to the requirements of OAR 860-038-0410; and

(k) The authorized representative of the ESS must state that all information provided is true and correct and sign the application.

(6) At a minimum, an ESS applicant must attest that it will:

(a) Furnish to consumers a toll-free number or local number that is staffed during normal business hours to enable a consumer to resolve complaints or billing disputes and a statement of the ESS's terms and conditions that detail the customer's rights and responsibilities;

(b) Comply with all applicable laws, rules, Commission orders, and electric company tariffs;

(c) Maintain insurance coverage, security bond, or other financial assurance commensurate with the types and numbers of consumers and loads being served, meet any other credit requirements contained in the electric company's tariffs, and cover creditors for a minimum of 90 days from the date of cancellation; and

(d) Adequately respond to Commission information requests within 10 business days.

(7) As conditions for certification, an ESS must agree to:

(a) Enter into an agreement or agreements with each respective electric company to assign to the electric companies any federal system benefits available from the Bonneville Power Administration to the residential and small-farm customers who receive distribution from an electric company and are served by the ESS; and

(b) Not enter into a Residential Sale and Purchase Agreement with the Bonneville Power Administration pursuant to Section 5(c) of the Pacific Northwest Power Act concerning federal system benefits available to residential and small farm customers receiving distribution from an electric company.

(8) An ESS must take all reasonable steps, including corrective actions, to ensure that persons or agents hired by the ESS adhere at all times to the terms of all laws, rules, Commission orders, and electric company tariffs applicable to the ESS.

(9) An ESS must notify the Commission that it will not be renewing its certification or it must renew its certification each year as follows:

(a) An ESS must submit its application for renewal 30 days prior to the expiration date of its current certificate;

(b) In its application for renewal the ESS must include the renewal fee, update the information specified in subsections (5)(a), (b), (h), (i), and (j) of this rule, and state whether it violated or is currently being investigated for violation of any attestation made under the current certificate. The ESS must state that it continues to attest that it will meet the requirements of

sections (6) and (7) of this rule. The authorized representative of the ESS must state that all information provided is true and correct and sign the renewal application;

(c) If the Commission takes no action on the renewal application, the renewal is granted for a period of one year from the expiration date of the prior certificate;

(d) If a written complaint is filed, or if on the Commission's own motion, the Commission has reason to believe the renewal should not be granted, the Commission will conduct a revocation proceeding per section (10) of this rule. The renewal applicant will be considered temporarily certified during the pending revocation proceeding.

(10) Upon review of a written complaint or on its own motion the Commission may, after reasonable notice and opportunity for hearing, revoke the certification of an ESS for reasons including, but not limited to, the following:

(a) Material misrepresentations in its application for certification or in any report of material changes in the facts upon which the certification was based;

(b) Material misrepresentations in customer solicitations, agreements, or in the administration of customer contracts;

(c) Dishonesty, fraud, or deceit that benefits the ESS or disadvantages customers;

(d) Demonstrated lack of financial or operational capability; or

(e) Violation of agreements stated in sections (6) and (7) of this rule.

(11) An ESS must promptly report to the Commission any circumstances or events that materially alter information provided to the Commission in the certification or renewal process or otherwise materially impacts their ability to reasonably serve electricity consumers in Oregon.

(12) Each ESS that owns, operates, or controls electrical supply lines and facilities subject to ORS 757.035 must have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service. Each such ESS must inspect its lines and facilities in such a manner and with such frequency as may be needed to ensure a reasonably complete knowledge about their condition and adequacy at all times. Such record must be kept of the conditions found as the ESS considers necessary to properly maintain its system, unless in special cases the Commission specifies a more complete record. The ESS must have written plans describing its inspection, operation, and maintenance programs necessary to ensure the safety and reliability of the facilities. The written plans and records required herein must be made available to the Commission upon request. The ESS must report serious injuries to persons or property ~~to the Commission in accordance with ORS 860-024-0050.~~

~~—(a) Every ESS must give immediate notice to the Commission by telephone, FAX, e-mail, or in person of incidents 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 the ESS; and~~

~~—(b) In addition to the immediate notice required in subsection (12)(a) of this rule, the incident must be reported in writing to the Commission within 20 days of the occurrence using a format prescribed by the Commission.~~

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00 (Order No. 00-596)

### **860-038-0450**

#### **Location of Underground Facilities**

An ESS and its customers shall comply with requirements of Chapter 952 regarding the prevention of damage to underground facilities.

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

Stats. Implemented: ORS 756.040, 757.542 through 757.562 & 757.649

Hist.: NEW

**860-038-0460**

**Construction, Safety, and Reporting Standards for Electricity Service Suppliers**

**An ESS shall comply with the construction, safety, and reporting standards set forth in OAR Chapter 860, Division 024.**

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

Stats. Implemented: ORS 756.040, 757.035, 757.039, & 757.649

Hist.: NEW

**860-038-0470**

**Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities**

**Pole and conduit attachments shall comply with the rules set forth in OAR Chapter 860, Division 028.**

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

Stats. Implemented: ORS 756.040, 757.270 through 757.290, 757.600 through 757.667 & 759.650 through 759.675

Hist.: NEW