



# Oregon

Theodore R. Kulongoski, Governor

## Public Utility Commission

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November 8, 2006

OREGON PUBLIC UTILITY COMMISSION  
ATTENTION: FILING CENTER  
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RE: **Docket No. AR 506 Phase II** - In the Matters of a Rulemaking to Amend  
and Adopt Permanent Rules in OAR 860, Division 028.

Enclosed for electronic filing in the above-captioned docket are the second round  
comments of the Public Utility Commission Staff. Courtesy copies are being  
provided to the AR 506 service list by electronic mail and U.S. mail.

*/s/ Diane Davis*

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c: AR 506 Service List

AR 506 Staff Recommendations for Phase II Rules

OPUC Staff respectfully submits Attachment C as the recommended rules that the Public Utility Commission of Oregon (Commission or OPUC) should adopt in phase II of these proceeding.

With respect to AR 510, Staff will need to review the Oregon Joint Use Association's (OJUA's) finalized rule proposals before it can further comment on them. OPUC Staff commends the OJUA and affected parties for its hard work and cooperation in the modification of sanction principles that will improve cooperation between pole owners and occupants. We are supportive of this effort and the draft principles proposed so far by the OJUA - as we understand them.

Staff's comments related to the AR 506 phase II rules and proceedings are included below.

Wireless Attachment Issues

Staff continues to believe that the participants have not adequately addressed wireless issues in AR 506. Discussion at AR 506 workshops confirms that the issues are too numerous and complex to be considered in this docket. They should be addressed in informal industry workshops and later in a separate rulemaking docket where more time and focus can be given to wireless matters.

It should be remembered that the OJUA insisted that AR 506 be divided into two phases: phase I for safety rules and phase II for attachment regulations. The OJUA stated that mandatory safety rules needed to be decided first before phase II could begin. The wireless industry was not involved in phase I, and now wants phase II rules to be made applicable to them. The wireline and wireless industries, the OJUA, and Staff should be given more time to address needed safety and attachment policies, standards and processes. Some of the issues that need consideration are covered in Attachment A.

The AR 506 pole attachment proposed rules (phases I and II) were primarily made with attachments in mind that are installed within the "communication usable space" on a pole. When communication or wireless attachments are put into the "electric supply usable space" on a pole or onto the pole top; the safety, reliability and cost issues become very complex, requiring unique engineering, construction, maintenance, and cost accounting attention.

The California PUC (CPUC) has been working for over two years on wireless pole attachment issues. It just recently issued a draft safety decision for wireless attachments, which can be found at: [http://www.cpuc.ca.gov/word\\_pdf/AGENDA\\_DECISION/58264.pdf](http://www.cpuc.ca.gov/word_pdf/AGENDA_DECISION/58264.pdf). If adopted, this order would only apply to antennas in the communication space on a pole. Also, Staff has heard that the CPUC is planning a new and separate safety docket to deal with pole top antennas. These installations have even more complex issues than those in the pole communication space. Staff thinks that CPUC is taking the right approach on wireless attachment safety.

Staff believes that the proposed attachment rules for Division 028 could be made applicable to wireless attachments placed within the communication usable space on poles. However, Staff

still has safety concerns about wireless attachments relative to lineworker safety. For a drawing of a utility pole electric communication usable space and electric supply usable, *see* Attachment B.

Staff does not object to wireless attachments on distribution poles or transmission poles; however, the OPUC's pole attachment rental rate formula for fully allocated costs does not seem appropriate for wireless attachments in many instances. Neither the wireless industry nor wireline industries (i.e., electric, telephone, and CATV) have submitted proposals to Staff on annual rental rates and charges that are appropriate for wireless attachments. The respective industries need to come forward with these proposals.

The Federal Communication Commission (FCC) has said that rates must be just and reasonable for wireless attachments, but has offered no formulas or standards for wireless applications. The FCC has emphasized that it will rule instead on a case-by-case basis in wireless disputes. In the *Omnipoint Corporation v. PECO Energy Company Case* (DA 03-857), the FCC ruled that the utility must give the attacher the historical cost data relating to the poles to which the wireless facilities would be attached, so that the attacher could determine if the rental rate is just and reasonable. The FCC acknowledged that "the pole attachment formula presumptions may be modified or adjusted in order to address unique attachment associated with wireless systems."<sup>1</sup>

If wireless issues are not adequately addressed, the safety and reliability of Oregon's electric and communication lines, including joint use cooperation, will be jeopardized with increased injuries, outages, and disputes to electric and communication operators. The duties of structure owners, wireline occupants, wireless occupants, and lineworkers need to be carefully thought out with respect to wireless attachments. Staff does not believe the various wireless issues mentioned have been discussed and addressed nearly enough for the Commission to make an informed decision in AR 506.

### Mandatory Rules in Division 028

Staff recommends that rules 028-0050 through 028-0080 be made mandatory to both owners and occupants. Rule 028-0115 needs to be made mandatory for owners, and rule 028-0120 should be made mandatory for occupants. Ongoing mistrust and issues between various owners and occupants indicates that nondiscretionary Division 028 rules are needed now to ensure ongoing joint use cooperation. This is necessary to ensure "safe and efficient utility poles, attachment installation practices, and rights of way" as directed by the Oregon Legislature in 1999 in House Bill 2271.

### Duties of Pole Owners and Duties of Pole Occupants

Staff reluctantly agreed to move the *Duties of Pole Owners* from Division 024 rules to Division 028 rules. The pole owner clearly needs to be the leader in establishing and enforcing reasonable attachment policies, technical standards, communication protocols and contract provisions. Without effective pole management by electric supply and communication utilities,

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<sup>1</sup> Access to Poles, Ducts, Conduits and Rights of Way by Cable and Telecommunications Companies, Raymond A. Kowalski, Troutman Sanders LLP, July 31, 2003, page 15

the safety and reliability of Oregon's power lines and communication lines are at serious risk. In the spirit of compromise in AR 506 Phase I (Safety), Staff agreed to the moving of Duties of Pole Owners to Division 028 rules with the understanding that the intent of these duty rules would not be changed.

#### Vegetation Management by Communication Occupants and Owners

In the phase I proceedings Staff reluctantly agreed to move the communication vegetation management rules originally proposed in Division 024 to Division 028. Staff continues to believe that the language it originally proposed for Division 024 needs to be preserved. Some parties argue that communication owners and occupants should only be required to trim or remove vegetation when there is direct hard contact. Staff disagrees. Communication operators need to have proactive programs that address vegetation conflicts that pose a significant risk to their communication facilities and to affected joint use facilities. These rules should not be moved to the "Duties of Occupant" rule in Division 028 because the vegetation management rules for communication operators apply to both pole owners and occupants. It should be noted that the electric utilities already have mandatory vegetation management regulations established within Division 024 and need not be covered in Division 028.

#### Government entities as used in Division 28 Rules

Currently ORS 757.273 and ORS 757.276 only authorize the OPUC to regulate the attachment rates, terms, and conditions over licensees. A "licensee" as defined in ORS 757.270(3) is any occupant that is not a government entity and is authorized to construct attachments upon the public rights of way. *See Qwest Corporation v. PUC, 205 Or App370 (2006).*

Government entities are not subject to the cost provisions of Division 028. The OPUC's attachment authority over attachment terms and conditions for government entities comes from ORS 757.035 (Adoption of Safety Rules and Regulations; Enforcement). Utility facility owners need other cost recovery mechanisms than those provided by the OPUC's attachment authority (e.g, agreements with government entities including franchise agreements).

#### Idaho Power Exemption

Staff does not agree with Idaho Power's request to be exempted from the Division 028 guidelines. The Commission does not have express statutory authority to exempt Idaho Power. In any event, if Idaho Power was given such an exemption, OPUC would still have to hear and resolve a complaint filed by a licensee against Idaho Power.

#### Idaho Power's Proposed Rental Rate Formula

The proposed rental formula by Idaho Power is more closely aligned to the FCC telecommunications formula than with ORS 757.282, which is based upon a rental formula for cable television operators. The following background information explains why.

Oregon is one of 18 states that are certified by the FCC to regulate their state's pole and conduit attachments. In the late 1970s the Oregon Legislature chose to not to be under federal FCC regulation with regard to pole and conduit attachments. Follow-up OPUC rulemakings (*see, e.g.*, Commission Orders 84-278 and 84-608) emphasized that the OPUC would not be adhering to FCC guidelines for all attachment rates, terms, and conditions.

The FCC had, and still has, a *cable television* rental rate formula that has been in effect since the late 1970s (*see* 47 CFR Section 224(d)) which ORS 757.282, and the corresponding OPUC rule, follows with considerable similarity for all Oregon licensees (including electric utilities, telecommunications utilities, telecommunications providers and cable television operators).

However, after the Telecommunications Act of 1996, the FCC adopted a new rental rate formula that applies to *telecommunications service providers*. This telecommunications formula, covered in 47 CFR 224(e), gives pole owners under many conditions greater cost recovery than is allowed by the cable television rental formula. The telecommunications formula is different than the FCC cable formula in that licensees share more equally in the costs for the "unusable space" portions of the pole. Staff notes there is a possible legal question whether ORS 757.282, which is based on the "cable" type of formula, prevents the OPUC from adopting the telecommunications formula for licensees, pole owners and occupants.

#### Direct Charges for New and Modified Attachment

Owners need to be given the option to charge a licensee for all the incremental costs associated with the making of a new attachment, including those costs for administration, engineering, inspection, and make-ready. Some telecommunications industries claim that administrative, engineering and inspection charges must be put into the rate calculation based on fully allocated costs. Staff disagrees. If the costs for new or modified attachments are put into rate carrying charges, then some occupants, including the pole owner, may be unfairly subsidizing those entities making the preponderance of new attachments. For example, should the traditional wireline industries (i.e., electric, telephone, and cable television) have to subsidize the major technology deployments and rebuilds of wireless and competitive telecommunications service providers?

It has been a long-standing OPUC policy that owners may charge for all the work related to new attachments by licensees. This policy or rule was issued on April 16, 1984 in Commission Order 84-278 and was confirmed in Order 84-608. Existing OPUC rule OAR 860-028-0110(6) from these orders states:

The rental rates ... 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.

The covered items primarily involve matters related to new attachments or attachments that need to be modified or altered. This rule provision shows that the costs, including administrative costs for preconstruction, special inspections, make ready, and other items may be billed directly to the specific licensee involved. However, it must be cautioned that the owner can charge for such non-recurring costs to a licensee, but only if these fees are not included again in the rate

calculation based on fully allocated costs. In other words there can be no double-charging by the owner.

If the owner does not receive reasonable cost recovery for new attachments, the owner may become careless about managing joint use attachments on its facilities. Experience in the past two decades has shown that it is extremely important for attachments to be permitted, installed, and inspected correctly from the start by both the owner and occupant. Otherwise, owner-occupant's facilities will most likely experience escalating safety and other problems with corresponding increasing costs.

Staff believes that allowing an owner to fully recover all incremental costs associated with licensee's new attachment better provides for safe and efficient poles, conduits and rights of way.

#### Transmission Tower Attachments

Staff is uncertain as to the OPUC's authority over wireless providers to attach to electric transmission towers. The U.S. Court of Appeals in *Southern Company v. FCC* held that Federal Pole Attachment Act and the FCC's regulatory power do not extend to an owner's interstate electric transmission towers and facilities. The owner may, however, voluntarily permit access to its transmission towers and negotiate a rental rate that is not governed by the FCC's pole attachment formula.<sup>2</sup>

#### Carrying Charge (860-028-0020(3))

Staff continues to support the proposed definition for Carrying Charge in 028-0020(3). The calculation of the carrying charge percentages should include both distribution and transmission pole accounts. The proposed definition is flexible enough to include both functions. Therefore, we do not recommend a direct reference to the FCC formulas—which include only distribution accounts—as some participants have suggested. When a calculation of carrying charge is required under Division 028, we would expect the Commission to consider the distribution accounts referenced in the FCC formulas along with the comparable transmission accounts.

The carrying charge calculations do not apply to attachments to transmission towers. The formula for calculating standard rental rates for tower attachments is far from apparent, and the participants in this rulemaking have not addressed the issue. Staff recommends a separate proceeding be held to consider the Commission's authority over towers, and if allowed, how to establish a generic rental rate calculation for attachments to towers.

#### Cost of Money for Consumer-owned Utilities

Staff is continuing its evaluation of arguments regarding the cost of money for consumer-owned utilities, particularly the appropriate cost of equity for consumer-owned utilities. Staff will provide comments on this issue by November 17.

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<sup>2</sup> Same as reference 1

### Inflation Adjustment to the Rental Rate

Some participants have recommended an inflation adjustment to the carrying charge or the entire rental rate. Staff strongly disagrees with an adjustment for inflation. There is no basis on which to presume the carrying charge or rental rate will go up every year. A utility's net investment in poles may go down as well as up. The company's administrative, general and maintenance expenses, particularly as a percentage of net plant, can go down in any given year. The depreciation rate for poles can go down—in fact, the Commission recently authorized lower depreciation expense for PGE, including a lower rate for the company's Distribution Account 364 (based on a longer life and lower negative salvage). (See Order No 06-581, Appendix A, p. 13.) Even if there were an expectation that these elements are likely to increase from year to year, ORS 757.282 defines the maximum “just and reasonable rate” as “not more than the actual capital and operating expenses” of the pole owner. Setting a rate based on estimated increases in costs or net plant would not comply with the statute. Pole owners and licensees, of course, may negotiate how year-to-year changes in the rental rate will occur, but the Commission should establish the rate in a complaint proceeding under these rules using actual data.

### Rebuttable Pole Costs, Dimensions and Definitions

To clarify that the carrying charge and rental rate will apply to both distribution and transmission poles, Staff recommends adding the following definition to rule 028-0020:

“Pole” means a distribution pole or a transmission pole owned or controlled by a public utility, telecommunications utility, or consumer-owned utility.

For the definition of Pole Cost, OPUC Staff recommends that the rebuttal presumption be clarified by adding “distribution” so the second sentence, which reads “There is a rebuttable presumption that the average bare distribution pole is 40 feet . . .” Because of the wide variation in the size of transmission poles and use by individual utilities across the state, we believe a rebuttable presumption with respect to transmission poles is not practical, but rather the Commission should make a fact-based determination on a case by case basis.

Some parties have raised issues as to appropriate rebuttable presumptions for the average distribution pole in Oregon. Some parties would like for the OPUC to use the FCC's rebuttable pole presumptions. Considerable debate was conducted in OPUC Docket AR 90 in 1983 and 1984. The resulting Commission Orders 84-278 and 84-608 provide a summary as to how Oregon's rebuttable dimensions were first established. Staff strongly believes that OPUC's current rebuttable presumptions for distribution pole unusable and usable space dimensions are still valid today and should not be changed. The rebuttable presumptions are illustrated in Attachment B.

### Other definitions

In the AR 506 comments, at least one proposal recommended replacing “net investment in conduit” with “net conduit investment.” While staff agrees the latter phrase typically would be preferred, for purposes of these rules “net investment in conduit” should be retained because

**2<sup>nd</sup> Round Comments of PUC Staff in AR 506 -- Page 7 of 7**

“Net investment” is a defined term, with an explicit meaning, that is used in various contexts throughout the rule. (See, e.g., 028-0020(3)(b) and (c)).

Respectfully submitted

/s/

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Safety and Reliability Section

Attachments A, B, and C follow.



Attachment A  
Related to Wireless Attachments to Poles, Structures, and Towers  
Page 1 of 5

General

1. What are the duties of pole owners with respect to wireless operators related to safety, accounting, engineering, inspections, administration, communications, maintenance, and emergency operations?
2. What are the duties of wireless occupants to the pole owner and to other occupants?
3. What are the duties of other occupants with respect to wireless attachments and to the pole owner?
4. What about wireless attachments and antennas in the “communication space” on a pole? With respect to pole attachment rates, terms, and conditions in Division 028 rules, PUC **Staff does not take issue** with wireless attachments contained within the communication space. However, Staff believes that additional safety rules in Division 024 may be needed for wireless attachments beyond the NESC.
5. What about wireless attachments and antennas in the “electric supply space” on a distribution pole?
6. What are the duties of electric supply and communication line workers with respect to poles and facilities with wireless antennas and attachments?
7. What about wireless attachments and antennas installed above the electric power space on a distribution pole?
8. What about wireless attachments and antennas installed on transmission poles?
9. What about wireless attachments and antennas installed on transmission towers?

Attachment A  
Related to Wireless Attachments to Poles, Structures, and Towers  
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List of more specific wireless concerns:

Technical Standards (Safety, Reliability, Attachment Management)

- Worker Access and Qualifications
- Structural Integrity Requirements & Analysis
- Clearances
- Climbing Space
- Electrical Design & Grounding (e.g., lightning protection, ground potential rise, etc.)
- Radio Frequency Interference
- Antenna Material Specifications and Mounting Details
- Facility Identification and Caution Signs
- Disconnect Switch (or Antenna Powering Down) for Workers
- Vegetation Clearances
- Scheduled Maintenance
- Emergency Maintenance

Processes (Safety & Attachment Rates, Terms, and Conditions)

- Communications
- New Application and Installations
- Dispute Resolution
- Pole Replacement
- Abandonment

Rates & Charges

- Annual Rental Rates
- Applicability of Existing Rental Rate Formula in Division 028
  - Does the traditional carrying charge rates formula hold up for wireless attachments, especially for pole top antennas?
  - Should tall antenna poles be combined in distribution pole accounts to determine pole costs?
- Application Fees (put in carrying charges?)
- Inspection Charges (put in carrying charges?)
- Make-ready
- Abandonment charges
- Other

Customer & Other Issues

- Community aesthetics
- Aviation (Federal Aviation Administration) safety requirements
- Property rights and easements
- Customer complaints

Attachment A  
Related to Wireless Attachments to Poles, Structures, and Towers  
Page 3 of 5

Antenna Attachments to Transmission Towers



Should wireless facilities on transmission towers have unique safety, reliability, and attachment regulations different from wireline utility facilities?

Safety Issues?

- Radio Frequencies
- Lightning
- Structural Integrity
  - Ice loading
  - Wind loading
- Line clearances
- Vegetation clearances
- Maintenance & emergency response
- Inspection frequency
- Ground Potential Rise (GPR)
- Other

Reliability Issues?

- Forced outages caused by antenna?
- Scheduled & emergency outages
- Who pays for outage resulting from wireless issues?
- FERC/NERC jurisdiction?
- Other

Pole Attachment (Rates, Terms, Conditions, and Processes)?

- Application and acceptance processes (45 days?)
- Structure owner cost recovery?
- Traditional PUC pole attachment formula applicable? (FCC telecommunications formula applicability?)
- Abandonment (exit strategy)?
- Other



**Transmission H-Frame Structure (with no distribution underbuild)**



Are these transmission electric lines exposed to unique wireless issues related to safety, reliability, and pole attachment concerns?

Safety Issues?

- Lightning
- Structural Integrity
  - Ice loading
  - Wind loading
- Line clearances
- Vegetation clearances
- Maintenance & emergency response
- Inspection frequency
- Ground Potential Rise (GPR)
- Custom engineering issues
- Radio Frequencies
- Aviation safety
- Other

Reliability Issues?

- Forced outages caused by antenna?
- Scheduled and emergency outages
- Does this line require critical infrastructure protection
- FERC/NERC jurisdiction?

Pole Attachment (Rates, Terms, Conditions, and Processes)?

- Application and acceptance processes (45 days)
- PUC pole attachment formula applicable?
- Structure owner cost recovery
- Abandonment

### Wireless Attachment on Distribution Pole Top



Note how much taller the pole is in the foreground compared to the one in the background to accommodate a wireless antenna.

#### Safety Issues?

- Structural Integrity
  - Ice loading
  - Wind loading
- Line clearances
- Lightning
- Vegetation clearances
- Maintenance & emergency response
- Inspection frequency
- Repair priorities
- Radio Frequencies
- Custom engineering

#### Reliability Issues?

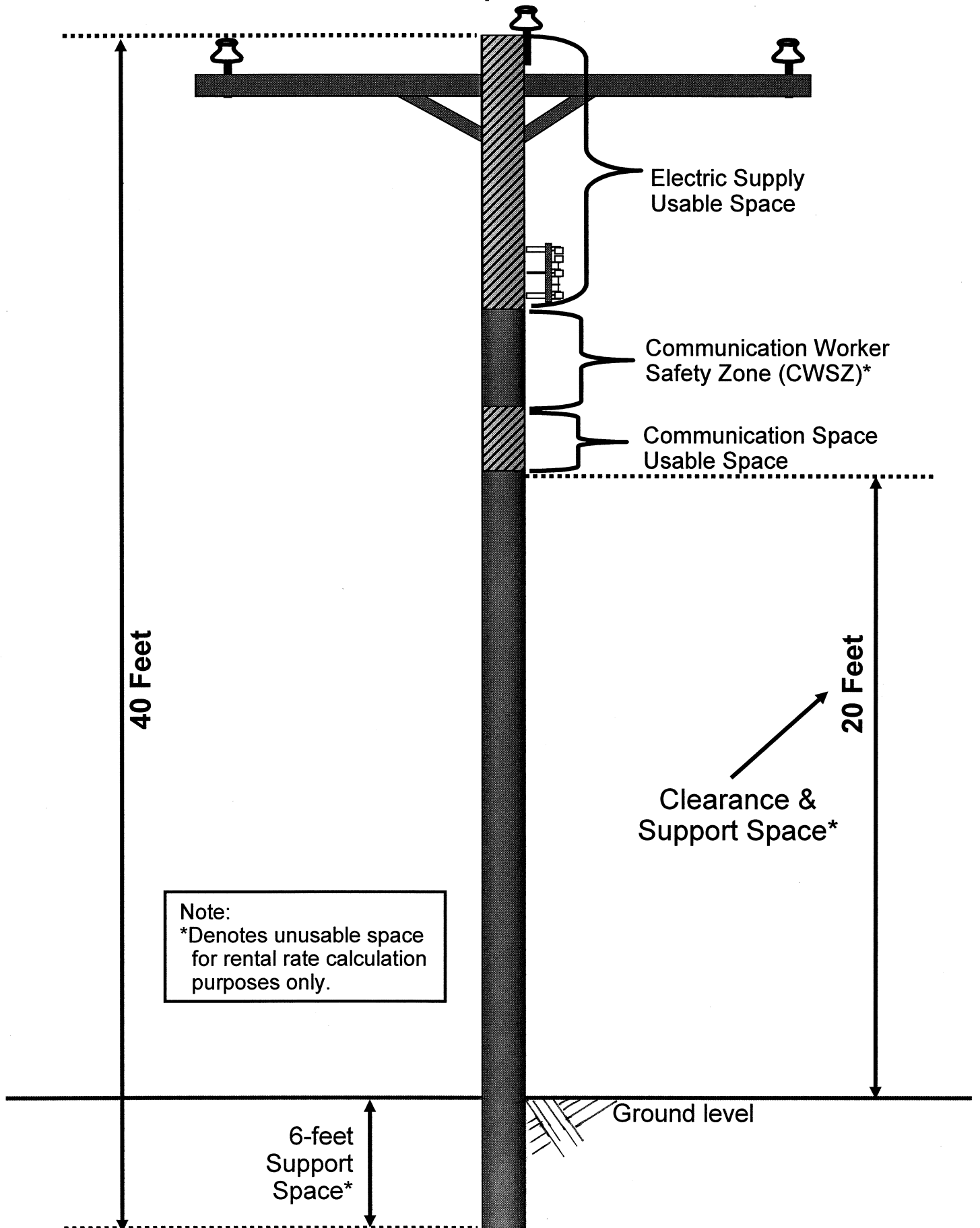
- Forced outages caused by antenna?
- Antenna scheduled and emergency outages

#### Pole Attachment (Rates, Terms, Conditions, and Processes)?

- Application and acceptance processes (45 days?). Is this too short?
- Is traditional PUC/FCC pole attachment formula applicable?
- Distribution pole cost account?
- Structure owner make ready and annual rental cost recovery
- If the wireless attachment pole is a telephone utility? What responsibilities does the telephone utility have for maintaining the safety and reliability of the electric power space?
- Abandonment Issues

# Rebuttable Distribution Pole Spaces & Dimensions

Attachment B



## Pole and Conduit Attachments

### 860-028-0020

#### Definitions for Pole and Conduit Attachment Rules

For purposes of this Division:

(1) "Attachment" has the meaning given in ORS 757.270 and 759.650.

**(2) "Authorized attachment space" means the space occupied by one or more attachments on a pole by an occupant with the pole owner's permission.**

**(3) "Carrying charge" means the costs incurred by the owner in owning and maintaining poles or conduits regardless of the presence of pole attachments or occupation of any portion of the conduits by licensees. The carrying charge is expressed as a percentage. The carrying charge is the sum of the percentages calculated for the following expense elements, using owner's data from the most recent calendar year available:**

**(a) The administrative and general percentage is total general and administrative expense as a percent of net investment in total plant.**

**(b) The maintenance percentage is maintenance of overhead lines expense or conduit maintenance expense as a percent of net investment in overhead plant facilities or conduit plant facilities.**

**(c) The depreciation percentage is the depreciation rate for gross pole or conduit investment multiplied by the ratio of gross pole or conduit investment to net investment in poles or conduit.**

**(d) Taxes are total operating taxes, including, but not limited to, current, deferred, and "in lieu of" taxes, as a percent of net investment in total plant.**

**(e) The cost of money is calculated as follows:**

**(A) For a telecommunications utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding;**

**(B) For a public utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding; or**

**(C) For a consumer-owned utility, the cost of money is equal to the weighted average of the utility's embedded cost of debt and the most recent cost of equity authorized by the Commission for ratemaking purposes for an electric company as defined in OAR 860-038-0005.**

**(24) "Commission pole attachment rules" mean ~~OAR 860-028-0110 through 860-028-0240~~ the rules provided in OAR Chapter 860, Division 028.**

**(35) "Commission safety rules" mean ~~OAR 860-024-0010~~ the rules provided in OAR Chapter 860, Division 024.**

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

**(57) "Consumer-owned utility" has the meaning given in ORS 757.270.**

**(8) "Day" means any one day in a calendar year, unless otherwise specified.**

- (9) “Duct” means a single enclosed raceway for conductors or cables.**
- (610) “Government entity” means a city, a county, a municipality, the state, or other political subdivision within Oregon.**
- (711) “Licensee” has the meaning given in ORS 757.270 or ORS 759.650. “Licensee” does not include a government entity.**
- (12) “Make ready work” means administrative, engineering, or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities. Make ready work costs are nonrecurring costs, and are not contained in carrying charges.**
- (13) “Net investment” is equal to the gross investment, from which is first subtracted the accumulated depreciation, from which is next subtracted related accumulated deferred income taxes, if any.**
- (14) “Net linear cost of conduit” is equal to net investment in conduit divided by the total length of conduit in the system.**
- (815) “Notice” means written notification sent by mail, electronic mail, telephonic facsimile, or telefax other such means.**
- (916) “Occupant” means any licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles or within conduits.**
- (107) “Owner” means a public utility, telecommunications utility, or consumer-owned utility that owns or controls poles, ducts, or conduits or rights-of-way.**
- (148) “Pattern” means a coursepattern of behavior that results in a material breach of a contract, or permits, or in frequent or serious violations of OAR 860-028-0120.**
- (19) “Percentage of conduit capacity occupied” means the product of the quotient of the number “one” divided by the number of inner ducts multiplied by the quotient of the number “one” divided by the number of ducts in the conduit [i.e. (1/Number of Inner Ducts (≥2)) x (1/Number of Ducts in Conduit)].**
- (20) “Permit” means the written or electronic record or invoice by which an owner authorizes an occupant to attach one or more attachments on a pole or poles, in a conduit, or on support equipment.**
- (21) “Pole” means a transmission pole or a distribution pole owned or controlled by a public utility, telecommunications utility or a consumer-owned utility.**
- (22) “Pole cost” means the depreciated original installed cost of an average bare pole to include support equipment of the pole owner, from which is subtracted related accumulated deferred taxes, if any. There is a rebuttable presumption that the average bare distribution pole is 40 feet and the ratio of bare pole to total pole for a public utility or consumer-owned utility is 85 percent, and 95 percent for a telecommunications utility.**
- (23) “Post construction inspection” means work performed to verify and ensure the construction complies with the permit, governing agreement, and Commission safety rules.**
- (24) “Preconstruction activity” means engineering, survey and estimating work required to prepare cost estimates for an attachment application by which the applicant may use to permit or re-route. Pre-construction activity includes costs incurred as a result of a occupant request up to but not including make ready or carrying charges.**
- (1225) “Public utility” has the meaning given in ORS 757.005.**



~~(1326)~~ “Serious injury” means “serious injury to person” or “serious injury to property” as defined in OAR 860-024-0050.

~~(1427)~~ “Service drop” means a ~~connection from distribution facilities to a single family, duplex, or triplex residence or similar small commercial facility~~ the overhead conductors between the electric distribution supply or communication distribution line and the building or structure being served, not to exceed 1,000 feet and not using a separate supporting messenger.

~~(28)~~ “Special inspection” means an owner’s field visit for all non-periodic inspections. A special inspection does not include pre-construction activity or post-construction inspection.

~~(29)~~ “Support equipment” means guy wires, anchoring systems and other accessories of the pole owner used to support the structural integrity of the pole to which the licensee is attached.

~~(30)~~ “Support equipment cost” means the average depreciated original installed cost of support equipment.

~~(31)~~ “Surplus ducts” means ducts other than: (a) those occupied by the conduit owner or a prior licensee; (b) an unoccupied duct held for emergency use; or (c) other unoccupied ducts that the owner reasonably expects to use within the next 60 months.

~~(4532)~~ “Telecommunications utility” has the meaning given in ORS 759.005.

~~(33)~~ “Threshold number of poles” means 50 poles, or one-tenth of one percent (0.10 percent) of the owner’s poles whichever is less, over any 30 day period.

~~(34)~~ “Unauthorized attachment” means an attachment that does not have a permit and a governing agreement subject to the provisions of 860-028-0120(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 860-022-0110 and 860-034-0810; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)

## 860-028-0050

### General

#### (1) Purpose and scope of this Division:

(a) OAR Chapter 860 Division 028 governs access to utility poles, conduits, and support equipment by occupants in Oregon, and it is intended to provide just and reasonable provisions when the parties are unable to agree on certain terms.

(b) Except where otherwise provided, the following rules contained in this Division are mandatory: OAR 860-028-0050 through OAR 860-028-0080, OAR 860-028-0115, and OAR 860-028-0120.

(c) Except for the rules specified in subsection (b) of this rule, parties may mutually agree on terms that differ from those provided in the rules contained in this Division. However, in the event of a dispute submitted for Commission resolution, the Commission will deem the terms and conditions specified in the rules contained in this Division as presumptively reasonable. In the event of a dispute that is submitted to the Commission for resolution, the

**burden of proof is on any party advocating a deviation from the rules in this Division to show the deviation is just, fair and reasonable.**

**(2) After the owner provides reasonable notice to a licensee of a hazard or situation requiring prompt attention, and after allowing the licensee a reasonable opportunity to repair or correct the hazard or situation, and if the hazard or situation remains uncorrected, the owner may correct the attachment deficiencies and charge the licensee for its costs. An Owner may charge a licensee for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.**

**(3) An owner or occupant that is an operator of communication facilities must trim or remove vegetation that poses a significant risk to its facilities or through contact with its facilities poses a significant risk to a structure of an operator of a jointly used system.**

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

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

**Hist.: NEW**

**860-028-0060**

**Attachment Contracts or Agreements**

**(1) Any entity requiring pole attachments to serve customers should use poles jointly as much as practicable.**

**(2) To facilitate joint use of poles, entities must execute contracts or agreements establishing the rates, terms, and conditions of pole use in accordance with OAR 860-028-0120.**

**(3) Parties must negotiate pole attachment contracts and agreements in good faith.**

**(4) Unless otherwise provided for by contract or agreement, when the parties are negotiating a new or amended contract or agreement, the last effective contract or agreement between the parties will continue in effect until a new or amended contract or agreement between the parties goes into effect.**

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

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

**Hist.: NEW**

**860-028-0070**

**Resolution of Disputes for Proposed New or Amended Contractual Provisions**

**(1) This rule applies to a complaint alleging a violation of ORS 757.273, 757.276, 757.279, 759.655, 759.660, or 759.665. Except as otherwise required by this rule, the procedural rules generally applicable to proceedings before the Commission also apply to such complaints. The party filing a complaint under this rule is the "complainant." The other party to the contract, against whom the complaint is filed, is the "respondent."**

- (2) Before a complaint is filed with the Commission, one party must request, in writing, negotiations for a new or amended attachment agreement from the other party.**
- (3) Ninety (90) days after one party receives a request for negotiation from another party, either party may file a complaint with the Commission for a proceeding under ORS 757.279 or ORS 759.660.**
- (4) The complaint must contain each of the following:**
- (a) Proof that a request for negotiation was received at least 90 days earlier. The complainant must specify the attempts at negotiation or other methods of dispute resolution undertaken since receipt of the request date and indicate that the parties have been unable to resolve the dispute.**
- (b) A statement of the specific attachment rate, term, and condition provisions that are claimed to be unjust or unreasonable.**
- (c) A description of the complainant's position on the unresolved provisions.**
- (d) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute.**
- (e) All information available as of the date the complaint is filed with the Commission that the complainant relied upon to support its claims:**
- (A) In cases in which the Commission's review of a rate is required, the complaint must include all data and information in support of its allegations, in accordance with the administrative rules set forth to evaluate the disputed rental rate.**
- (B) If the licensee is the complainant, the complainant must request the data and information required by this rule from the respondent. The respondent must provide the complainant the information required in this rule, as applicable, within 30 days of the receipt of the request. The complainant must submit this information with its complaint.**
- (C) If the respondent does not provide the data and information required by this rule after a request by the complainant, the complainant will include a statement indicating the steps taken to obtain the information from the respondent, including the dates of all requests.**
- (D) No complaint will be dismissed because the respondent has failed to provide the applicable data and information required under subsection (4)(e)(C) of this rule.**
- (5) Within 30 calendar days of receiving a copy of the complaint, the respondent will file its response to the complaint with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions.**
- (6) If the Commission determines after a hearing that a rate, term, or condition that is the subject of the complaint is not just, fair, and reasonable, it may reject the proposed rate, term or condition and may prescribe a just and reasonable rate, term, or condition.**

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

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

**Hist.: NEW**

**860-028-0080**

**Costs of Hearing in Attachment Contract Disputes**

**(1) When the Commission issues an order in an attachment contract dispute that applies to a consumer-owned utility, as defined by ORS 757.270, the order will also provide for payment by the parties of the cost of the hearing process.**

**(2) The cost of the hearing process includes, but is not limited to, the cost of Commission employee time, the use of facilities, and other costs incurred. The rates will be set at cost.**

**(3) The Joint Use Association is not considered a party for purposes of this rule when participating in a case under OAR 860-028-0200(1)(b).**

**(4) The Commission will allocate costs in a manner that it considers equitable. The Commission will consider the following factors in determining payment:**

**(a) Merits of the party's positions throughout the course of the proceeding; and**

**(b) Other factors that the Commission deems relevant.**

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

**Stats. Implemented: ORS 756.040, 757.279, and 759.660**

**Hist.: NEW**

**860-028-0100**

**Application Process for New or Modified Attachments**

**(1) An applicant requesting a new or modified attachment will submit an application providing the following information in writing or electronically to the owner:**

**(a) Information for contacting the applicant.**

**(b) The pole owner may require the applicant to provide the following information:**

**(A) Location and identifying pole or conduit for which the attachment is requested;**

**(B) The amount of space requested;**

**(C) The number and type of attachment for each pole or conduit;**

**(D) Physical characteristics of attachments;**

**(E) Attachment location on pole;**

**(F) Description of installation;**

**(G) Proposed route, and**

**(H) Proposed schedule for construction.**

**(2) The owner will provide notice to the applicant within 14 days of the application receipt date confirming receipt and listing any deficiencies with the application, including missing information. If required information is missing, the owner may suspend processing the application until the missing information is provided.**

**(3) Upon receipt of a completed application, the owner will provide notice to the applicant no later than 45 days from the date the completed application is received. The owner's reply must state whether the application is approved, approved with modifications or conditions, or denied.**

**(a) An approved application will be valid for 180 days unless extended by the owner.**

**(b) The owner may require the applicant to provide notice of work completion within 45 days.**

(c) If the owner approves an application that requires make ready work, the owner will provide a detailed list of the make ready work needed to accommodate the applicant's facilities, an estimate for the time required for the make ready work, and the cost for such make ready work.

(d) The owner may deny access for the following reasons: insufficient capacity, safety, reliability, and generally applicable engineering purposes. In denying an application the owner will state the reasons for denial.

(e) If the owner does not provide the applicant with notice that the application is approved, approved with conditions, or denied within 45 days from its receipt, the applicant may begin installation.

(4) If the owner approves an application that requires make ready work, the owner will perform such work at the applicant's expense. This work will be completed in a timely manner and at a reasonable cost. Where this work requires more than 45 days to complete, the parties must negotiate a mutually satisfactory period of time to complete the make ready work.

(5) If an owner can not meet the time frames established by this rule, preconstruction activity, application, and make ready work may be performed by a mutually acceptable third party.

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

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

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

Hist.: NEW

860-028-0110

Rental Rates and Charges for Attachments by Licensees to Poles Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through ORS 757.290 or ORS 759.650 through ORS 759.675.

~~(2) In this rule:~~

~~(a) "Carrying Charge" means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs attributable to the facilities used by the licensee. The cost of money component shall be equal to the return on investment authorized by the Commission in the pole owner's most recent rate proceeding.~~

~~(b) "Pole Cost" means the depreciated original installed cost of an average bare pole of the pole owner.~~

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

~~(d) "Support Equipment Cost" means the average depreciated original installed cost of support equipment.~~

~~(e) "Usable Space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between~~

~~communications and power circuits. There is a rebuttable presumption that six feet of a pole are buried below ground level.~~

~~(32) The A-disputed pole attachment rental rate per foot will be is computed by taking multiplying the pole cost times by the carrying charge and then dividing the resultant product by the usable space per pole.~~

~~(a) 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 communication worker safety zone between the communications and power circuits. There is a rebuttable presumption that six feet of a pole is below ground level.~~

~~(3) The rental rate per pole is computed from the rental rate per foot times multiplied by the licensee's authorized attachment space, portion of the usable space occupied by the licensee's attachment.~~

~~(4) A disputed support equipment rental rate will be computed by taking the support equipment cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.~~

~~(5) The minimum usable space occupied by a licensee's attachment is one foot.~~

~~(64) The rental rates referred to in sections (3) and (4)(2) of this rule do not cover include the costs of attachment to support equipment, permit application processing, special inspections, or preconstruction activity, post construction inspection, make ready, change-out, and rearrangement work; or the costs related to unauthorized attachments. Charges for those activities shall beare based on actual (including administrative) costs, including administrative costs, and will be charged in addition to the rental rate. The owner must be able to demonstrate that charges under this section of this rule have been excluded from the rental rate calculation.~~

~~(7) Licensees shall report all attachments to the pole owner. A pole owner may impose sanctions for violations of OAR 860-028-0120. A pole owner may also charge for any expenses it incurs as a result of an unauthorized attachment.~~

~~(8) All attachments shall meet state and federal clearance and other safety requirements, be adequately grounded, guyed, and anchored, and meet the provisions of contracts executed between the pole owner and the licensee. A pole owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the pole owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.~~

~~(5) Authorized attachment space for rental rate determination must comply with the following:~~

~~(a) The initial authorized attachment space on a pole must not be less than 12 inches. The owner may authorize additional attachment space in increments of less than 12 inches.~~

~~(b) For each attachment permit, the owner will specify the authorized attachment space on the pole that is to be used for one or more attachments. This authorized attachment space will be specified in the owner's attachment permit.~~

~~(c) An additional or modified attachment by the occupant that meets the Commission safety rules and that is placed within the occupant's existing authorized attachment space will be considered a component of the existing pole permit for rental rate determination purposes.~~

**(6) The owner may require prepayment of the owner's estimated costs for any of the work covered by OAR 860-028-0100. The final invoice will reflect actual costs less any prepayment. The owner must be able to demonstrate that charges under this section of this rule have been excluded from the rental rate calculation.**

**(7) The owner must provide notice to the occupant of any change in rental rate or fee schedule a minimum of 90 days prior to the effective date of the change. The occupant has 60 days from the date of the notice to dispute the rate or fee schedule. If no dispute is filed, with the owner, the rate and fee schedule shall be deemed effective for the term of the rental period. This subsection shall become effective on January 1, 2008.**

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

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

Hist.: PUC 9-1984, f. & ef. 4-18-84 (Order No. 84-278); PUC 16-1984, f. & ef. 8-14-84 (Order No. 84-608); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); renumbered from OARs 860-022-0055 and 860-034-0360; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)

#### **860-028-0115**

##### **Duties of Electric Supply and Communication Pole Owners**

**(1) An owner shall install, maintain, and operate its facilities in compliance with Commission safety rules.**

**(2) An owner must establish, maintain, and make available to occupants its joint-use construction standards and practices for attachments to its distribution poles. Standards for attachment must apply uniformly to all operators, including the owner.**

**(3) An owner must establish and maintain mutually agreeable protocols for communications between the owner and occupants.**

**(6) A Pole owner must respond to a pole occupant's notice request for assistance to make corrections within 45 days.**

**(7) A Pole owners will ensure the accuracy of inspection data prior to transmitting information to a pole occupant.**

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

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

**Hist.: NEW**

#### **860-028-0310**

##### **Rental Rates and Charges for Attachments by Licensees to Conduits Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities**

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through ORS 757.290 or ORS 759.650 through ORS 759.675.

**(2) As used in this rule:**

- (a) ~~“Annual Carrying Charge” shall be equal to the return on investment authorized by the Commission in the conduit owner’s most recent rate proceeding times the conduit cost.~~
- (b) ~~“Annual Operating Expense” means annual operating maintenance, administrative, general, depreciation, income tax, property tax, and other tax expenses attributable, on a per-duct basis, to the section of conduit occupied by the licensee.~~
- (c) ~~“Conduit Cost” means the depreciated original installed cost, on a per-duct basis, of the section of conduit occupied by the licensee.~~
- (d) ~~“Duct” means a single enclosed raceway for conductors or cable.~~
- (e) ~~“Surplus Ducts” means ducts other than those occupied by the conduit owner or a prior licensee, one unoccupied duct held as an emergency use spare, and other unoccupied ducts that the owner reasonably expects to use within the next 18 months.~~
- (32) ~~The~~ ~~A~~ ~~disputed~~ conduit rental rate per linear foot will be computed by adding the annual operating expense to the annual carrying charge and then multiplying by the number of ducts occupied by the licensee multiplying the percentage of conduit capacity occupied by the net linear cost of conduit and then multiplying that product by the carrying charge.
- (43) A licensee occupying part of a duct ~~shall be~~ deemed to occupy the entire duct.
- (54) Licensees ~~shall~~ must report all attachments to the conduit owner. A conduit owner may impose a penalty charge for failure to report or pay for all attachments. If a conduit owner and licensee do not agree on the penalty and submit the dispute to the Commission, the penalty amount will be five times the normal rental rate from the date the attachment was made until the penalty is paid. If the date the attachment was made cannot be clearly established, the penalty rate ~~shall~~ will apply from the date the conduit owner last inspected the conduit in dispute. The last inspection ~~date shall be~~ deemed to be no more than ~~three~~ five years before the unauthorized attachment is discovered. The conduit owner also ~~shall~~ may charge for any expenses it incurs as a result of the unauthorized attachment.
- (65) The conduit owner ~~shall~~ must give a licensee 18 months’ notice of its need to occupy licensed conduit and ~~shall~~ will propose that the licensee take the first feasible action listed:
- (a) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the conduit owner’s space needs;
  - (b) Pay revised conduit rent based on the cost of new conduit constructed to meet the conduit owner’s space needs;
  - (c) Vacate ducts that are no longer surplus;
  - (d) Construct and maintain sufficient new conduit to meet the conduit owner’s space needs.
- (7) ~~When two or more licensees occupy a section of conduit, the last licensee to occupy the conduit shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all licensees shall bear the increased cost.~~
- (8) ~~All conduit attachments shall meet local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the conduit owner and the licensee. A conduit owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall~~



~~pay the conduit owner for any fines, fees, damages, or other costs the licensee's attachments cause the conduit owner to incur.~~

**(6) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, special inspections, preconstruction activity, post construction inspection, make ready work, and the costs related to unauthorized attachments. Charges for activities not included in the rental rates will be based on actual costs, including administrative costs, and will be charged in addition to the rental rate.**

**(7) The owner may require reasonable prepayments from a licensee of owner's estimated costs for any of the work allowed by OAR 860-028-0100. The owner's estimate will be adjusted to reflect the owner's actual cost upon completion of the requested tasks. The owner will promptly refund any overcharge to the licensee.**

**(8) The owner must be able to demonstrate that charges under sections (6) and (7) of this rule have been excluded from the rental rate calculation.**

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

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

Hist.: PUC 2-1986, f. & ef. 2-7-86 (Order No. 86-107); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); renumbered from OARs 860-022-0060 and 860-034-0370; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)


**PUBLIC UTILITY COMMISSION**

**CERTIFICATE OF SERVICE**

AR 506 Phase 2

I, DIANE DAVIS, of the Regulatory Operations Division, Public Utility Commission of Oregon, hereby certify that on the 8th day of November, 2006, I served a copy of Staff's 2<sup>nd</sup> Round Division 028 Comments upon all persons as indicated on the attached listing, by electronic mail and by depositing in the United States Mail at Salem, Oregon, with postage prepaid.

PUBLIC UTILITY COMMISSION

  
\_\_\_\_\_  
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