

LEXSTAT O.a.r. 860-028-0140

OREGON ADMINISTRATIVE RULES
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*** THIS DOCUMENT REFLECTS CHANGES FILED AS OF OCTOBER 15, 2003 ***

CHAPTER 860 PUBLIC UTILITY COMMISSION
DIVISION 28 POLE AND CONDUIT ATTACHMENTS

POLE ATTACHMENTS

Or. Admin. R. 860-028-0140
(2003)

860-028-0140 Sanctions for Having No Permit

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

(a) \$ 250 per pole; or

(b) 30 times the owner's annual rental fee per pole.

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

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

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

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

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 & 860-034-0340

Mailed 10/28/98

ALJ/TRP/mrj

Decision 98-10-058 October 22, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion Into Competition
for Local Exchange Service.

R.95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion Into Competition
for Local Exchange Service.

I.95-04-044
(Filed April 26, 1995)

R.95-04-043, I.95-04-044 ALJ/TRP/mrj**

attachments by third parties in order to ensure the continuing safety and reliability of the facilities.

The Coalition acknowledges the need for utilities to provide for the safety and reliability of their facilities - so long as the safety and reliability concerns are genuine and have not been manufactured as excuses for a plainly discriminatory access policy. The Coalition argues that any utility that contends that safety and reliability concerns preclude additional attachments should bear the burden of demonstrating that such concerns have not been fabricated as an excuse of denying access.

2. Discussion

We generally agree that the incumbent utility, particularly electric utilities, should be permitted to impose restrictions and conditions which are necessary to ensure the safety and engineering reliability of its facilities. In the interest of public health and safety, the utility must be able to exercise necessary control over access to its facilities to avoid creating conditions which could risk accident or injury to workers or the public. The utility must also be permitted to impose necessary restrictions to protect the engineering reliability and integrity of its facilities.

Telecommunications carriers must obtain express written authorization from the incumbent utility and must comply with applicable notification and safety rules before attempting to make a new attachment or modifying existing attachments. Any unauthorized new attachments or modifications of existing attachments are strictly prohibited. Before an attachment to a utility pole or support structure is made, we shall require successful completion of a fully executed contract.

In order to provide carriers with a strong economic disincentive to attach to poles or occupy conduit without a fully signed contract

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and authorization to proceed, any carrier found to have engaged in such action, or which has performed an unauthorized modification, shall pay a penalty fee. GTEC has proposed a penalty of five times the recurring monthly rate for each month of the violation. Edison, PG&E, and SDG&E agree that a penalty fee is warranted, but believe that GTEC's proposed penalty is too small to deter unauthorized attachments. Edison argues that many attaching parties may believe such a small penalty is an acceptable risk for unauthorized attachment rather than to incur the costs for negotiating and administering an access request. PG&E and SDG&E propose a \$100 fee as an adequately large penalty to discourage unauthorized attachments while Edison proposes a \$500 fee. We shall impose an automatic penalty of \$500 per violation for unauthorized attachments, based on the proposal of Edison. For purposes of applying the \$500 penalty, each unauthorized pole attachment shall constitute a separate violation. The setting of the penalty level at \$500 is consistent with PU Code Section 2107 which prescribes default penalties for violations of Commission orders of not less than \$500, or more than \$20,000, for each offense. If violations continue to occur despite the imposition of this penalty, we may consider increasing the amount of the penalty at a future time.

We shall not adopt specific detailed rules addressing a comprehensive set of safety and reliability requirements given the complexity and diversity of the technical issues involved. Historically, the Commission's GO 95 and GO 128 have dealt with safety requirements for clearances and separation between conductors on poles or in common trenches. These rules have become accepted industry practice and parties agreed generally that they should continue to be enforced. At a minimum, parties must comply with GOs 95 and 128, as well as other applicable local, state, and federal safety regulations including those prescribed by Cal/OSHA Title 8. Attachments to wood poles

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APPENDIX A

**COMMISSION-ADOPTED RULES GOVERNING ACCESS
TO RIGHTS-OF-WAY AND SUPPORT STRUCTURES OF
INCUMBENT TELEPHONE AND ELECTRIC UTILITIES**

- I. PURPOSE AND SCOPE OF RULES
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 - A. NOTIFICATION TO PARTIES ON OR IN SUPPORT STRUCTURES

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C. CONTRACTS

1. A utility that provides or has negotiated an agreement with a telecommunications carrier or cable TV company to provide access to its support structures shall file with the Commission the executed contract showing:
 - a. The annual fee for attaching to a pole and supporting anchor.
 - b. The annual fee per linear foot for use of conduit.
 - c. Unit costs for all make ready and rearrangements work.
 - d. All terms and conditions governing access to its rights of way and support structures.
 - e. The fee for copies or preparation of maps, drawings and plans for attachment to or use of support structures.
2. A utility entering into contracts with telecommunications carriers or cable TV companies or cable TV company for access to its support structures, shall file such contracts with the Commission pursuant to General Order 96, available for full public inspection, and extended on a nondiscriminatory basis to all other similarly situated telecommunications carriers or cable TV companies. If the contracts are mutually negotiated and submitted as being pursuant to the terms of 251 and 252 of TA 96, they shall be reviewed consistent with the provisions of Resolution ALJ-174.

D. Unauthorized Attachments

1. No party may attach to the right of way or support structure of another utility without the express written authorization from the utility.
2. For every violation of the duty to obtain approval before attaching, the owner or operator of the unauthorized attachment shall pay to the utility a penalty of \$500 for each violation. This fee is in addition to all other costs which are part of the attacher's

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responsibility. Each unauthorized pole attachment shall count as a separate violation for assessing the penalty.

3. Any violation of the duty to obtain permission before attaching shall be cause for imposition of sanctions as, in the Commissioner's judgment, are necessary to deter the party from in the future breaching its duty to obtain permission before attaching will be accompanied by findings of fact that permit the pole owner to seek further remedies in a civil action.

4. This Section D applies to existing attachments as of the effective date of these rules.

VII. RESERVATIONS OF CAPACITY FOR FUTURE USE

No utility shall adopt, enforce or purport to enforce against a telecommunications carrier or cable TV company any "hold off," moratorium, reservation of rights or other policy by which it refuses to make currently unused space or capacity on or in its support structures available to telecommunications carriers or cable TV companies requesting access to such support structures, except as provided for in Part C below.

All access to a utility's support structures and rights of way shall be subject to the requirements of Public Utilities Code § 851 and General Order 69C. Instead of capacity reclamation, our preferred outcome is for the expansion of existing support structures to accommodate the need for additional attachments.

Notwithstanding the provisions of Paragraphs VII.A and VII.B, an electric utility may reserve space for up to 12 months on its support structures required to serve core utility customers where it demonstrates that: (i) prior to a request for access having been made, it had a bona fide development plan in place prior to the request and that the specific reservation of attachment capacity is reasonably and specifically needed for the immediate provision (within one year of the request) of its core utility service, (ii) there is no other feasible solution to meeting its immediately foreseeable needs, (iii) there is no available technological means of increasing the

**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION**

GENERAL ORDER

Docket No. U-22833. In Re: Review of LPSC Orders U-14325, U-14325-A and General Order dated December 17, 1984 dealing with agreements for Joint Utilization of Poles and Facilities by Two or More Entities.

(Decided at Open Session held February 24, 1999)

This case was set on the generic docket for purposes of receiving evidence regarding whether the current Louisiana Public Service Commission (LPSC) calculation for determining pole attachment rates is prohibitive to telecommunication, electric and cable television providers to the point of being a denial of entry into their respective markets.¹ Other issues regarding this matter include make ready or additional charges charged by various pole owners prior to allowing attachment as well as charges for engineering, inventory, inspection and transportation costs which are placed in the contracts with various telecommunication, electric or cable television providers.

Staff sought comment on the matters of the continued use of the current LPSC formula for calculating the rates for pole attachments and what, if any additional fees should be allowed above and beyond the calculation rental fee. Following a review of all testimony, comments, reply comments and other data collected by the LPSC Staff, after holding a technical conference discussing the modification of the LPSC pole attachment formula, make ready charges and over-lashing, after accepting comments and Exceptions briefs to Staff's Initial Recommendation, and after discussion were held among the parties and intervenors regarding settlement of this matter, Staff recommended the following settlement proposal which is in the public interest:

1. Until December 31, 2002, there shall be in effect a rate freeze of the LPSC-approved pole rental rates in effect as of the date of execution of this agreement, or a rate freeze of a pole rental rate set by a contract in effect as of the date of execution of this agreement. However, joint pole use agreements between pole owners containing automatic adjustment clauses will be allowed to remain in effect and not subject to the above referenced freeze.
2. The LPSC formula adopted in LPSC Orders U-14325 and U-14325-A shall be reviewed prior to termination of the rate freeze.

¹ The LPSC acquired jurisdiction over pole attachments in cable, electric and telecommunications cases. 47 U.S.C. Section 224 (c). Section 224(c) provides that a State which regulates the rates, terms and conditions of pole attachments must certify to the commission that it regulates those matters and that it will consider the interests of the subscribers to cable and utilities services. The state must issue and make effective rules and regulations implementing the State's authority over pole attachments before it will be allowed to regulate pole attachments. The State procedures were successfully completed by the LPSC in Docket U-14325 on October 31, 1980 with respect to pole attachment rentals between electric and telephone companies. The same procedure was extended to cable television operators in a General Order dated December 17, 1984. Because of this authority, the LPSC regulates the rates, terms and conditions of pole attachments between telecommunication, electric and cable television carriers. Due to LPSC staff initial findings regarding various charges, this docket was opened to address whether the rate and other additional current charges are prohibitive to telecommunication, electric and cable television providers to the point of being a denial of entry into their respective markets.

3. No other additional charges other than traditional "Make Ready" charges are allowed except (1) in those cases where extraordinary work must be performed by the pole provider i.e. pole or equipment change-outs to allow minimum ground clearance and other work the parties agree are necessary, or (2) where agreed to by the parties or (3) where the company petitions the Commission with cost-based documentation supporting the need for the additional charges and is granted Commission authority for the additional charges.
4. Any party wishing to attach or overlash facilities must file a written request with the pole owner identifying what facilities are to be attached and/or overlashed, where such facilities will be attached and/or overlashed, and when such facilities will be attached and/or overlashed. The pole owner shall respond within thirty working days of receipt of the written request. Where a pole owner does not permit attachment or overlashing of facilities, the pole owner must identify, in writing, the reasons for the denial.
5. A party with existing facilities may overlash those facilities for its own use without incurring an additional pole rental charge. Where facilities are overlashed for use by a third party or for use by an affiliate of the attached party, such overlashed facilities will be considered a new attachment and be charged the applicable rate, unless, prior to overlashing the facilities, the parties agree in writing to a different rate for the overlashed facilities.
6. Reasonable penalties will be assessed by the Commission after a finding of a violation of any provision of this Order, not to exceed \$10,000.00 per occurrence.

This matter was considered at the Commission's Open Session held on February 24, 1999. On motion of Commissioner Dixon and seconded by Commissioner Blossman, and adopted by a unanimous vote, the Commission voted to accept the staff recommendation.

IT IS THEREFORE ORDERED THAT:

1. Until December 31, 2002, there shall be in effect a rate freeze of the LPSC-approved pole rental rates in effect as of the date of execution of this agreement, or a rate freeze of a pole rental rate set by a contract in effect as of the date of execution of this agreement. However, joint pole use agreements between pole owners containing automatic adjustment clauses will be allowed to remain in effect and not subject to the above referenced freeze.
2. The LPSC formula adopted in LPSC Orders U-14325 and U-14325-A shall be reviewed prior to termination of the rate freeze.
3. No other additional charges other than traditional "Make Ready" charges are allowed except (1) in those cases where extraordinary work must be performed by the pole provider i.e. pole or equipment change-outs to allow minimum ground clearance and other work the parties agree are necessary, or (2) where agreed to by the parties or (3) where the company petitions the Commission with cost-based documentation supporting the need for the additional charges and is granted Commission authority for the additional charges.
4. Any party wishing to attach or overlash facilities must file a written request with the pole owner identifying what facilities are to be attached and/or overlashed, where such facilities will be attached and/or overlashed, and when such facilities will be attached and/or overlashed. The pole owner shall respond within thirty working days of receipt of the written request. Where a pole owner does not permit attachment or overlashing of facilities, the pole owner must identify, in writing, the reasons for the denial.
5. A party with existing facilities may overlash those facilities for its own use without incurring an additional pole rental charge. Where facilities are overlashed for use by a third party or for use by an affiliate of the attached party, such overlashed facilities will be considered a new attachment and be charged the applicable rate, unless, prior to overlashing the facilities, the parties agree in writing to a different rate for the overlashed facilities.

- 6. Reasonable penalties will be assessed by the Commission after a finding of a violation of any provision of this Order, not to exceed \$10,000.00 per occurrence.

**BY ORDER OF THE COMMISSION
 BATON ROUGE, LOUISIANA
 MARCH 12, 1999**

/S/ C. DALE SITTIG
 DISTRICT IV
 CHAIRMAN C. DALE SITTIG

/S/ JACK "JAY" A. BLOSSMAN, JR.
 DISTRICT I
 VICE CHAIRMAN JACK "JAY" A. BLOSSMAN, JR.

/S/ DON OWEN
 DISTRICT V
 COMMISSIONER DON OWEN

/S/ IRMA MUSE DIXON
 DISTRICT III
 COMMISSIONER IRMA MUSE DIXON

/S/ LAWRENCE C. ST. BLANC
 S E C R E T A R Y

/S/ JAMES M. FIELD
 DISTRICT II
 COMMISSIONER JAMES M. FIELD