

PUBLIC UTILITY COMMISSION

DIVISION 28

POLE AND CONDUIT ATTACHMENTS

860-028-0000

Applicability

(1) The rules contained in this Division apply to every pole or conduit owner and every pole or conduit occupant, as defined in OAR 860-028-0020.

(2) Upon request or its own motion, the Commission may waive any of the Division 028 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

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

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

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 23-2001, f. & cert. ef. 10-11-01; PUC 6-2011, f. & cert. ef. 9-14-11

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 usable 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. The carrying charge is expressed as a percentage. The carrying charge is the sum of the percentages calculated for the following expense elements, using owner's data from the most recent calendar year and that are publicly available to the greatest extent possible:

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

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

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

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

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

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

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

(C) For a consumer-owned utility, the cost of money is equal to the utility's embedded cost of long-term debt plus 100 basis points. Should a consumer-owned utility not have any long-term debt, then the cost of money will be equal to the 10-year treasury rate as of the last traded day for the relevant calendar year plus 200 basis points.

(4) "Commission pole attachment rules" mean the rules provided in OAR chapter 860, division 028.

(5) "Commission safety rules" has the meaning given in OAR 860-024-0001(1).

(6) "Conduit" means any structure, or section thereof, containing one or more ducts, manholes, or handholes, used for any telephone, cable television, electrical, or communications conductors or cables, owned or controlled, in whole or in part, by one or more public, telecommunications, or consumer-owned utilities.

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

(8) "Duct" means a single enclosed raceway for conductors or cables.

(9) "Government entity" means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(10) "Licensee" has the meaning given in ORS 757.270 or 759.650. "Licensee" does not include a government entity.

(11) "Make ready work" means 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 non-recurring costs and are not contained in carrying charges.

(12) "Net investment" means the gross investment, from which is first subtracted the accumulated depreciation, from which is next subtracted related accumulated deferred income taxes, if any.

(13) "Net linear cost of conduit" is equal to net investment in conduit divided by the total length of conduit in the system.

(14) "Notice" means written notification sent by mail, electronic mail, telephonic facsimile, or other means previously agreed to by the sender and the recipient.

(15) "Occupant" means any licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles or within conduits.

(16) "Owner" means a public utility, telecommunications utility, or consumer-owned utility that owns or controls poles, ducts, conduits, rights-of-way, manholes, handholes, or other similar facilities.

(17) "Pattern" means a course of behavior that results in a material breach of a contract, or permits, or in frequent violations of OAR 860-028-0120.

(18) "Percentage of conduit capacity occupied" means:

(a) When inner ducts are used, 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., $(1/\text{Number of Inner Ducts} \geq 2) \times (1/\text{Number of Ducts in Conduit})$]; or

(b) When no inner ducts are used, the quotient of the number "one," divided by the number of ducts in the conduit [i.e., $(1/\text{Number of Ducts in Conduit})$].

(19) "Periodic Inspection" means any inspection done at the option of the owner, including a required inspection pursuant to division 024, the cost of which is recovered in the carrying charge. Periodic inspections do not include post construction inspections.

(20) "Permit" means the written or electronic record by which an owner authorizes an occupant to attach one or more attachments on a pole or poles, in a conduit, or on support equipment.

(21) "Pole" means any pole that carries distribution lines and that is owned or controlled by a public utility, telecommunications utility, or 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 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.

(25) "Public utility" has the meaning given in ORS 757.005.

(26) "Serious injury" means "serious injury to person" or "serious injury to property" as defined in OAR 860-024-0050.

(27) "Service drop" means a connection from distribution facilities to the building or structure being served.

(28) "Special inspection" means an owner's field visit made at the request of the licensee for all nonperiodic inspections. A special inspection does not include preconstruction activity or post construction inspection.

(29) "Support equipment" means guy wires, anchors, anchor rods, and other accessories of the pole owner used to support the structural integrity of the pole to which the licensee is attached.

(30) "Surplus ducts" means ducts other than:

(a) Those occupied by the conduit owner or a 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.

(31) "Telecommunications utility" has the meaning given in ORS 759.005.

(32) "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.

(33) "Unauthorized attachment" means an attachment that does not have a valid permit and a governing agreement subject to OAR 860-028-0120.

(34) "Usable space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between the communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0110 & 860-034-0810; PUC 3-2007, f. & cert. ef. 4-16-07

860-028-0050

General

- (1) OAR chapter 860 division 028 governs access to utility poles, conduits, and support equipment by occupants in Oregon.
- (2) OAR chapter 860, division 028 is intended to provide just and reasonable provisions when the parties are unable to agree on certain terms.
- (3) With the exceptions of OARs 860-028-0060 through 860-028-0080, 860-028-0115, and 860-028-0120, parties may mutually agree on terms that differ from those in this division. In the event of disputes submitted for Commission resolution, the Commission will deem the terms and conditions specified in this division as presumptively reasonable. If a dispute 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.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

860-028-0060

Attachment Contracts

- (1) Any entity requiring pole attachments to serve customers should be allowed to use utility poles, ducts, conduits, rights-of-way, manholes, handholes, or other similar facilities jointly, as much as practicable.
- (2) To facilitate the joint use of poles, entities must execute contracts establishing the rates, terms, and conditions of pole use in accordance with OAR 860-028-0120. Government entities are not required to execute contracts.
- (3) Parties must negotiate pole attachment contracts in good faith.
- (4) Unless expressly prohibited by contract, the last effective contract between the parties will continue in effect until a new contract between the parties goes into effect.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

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, 757.282, 759.655, 759.660, or 759.665.
- (2) In addition to the generally applicable hearing procedures contained in OAR chapter 860, division 001, the procedures set forth in this rule shall apply to a complaint that an existing or proposed contract is unjust and unreasonable.
- (3) 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."

- (4) 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.
- (5) Ninety (90) calendar days after one party receives a request for negotiation from another party, either party may file with the Commission for a proceeding under ORS 757.279 or 759.660.
- (6) The complaint must contain each of the following:
- (a) Proof that a request for negotiation was received at least 90 calendar days earlier. The complainant must specify the attempts at negotiation or other methods of dispute resolution undertaken since the date of receipt of the request and indicate that the parties have been unable to resolve the dispute.
 - (b) A statement of the specific attachment rates, terms and conditions that are claimed to be unjust or unreasonable.
 - (c) A description of the complainant's position on the unresolved provisions.
 - (d) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute.
 - (e) All information available as of the date the complaint is filed with the Commission that the complainant relied upon to support its claims:
 - (A) In cases in which the Commission's review of a rate is required, the complaint must provide all data and information in support of its allegations, in accordance with the administrative rules set forth to evaluate the disputed rental rate.
 - (B) If the licensee is the party submitting the complaint, the licensee must request the data and information required by this rule from the owner. The owner must supply the licensee the information required in this rule, as applicable, within 30 calendar days of the receipt of the request. The licensee must submit this information with its complaint.
 - (C) If the owner does not provide the data and information required by this rule after a request by the licensee, the licensee must include a statement indicating the steps taken to obtain the information from the owner, including the dates of all requests.
 - (D) No complaint by a licensee will be dismissed because the owner has failed to provide the applicable data and information required under paragraph (6)(e)(B) of this rule.
- (7) Within 30 calendar days of receiving a copy of the complaint, the respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions.
- (8) 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 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

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 must also provide for payment by the parties of the cost of the hearing.

(2) The cost of the hearing includes, but is not limited to, the cost of Commission employee time, the use of facilities, and other costs incurred. The rates will be set at cost. Upon request of a party, and no more than once every 60 days, the Commission will provide to the parties the costs incurred to date in the proceeding.

(3) The Joint-Use Association is not considered a party for purposes of this rule when participating in a case as an advisor to the Commission.

(4) The Commission will allocate costs in a manner that it considers equitable. The following factors will be considered in allocating costs:

(a) Whether the party unreasonably burdened the record or delayed the proceeding;

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

(c) Other factors that the Commission deems relevant.

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

Stats. Implemented: ORS 756.040, 757.279 & 759.660

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

860-028-0100

Application Process for New or Modified Attachments

(1) As used in this rule, "applicant" does not include a government entity.

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

(a) Information for contacting the applicant.

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

(A) Location of 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.

(3) The owner must provide written or electronic notice to the applicant within 15 days of the application receipt date confirming receipt and listing any deficiencies with the application, including missing information. If required information is missing, the owner may suspend processing the application until the missing information is provided.

(4) Upon receipt of a completed application, an owner must reply in writing or electronically to the applicant as quickly as possible and 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 approval will be valid for 180 calendar days unless extended by the owner.

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

(c) If the owner approves an application that requires make ready work, the owner must 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) If the owner denies the application, the owner must state in detail the reasons for its denial.

(e) If the owner does not provide the applicant with notice that the application is approved, denied, or conditioned within 45 days from its receipt, the applicant may begin installation. Applicant must provide notice prior to beginning installation. Commencement of installation by the occupant will not be construed as completion of the permitting process or as final permit approval. Unpermitted attachments made under this section are not subject to sanction under OAR 860-028-0140.

(5) If the owner approves an application that requires make ready work, the owner will perform such work at the applicant's expense. This work must 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 longer period to complete the make ready work.

(6) If an owner cannot meet the time frame for attachment established by this rule, preconstruction activity and make ready work may be performed by a mutually acceptable third party.

(7) If an 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 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

Pole Attachments

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 757.290 or 759.650 through 759.675.

(2) The pole attachment rental rate per foot is computed by multiplying the pole cost by the carrying charge and then dividing the product by the usable space per pole. The rental rate per pole is computed as the rental rate per foot multiplied by the licensee's authorized attachment space.

(3) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, 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.

(4) 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 must 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.
- (5) The owner may require prepayment from a licensee of the owner's estimated costs for any of the work allowed by OAR 860-028-0100. Upon completion of the work, the owner will issue an invoice reflecting the actual costs, less any prepayment. Any overpayment will be promptly refunded, and any extra payment will be promptly remitted.
- (6) A communication operator has primary responsibility for trimming vegetation around its communication lines in compliance with OAR 860-028-0115(7) and 860-028-0120(7). If the communication operator so chooses, or if the communication operator is sanctioned or penalized for failure to trim vegetation in compliance with OAR 860-028-0115(7) or 860-028-0120(7), the electric supply operator may trim the vegetation around communication lines that poses a foreseeable danger to the pole and electric supply operator's lines. If the electric supply operator trims the vegetation around communication lines, it shall do so contemporaneously with trimming around its own facilities. If the electric supply operator is the pole owner, it may bill the communication operators for the actual cost of trimming around the communication lines. If the electric supply operator is the pole occupant, it may offset its pole rent by the vegetation trimming cost.
- (7) The owner must provide notice to the occupant of any change in rental rate or fee schedule a minimum of 60 days prior to the effective date of the change. This section will become effective on January 1, 2008.

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

Stats. Implemented: ORS 756.040, 757.270 - 290, 759.045 & 759.650 - 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 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0055 & 860-034-0360; PUC 3-2007, f. & cert. ef. 4-16-07

860-028-0115

Duties of Structure Owners

- (1) An owner must 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 for attachments to its poles, towers, and for joint space in conduits. Standards for attachment must apply uniformly to attachments by all operators, including the owner.
- (3) An owner must establish and maintain mutually agreeable protocols for communications between the owner and its occupants.
- (4) An owner must immediately correct violations that pose imminent danger to life or property. In the event that a pole occupant performs the corrections, a pole owner must reimburse the pole occupant for the actual cost of corrections. Charges imposed under this section must not exceed the actual cost of corrections.
- (5) An owner must respond to a pole occupant's request for assistance in making a correction within 45 days.
- (6) An owner must ensure the accuracy of inspection data prior to transmitting information to the pole occupant.
- (7) Vegetation around communications lines must not pose a foreseeable danger to the pole and electric supply operator's facilities.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

860-028-0120

Duties of Pole Occupants

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

(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 occupant has attachments;

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

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

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

(3) A pole occupant may install a service drop without the permit required under subsection (1)(b) of this rule, but the pole occupant must:

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

(b) Except for a pole occupant that is a government entity, install the attachment in compliance with the written contract required under subsection (1)(a) of this rule; and

(c) Install the service drop in compliance with Commission safety rules.

(4) A pole occupant must repair, disconnect, isolate, or otherwise correct any violation that poses an imminent danger to life or property immediately after discovery. If the pole owner performs the corrections, a pole occupant must reimburse the pole owner for the actual cost of correction. Reimbursement charges imposed under this section must not exceed the actual cost of correction.

(5) Upon receipt of a pole owner's notification of violation, a pole occupant must respond either with submission of a plan of correction within 60 calendar days or with a correction of the violation within 180 calendar days.

(a) If a pole occupant fails to respond within these deadlines, the pole occupant is subject to sanction under OAR 860-028-0150(2).

(b) If a pole occupant fails to respond within these deadlines and if the pole owner performs the correction, the pole occupant must reimburse the pole owner for the actual cost of correction attributed to violations caused by the occupant's non-compliant attachments. Reimbursement charges imposed under this section must not exceed the actual cost of correction attributed to the occupant's attachments.

(6) A pole occupant must correct a violation in less than 180 days if the pole owner notifies an occupant that the violation must be corrected within that time to alleviate a significant safety risk to any operator's employees or a potential risk to the general public. A pole occupant must reimburse the pole owner for the actual cost of correction caused by the occupant's non-compliant attachments made under this section if:

(a) The owner provides reasonable notice of the violation; and

(b) The occupant fails to respond within timelines set forth in the notice.

(7) Vegetation around communications lines must not pose a foreseeable danger to the pole and electric supply operator's facilities.

Stat. Auth.: ORS 183, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0120 & 860-034-0820; PUC 2-2007, f. & cert. ef. 4-16-07

860-028-0130

Sanctions for Having No Contract

(1) Except as provided in section (2) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0060(2). The sanction may not exceed \$500 per pole. This rule does not apply to:

(a) A pole occupant that is a government entity; or

(b) A pole occupant operating under an expired or terminated contract and participating in good faith efforts to negotiate a contract or engaged in formal dispute resolution, arbitration, or mediation regarding the contract; or

(c) A pole occupant operating under a contract that is expired if both pole owner and occupant are unaware that the contract expired and both carry on business relations as if the contract terms are mutually-agreeable and still applicable.

(2) Sanctions imposed pursuant to this rule will be imposed no more than once in a 365 day period.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0130 & 860-034-0830; PUC 2-2007, f. & cert. ef. 4-16-07

860-028-0140

Sanctions for Having No Permit

(1) Except as provided in section (3) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(b), except as provided in 860-028-0120(3).

(2) Sanctions imposed under this rule may not exceed:

(a) Five times the current annual rental fee per pole if the violation is reported by the occupant to the owner and is accompanied by a permit application or is discovered through a joint inspection between the owner and occupant and accompanied by a permit application; or

(b) \$100 per pole plus five times the current annual rental fee per pole if the violation is reported by the owner in an inspection in which the occupant has declined to participate.

(3) Sanctions imposed pursuant to this rule may be imposed no more than once in a 60 day period.

(4) A pole owner may not impose new sanctions for ongoing violations after the initial 60 day period if:

- (a) The occupant filed a permit application in response to a notice of violation; or
 - (b) The notice of violation involves more than the threshold number of poles, as defined in OAR 860-028-0020(32), and the parties agree to a longer time frame to complete the permitting process.
- (5) This rule does not apply to a pole occupant that is a government entity.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0140 & 860-034-0840; PUC 2-2007, f. & cert. ef. 4-16-07

860-028-0150

Sanctions for Violation of Other Duties

(1) A pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(c), (1)(d), or (3). Sanctions imposed for these violations may not exceed \$200 per pole.

(2) A pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(5). Sanctions imposed under this section must not exceed 15 percent of the actual cost of corrections incurred under OAR 860-028-0120(5).

(3) Sanctions and charges imposed under sections (1) and (2) of this rule do not apply if:

(a) The occupant submits a plan of correction in compliance with OAR 860-028-0170 within 60 calendar days of receipt of notification of a violation; or

(b) The occupant corrects the violation and provides notification of the correction to the owner within 180 calendar days of receipt of notification of the violation.

(4) If a pole occupant submits a plan of correction in compliance with OAR 860-028-0170 and fails to adhere to all of the provisions and deadlines set forth in that plan, the pole owner may impose sanctions for the uncorrected violations documented within the plan.

(5) Notwithstanding the timelines provided for in section (3) of this rule, a pole owner must notify the occupant immediately of any violations occurring on attachments that are newly-constructed and newly-permitted by the occupant or are caused by the occupant's transfer of currently-permitted facilities to new poles. The occupant must immediately correct the noticed violation. If the violation is not corrected within five days of the notice, the pole owner may immediately impose sanctions.

(a) Sanctions may be imposed under this section only within 90 calendar days of the pole occupant providing the pole owner with a notice of completion.

(b) Sanctions under this section will not be charged to the pole occupant if the violation is discovered in a joint post-construction inspection between the pole owner and pole occupant, or their respective representatives, and is corrected by the pole occupant within 60 calendar days of the joint post-construction inspection or within a mutually-agreed upon time.

(c) If the pole occupant performs an inspection and requests a joint post construction inspection, the pole owner's consent to such inspection must not be unreasonably withheld.

(6) This rule does not apply to a pole occupant that is a government entity.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0150 & 860-034-0850; PUC 2-2007, f. & cert. ef. 4-16-07

860-028-0160

Choice of Sanctions

(1) If a pole owner contends that an attachment of a pole 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 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 occupant agree otherwise.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0160 & 860-034-0860

860-028-0170

Plans of Correction

(1) A plan of correction must, at a minimum, set out:

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

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

(2) If a pole occupant suggests a compliance date of more than 180 days following receipt of a notice of violation, then the pole occupant must show good cause.

(3) Upon its receipt of a plan of correction that a pole occupant submits under OAR 860-028-0150(3)(a), a pole owner must give notice of its acceptance or rejection of the plan.

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

(b) The pole occupant's time for compliance set forth in the plan of correction begins when the plan of correction is mutually agreed upon by both the pole owner and the occupant.

(c) If a plan of correction is divisible and if the pole owner accepts part of it, then the pole occupant must carry out that part of the plan.

(d) If a pole occupant submits a plan, the pole occupant must carry out all provisions of that plan unless the pole owner consents to a submitted plan amendment.

(4) Pole occupants submitting a plan of correction must report to the pole owner all corrections completed within the timelines provided for within the plan.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0170 & 860-034-0870; PUC 2-2007, f. & cert. ef. 4-16-07

860-028-0180

Removal of Occupant Pole Attachments

(1) If the pole occupant fails to meet the time limitations set out in OARs 860-028-0120, 860-028-0130, 860-028-0140, or 860-028-0150 by 180 or more days, then the pole owner may request an order from the Commission authorizing removal of the pole occupant's attachments. Nothing in this section precludes a party from pursuing other legal remedies.

(2) This rule does not apply to a pole occupant that is a government entity.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0180 & 860-034-0880; PUC 2-2007, f. & cert. ef. 4-16-07

860-028-0190

Notice of Violation

A pole owner that seeks, under these rules, any type of relief against a pole occupant for violation of OAR 860-028-0120 must provide the pole occupant notice of each attachment allegedly in violation of the rule, including the provision of the rule each attachment allegedly violates; an explanation of how the attachment violates the rule; and the pole number and location, including pole owner maps and GPS coordinates, if available.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0190 & 860-034-0890; PUC 2-2007, f. & cert. ef. 4-16-07

860-028-0195

Time Frame for Final Action by Commission

The Commission shall issue its final order within 360 days of the date a complaint is filed in accordance with these rules. This rule does not apply to a complaint involving the attachment(s) of an "incumbent local exchange carrier" (as that phrase is defined in 47 U.S.C. Section 251(h)(2002)).

Stat. Auth.: ORS 183, 756, 757 & 759, 47 USC § 224(c)(3)(B)(ii)

Stats. Implemented: ORS 756.040, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 9-2004, f. & cert. ef. 4-21-04

860-028-0200

Joint-Use Association

(1) Pole owners and pole 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 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 occupants; and

(b) Settlement of disputes between a pole owner and a pole occupant that arise under administrative rules governing pole owners and pole 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 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0200 & 860-034-0900

860-028-0210

Resolution of Disputes over Plans of Correction

(1) If a pole occupant and a pole owner have a dispute over the reasonableness 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 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 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0210 & 860-034-0910

860-028-0220

Resolution of Factual Disputes

(1) If a pole occupant and pole owner have a dispute over facts that the pole occupant and pole owner must resolve so that the pole owner can impose appropriate sanctions, or in the event that a pole 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 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 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 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0220 & 860-034-0920

860-028-0230

Pole Attachment Rental Reductions

- (1) Except as provided in section (3), a licensee must receive a rental reduction.
- (2) The rental reduction must be based on ORS 757.282(3) and applicable administrative rules.
- (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 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 engaged in a pattern of failing to obtain permits issued by the pole owner for each pole on which the pole occupant has attachments;
 - (d) The licensee 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 engaged in a pattern of failing to respond promptly to the pole owner, Commission Staff, or civil authorities in regard to emergencies, safety violations, or pole modification requests; or
 - (f) The licensee engaged in a pattern of delays, each delay greater than 45 days from the date of billing, in payment of fees and charges that were not disputed in good faith, that were filed in a timely manner, and are 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 must notify the licensee of the loss of reduction in writing. The written notice must:
 - (a) State how and when the licensee violated either the Commission's rules or the terms of the contract;
 - (b) Specify the amount of the loss of rental reduction that 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 must 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 must send its response to the pole owner, with a copy to the Commission. The licensee must 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 must, 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 must, within 30 days, issue an order.
- (7) Except for the rental reduction amount in dispute, the licensee must not delay payment of the pole attachment rental fees due to the pole owner.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0230 & 860-034-0930; PUC 2-2007, f. & cert. ef. 4-16-07

Conduit Attachments

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 757.290 or 759.650 through 759.675.
- (2) The conduit rental rate per linear foot is computed by multiplying the percentage of conduit capacity occupied by the net linear cost of conduit and then multiplying that product by the carrying charge.
- (3) A licensee occupying part of a duct is deemed to occupy the entire duct.
- (4) Licensees 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 will apply from the date the conduit owner last inspected the conduit in dispute. The last inspection date is deemed to be no more than five years before the unauthorized attachment is discovered. The conduit owner also may charge for any expenses it incurs as a result of the unauthorized attachment.
- (5) The conduit owner must give a licensee 18 months' notice of its need to occupy licensed conduit and 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.
- (6) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, preconstruction activity, post construction inspection, make ready work, and the costs related to unauthorized attachments. Charges for activities not included in the rental rates must be based on actual costs, including administrative costs, and will be charged in addition to the rental rate.
- (7) The owner may require prepayment from a licensee of the owner's estimated costs for any of the work allowed by OAR 860-028-0100. Upon completion of the work, the owner will issue an invoice reflecting the actual costs, less any prepayment. Any overpayment will be promptly refunded, and any extra payment will be promptly remitted.

(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 183, 756, 757 & 759

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

Hist.: PUC 2-1986, f. & ef. 2-7-86 (Order No. 86-107); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 12-1998, f. & cert. ef. 5-7-98; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01. Renumbered from 860-022-0060 & 860-034-0370; PUC 3-2007, f. & cert. ef. 4-16-07

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