

AR 638 –Rulemaking

DRAFT OJUA Comments Concerning Joint Inspections and High Fire Risk Zone Safety Standards

OPUC Proposal:

- OAR 860-024-0001 (5) “Joint Inspection” means an inspection that includes both the Owner and Occupant(s) of any utility pole, structure, duct or conduit.
- OAR 860-028-0018 (5) Public Utility Owners of electric supply facilities and pole Occupants in High Fire Risk Zones shall participate in “Joint Inspections” of facilities to identify violations of Commission Safety Rules and mitigate fire risk.

OJUA Comments:

The OJUA offers its unique perspective on joint inspections as an entity which represents diverse industry perspectives. OJUA has seventy-eight (78) members including: Cable Operators; Telecommunications Operators; Competitive Providers; Government Entities; Wireless Carriers; Investor-Owned Utilities; Consumer-Owned Utilities; and Contractors. The OJUA, with its unique and diverse membership, is a long-time proponent of *voluntary* joint inspections.¹

The OJUA’s mission to is to “Become a resource that builds trust, cooperation, and organization between support structure (pole) owners, users, and government entities that will result in the safe, efficient use of the Right of Way and a self sustaining nonprofit association.” In support of its mission, the OJUA maintains several active committees – specifically including, an Inspection Correction Efficiency (ICE) Committee which was formed in 2012. Deliverables of the ICE Committee include: a best practices technical manual that sets forth recommendations for joint inspection coordination between pole owners and pole occupants; a standing committee meeting where participants may discuss associated topics; and a robust GIS map that displays operator service territories and certain inspection coverage areas. The map can be accessed at this link: <https://www.ojua.org/oregon-utility-mapping-project/>. As the voice of

¹ See, e.g. OPUC Docket No. AR 506 – In the Matter of Rulemaking to Amend and Adopt Permanent Rules in OAR 860 Division 24 Regarding Pole Attachment Use and Safety, Comments of the Oregon Joint Use Association dated May 1, 2006 at 7.

the industry, the OJUA has opposed and continues to oppose *mandated* joint inspections. The OJUA's concerns relating to the AR 638 proceeding are described below.

The Commission Should Avoid a De Facto Joint Use Rulemaking

The Commission should avoid a *de facto* joint use rulemaking. AR 638 was initiated to address "risk-based wildfire protection plans and planned activities consistent with the Governor's Executive Order 20-04." The rulemaking was not initiated to address the provisions that govern joint use between pole owners and occupants. The scope of joint inspections goes far beyond safety, and impacts attachment rates, terms and conditions which are governed by pole attachment and joint use contracts as well as Chapter 860 Division 028 rules. In addition to the OJUA's concerns regarding the scope of the proceeding, however, the OJUA is also concerned that if the generic requirement to conduct joint inspections were to be adopted by the Commission it would lead to contract disputes between owners and occupants.

Joint Inspections Must Remain Voluntary and Not Mandated by the Commission

Joint inspections must remain voluntary and not mandated by the Commission. Each operator is situated differently, and a joint inspection program may or may not be feasible or practical for everyone. The OJUA notes that its members currently maintain inspection programs and cycles to satisfy Chapter 860 Division 024 requirements. A requirement to perform joint inspections in High Fire Risk Zones would introduce a number of adverse impacts. First, inspection cycles are impacted. For example, most pole occupants already maintain a 10-year inspection cycle and a more frequent inspection of High Fire Risk Zone may lead to redundancy or fluctuations in annual volumes of inspections which are difficult to manage from year-to-year. Furthermore, depending on the size and location of the pole occupant's system – it may be located entirely in a High Fire Risk Zone and thus its entire system could be inspected each year. Second, each operator is situated differently from a resource standpoint. To support inspection programs, some operators maintain in-house personnel, others use contract resource, and some use a combination of both. Joint inspections are intensive to plan, coordinate, and manage and may require operators to increase resource levels without a commensurate enhancement to safety or wildfire mitigation.

Mandated Joint Inspections Will Not Enhance Safety or Wildfire Mitigation

Mandated joint inspections will not enhance safety or wildfire mitigation. Specifically, the adoption of a new rule which requires joint inspections does not mean that all operators located within a High Fire Risk Zone will be responsive to inspection coordination, cost-sharing, and corrections. Stated another way, if an operator does not currently maintain a program, its unlikely that it will be responsive to additional Chapter 860 Division 024 requirements. In fact, a requirement to bring all pole occupants into existing voluntary joint inspection programs could be disruptive as the programs would need to be expanded in complexity without any

assurance that new participants would contribute to cost sharing or be responsive to an additional volume of violations which may be identified.

The Commission has Mechanisms Available to Address Non-Compliance with Safety Standards

The Commission has mechanisms available to address non-compliance with Safety Standards. The OJUA firmly believes that each operator should be responsible for its own inspection and correction program, as well as maintain independent reporting to the Commission. Indeed, existing Chapter 860 Division 024 rules were deliberately written, with full industry participation, to accomplish this. Should the Commission wish to address non-compliance concerning a specific operator, including operators that may not have an adequate inspection and correction program, they can employ a number of mechanisms. First, “when an operator has demonstrated a pattern of non-compliance with Commission Safety Rules, the Commission may require a shorter interval between inspections.”² Second, the Commission may deny a rental rate reduction to a licensee if certain conditions are met, including if the licensee has engaged in a pattern of non-compliance with Commission Safety Rules.³ Finally, failure to comply with Commission safety regulations or NESC rules can result in Commission orders and/or civil penalties.⁴

OPUC Proposal:

- OAR 860-024-0011 (B) Detailed inspections include, but are not limited to, visual checks, pole test and treat programs or practical tests of all facilities, to the extent required to identify violations of Commission Safety Rules. Where facilities are exposed to extraordinary conditions (including High Fire Risk Zones) or when an operator has demonstrated a pattern of non-compliance with Commission Safety Rules, the Commission may require a shorter interval between inspections.

- OAR 860-024-0012 (3) An Operator may elect to defer correction of violations of the Commission Safety Rules that pose little or no foreseeable risk of danger to life or property to correction during the next major work activity. (a) In no event shall a deferral under this section extend for more than ten years after discovery.

(b) The Operator must develop a plan detailing how it will remedy each such violation.

(c) If more than one Operator is affected by the deferral, all affected operators must agree to the plan. If any affected operators do not agree to the plan, the correction of violation(s) may not be deferred.

² See, OAR 860-024-0011(1)(b)(B).

³ See, OAR 860-028-0230.

⁴ Refer to ORS 757.990(1) for penalty amounts.

(4) The exception in subsection (3) expires on 12/31/2027.

- OAR 860-024-0018 (3) In addition to the requirements set forth in 860-024-0011, Operators of electric facilities in High Fire Risk Zones must:
 - (a) conduct at a minimum, enhanced detailed inspections, including, but are not limited to, in person, onsite visual checks, or practical tests of all facilities, to the extent required to mitigate fire risk and identify violations of Commission Safety Rules.
 - (b) for transmission systems energized at or above 50,001 volts, perform and document, at a minimum, detailed inspections via onsite climbing or high-powered spotting scope to identify structural and conductor defects, as well as violations of Commission Safety Rules.
- OAR 860-024-0018(4) In addition to the requirements set forth in 860-024-0011, Public Utility Operators of electric facilities must conduct annual fire season safety patrols in High Fire Risk Zones. Public Utility Operators of electric facilities shall perform and document, in person, fire safety patrols of overhead electric supply lines and accessible facilities for potential fire risks, including but not limited to, off right of way hazard trees, right of way access for first responders, seasonal vegetation damage, vegetation Cycle Buster clearance conditions as defined in 860-024-0016(1)(a), potential equipment failures, and deteriorated supply or communication facilities.
- OAR 860-024-0018 (5) Public Utility Owners of electric supply facilities and pole Occupants in High Fire Risk Zones shall participate in “Joint Inspections” of facilities to identify violations of Commission Safety Rules and mitigate fire risk.
- OAR 860-024-0018 (6) Beginning on 12/31/2027, at the discretion of the pole owner, Consumer Owned Utility Pole Owners and Occupants in High Fire Risk Zones will implement detailed inspection cycle alignment to identify violations of Commission Safety Rules and mitigate fire risk.
- OAR 860-024-0018 (7) A violation of Commission Safety Rules in High Fire Risk Zones affecting energized conductors and a heightened risk of wildfire, as identified by the Operator of electric facility, shall be corrected no later than 180 days after discovery, regardless of pole ownership.

OJUA Comments:

Notwithstanding the AR 638 workshops which have been held in connection with the proposed changes and additions to Chapter 860 Division 024 rules, OJUA members still have a

number of questions relating to the Commission's desired policy outcome as well as the intent surrounding Commission's proposed language. The OJUA respectfully requests that the Commission provide greater clarity in the following areas, with the goal to ultimately adopt rules that the industry can clearly understand and apply:

- Proposed OAR 860-024-0018(3) and OAR 860-024-0018(4) are both characterized as being in addition to the requirements set forth in 860-024-0011. Greater clarity is needed from the Commission as to how many different inspections on an annual basis would be required to satisfy the existing Section 0011 rules combined with the new 0018 rules. OJUA members question whether multiple inspections of the same pole would be required by operators of electric facilities on an annual basis.
- Proposed Section 0018 is titled as "High Fire Risk Safety Standards" however OAR 860-024-0018(3) and OAR 860-024-0018(4) are drafted to require the identification of all violations of Commission Safety Rules. Because not all violations of Commission Safety Rules are associated with high fire risk, what is the purpose of broadening the scope of inspections?

The OJUA raises the following additional concerns:

- Regarding OAR 860-024-0011 (B), the requirement for pole test and treat programs to be performed by operator of communication facilities should be removed, unless they are the owner of the pole.
- Regarding OAR 860-024-0012 (4), the ability to utilize the deferral outlined in 860-024-0012 (3) should not be terminated, as it is a valuable and necessary option to efficiently use resources. Examples of deferring costly pole change-outs include street widening projects, forced relocate projects, and other minor code violations. The OJUA commented strongly on this at the previous 506 Rulemaking, and believes this should remain. If there are operators who improperly employ this deferral, the OPUC has mechanisms as previously stated.
- Regarding OAR 860-024-0018(6), the OJUA is concerned that pole occupants may be unable to plan for a detailed inspection cycle alignment which is at the discretion of the pole owner and may not be determined until as late as the final year of the current 10-year cycle (12/31/2027).
- Regarding OAR 860-024-0018 (7), definitions and examples have not been provided with respect to what affects energized conductors or what involves a heightened risk of wildfire. Therefore, OJUA members question which violations would need to be corrected within the

proposed 180-day timeframe. The OJUA recommends that correction timeframes be governed by each operator and existing OAR 860-024-0012.

OPUC Proposal:

Public Safety Power Shutoff
860-300-0002
Definitions for this Division

The OJUA raises the concern of ensuring that affected or impacted communications operators are made aware of pending Public Safety Power Shutoff activity. OJUA believes that affected communications operators should be defined in the rules and included in the sections noted below.

The OJUA offers for consideration the following definition of affected or impacted communications operators:

“Affected communications operators” means a communications service provider that is a pole occupant or a communications service provider likely to suffer a loss of power due to the Public Safety Power Shutoff”

OPUC Proposal

860-300-0006 Communications Requirements Prior, During, and After a Public Safety Power Shutoff

OJUA Comment

The OJUA believes that affected communications operators should be notified when a PSPS is likely to occur. As an example, the OJUA offers the following and requests that the term “affected communications operator(s) be used in the section whenever a pole owner is required to provide notification of a PSPS:

- (1) When a Public Utility determines that a PSPS is likely to occur, it must deliver notification of the PSPS to its Public Safety Partners, operators of utility identified critical facilities, affected communications operators and adjacent local Public Safety Partners.
 - (a) To the extent practicable, the Public Utility must provide priority notification directly to Public Safety Partners, operators of utility identified critical facilities, affected communications operators and adjacent local Public Safety Partners.

The OJUA appreciates the opportunity to provide feedback regarding this rulemaking. The OJUA Board of Directors is willing to engage in the process as fully as practical and welcomes any comments or responses to these proposed edits and comments.

Best Regards

Brant Wolf
OJUA President 2021

18 November 2021