



# Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Building Codes Division

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## *Electrical and Elevator Board*

Meeting agenda

Thursday, March 26, 2020, 9:30 a.m.

Conference Room A

***This packet will include late submissions***

Board meetings are available via the Internet:

<https://www.oregon.gov/bcd/boards/Pages/index.aspx>

### **I. Board business**

- A. Call to order
- B. Roll call
- C. Approval of agenda and order of business
- D. Approval of the draft board meeting minutes of [Jan. 23, 2020](#)
- E. Date of the next regularly scheduled meeting: May 28, 2020

### **II. Public comment**

*This time is available for individuals wanting to address the board on **non-agenda items only**. The board will not take action on non-agenda items raised under public comment at this meeting. Testimony on agenda items will be heard when the item is called. (See "Issues to remember when addressing board" at the end of this agenda).*

### **III. Reports**

- A. Review of [three separate Proposed Orders](#) in consideration of final orders in the Matter of:
  - [Dustin M. Hepler](#)
  - [Kyle J. Rood](#)
  - [Alameda Electric](#)*(Separate board action is required for each Proposed Order included in this item)*
- B. Board [vote on a consent order](#) proposed for resolution as outlined in the enforcement board report *(Board action required)*
- C. Summary of [enforcement cases previously resolved](#) by the division as outlined in the enforcement board report *(No board action required)*
- D. Consideration of Scott McNamara assessed civil penalties; Case Numbers C2014-0230 and 2008-0271 *(Board action required) (This item will include a late submission. The document will be posted to the division website as soon as it becomes available).*
- E. Elevator program update
- F. Electrical program update

### **IV. Communications - None**

### **V. Appeals - None**

## VI. Unfinished business - None

## VII. New business

- A. Board review and [provide a recommendation](#) to the Administrator for the adoption of the 2020 Oregon Electrical Specialty Code
- B. Board review request received from Oregon State Association of Electrical Workers and National Electrical Contractors Association to [approve a reciprocity agreement with Washington](#) for the general journeyman electrical license (*This item will include a late submission. The document will be posted to the division website as soon as it becomes available*).
- C. Review and approve committee recommendations for [new continuing education](#) course and instructor applications

## VIII. Announcements - None

## IX. Adjournment

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### Issues to remember when addressing the board:

- All public participation is subject to the discretion of the board chair for order of testimony, length and relevance.
- Speakers are generally limited to five minutes.
- Please register on the attendance registration form and on the public testimony registration form, listing the appropriate agenda item.
- The board chair will call you to the front testimony table.
- Please state your name and the organization you represent (if any).
- Always address your comments through the chair.
- If written material is included, please provide 20 three-hole-punched copies of all information to the boards administrator prior to the start of the meeting and, when possible, [staff](#) respectfully requests an electronic copy of materials 24 hours prior to the meeting.

**Interpreter services or auxiliary aids for persons with disabilities are available upon advance request. Persons making presentations including the use of video, DVD, PowerPoint, or overhead projection equipment are asked to contact boards coordinator 24 hours prior to the meeting. For assistance, please contact [Debi Barnes-Woods](#) at 503-378-6787.**

Please do not park vehicles with "E" plates in "customer only" spaces.

*Note:* For information regarding re-appointments or board vacancies, please visit the Governor's [website](#).

**State of Oregon**

**Electrical and Elevator Board**

**Meeting minutes**

Jan. 23, 2020

**Members present:** Heather Miller, journeyman electrician, chair  
William (BJ) Barlow, electrical equipment manufacturing rep  
Randy Carmony, journeyman elevator installer  
Jon Flegel, journeyman electrician  
Scott Hall, electrical equipment supplier  
Vern Palmrose, power and light industry  
Ryan Richards, electrical contractor  
James Totten, owner/manager of a commercial office building

**Members absent:** Thomas Kyle, electrical contractor, vice-chair  
Robert McNeill, elevator-manufacturing representative  
Randy Smith, electrical inspector  
Vacant, building official  
Vacant, commercial underwriter  
Vacant, industrial plant employing electricians  
Vacant, public member

**Staff present:** Alana Cox, manager, Policy and Technical Services (PTS)  
Keith Anderson, electrical program chief, PTS  
Todd Smith, senior stakeholder & public affairs analyst,  
Administration  
Warren Hartung, elevator program chief, Statewide Services  
Tyler Glaze, policy analyst, PTS  
Nick Howard, contested case representative, Enforcement Services  
Debi Barnes-Woods, boards administrator, PTS

**Guests present:** Amy Beyer, self  
Frank Sonnabend, City of Corvallis  
Doug Rudisel, City of Portland  
Nathan Philips, NECA  
Eric McClaskey, EIWPF  
Emily Marchant, OMHA

**I. Board business**

**A. Call to order**

Chair Heather Miller called the Jan. 23, 2020, Electrical and Elevator Board meeting to order at 9:30 a.m. The meeting took place at the Building Codes Division in Conference Room A, at 1535 Edgewater Street NW, Salem, Oregon.

**B. Roll call**

Vice-chair Kyle, Robert McNeill, and Randy Smith were all excused. All other members were present in Conference Room A.

The Electrical and Elevator Board has four vacancies: Building official, commercial underwriter, industrial plant representative, and public member.

**C. Approval of the agenda and order of business**

Chair Miller **RULED** the agenda and order of business approved.

**D. Approval of the board meeting draft minutes of Nov. 21, 2019**

Chair Miller ruled the meeting minutes of Nov. 21, 2019, final.

**E. Date of the next regularly scheduled meeting:** March 26, 2020.

**II. Public comment**

Eric McClaskey, OSHA Electrical Industry Safety Alliance (EISA), said that the elevator industry safety partners and OSHA have entered into an alliance. To review additional information, click on the link provided:

<https://www.osha.gov/alliances/regional/Region-10>

**III. Reports**

**A. Summary of enforcement cases previously resolved by the division as outlined in the enforcement board report (*No board action required*)**

Sarah Blam-Linville, contested case representative, Enforcement Services, was at the testimony table to answer questions the board may have had on the two case summaries.

**C. Elevator program update**

Warren Hartung, elevator program chief, Statewide Services, discussed the reports provided by the elevator program.

Chief Hartung explained that the additional new report summarized each accident that was reported. He reported that there were no equipment related elevator or escalator accidents.

**D. Electrical program update**

Keith Anderson, electrical program chief, Policy and Technical Services, said the code review committee completed its review of the 2020 Oregon Electrical Specialty Code. Chief Anderson thanked the committee members for all their work and said that a code document is expected to be presented to the board at its March meeting for an anticipated effective date of Oct. 1, 2020.

**IV. Communications -None**

**V. Appeals - None**

**VI. Unfinished business - None**

**VII. New business**

**Review and approve committee recommendations for new continuing education course and instructor applications**

Policy analyst Tyler Glaze said the board was to consider all new continuing education applications for instructors and courses the committee reviewed since the committee last met.

**Motion by James Totten** to approve the committee's recommendations for approval or denial of courses or instructors.

**Motion carried unanimously.**

**VIII. Announcements** - None

**IX. Adjournment**

Chair Miller adjourned the meeting at 9:40 a.m.

Respectfully submitted by Debi Barnes-Woods, boards administrator/coordinator.

**State of Oregon**

**Board memo**

**Building Codes Division**

**March 26, 2020**

**To:** Electrical and Elevator Board

**From:** Tyler Anderson, Assistant Attorney General and Sarah Blam-Linville, Contested Case Representative, Enforcement Services

**Subject:** Approval of Proposed Order for Case Nos. C2017-0407, In the Matter of Dustin M. Hepler, Case C2016-0479, In the Matter of Kyle J. Rood, and Case C2016-0480, In the Matter of Alameda Electric, LLC

**Action requested:**

To consider the adoption of each of the three Proposed Orders and issue Final Orders.

**Background:**

On November 8, 2017, the Building Codes Division (Division), acting on behalf of the State Electrical and Elevator Board (Board), issued a Notice of Proposed Assessment of a Civil Penalty and Notice of Final Order on Default (Notice Hepler) to Dustin M. Hepler (Hepler) because he was performing electrical installations without holding a valid Oregon supervising or journeyman electrician license in violation of Oregon Revised Statute (ORS) 479.620(3). On November 16, 2017, Hepler requested a hearing.

On July 18, 2017, the Division, acting on behalf of the Board, issued a Notice of Proposed Assessment of A Civil Penalty, Notice of Proposed Revocation of Supervising Electrician License Number 4871S and Notice of Final order on Default (Notice Rood) to Kyle J. Rood (Rood) because from January 1, 2016, through October 11, 2018, Rood failed to be “continuously employed” in violation of Oregon Administrative Rule (OAR) 918-282-0140(2)(c), failed to sign all permits in violation of OAR 918-282-0140(2)(a), failed to ensure proper electrical safety procedures were used in violation of OAR 918-282-0140(2)(d), failed to ensure all electrical labels and permits were used and signed in violation of OAR 918-28-0140(2)(e), and failed to prevent employees from performing electrical installations for which they were not properly licensed in violation of OAR 918-282-0140(2)(f). On July 31, 2017, Rood requested a hearing through his attorney. On November 9, 2017, the Division, on behalf of the Board, issued an Amended Notice of Proposed Assessment of a Civil Penalty, Amended

Notice of Proposed Revocation of Supervising Electrician License Number 4871S and Amended Notice of Final Order on Default (Amended Notice Rood).

On July 18, 2017, the Division, acting on behalf of the Board, issued a Notice of Proposed Assessment of A Civil Penalty, Notice of Proposed Suspension of Electrical Contractors License Number C923 and Notice of Final order on Default (Notice Alameda) to Alameda Electric, LLC (Alameda) because from January 1, 2016, through November 7, 2017, Alameda failed to “continuously employ” at least one full-time general supervising electrician in violation of OAR 918-282-0010(1) and for allowing one or more employees to perform electrical installations for which they were not properly licensed in violation of OAR 918-282-0120(1). On July 31, 2017, Alameda requested a hearing through its attorney. On November 9, 2017, the Division, on behalf of the Board, issued an Amended Notice of Proposed Assessment of a Civil Penalty, Amended Notice of Proposed Suspension of Electrical Contractors License Number C923 and Amended Notice of Final Order on Default (Amended Notice Alameda).

On October 11, 2018, the Division, on behalf of the Board, issued a Second Amended Notice of Proposed Assessment of a Civil Penalty, Second Amended Notice of Proposed Revocation of Supervising Electrician License Number 4871S and Second Amended Notice of Final Order on Default (Second Amended Notice Rood) to Rood.

Administrative Law Judge (ALJ) Jennifer H. Rackstraw was assigned to the case(s) and, after several postponement requests, assigned the matters to be heard consecutively at an in person hearing which was held in Salem, Oregon, on August 27, 28, and 29, 2019. Assistant Attorney General Tyler Anderson represented the Division, and Attorney Terence McLaughlin represented Rood, Alameda, and Hepler. Sarah Blam-Linville was present as an agency representative. Andy Skinner, the Division’s Acting Enforcement Manager, was present as an observer. David Thompson, the owner of Alameda Electric, LLC, Kyle J. Rood, Dustin M. Hepler, Joe Bozied, an electrician employed by Alameda, and David Danielson, owner of Danielson Contracting, Inc., were each present and testified on behalf of Alameda, Rood and Hepler. Russ Darling, Division Compliance Investigator, Shannon Flowers, Division Senior Policy Advisor, and Andrea Simmons, Division Acting Fiscal & Customer Services Manager each testified on behalf of the Division.

On September 30, 2019, the parties filed their respective written closing arguments. With its closing argument, the Division included Attachments A and B. On October 21, 2019, Rood and Alameda’s attorney filed a supplemental written closing argument on their behalf. With the supplemental argument, Rood/Alameda moved to strike Division Attachments A and B from the record, as well as any Division arguments relying on those attachments. On that same date, the Division responded with written objections to Rood and Alameda’s motion, and Rood/Alameda thereafter filed a response to those objections.

On December 5, 2019, ALJ Rackstraw issued a Proposed Order for Hepler.  
On January 3, 2020, ALJ Rackstraw issued a Proposed Order for Alameda.  
On December 17, 2019, ALJ Rackstraw issued a Proposed Order for Rood.

On December 23, 2019, Respondent Rood sent the Division exceptions to the Proposed Order. On December 16, 2019, Respondent Alameda and Rood sent the Division exceptions to the Proposed Orders. The exceptions for each case are included in the hearing packet.

The Division now presents each of the three Proposed Orders for Board consideration and approval.



**BEFORE THE BUILDING CODES DIVISION  
ELECTRICAL AND ELEVATOR BOARD**

IN THE MATTER OF:	)	NOTICE OF APPEAL
	)	OF PROPOSED ORDER
	)	OAH Reference #2018-ABC-01225
<b>DUSTIN M. HEPLER</b>	)	
	)	
	)	Agency Case # C2017-0407
 <b>BUILDING CODES DIVISION 1535 EDGEWATER ST. NW SALEM, OR 97304</b>		

APPEAL OF THE PROPOSED ORDER OF ADMINISTRATIVE LAW JUDGE

Respondent appeals the 12/05/19 proposed order of ALJ Jennifer Rackstraw. Respondent specifically excepts to the finding that Respondent Dustin M. Hepler was installing electrical products on or about October 03, 2017. ALJ Rackstraw determined that Mr. Hepler was more probably than not installing Romex cable while employed by Alameda Electric, LLC.

The record contains no competent evidence that Mr. Hepler was installing Romex cable on 10/03/17. The evidence presented by the Division consists solely of the testimony of its investigator. However, accepting that testimony requires ignoring the physical facts presented by Respondent.

The testimony at hearing was clear that Mr. Hepler was low voltage cable which he was allowed to do. Respondent offered proof of the actual installation (identified by witnesses Hepler and Boside) in the form of Exhibits #4 and #5. Those photographs showed the actual installation Mr. Hepler was working on. The Division was allowed a continuance to refute this evidence, which was determinative on this issue, but was unable to do so. The Division, in fact, rested without making any attempt at all to refute evidence which was (and remains) outcome determinative.

In light of unrefuted evidence which established that Mr. Hepler did not install Romex, the ALJ's ruling could only have been in favor of Mr. Hepler. Choosing to accept the unsupported testimony of the Division's investigator over unrefuted physical evidence is clear error. The burden of proof was on the Division and it failed to prove by a preponderance of the evidence that a violation occurred.

CONCLUSION

For the reasons above the proposed Order should be amended to find in favor of Mr. Hepler and no fine should be imposed on him where there is a complete failure of proof regarding Dustin M. Hepler's claimed installation of electrical products.

Dated this 23rd day of December, 2019.

*/s/ Terence S. McLaughlin*

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CERTIFICATE OF SERVICE

I, Terence S. McLaughlin, hereby certify that I served a true copy of the Supplementary Argument by email on:

Tyler E. Anderson  
Assistant Attorney General  
General Counsel Division  
1162 Court St. NE  
Salem, OR 97301-4096

Dated this 23rd day of December, 2019.

*/s/ Terence S. McLaughlin*

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**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
BUILDING CODES DIVISION  
ELECTRICAL AND ELEVATOR BOARD**

IN THE MATTER OF: ) **PROPOSED ORDER**  
 )  
**DUSTIN M. HEPLER** ) OAH Case No. 2018-ABC-01225  
 ) Agency Case No. C2017-0407

**HISTORY OF THE CASE**

On November 8, 2017, the Electrical and Elevator Board of the Building Codes Division (Division) issued a “Notice of Proposed Assessment of a Civil Penalty and Notice of Final Order on Default” to Dustin M. Hepler. On November 16, 2017, Mr. Hepler requested a hearing. On January 10, 2018, the Division referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Jennifer H. Rackstraw to preside at hearing.

On March 27, 2018, ALJ Rackstraw held a prehearing conference. At the conference, Assistant Attorney General Tyler Anderson represented the Division, and Attorney Terence McLaughlin represented Mr. Hepler, as well as appellants Alameda Electric, LLC (Alameda) (OAH Case No. 2018-ABC-01221) and Kyle Rood (OAH Case No. 2018-ABC-01223) from two related contested case matters. The three matters were set to be heard consecutively on October 2, 3, and 4, 2018.

On September 28, 2018, ALJ Rackstraw granted the parties’ joint request to postpone the hearings set for October 2 through 4, 2018 in the Hepler, Alameda, and Rood matters. On October 2, 2018, ALJ Rackstraw held a status conference to reschedule the hearings. Mr. Anderson represented the Division, and Mr. McLaughlin represented Mr. Hepler, Alameda, and Mr. Rood. The three matters were reset to be heard consecutively on December 19, 20, and 21, 2018.

On December 13, 2018, the OAH assigned the matters to Senior ALJ Richard Barber. On December 19, 2018, ALJ Barber granted the parties’ joint request to postpone the hearings scheduled for December 19 through 21, 2018. The three matters were reset to be heard consecutively on May 15 and 16, 2019, with ALJ Rackstraw assigned to preside over the hearings.

On April 9, 2019, ALJ Rackstraw granted Mr. McLaughlin’s unopposed request to postpone the hearings scheduled for March 15 and 16, 2019. The three matters were reset to be heard consecutively on August 27, 28, and 29, 2019

On August 27, 28, and 29, 2019, ALJ Rackstraw held a hearing in Salem, Oregon. Mr. Anderson represented the Division, and Mr. McLaughlin represented Mr. Hepler, Alameda, and Mr. Rood.<sup>1</sup> Sarah Blam-Linville was present as an agency representative. Andy Skinner, the Division's Acting Enforcement Manager, was present at the hearing as an observer. David Thompson, the owner of Alameda; Kyle Rood; and Dustin Hepler were each present and testified. The following persons also testified: Russ Darling, Division Compliance Investigator (Investigator); Shannon Flowers, Division Senior Policy Advisor; Andrea Simmons, Division Acting Fiscal & Customer Services Manager;<sup>2</sup> Joe Bozied, an electrician employed by Alameda; and David Danielson, owner of Danielson Contracting, Inc.

The record remained open until October 21, 2019, for the receipt of written closing arguments. On September 30, 2019, the parties filed their respective written closing arguments. On October 21, 2019, Mr. Hepler filed a supplemental written closing argument. The record closed on October 21, 2019.

## ISSUES

1. Whether Mr. Hepler performed an electrical installation without holding an Oregon journeyman or general supervising electrician's license, in violation of ORS 479.620(3).
2. If so, whether the Division may assess a \$2,000 civil penalty against Mr. Hepler, pursuant to ORS 455.895(1)(b) and OAR 918-001-0036.

## EVIDENTIARY RULINGS

Mr. Hepler's Exhibit R1 and the Division's Exhibits A1 and A3 through A5 were admitted into the record without objection. The Division's Exhibit A2 was admitted into the record over Mr. Hepler's hearsay objection.<sup>3</sup> Mr. Hepler's Exhibits R4, R5, and R6 were admitted over the Division's objections that they were not offered in a timely manner and that they lack indicia of authenticity as to date, time, and location. Mr. Hepler did not offer any Exhibits R2 or R3.

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<sup>1</sup> On August 27, 2019, the parties agreed to consolidate the three matters onto one hearing record, instead of having the individual cases heard consecutively on three separate records. *See* OAR 137-003-0525(1)(c) (allowing the OAH or ALJ to consolidate contested cases, subject to agency approval). However, a separate Proposed Order with appeal rights specific to the individual appellant is being issued for each case.

<sup>2</sup> Ms. Simmons was formerly a Division Policy Analyst and Senior Policy Advisor. In 2012, she became the Division's Enforcement Manager. Although that is still her official position, in approximately mid-2018, she began a job rotation as the Fiscal & Customer Services Manager. (Test. of Simmons.)

<sup>3</sup> Exhibits A1 through A5, referenced in this Proposed Order, are specific to the Hepler case. The Alameda and Rood cases have their own designated exhibits.

## CREDIBILITY CONSIDERATIONS & DETERMINATION

One of an administrative law judge's chief responsibilities is to reconcile conflicting evidence in the record and determine which evidence is more likely than not true. Because of the nature of the conflicting testimony in the present matter, I must assess the credibility of various witnesses offering testimony to reconcile the conflicting evidence.

While a witness is presumed to speak the truth, the presumption may be overcome "by the manner in which the witness testifies, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence." ORS 44.370. A determination of witness credibility may also be based on the inherent probability of the evidence, whether the evidence is corroborated, whether the evidence is contradicted by other testimony or evidence, whether there are internal inconsistencies, and "whether human experience demonstrates that the evidence is logically incredible." *Tew v. DMV*, 179 Or App 443, 449 (2002), citing *Lewis and Clark College v. Bureau of Labor*, 43 Or App 245, 256 (1979) *rev den* 288 Or 667 (1980) (Richardson, J., concurring in part, dissenting in part).

The central issue in this case is whether, on October 3, 2017, while working as a materials handler for Alameda, Mr. Hepler performed an electrical installation without holding the requisite license. It is undisputed that Mr. Hepler had no Oregon journeyman or general supervising electrician license on the date at issue. Thus, the only remaining question is whether Mr. Hepler did, in fact, perform an electrical installation on October 3, 2017.

Investigator Darling contends that when he arrived at one of the homes at the Alameda worksite on October 3, 2017 to perform a licensing "spot check," he directly observed Mr. Hepler drilling holes into a wooden ceiling stud and using both hands to pull dangling Romex electrical wiring through the holes. Testimony of Darling; *see* Exhibit A1 at 1-2. Mr. Hepler, however, denies that he pulled any Romex electrical wiring on October 3, 2017, and insists that he was merely pulling low-voltage coaxial cable and phone wiring when observed by Investigator Darling. It is undisputed that pulling high-voltage Romex electrical wiring constitutes an electrical installation, and that pulling low-voltage cable and phone wiring does not.

### *Investigator Darling*

Although Investigator Darling is not a licensed electrician, he has been performing field investigations for the Division since November 2014. Prior to that time, he worked as a licensed private investigator in Hawaii and California, primarily in the field of insurance and fraud. *See* testimony of Darling.

At hearing, Investigator Darling asserted that after spending nearly five years inspecting construction sites, and having had some personal experience pulling Romex electrical wiring at his own residence, he was certain that the wiring he observed Mr. Hepler pulling through drill holes on October 3, 2017 was Romex, and not coaxial cable or phone wiring. Moreover, a journeyman electrician on-duty at the job site on October 3, 2017, Scott Schildmeyer, told Investigator Darling on that date that he believed Mr. Hepler was a licensed electrical apprentice

whose job duties included pulling electrical wiring. And, licensed electrical apprentice Kevin Palm, who had been working with Mr. Hepler on October 3, 2017, similarly expressed to Investigator Darling on that date that he had believed Mr. Hepler to be an electrical apprentice. *See* Exhibit A1 at 2-4.

Investigator Darling's hearing testimony regarding Mr. Hepler's alleged actions on October 3, 2017 was consistent with the information contained in his Investigative Report dated October 10, 2017. *See* testimony of Darling and Exhibit A1.

In his closing arguments, Mr. Hepler contends that Investigator Darling's hearing testimony was "riddled with inconsistent statements and evasive answers," and that Investigator Darling produced investigative reports in the Hepler, Alameda, and Rood cases that "were designed" to result in the filing of violations against all three appellants. *See* Hepler Supplemental Closing Argument at 3; Hepler Closing Argument at 4. Those contentions are not borne out by the evidentiary record and they are not persuasive.

In sum, Investigator Darling, an experienced Division investigator, demonstrated his familiarity with different types of wiring and credibly testified that Mr. Hepler pulled Romex electrical wiring while working for Alameda on October 3, 2017.

*Mr. Hepler*

Mr. Hepler began working for Alameda as a materials handler in approximately mid-2016. His duties included, among other things, pulling low voltage coaxial cable and telephone wiring and handling and transporting high-voltage Romex electrical wire. Mr. Hepler had no electrical experience prior to working for Alameda. *See* testimony of Hepler.

Mr. Hepler testified at hearing that when Investigator Darling arrived at the job site on October 3, 2017, he (*i.e.*, Mr. Hepler) was drilling holes and pulling low voltage coaxial cable and telephone wire in the garage area. He further testified that although there was high-voltage Romex wire next to where he was drilling, he did not pull any high-voltage Romex wire on that date.

To support his testimony, Mr. Hepler offered Exhibits R4 and R5, which are Alameda photographs taken the day after Investigator Darling's inspection that show various low voltage wiring that Mr. Hepler purportedly pulled at the job site on October 3, 2017.<sup>4</sup> However, as the Division has pointed out, the photographs do not provide any indication as to who performed the worked depicted in the exhibits or when such work was completed. Moreover, the scale of the photographs provides no context as to what portion of the job site they represent or whether they even depict work performed at the job site in question. *See* Division's Closing Argument at 7.

Furthermore, when Investigator Darling made contact with Mr. Hepler on October 3, 2017, Mr. Hepler initially claimed that he was an electrical apprentice. After Investigator

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<sup>4</sup> At hearing, licensed journeyman electrician Joe Bozied testified that Exhibits R4 and R5 were taken in the garage at the job site on October 4, 2017, one day after Investigator Darling's inspection. (Test. of Bozied.)

Darling asked for his apprentice license, Mr. Hepler then admitted to Investigator Darling that he was a materials handler and not an apprentice. At hearing, Mr. Hepler acknowledged the dishonest statement made to Investigator Darling. He explained that his dishonesty to Investigator Darling was because he gets nervous around individuals in positions of authority, and he admitted that it had been “stupid” for him to lie. Testimony of Hepler. The Division suggests that Mr. Hepler, more likely than not, lied to Investigator Darling about being an apprentice to cover for the fact that Investigator Darling may have observed him pulling Romex electrical wiring on October 3, 2017. While Mr. Hepler’s admitted dishonesty to Investigator Darling on October 3, 2017, does not mean that Mr. Hepler’s hearing testimony automatically lacks credibility as a whole, it does call into question his reliability on the material issue of whether he pulled Romex electrical wiring on October 3, 2017. It is more logically credible that Mr. Hepler would falsely claim to be an electrical apprentice because he had just pulled electrical wiring in the presence of a Division inspector rather than making such a claim through simple nervousness around authority figures.

Finally, Mr. Hepler has motive to be untruthful in this matter. The Division has proposed a fairly significant financial sanction (\$2,000) against him, and the alleged violation, if proven, would subject his employer, Alameda, to disciplinary action.

In weighing the above considerations, Mr. Hepler’s testimony regarding whether he performed an electrical installation on October 3, 2017 is less persuasive than the testimony of Investigator Darling. Greater weight is therefore accorded to Mr. Darling’s testimony.

### **FINDINGS OF FACT**

1. Alameda is an electrical contractor holding electrical contractor license number C923. (Ex. A3 at 1; test. of Darling.) During all times relevant to this matter, Alameda was performing electrical work on residential structures at the Polygon Estates subdivision in Tigard, Oregon (the property). (See Exs. A1 at 1-2, A3 at 1-2; test. of Darling.)

2. In approximately mid-2016, Mr. Hepler began working as a materials handler for Alameda. His primary responsibilities included pulling low voltage coaxial cable and telephone wiring, performing clean-up duties, drilling holes, and handling and transporting high-voltage Romex electrical cables to Alameda’s electricians. (Test. of Hepler.) At all times relevant to this matter, Mr. Hepler was not an electrical apprentice and he did not hold any Oregon electrician’s license.<sup>5</sup> (Test. of Hepler and Darling; see Exs. A2 at 1-2, A4 at 2.) At the time of the hearing, Alameda continued to employ Mr. Hepler. (Test. of Hepler.)

3. At approximately 1:45 p.m. on October 3, 2017, Investigator Darling visited one of the homes under construction at the property to perform a licensing “spot check.”<sup>6</sup> (Test. of

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<sup>5</sup> Several months later, in early February 2018, Mr. Hepler did become an electrical apprentice with Alameda. (Test. of Hepler.)

<sup>6</sup> Investigator Darling performs approximately two or three licensing “spot checks” per week at various work sites. Although he had received a complaint pertaining to Alameda and its signing supervisor (Mr.

Darling; Ex. A1 at 1-2.) When Mr. Darling arrived at the home, Mr. Hepler was working in an open garage area. Investigator Darling observed that Mr. Hepler was standing on a ladder, drilling holes into a wooden ceiling stud, and using both hands to pull high-voltage Romex electrical wiring that had been dangling above from ceiling rafters through the holes. (Test. of Darling; Ex. A1 at 1-2.) Investigator Darling made contact with Mr. Hepler and asked him to produce his license. In response, Mr. Hepler falsely informed Investigator Darling that he was an electrical apprentice. (Test. of Darling and Hepler.) A couple minutes later, after Investigator Darling asked for proof of his apprenticeship, Mr. Hepler admitted to Investigator Darling that he was not an apprentice, that he did not hold an electrical license, and that he actually worked as a material handler for Alameda. (Test. of Darling and Hepler; Ex. A1 at 2.)

4. The Division has adopted a penalty matrix for determining the appropriate civil penalty for violations of the electrical code and other trade specialty codes. (Ex. A5 at 1-2.) Mr. Hepler has no previous disciplinary history with the Division. (See Ex. A4 at 1.) For a first-time violator, the standard civil penalty for an individual performing unlicensed electrical work is \$2,000. The penalty matrix further provides:

The entire penalty is imposed in all cases. \* \* \*. A stay of some portion of a penalty is within the sole discretion of the board or the division acting on the board's behalf for purposes of settling cases prior to hearing.<sup>7</sup>

(Ex. A5 at 1.)

## CONCLUSIONS OF LAW

1. Mr. Hepler performed an electrical installation without holding a journeyman or general supervising electrician's license, in violation of ORS 479.620(3).
2. The Division may assess a \$2,000 civil penalty against Mr. Hepler.

## OPINION

The Division bears the burden of establishing by a preponderance of the evidence that the alleged violation occurred, and that the proposed civil penalty is warranted. See ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of a fact or position); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (preponderance standard of proof generally applies in agency proceedings). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

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Rood) prior to October 3, 2017, his visit to the property on October 3, 2017 was unrelated to that complaint. (Test. of Darling.)

<sup>7</sup> At hearing, Ms. Simmons reiterated that the Division does not assess less than the standard civil penalty unless the violator enters into a settlement or "consent" agreement with the Division. (Test. of Simmons.)



## **1. Violation of ORS 479.620(3)**

ORS 479.620(3) states that, subject to ORS 479.540,<sup>8</sup> a person may not:

Except as provided in subsection (5) of this section,<sup>9</sup> make any electrical installation without a supervising or journeyman electrician's license.

ORS 479.530 provides, in part, the following relevant definitions:

(10) "Electrical installations" means the construction or installation of electrical wiring and the permanent attachment or installation of electrical products in or on any structure that is not itself an electrical product[.]

(11) "Electrical product" means any electrical equipment, material, device or apparatus that, except as provided in ORS 479.540, requires a license or permit to install and either conveys or is operated by electrical current.

(12) "Equipment" means any material, fittings, devices, appliances, fixtures, apparatus or the like that are used as part of or in connection with an electrical installation.

The parties do not dispute that the pulling of high-voltage Romex electrical wiring during the construction of a home is an electrical installation, as defined in ORS 479.530, and therefore requires an electrician's license. The parties also do not dispute that Mr. Hepler lacked such a license on October 3, 2017. The only contested issue is whether he pulled Romex electrical wiring at the property on October 3, 2017.

For the reasons discussed under the previous subsection titled "Credibility Considerations & Determination," the record establishes, more likely than not, that Mr. Hepler pulled high-voltage Romex electrical wiring on October 3, 2017. Because he did not hold an electrician's license when performing that electrical installation, his conduct on that date violated ORS 479.620(3).

## **2. Civil Penalty**

ORS 455.895(1)(b) authorizes the Division to assess a civil penalty for the established violation against Mr. Hepler and states that "[t]he Electrical and Elevator Board may impose a civil penalty against a person as provided under ORS 479.995." ORS 479.995 provides:

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<sup>8</sup> ORS 479.540 sets forth many exemptions, none of which are relevant in the present matter.

<sup>9</sup> Subsection (5) of ORS 479.620 contains an exception for electrical installations performed on certain single or multifamily dwelling units, but nonetheless requires a limited residential electrician's license, which Mr. Hepler did not have.

The Electrical and Elevator Board may impose a civil penalty for a violation of ORS 479.510 to 479.945 or rules adopted for the administration or enforcement of ORS 479.510 to 479.945 and this section. The board shall impose a civil penalty authorized by this section as provided in ORS 455.895.

OAR 918-001-0036 is titled “Guidelines for Civil Penalties” and states, in part:

(6) The Director may, subject to approval of a board, develop a penalty matrix for the board’s use to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.

The Division has adopted a penalty matrix. *See* Exhibit A5 at 1-2; testimony of Simmons. That penalty matrix provides that for a first-time violator, such as Mr. Hepler, the standard civil penalty for performing unlicensed work is \$2,000. *See* Exhibit A5 at 1. Because Mr. Hepler has provided no persuasive evidence showing that deviation from that standard civil penalty is warranted, he is liable to pay \$2,000 for the established violation of ORS 479.620(3).

### **ORDER**

*I propose that the Building Codes Division issue the following order:*

Dustin M. Hepler must pay a \$2,000 civil penalty for violating ORS 479.620(3).

**Jennifer H. Rackstraw**

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Senior Administrative Law Judge  
Office of Administrative Hearings

### **APPEAL PROCEDURE**

This is the Administrative Law Judge’s Proposed Order. You have the right to file written exceptions and argument to be considered per OAR 137-003-0650. Your exceptions and argument must be received within 20 calendar days after the service date of this Proposed Order. Send them to:

Building Codes Division  
P.O. Box 14470  
Salem, OR 97309-0404

**CERTIFICATE OF MAILING**

On December 5, 2019, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 2018-ABC-01225.

By: First Class Mail

Dustin M. Hepler  
14428 Brittany Terrace  
Oregon City OR 97045

Terence S McLaughlin  
Attorney at Law  
PO Box 672  
Carlton OR 97111

By: Electronic Mail

Sarah Blam-Linville  
Agency Representative  
Building Codes Division  
PO Box 14470  
Salem OR 97309

Tyler E Anderson  
Assistant Attorney General  
Department of Justice  
1162 Court St NE  
Salem OR 97301

Anesia N Valihov  
Hearing Coordinator

**BEFORE THE BUILDING CODES DIVISION  
ELECTRICAL AND ELEVATOR BOARD**

IN THE MATTER OF:

**KYLE J. ROOD**

**BUILDING CODES DIVISION  
1535 EDGEWATER ST. NW  
SALEM, OR 97304**

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OAH Reference #2018-ABC-01223

Agency Case # C2016-0479

APPEAL OF THE PROPOSED ORDER OF ADMINISTRATIVE LAW JUDGE

Respondent appeals the proposed order of ALJ Jennifer Rackstraw. Respondent specifically excepts to the finding that a revocation of Kyle J. Rood's license was supported by the facts in this case. ALJ Rackstraw determined that Alameda's employment of a well qualified licensed signing supervisor warranted a revocation of Kyle J. Rood's license in the complete absence of facts supporting the *proposed order*.

The record reflects that Alameda Electric, LLC retained Kyle J. Rood, a licensed signing supervisory electrician throughout the relevant time period. Further, that during the last 13 months he has worked solely for Alameda Electric, LLC. If we are to accept the findings of ALJ Rackstraw we reach the bizarre conclusion that Alameda Electric, LLC would have been better off to have never had a signing supervisory electrician. That would have warranted only a fine.

Respondent specifically excepts to the ALJ's acceptance of the Division's definition of continuous employment. While the Board can make reasonable rules, that legislative latitude does not extend to redefining time, place and manner to reach an impermissible outcome.

Citing OAR 918-282-0090(3) BCD's basis for any and all action against Alameda and Rood is its definition of "continuously employ" which, based upon BCD's reading of its own definition, is claimed to limit the employment of Kyle Rood.

The statute requires only that a signing supervising electrician be "continuously employed." Respondents are entitled to a plain reading of the statute. Relying on the Oxford English Dictionary "continuously" is defined as follows:

***continuously***

**ADVERB**

• **1** *Without interruption or gaps.*  
*'these images loop continuously'*

**1.1** *Repeatedly without exceptions or reversals.*  
*'their performance has continuously improved'*

<https://www.lexico.com/en/definition/continuously>

Thus, Mr. Rood's employment must be without interruption or gaps, as it was. The plain meaning of the statute is that you could not have a signing supervisor hired on a job by job basis or hourly basis. This makes quite a bit of sense and provides continuity for all concerned.

By contrast, OAR 918-282-0090(3) is an unconstitutional exercise of BCD's authority to make "reasonable rules." The definition adopted by BCD is internally inconsistent, at odds with the statute, and beyond reasonable definition of the term "continuously" and beyond its grant of authority by the Legislature.

CONCLUSION

For the reasons above the proposed Order should be amended to find in favor of Kyle J. Rood, or, in the alternative, a maximum fine of \$6000.00 should be imposed.

Dated this 3rd day of January, 2020.

*/s/ Terence S. McLaughlin*

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Terence S. McLaughlin  
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OSB 840735  
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CERTIFICATE OF SERVICE

I, Terence S. McLaughlin, hereby certify that I served a true copy of the Supplementary Argument by email on:

Tyler E. Anderson  
Assistant Attorney General  
General Counsel Division  
1162 Court St. NE  
Salem, OR 97301-4096

Dated this 3rd day of January, 2020.

*/s/ Terence S. McLaughlin*

---

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**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
BUILDING CODES DIVISION  
ELECTRICAL AND ELEVATOR BOARD**

IN THE MATTER OF: ) **PROPOSED ORDER**  
 )  
**KYLE J. ROOD** ) OAH Case No. 2018-ABC-01223  
 ) Agency Case No. C2016-0479

**HISTORY OF THE CASE**

On July 18, 2017, the Electrical and Elevator Board (Board) of the Building Codes Division (Division) issued a “Notice of Proposed Assessment of a Civil Penalty, Notice of Proposed Revocation of Supervising Electrician License Number 4871S, and Notice of Final Order on Default” to Kyle J. Rood. On July 31, 2017, Mr. Rood requested a hearing through his attorney. On November 9, 2017, the Division, on behalf of the Board, issued an “Amended Notice of Proposed Assessment of a Civil Penalty, Amended Notice of Proposed Revocation of Supervising Electrician License Number 4871S, and Amended Notice of Final Order on Default” to Mr. Rood. On January 10, 2018, the Division referred the matter to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Jennifer H. Rackstraw was assigned to preside at hearing.

On March 27, 2018, ALJ Rackstraw held a prehearing conference. At the conference, Assistant Attorney General Tyler Anderson represented the Division, and Attorney Terence McLaughlin represented Mr. Rood, as well as appellants Alameda Electric, LLC (Alameda) (OAH Case No. 2018-ABC-01221) and Dustin Hepler (OAH Case No. 2018-ABC-01225) from two related contested case matters. The three matters were set to be heard consecutively on October 2, 3, and 4, 2018.

On September 28, 2018, ALJ Rackstraw granted the parties’ joint request to postpone the hearings set for October 2 through 4, 2018 in the Rood, Alameda, and Hepler matters. On October 2, 2018, ALJ Rackstraw held a status conference to reschedule the hearings. Mr. Anderson represented the Division, and Mr. McLaughlin represented Mr. Rood, Alameda, and Mr. Hepler. The three matters were reset to be heard consecutively on December 19, 20, and 21, 2018.

On October 11, 2018, the Division issued a “Second Amended Notice of Proposed Assessment of a Civil Penalty, Second Amended Notice of Proposed Revocation of Supervising Electrician License Number 4871S, and Second Amended Notice of Final Order on Default”

(Second Amended Notice) to Mr. Rood.<sup>1</sup>

On December 13, 2018, the OAH assigned the matters to Senior ALJ Richard Barber. On December 19, 2018, ALJ Barber granted the parties' joint request to postpone the hearings scheduled for December 19 through 21, 2018. The three matters were reset to be heard consecutively on May 15 and 16, 2019, with ALJ Rackstraw assigned to preside over the hearings.

On April 9, 2019, ALJ Rackstraw granted Mr. McLaughlin's unopposed request to postpone the hearings scheduled for March 15 and 16, 2019. The three matters were reset to be heard consecutively on August 27, 28, and 29, 2019

On August 27, 28, and 29, 2019, ALJ Rackstraw held a hearing in Salem, Oregon. Mr. Anderson represented the Division, and Mr. McLaughlin represented Mr. Rood, Alameda, and Mr. Hepler.<sup>2</sup> Sarah Blam-Linville was present as an agency representative. Andy Skinner, the Division's Acting Enforcement Manager, was present at the hearing as an observer. David Thompson, the owner of Alameda Electric; Kyle Rood; and Dustin Hepler were each present and testified. The following persons also testified: Russ Darling, Division Compliance Investigator (Investigator); Shannon Flowers, Division Senior Policy Advisor; Andrea Simmons, Division Acting Fiscal & Customer Services Manager;<sup>3</sup> Joe Bozied, an electrician employed by Alameda; and David Danielson, owner of Danielson Contracting, Inc.

The record remained open until October 21, 2019, for the receipt of written closing arguments. On September 30, 2019, the parties filed their respective written closing arguments. With its closing argument, the Division included Attachments A and B. On October 21, 2019, Mr. Rood filed a supplemental written closing argument. With his supplemental argument, Mr. Rood moved to strike Division Attachments A and B from the record, as well as any Division arguments relying on those attachments. On that same date, the Division responded with written objections to Mr. Rood's motion, and Mr. Rood thereafter filed a response to those objections. The record closed after receipt of those filings on October 21, 2019.

## ISSUES

1. Whether, as the general signing supervising electrician for Alameda, Mr. Rood failed to be continuously employed by Alameda during the period January 1, 2016 through October 11,

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<sup>1</sup> The Second Amended Notice is dated October 11, 2018, and some of the violations therein are alleged to have occurred through the date of the notice. (*See* Pleading P9 at 5-7.)

<sup>2</sup> On August 27, 2019, the parties agreed to consolidate the three matters onto one hearing record, instead of having the individual cases heard consecutively on separate records. *See* OAR 137-003-0525(1)(c) (allowing the OAH or ALJ to consolidate contested cases, subject to agency approval). However, a separate Proposed Order with appeal rights specific to the individual appellant is being issued for each case.

<sup>3</sup> Ms. Simmons was formerly a Division Policy Analyst and Senior Policy Advisor. In 2012, she became the Division's Enforcement Manager. Although that is still her official position, in approximately mid-2018, she began a job rotation as the Fiscal & Customer Services Manager. (Test. of Simmons.)



2018, in violation of OAR 918-282-0140(2)(c).

2. Whether, as the general signing supervising electrician for Alameda, Mr. Rood failed to sign all permits during the period January 1, 2016 through October 11, 2018, in violation of OAR 918-282-0140(2)(a).

3. Whether, as the general signing supervising electrician for Alameda, Mr. Rood failed to ensure that proper electrical safety procedures were used during the period January 1, 2016 through October 11, 2018, in violation of OAR 918-282-0140(2)(d).

4. Whether, as the general signing supervising electrician for Alameda, Mr. Rood failed to ensure that all electrical labels and permits required to perform electrical work were used and signed during the period January 1, 2016 through October 11, 2018, in violation of OAR 918-282-0140(2)(e).

5. Whether, on October 3, 2017, Mr. Rood failed to prevent one or more employees from performing electrical installations for which they were not properly licensed, in violation of OAR 918-282-0140(2)(f).

6. If the above violations are established, whether the Division may assess total civil penalties of \$6,000 against Mr. Rood, pursuant to ORS 455.895(1)(b) and OAR 918-001-0036.

7. If the above violations are established, whether the Division may revoke Mr. Rood's supervising electrician license, pursuant to ORS 455.129(2)(a) and (3)(b).

### **EVIDENTIARY RULINGS**

#### *At the hearing*

Mr. Rood's Exhibit R1 and the Division's Exhibits A1 through A11 were admitted into the record without objection.<sup>4</sup> Mr. Rood's Exhibits R4, R5, and R6 were admitted over the Division's objections that they were not offered in a timely manner and they lack indicia of authenticity as to date, time, and location.<sup>5</sup>

#### *After the hearing*

On October 21, 2019, Mr. Rood moved to strike Attachments A and B, which the Division provided with its written closing argument, and any Division arguments that rely on those attachments. Mr. Rood argued that because the Division had not previously provided Attachments A and B to the ALJ or to him, and it had not previously offered the documents as hearing exhibits, the Division was precluded from doing so after the close of the evidentiary record. In response, the Division asserted that it offered the Attachments to "directly and

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<sup>4</sup> Exhibits A1 through A11, referenced in this Proposed Order, are specific to the Rood case. The Alameda and Hepler cases have their own designated exhibits.

<sup>5</sup> Mr. Rood did not offer any Exhibits R2 or R3.

factually rebut testimony offered by Respondents at hearing.” See Division’s October 21, 2019 Email Response to Motion to Strike.

The Division did not request that the evidentiary record remain open after the hearing so that it might offer rebuttal evidence, and it has offered no explanation for the untimely offering of the evidence.<sup>6</sup> To the extent that the Division’s inclusion of Attachments A and B with its written closing argument is construed as a request to reopen the evidentiary record, the request is denied as untimely. Attachments A and B are therefore excluded from consideration in this matter, as well as the Division’s arguments regarding the contents of those exhibits.

## **CREDIBILITY CONSIDERATIONS**

One of an administrative law judge’s chief responsibilities is to reconcile conflicting evidence in the record and determine which evidence is more likely than not true. Because of the nature of the conflicting testimony in the present matter, I must assess the credibility of various witnesses offering testimony to reconcile the conflicting evidence.

While a witness is presumed to speak the truth, the presumption may be overcome “by the manner in which the witness testifies, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence.” ORS 44.370. A determination of witness credibility may also be based on the inherent probability of the evidence, whether the evidence is corroborated, whether the evidence is contradicted by other testimony or evidence, whether there are internal inconsistencies, and “whether human experience demonstrates that the evidence is logically incredible.” *Tew v. DMV*, 179 Or App 443, 449 (2002), citing *Lewis and Clark College v. Bureau of Labor*, 43 Or App 245, 256 (1979) *rev den* 288 Or 667 (1980) (Richardson, J., concurring in part, dissenting in part).

### **1. Mr. Hepler – Issue of Unlicensed Electrical Installation**

One issue in this case is whether, on October 3, 2017, while working as a materials handler for Alameda, Mr. Hepler performed an electrical installation without holding the requisite license. It is undisputed that Mr. Hepler had no Oregon journeyman or general supervising electrician license on the date at issue. Thus, the only remaining question is whether Mr. Hepler did, in fact, perform an electrical installation on October 3, 2017.

Investigator Darling contends that when he arrived at a newly constructed home located at 15306 SW Hudson Avenue (the job site) in the Polygon subdivision on October 3, 2017 to perform a licensing “spot check,” he directly observed Mr. Hepler drilling holes into a wooden ceiling stud and using both hands to pull dangling Romex electrical wiring through the holes. Testimony of Darling; see Exhibit A8 at 1-2. Mr. Hepler and Alameda deny that he pulled any Romex electrical wiring on October 3, 2017, and insist that he was merely pulling low-voltage coaxial cable and phone wiring when observed by Investigator Darling. It is undisputed that

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<sup>6</sup> In an email to the ALJ dated August 28, 2019, counsel for the Division specifically stated that the Division “will not be submitting any additional exhibits.” See Division’s August 28, 2019 Email Regarding Division Recall of Witness for Tomorrow.

pulling high-voltage Romex electrical wiring constitutes an electrical installation, and that pulling low-voltage cable and phone wiring does not.

### *Investigator Darling*

Although Investigator Darling is not a licensed electrician, he has been performing field investigations for the Division since November 2014. Prior to that time, he worked as a licensed private investigator in Hawaii and California, primarily in the field of insurance and fraud. *See* testimony of Darling.

At hearing, Investigator Darling asserted that after spending nearly five years inspecting construction sites, and having had some personal experience pulling Romex electrical wiring at his own residence, he was certain that the wiring he observed Mr. Hepler pulling through drill holes on October 3, 2017 was Romex, and not coaxial cable or phone wiring. Moreover, a journeyman electrician on-duty at the job site on October 3, 2017, Scott Schildmeyer, told Investigator Darling on that date that he believed Mr. Hepler was a licensed electrical apprentice whose job duties included pulling electrical wiring.<sup>7</sup> And, licensed electrical apprentice Kevin Palm, who had been working with Mr. Hepler on October 3, 2017, similarly expressed to Investigator Darling on that date that he had believed Mr. Hepler to be an electrical apprentice. *See* Exhibit A8 at 2-4.

Investigator Darling's hearing testimony regarding Mr. Hepler's alleged actions on October 3, 2017 was consistent with the information contained in his Investigative Report dated October 10, 2017. *See* testimony of Darling and Exhibit A8.

In his closing arguments, Mr. Rood contends that Investigator Darling's hearing testimony was "riddled with inconsistent statements and evasive answers," and that Investigator Darling produced investigative reports in the Hepler, Alameda, and Rood cases that "were designed" to result in the filing of violations against all three appellants. *See* Rood Supplemental Closing Argument at 3; Rood Closing Argument at 4. Those contentions are not borne out by the evidentiary record and they are not persuasive.

In sum, Investigator Darling, an experienced Division investigator, demonstrated his familiarity with different types of wiring and credibly testified that Mr. Hepler pulled Romex electrical wiring while working for Alameda on October 3, 2017.

### *Mr. Hepler*

Mr. Hepler began working for Alameda as a materials handler in approximately mid-2016. His duties included, among other things, pulling low voltage coaxial cable and telephone wiring and handling and transporting high-voltage Romex electrical wire. Mr. Hepler had no electrical experience prior to working for Alameda. *See* testimony of Hepler.

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<sup>7</sup> Pursuant to OAR 918-282-0270(1)(a) and (b), an electrical apprentice must meet various minimum requirements and be licensed.

Mr. Hepler testified at hearing that when Investigator Darling arrived at the job site on October 3, 2017, he (*i.e.*, Mr. Hepler) was drilling holes and pulling low voltage coaxial cable and telephone wire in the garage area. He further testified that although there was high-voltage Romex wire next to where he was drilling, he did not pull any high-voltage Romex wire on that date.

To support Mr. Hepler's testimony, Mr. Rood offered Exhibits R4 and R5, which are Alameda photographs taken the day after Investigator Darling's inspection that show various low voltage wiring that Mr. Hepler purportedly pulled at the job site on October 3, 2017.<sup>8</sup> However, as the Division has pointed out, the photographs do not provide any indication as to who performed the worked depicted in the exhibits or when such work was completed. Moreover, the scale of the photographs provides no context as to what portion of the job site they represent or whether they even depict work performed at the job site in question. *See* Division's Closing Argument at 24.

Furthermore, when Investigator Darling made contact with Mr. Hepler on October 3, 2017, Mr. Hepler initially claimed that he was an electrical apprentice. After Investigator Darling asked for his apprentice license, Mr. Hepler then admitted to Investigator Darling that he was a materials handler and not an apprentice. At hearing, Mr. Hepler acknowledged the dishonest statement made to Investigator Darling. He explained that his dishonesty to Investigator Darling was because he gets nervous around individuals in positions of authority, and he admitted that it had been "stupid" for him to lie. Testimony of Hepler. The Division suggests that Mr. Hepler, more likely than not, lied to Investigator Darling about being an apprentice to cover for the fact that Investigator Darling may have observed him pulling Romex electrical wiring on October 3, 2017. While Mr. Hepler's admitted dishonesty to Investigator Darling on October 3, 2017 does not mean that Mr. Hepler's hearing testimony automatically lacks credibility as a whole, it does call into question his reliability on the material issue of whether he pulled Romex electrical wiring on October 3, 2017. It is more logically credible that Mr. Hepler would falsely claim to be an electrical apprentice because he had just pulled electrical wiring in the presence of a Division inspector rather than making such a claim through simple nervousness around authority figures.

Finally, Mr. Hepler has motive to be untruthful in this matter. The Division has proposed a fairly significant financial sanction (\$2,000) against him, and the alleged violation, if proven, would subject his employer, Alameda, to disciplinary action.

In weighing the above considerations, Mr. Hepler's testimony regarding whether he performed an electrical installation at the job site on October 3, 2017 is less persuasive than the testimony of Investigator Darling. Greater weight is therefore accorded to Mr. Darling's testimony.

## **2. Mr. Bozied – Issue of Apprentice Supervision**

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<sup>8</sup> At hearing, licensed journeyman electrician Joe Bozied testified that Exhibits R4 and R5 were taken in the garage at the job site on October 4, 2017, one day after Investigator Darling's inspection. (Test. of Bozied.)

Another issue in this case is whether, on October 3, 2017, there was a sufficient ratio of journeyman electricians to electrical apprentices at the job site. The following facts are undisputed: 1) Scott Schildmeyer and Joe Bozied were journeyman electricians, Kevin Palm and Matthew Rodocker were electrical apprentices, and Mr. Hepler was an unlicensed material handler on October 3, 2017; 2) Mr. Schildmeyer, Mr. Bozied, Mr. Palm, Mr. Rodocker, and Mr. Hepler were each present at the job site at approximately 7:00 a.m. on October 3, 2017, and each worked at the job site for some period of time on that date; 3) when Investigator Darling arrived at the job site at approximately 1:45 p.m. on October 3, 2017, he made contact with and subsequently spoke to Mr. Schildmeyer, Mr. Palm, Mr. Rodocker, and Mr. Hepler; and 4) Investigator Darling and Mr. Bozied did not see or speak to one another at the job site on October 3, 2017.

The Division concedes that Mr. Schildmeyer was present while apprentices Palm and Rodocker worked at the job site from approximately 7:00 a.m. to 1:45 p.m. on October 3, 2017, and the Division concedes that Mr. Schildmeyer provided direct journeyman supervision to the apprentices during that time. The Division argues, however, that Mr. Bozied was not present at the job site after approximately 8:30 a.m. on October 3, 2017, and that he did not provide direct supervision to apprentices Palm and Rodocker while they performed electrical installation work from approximately 8:30 a.m. to 1:45 p.m. The Division further argues that even if Mr. Bozied was actually working at or near the job site on October 3, 2017 from approximately 8:30 a.m. to 1:45 p.m., he was not working in a location where he could see, hear, and actually provide direct supervision to apprentices Palm and Rodocker.

Mr. Rood contends that Mr. Bozied was, in fact, present at the job site from approximately 7:00 a.m. to 2:30 p.m. on October 3, 2017, which includes the time period during which apprentices Palm and Rodocker performed electrical installation work that day. Moreover, Mr. Rood asserts that the “job site” for purposes of apprentice supervision would include adjacent houses under construction in the subdivision where Alameda employees were working on October 3, 2017. Mr. Rood argues that because there were two journeyman electricians (Mr. Schildmeyer and Mr. Bozied) present at the job site while the two apprentices (Mr. Palm and Mr. Rodocker) performed work on October 3, 2017, Alameda maintained an acceptable 1:1 journeyman/apprentice ratio.

*Hepler, Palm, Rodocker, and Schildmeyer Statements on October 3, 2017*

When Investigator Darling arrived at the job site at approximately 1:45 p.m. on October 3, 2017, he observed Mr. Hepler, Mr. Schildmeyer, Mr. Palm, and Mr. Rodocker. At no time during his site visit did Investigator Darling observe Mr. Bozied in or around the home located at 15306 SW Hudson Avenue.

When Investigator Darling questioned Mr. Hepler during the site visit, Mr. Hepler identified the journeyman electrician on the job site as Mr. Schildmeyer. Mr. Hepler did not identify Mr. Bozied as a journeyman who was present at the job site.

When Investigator Darling questioned Mr. Schildmeyer during the site visit, Mr. Schildmeyer stated that he had been the sole journeyman at the job site since Mr. Bozied left the site at approximately 8:30 a.m. that morning to go to a different job site.

When Investigator Darling questioned Mr. Palm during the site visit, Mr. Palm stated that Mr. Bozied had been present at the job site at 7:00 a.m. that day but left sometime that morning, and Mr. Schildmeyer was then the only journeyman present to supervise the apprentices.

When Investigator Darling questioned Mr. Rodocker during the site visit, Mr. Rodocker stated that Mr. Bozied had been present at the job site when he arrived that morning at 7:00 a.m., but Mr. Bozied left at approximately 8:30 a.m. and did not return thereafter. Mr. Rodocker further stated that he, Mr. Hepler, Mr. Palm, and Mr. Schildmeyer worked throughout the day until Investigator Darling arrived onsite. Mr. Rodocker admitted that he was uncertain of the proper journeyman/apprentice ratio, but stated he believed one journeyman worker might be sufficient to supervise two apprentices.

#### *Bozied Hearing Testimony*

At hearing, Mr. Bozied testified that, although he could not recall where he was from hour to hour on October 3, 2017, his best estimate was that he arrived at the job site at 7:00 or 8:00 a.m. that day, at some point he worked for one to two hours alone in the crawlspace under the house,<sup>9</sup> he was unable to observe the apprentices and their work while in the crawl space, he visually observed Mr. Hepler perform work for more than four hours that day, he may have spent some time working at another house under construction on the same street, he departed the job site at approximately 2:30 p.m. (after Mr. Darling, Mr. Schildmeyer, Mr. Hepler, Mr. Palm, and Mr. Rodocker had all left), and he learned of Investigator Darling's site visit via a phone call from Mr. Hepler shortly thereafter.

At hearing, when asked by the Division's counsel whether he had been in a journeyman role supervising an apprentice at the job site on October 3, 2017, Mr. Bozied responded, "I believe so." Testimony of Bozied. He further testified that while he was working in the crawlspace, and therefore unable to directly observe one of the apprentices, an apprentice would have been required to take off his tool belt and refrain from performing any electrical installation work during that period of time. Mr. Bozied admitted at hearing, however, that he did not know if one of the apprentices followed that protocol for the one to two hours that Mr. Bozied was in the crawlspace.

#### *Thompson Statement on October 3, 2017, Thompson Hearing Testimony, and Exhibit R6*

On October 3, 2017, shortly after arriving at the job site and speaking with Mr. Hepler and Mr. Schildmeyer, Investigator Darling had a brief phone conversation with Alameda's owner, David Thompson. During their conversation, Investigator Darling questioned Mr. Thompson about, among other things, a single journeyman being responsible for two apprentices. Mr. Thompson informed Investigator Darling that two journeyman workers should

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<sup>9</sup> Mr. Bozied testified at hearing that he may have been working in the crawlspace during Investigator Darling's site visit, but he was not sure. (Test. of Bozied.)

have been present at the job site that day. When Investigator Darling mentioned that Mr. Bozied had departed the job site at approximately 8:30 a.m. that day, Investigator Darling lost phone contact with Mr. Thompson. *See* Exhibit A8 at 3; testimony of Darling.

Mr. Thompson testified at hearing that approximately one-half hour after speaking with Investigator Darling, he used an application called “Find Friends” to ascertain Mr. Bozied’s location. Testimony of Thompson. Mr. Thompson further testified that the application showed that Mr. Bozied was at the job site and he took a screen shot of the application’s results some time on October 3, 2017.

Mr. Thompson testified that around the same time he identified Mr. Bozied’s location through “Find Friends,” he spoke with Mr. Bozied by phone (after having been unsuccessful in reaching Mr. Bozied during his first phone call attempt), and Mr. Bozied stated he was “at the subdivision.” Testimony of Thompson.

Nearly two years later, at the hearing in August of 2019, Mr. Rood presented as Exhibit R6 a copy of a screen shot from Mr. Thompson’s cell phone showing “Find Friends” results for “Electrician Joe” (which Mr. Thompson testified refers to Mr. Bozied). *See* Exhibit R6; testimony of Thompson. The screen shot shows an orange locator dot on an unnamed street. The screen shot does not show a date or a specific location, but it does list a time of “12:10 p.m.,” include the notation “Portland, OR – now,” and show “SW Cabernet Drive” as the nearest named street to the orange dot. *See* Exhibit R6.

According to Mr. Thompson, Exhibit A6 shows that at the time Mr. Thompson checked Mr. Bozied’s location on October 3, 2017, Mr. Bozied was at the job site.

### *Discussion*

First, the contemporaneous, consistent statements from Mr. Hepler, Mr. Schildmeyer, Mr. Palm, and Mr. Rodocker to Investigator Darling on October 3, 2017 are more reliable and persuasive than Mr. Bozied’s hearing testimony nearly two years after the incident at issue.

The statements from Mr. Hepler, journeyman Schildmeyer, and apprentices Palm and Rodocker to Investigator Darling persuasively establish that Mr. Bozied was visibly present at the home located at 15306 SW Hudson Avenue from approximately 7:00 a.m. to 8:30 a.m. on October 3, 2017. Their statements also establish that they believed Mr. Bozied left the home as of approximately 8:30 a.m. that day; they did not see Mr. Bozied at the home at any time after 8:30 a.m.; they believed Mr. Schildmeyer was the only journeyman electrician at the home as of 8:30 a.m.; and they each performed work until approximately 1:45 p.m., when Investigator Darling arrived there.

By contrast, at hearing, Mr. Bozied could not with any specificity remember where he had been, and when, between 8:30 a.m. and approximately 1:45 p.m. on October 3, 2017. For example, he testified that he was in the crawlspace of the home for between one to two hours, but he could not recall when that occurred. He testified that he may have been working at another, nearby home in the same subdivision, but he could not provide details as to when that occurred,

if at all. And, he could not reliably recall where he had been when Mr. Darling was at the job site from approximately 1:45 p.m. until sometime after 2:00 p.m.

In addition, Mr. Bozied testified that he visually observed Mr. Hepler performing work for at least four hours on October 3, 2017.<sup>10</sup> Such testimony conflicts with other, more credible evidence establishing that Mr. Bozied was *not* present with Mr. Hepler (and he therefore could not have visually observed him) for such an extended period of time on October 3, 2017. At most, Mr. Bozied could have observed Mr. Hepler's work (and directly supervised one or both apprentices) from approximately 7:00 a.m. to 8:30 a.m. that day.

Finally, the "Find Friends" screenshot designated as Exhibit A6 does not constitute persuasive, reliable evidence of Mr. Bozied's whereabouts between 8:30 a.m. to 1:45 p.m. on October 3, 2017. The exhibit itself lacks specificity and sufficient indicia of reliability and, at most, shows *generally* where Mr. Bozied was when Mr. Thompson used the application sometime on the afternoon of October 3, 2017, roughly between 2:00 and 3:00 p.m.

The Findings of Fact that follow are made in accordance with the above considerations.

## **FINDINGS OF FACT**

### *Alameda*

1. Since 2013, David Thompson has been the owner and operator of Alameda, an electrical contractor with its principal place of business in Oregon. During all times pertinent to this matter, Alameda held electrical contractor license number C923 and Kyle Rood held general supervising electrician license number 4871S. (*See* Exs. A4 at 1-2, A7 at 1-2; test. of Thompson and Rood.)

2. The majority of Alameda's work assignments consist of "service calls and short order work" received through the Yelp website. (Exs. A4 at 2-3; test. of Thompson.) Most Alameda employees begin their workday at 5:30 or 6:00 a.m. on weekdays. Alameda will respond to emergency requests and sometimes perform electrical work on evenings and weekends. Alameda advertises its business hours as 7:00 a.m. to midnight on the Yelp website. Mr. Thompson does not advertise that Alameda performs work 24 hours per day because he wants to reduce the number of service calls received at unusual hours. Approximately 30 percent of Alameda's service calls come in during these unusual hours, with the remainder of the calls received no later than 6:00 or 7:00 p.m. (Test. of Thompson; *see also* Ex. A4 at 2-3.)

### *Mr. Rood's Employment*

3. Since 1998, Mr. Rood has been in the electrical industry. From 1993 to 1996, he participated in an electrical apprenticeship program in Coos Bay. In December 1996, he became a general journeyman electrician. He is licensed as a general journeyman in Oregon, California, Washington, and Montana. In August 2001, he received his Oregon supervising electrician's

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<sup>10</sup> Mr. Bozied offered this testimony in conjunction with his assertion that Mr. Hepler did not perform any electrical installations on October 3, 2017. (*See* test. of Bozied.)



license. In December 2001, he received his electrical inspector certification. (Test. of Rood.)

4. From December 12, 2005 to approximately December 4, 2018, Mr. Rood worked as an electrical inspector for the Port of Portland (Port) on a full-time basis. (Exs. A1 at 4, A4 at 4; test. of Rood.) His regular work hours at the Port were from 7:00 a.m. to 3:30 p.m., Monday through Friday. (Exs. A1 at 4, A4 at 4; test. of Rood.) Although the Port initially required that he adhere to a rigid work schedule, his schedule became increasingly flexible over time. Some days, he was not required to report to the Port work site at all. The Port paid him at an hourly rate, and he kept track of his Port work hours in a book. (Test. of Rood.) Timesheets from the Port for the period January 1, 2016 to July 1, 2017, show that Mr. Rood consistently reported working 40 hours per week at the Port. (Test. of Flowers; *see* Ex. R7 at 1-57.)

5. Since January 1, 2016, Alameda has employed Mr. Rood as its registered signing supervisor. Since that date, Mr. Rood has consistently served as Alameda's sole signing supervisor. (*See* Ex. A4 at 2; test. of Thompson and Rood.)

6. While working for the Port, Mr. Rood generally communicated with Mr. Thompson and Alameda employees via telephone and various electronic means such as email, text message, FaceTime, iCalendar, and a Voxer messenger application. (Test. of Thompson and Rood; Ex. A4 at 2-5.) On occasion, Mr. Rood left the Port during Port work hours to visit Alameda job sites. His visits to Alameda job sites did not generally occur when other Alameda employees were present. (Ex. A4 at 4; test. of Rood.) Two of Mr. Rood's four supervisors at the Port were aware of his concurrent employment with Alameda. (Test. of Rood.)

7. While Mr. Rood was concurrently working as Alameda's signing supervisor and an electrical inspector for the Port, Alameda paid Mr. Rood a salary of \$500 per week, or approximately \$2,000 per month. (Test. of Rood and Thompson; Ex. A4 at 2, 4.)

8. For approximately 11 years, including during the time period that he worked concurrently for the Port and for Alameda, Mr. Rood was a part-time journeyman electrician continuing education instructor with NECA/IBEW. He primarily taught classes on Tuesday and Thursday evenings, averaging approximately 16 hours of work per month for NECA/IBEW. (Test. of Rood; *see* Exs. A3 at 1-3.)

*Division's investigation re: Alameda and Mr. Rood*

9. Sometime prior to February 7, 2017, Division personnel learned that Mr. Rood was employed as Alameda's signing supervisor while also working as a full-time employee at the Port. In response, the Division opened an investigation regarding Alameda and Mr. Rood. (*See* Exs. A1 at 1-2, A4 at 1-2; test. of Darling.)

10. On February 7, 2017, Investigator Darling conducted an interview with Mr. Thompson. During the interview, Mr. Thompson stated that Alameda had, at that time, nine electricians on staff and a total of 18 employees. He further stated that Alameda typically operated from 7:00 a.m. to 3:00 p.m., Monday through Friday, but would also respond to emergency requests and sometimes perform work on evenings and weekends. He told

Investigator Darling that he and Alameda employees communicated with Mr. Rood via telephone, a Voxer “walkie-talkie” messenger application, email, text message (with photos and/or video if necessary), FaceTime, and iCalendar. (Ex. A4 at 2-3.) He reported that those communications primarily occurred during Mr. Rood’s Port breaks and lunches, evening hours, and weekends. He estimated that on weekdays, he and Mr. Rood talked three to four times per day to discuss Alameda projects. He stated that there was rarely an urgent need to reach Mr. Rood, and that their weekday conversations typically took place when Mr. Rood returned calls during his Port breaks or Port lunch hour. He explained that topics of discussion with Mr. Rood have included the scope of work on a project, general details involving projects, specific questions regarding the size of conduit or wiring for an installation, and the best product to use for an installation. He estimated that within the past six months, he had used FaceTime with Mr. Rood approximately seven or eight times to allow Mr. Rood to review a blueprint or some aspect of an electrical installation. He explained that the iCalendar feature allowed him and Mr. Rood to view information for each job location, including the assigned electrician, invoice number for the job, estimate or bid numbers, and notes from the electrician regarding the work performed. He told Mr. Darling about two recent instances where Mr. Rood had visited Alameda work sites: 1) in December 2016, Mr. Rood visited a work site in Boring to “double check” that the work had been done properly; and 2) in February 2017, Mr. Rood accompanied Mr. Thompson to a work site in Troutdale after performing load calculations for the project. (*Id.*)

11. On March 16, 2017, Investigator Darling interviewed Mr. Rood, with attorney McLaughlin present. (Ex. A4 at 3.) Mr. Rood stated that Alameda’s operating hours were typically from 7:00 a.m. to 3:00 p.m., Monday through Friday, with occasional work performed after hours. He reported that his typical work hours at the Port were from 7:00 a.m. to 3:30 p.m. He acknowledged teaching continuing education evening classes on a part-time basis for NECA-IBEW. He reported that Alameda’s permits are typically obtained electronically by journeyman personnel, and he becomes aware of the permits via his daily review of iCalendar. He stated that he has occasionally left his Port job site during Port work hours to visit an Alameda job site. When asked when he last visited an Alameda job site, he provided as examples of recent site visits a “grow operation” he visited in Boring, the Firestone job site, and the Gunderson railcar job site. (*Id.* at 4.) He reported that no Alameda employees had been present at the job sites during his visits. He described having performed a “plan review” with load calculations for the “grow operation” in Boring. (*Id.*) When asked whether he had ever met with an electrical inspector regarding correction notices for any Alameda jobs, he stated that he once communicated with Gary Lyle of Clackamas County regarding one such notice, and that he had communicated with the City of Portland a “myriad of times.” (*Id.*) When asked to discuss when he has designed or planned electrical installations for Alameda, Mr. Rood stated that he performed such work “almost daily” and that it usually involved phone conversations with Mr. Thompson during Mr. Rood’s breaks at the Port. He described one such instance that occurred in early March 2017, when Mr. Thompson called him regarding the installation of a heat pump at the “grow operation.” (*Id.*) When asked how he can control the making of an electrical installation for Alameda while working full-time for the Port, Mr. Rood stated that prior to the start of a project, he talks with Alameda employees regarding wiring methodology and fault current, conduit and wire size, and grounding and bonding issues. He provided a recent example where an Alameda journeyman electrician sent him a text message with a photograph and asked a question regarding grounding and bonding. He reported that he responded to the electrician

with his own message advising that the electrician could not do what he was requesting to do. When asked whether he had visited the job site that had the grounding/bonding issue, Mr. Rood replied “not yet.” (*Id.* at 5.) He estimated that typically he receives five or six phone calls per day from Mr. Thompson and Alameda journey personnel. When asked how he is able to ensure that all Alameda electrical installations meet minimum safety standards, he stated that Alameda has “qualified individuals who are licensed” and that there is an “open line of communication” among employees. (*Id.*) He further stated that if an electrician’s work leads to Alameda receiving correction notices, the electrician’s work product is more closely monitored. (*Id.*)

12. After resigning from the Port on or about December 4, 2018, Mr. Rood continued his employment with Alameda as its signing supervisor. At that time, Alameda increased his pay to a wage equal to a general foreman’s wage under the union collective bargaining agreement. At hearing, Mr. Rood estimated that his new Alameda salary (as of approximately December 4, 2018) was around \$4,000 per month. (Test. of Rood.)

13. At the time of the hearing, Mr. Thompson and Mr. Rood were working towards establishing a business partnership. (Test. of Rood.)

*October 3, 2017 site visit*

14. In approximately mid-2016, Mr. Hepler began working as a materials handler for Alameda. His primary responsibilities included pulling low voltage coaxial cable and telephone wiring, performing clean-up duties, drilling holes, and handling and transporting high-voltage Romex electrical cables to Alameda’s electricians. (Test. of Hepler.) At all times relevant to this matter, Mr. Hepler was not an electrical apprentice and he did not hold any Oregon electrician’s license.<sup>11</sup> (Test. of Hepler and Darling; *see* Ex. A8 at 2.) At the time of the hearing, Alameda continued to employ Mr. Hepler. (Test. of Hepler.)

15. In 2017, Alameda was performing electrical work on single-family residential homes in the Polygon Estates subdivision in Tigard, Oregon (the subdivision). (*See* Exs. A8 at 1-2, A10 at 1-2; test. of Darling.) The entire subdivision consisted of approximately 86 homes. Phase Four of the subdivision included approximately 25 homes. (Test. of Thompson.) In June 2017, Alameda obtained a “Residential – Master Permit” from the City of Tigard to perform work on a home located at 15306 SW Hudson Avenue (Lot 16) in Phase Four of the subdivision. (Ex. A10 at 1-2; test. of Flowers.)

16. Joe Bozied and Scott Schildmeyer are licensed journeyman electricians. (Test. of Bozied; *see* Ex. A8 at 2-3.) At all times relevant to this matter, Alameda employed Matthew Rodocker and Kevin Palm as electrical apprentices. Mr. Rodocker was a limited residential apprentice, and Mr. Palm was an inside electrical apprentice. At no relevant time did either Mr. Palm or Mr. Rodocker hold an indirect supervision electrical apprentice license, a journeyman electrician license, or a supervising electrician license. (*See* Exs. A8 at 3-4, A9 at 1-2.)

17. At approximately 7:00 a.m. on October 3, 2017, Mr. Bozied arrived at the home

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<sup>11</sup> Several months later, in early February 2018, Mr. Hepler did become an electrical apprentice with Alameda. (Test. of Hepler.)

located at 15306 SW Hudson Avenue. Mr. Hepler, journeyman Schildmeyer, and electrical apprentices Palm and Rodocker were also present at the home at that time. (See Ex. A8 at 3-4; test. of Bozied.) At some point during the day, Mr. Bozied spent approximately one to two hours performing electrical wiring work in the crawlspace under the home. Neither Mr. Rodocker nor Mr. Palm accompanied Mr. Bozied into the crawlspace. Mr. Bozied could not visually observe Mr. Palm or Mr. Rodocker while he was in the crawlspace. (Test. of Bozied.)

18. Mr. Hepler, journeyman Schildmeyer, and apprentices Palm and Rodocker did not see Mr. Bozied at any time after approximately 8:30 a.m. on October 3, 2017. Between approximately 8:30 a.m. and 1:45 p.m., Mr. Hepler, journeyman Schildmeyer, and apprentices Palm and Rodocker worked at the home with the understanding that Mr. Schildmeyer was the only journeyman electrician present during that time period. (See Ex. A8 at 2-4.)

19. At approximately 1:45 p.m. on October 3, 2017, Investigator Darling visited the home located at 15306 SW Hudson Avenue to perform a licensing “spot check.”<sup>12</sup> (Test. of Darling; Ex. A8 at 1-2.) When Mr. Darling arrived at the home, Mr. Hepler was working in an open garage area. Investigator Darling observed that Mr. Hepler was standing on a ladder, drilling holes into a wooden ceiling stud, and using both hands to pull high-voltage Romex electrical wiring that had been dangling above from ceiling rafters through the holes. (Test. of Darling; Ex. A8 at 1-2.) Investigator Darling also observed Mr. Palm and Mr. Rodocker working in the garage area. (Test. of Darling; see Ex. A8 at 3-4.)

20. Investigator Darling made contact with Mr. Hepler and asked him to produce his license. In response, Mr. Hepler falsely informed Investigator Darling that he was an electrical apprentice. (Test. of Darling and Hepler.) A couple minutes later, after Investigator Darling asked for proof of his apprenticeship, Mr. Hepler admitted to Investigator Darling that he was not an apprentice, that he did not hold an electrical license, and that he actually worked as a material handler for Alameda. (Test. of Darling and Hepler; Ex. A8 at 2.) Mr. Hepler identified the journeyman electrician on the job site as Mr. Schildmeyer. (See Ex. A8 at 2.)

21. Investigator Darling next spoke with Mr. Schildmeyer, who informed Investigator Darling that Mr. Hepler was an electrical apprentice who had worked for Alameda for approximately five months. Mr. Schildmeyer stated that Mr. Hepler’s job duties included drilling holes for electrical wiring and pulling the wiring through walls and ceilings. When Investigator Darling asked Mr. Schildmeyer if Mr. Hepler was a licensed electrical apprentice in a BOLI (Bureau of Labor and Industries) program, Mr. Schildmeyer responded in the affirmative. Mr. Schildmeyer then appeared surprised when Investigator Darling informed him that Mr. Hepler was not a licensed apprentice. Mr. Schildmeyer informed Investigator Darling that he was not responsible for checking the licenses of crew members. He further stated that he was the only journeyman working at the job site since Mr. Bozied had left the site at approximately 8:30 a.m. that morning. (Ex. A8 at 2-3.)

22. Mr. Schildmeyer subsequently contacted his immediate supervisor, Mr. Thompson,

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<sup>12</sup> Investigator Darling performs approximately two or three licensing “spot checks” per week at various work sites. Although he had started an investigation into Alameda and Mr. Rood prior to October 3, 2017, his visit to the job site on that date was unrelated to that investigation. (Test. of Darling.)

by phone to inform him of Investigator Darling's site visit. Mr. Schildmeyer provided the phone to Investigator Darling so he could speak directly to Mr. Thompson. When Inspector Darling questioned Mr. Thompson about Mr. Hepler performing electrical installation work without a license, Mr. Thompson stated that Mr. Hepler was merely a material handler and should not have been engaged in electrical installation work. When Investigator Darling questioned Mr. Thompson about a single journeyman being responsible for two apprentices, Mr. Thompson stated that two journeyman workers should have been present at the job site that day. When Investigator Darling mentioned that Mr. Bozied had departed the job site at approximately 8:30 a.m. that day, telephone contact with Mr. Thompson was lost. (Ex. A8 at 2-3.)

23. At approximately 2:00 p.m. on October 3, 2017, Investigator Darling spoke with Mr. Rodocker, who reported that he had arrived at the job site at approximately 7:00 a.m. that day. He further reported that two journeyman electricians were present when he arrived, Mr. Schildmeyer and Mr. Bozied, but Mr. Bozied left the job site at approximately 8:30 a.m. and did not return thereafter. Mr. Rodocker informed Investigator Darling that he, Mr. Hepler, Mr. Palm, and Mr. Schildmeyer worked throughout the day, until Investigator Darling arrived. When asked about his understanding of apprentice ratios, Mr. Rodocker expressed that he was unsure if more than one journeyman electrician was required to supervise two electrical apprentices. (Ex. A8 at 3; test. of Darling.)

24. At approximately 2:05 p.m. on October 3, 2017, Investigator Darling spoke to Mr. Palm, who stated that he had arrived at the job site at approximately 7:00 a.m. that day, journeyman electricians Bozied and Schildmeyer were both present when he arrived, Mr. Bozied left the job site at some point that morning, and Mr. Schildmeyer was then the only journeymen present while Mr. Palm, Mr. Hepler, and Mr. Rodocker worked. Mr. Palm reported that up until the investigator arrived at the job site that day, he had believed that Mr. Hepler was a licensed electrical apprentice. He further reported that because he had only been working for Alameda for two days, he was not aware of Mr. Hepler's exact job duties. (Ex. A8 at 4.)

25. Mr. Bozied and Investigator Darling did not see, or otherwise have any contact with, one another during Investigator Darling's visit to the home located at 15306 SW Hudson Avenue on October 3, 2017. (Test. of Darling and Bozied; *see* Ex. A8 at 2-4.)

26. Mr. Bozied believes that the correct ratio of journeyman electricians to apprentices is one-to-one (*i.e.*, 1:1). He has occasionally supervised electricians from adjacent or nearby structures. He considers the "job site," for purposes of apprentice supervision, to be where Alameda's construction is generally occurring. (Test. of Bozied.)

27. Later on October 3, 2017, in response to Investigator Darling's site visit, Mr. Rood drafted a document that outlined employee roles and responsibilities and included such topics as apprentice ratios and material handler duties. He distributed the document to Alameda employees during a meeting on the morning of October 4, 2017. (Test. of Rood, Bozied, and Thompson.)

28. For residential electrical apprentices, the ratio of journeyman workers to apprentices must be 1:1. For inside electrical apprentices, the ratio requirements are as follows:

Each job site shall be allowed a ratio of two (2) apprentices for every three (3) journeymen or fraction thereof[.]

In no case shall the number of apprentices exceed the number of journeymen on the job.

(Ex. A9 at 1; test. of Simmons.)

### *Sanctions*

29. The Division has adopted a penalty matrix for determining the appropriate civil penalty for violations of the electrical code and other trade specialty codes. (Ex. A11 at 1-2; test. of Simmons.) Mr. Rood has no previous disciplinary history with the Division. (*See* Ex. A1 at 1.) For a first-time violator, the standard civil penalty for a violation of OAR 918-282-0140 is \$3,000 per violation. (Ex. A11 at 2.) The penalty matrix further provides:

The entire penalty is imposed in all cases. \* \* \*. A stay of some portion of a penalty is within the sole discretion of the board or the division acting on the board's behalf for purposes of settling cases prior to hearing.<sup>13</sup>

(*Id.* at 1.)

30. The Division assessed a \$3,000 civil penalty against Mr. Rood for the alleged violation OAR 918-282-0140(2)(f). For the alleged violations of OAR 918-282-0140(2)(a), (c), (d), and (e), the Division chose to assess only a single \$3,000 civil penalty, instead of a separate \$3,000 civil penalty for each violation (which would have resulted in a total civil penalty of \$15,000 for all five alleged violations). (*See* October 11, 2018 Second Amended Notice at 7; test. of Simmons.)

31. Electrical shortages and other electrical-related issues are the main cause of fires in the State of Oregon. The failure of an electrical contractor to continuously employ a full-time signing supervisor and the failure to prevent individuals from performing electrical installations without proper licensure pose a risk to the public's health and safety. (Test. of Simmons.)

## **CONCLUSIONS OF LAW**

1. As the general signing supervising electrician for Alameda, Mr. Rood failed to be continuously employed by Alameda during the period January 1, 2016 through October 11, 2018, in violation of OAR 918-282-0140(2)(c).

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<sup>13</sup> At hearing, Ms. Simmons reiterated that the Division does not assess less than the standard civil penalty unless the violator enters into a settlement or "consent" agreement with the Division. (Test. of Simmons.) She also explained that only in the context of settlement negotiations will the Division consider potentially mitigating factors such as a person's state of mind or intent, and whether a respondent took any corrective actions. (*Id.*)

2. The Division did not establish that, as the general signing supervising electrician for Alameda, Mr. Rood failed to sign all permits during the period January 1, 2016 through October 11, 2018, in violation of OAR 918-282-0140(2)(a).

3. As the general signing supervising electrician for Alameda, Mr. Rood failed to ensure that proper electrical safety procedures were used during the period January 1, 2016 through October 11, 2018, in violation of OAR 918-282-0140(2)(d).

4. As the general signing supervising electrician for Alameda, Mr. Rood failed to ensure that all electrical labels and permits required to perform electrical work were used and signed during the period January 1, 2016 through October 11, 2018, in violation of OAR 918-282-0140(2)(e).

5. On October 3, 2017, Mr. Rood failed to prevent one or more employees from performing electrical installations for which they were not properly licensed, in violation of OAR 918-282-0140(2)(f).

6. The Division may assess total civil penalties of \$6,000 against Mr. Rood, pursuant to ORS 455.895(1)(b) and OAR 918-001-0036.

7. The Division may revoke Mr. Rood's supervising electrician license, pursuant to ORS 455.129(2)(a) and (3)(b).

## OPINION

The Division bears the burden of establishing by a preponderance of the evidence that the alleged violations occurred, and that the proposed sanctions (*i.e.*, \$5,000 civil penalty and one-year license suspension) are warranted. *See* ORS 183.450(2) (“The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position”); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of a fact or position); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (preponderance standard of proof generally applies in agency proceedings). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

### 1. Alleged Violation of OAR 918-282-0140(2)(c)

The first issue is whether during the period January 1, 2016 through October 11, 2018, while employed as Alameda's sole signing supervising electrician,<sup>14</sup> Mr. Rood was continuously employed by Alameda, as required by OAR 918-282-0140(2)(c).

OAR 918-282-0140(2) sets forth a signing supervising electrician's rights and duties, in relevant part, as follows:

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<sup>14</sup> OAR 918-251-0090(39) defines a “Signing Supervising Electrician” or “Signing Supervisor” as “a licensed supervising electrician who has been authorized by the electrical contractor to sign permits.”

- (2) The general signing supervising electrician must:
- (a) Sign all permits;
  - (b) Ensure all electrical installations meet minimum safety standards;
  - (c) Be continuously employed as a general supervising electrician on the electrical contractor's regular payroll and be available during working hours to carry out the duties of a supervising electrician under this section;
  - (d) Ensure proper electrical safety procedures are used;
  - (e) Ensure all electrical labels and permits required to perform electrical work are used and signed;
  - (f) Ensure electricians have proper licenses for the work performed, and may not permit either by assent or by failure to prevent, an individual to perform work for which they are not properly licensed;
  - (g) Comply with corrective notices issued by the inspecting authority;
  - (h) Notify the division in writing within five days if the signing supervising electrician terminates the relationship with the electrical contractor; and
  - (i) Not act as a supervising electrician for more than one employer.

The Division contends that Mr. Rood was not continuously employed by Alameda and he was not available during working hours to carry out all the required duties of a supervising electrician during the period January 1, 2016 through October 11, 2018, because he was concurrently employed on a full-time basis with another employer (the Port) and his work hours with that other employer substantially overlapped with Alameda's work hours.

Mr. Rood, on the other hand, argues that he worked as Alameda's signing supervisor on a full-time basis, without any interruption in that employment (*i.e.*, for the full two-year and nine-month period), and that despite his Port employment, he fulfilled all the required duties of a signing supervisor for Alameda in a professional, competent manner.

In its administrative rule in OAR 918-251-0090(8), the Division defines the phrase "continuously employ," as the phrase is used in OAR chapter 918, division 282:

"Continuously Employ" means a person \* \* \*, during time periods when electrical work for which they are responsible is performed, devotes their entire time of employment to tasks of supervising, designing, laying out,



planning, controlling, and making electrical installations for the electrical contractor for which the supervisor is registered as signing supervisor.

Mr. Rood appears to take issue with the Division's promulgation of the above definition,<sup>15</sup> arguing that the definitional rule is an "unconstitutional exercise of BCD's authority to make 'reasonable rules.'" Rood Closing Argument at 3. Mr. Rood further argues that the definitional rule is "internally inconsistent, at odds with the statute,<sup>16</sup> \* \* \* beyond reasonable definition of the term "continuously" and beyond its grant of authority by the Legislature.

The Legislative Assembly has charged the Division's Elevator and Electrical Board with promulgating administrative rules that, among other things, are "necessary to carry out the duties of the board under ORS 479.510 to 479.945 and 479.995." ORS 479.680.<sup>17</sup> ORS 479.520 provides that the purpose of the Electrical Safety Law, set forth ORS 479.510 to 479.945, is to "protect the health and safety of the people of Oregon from the danger of electrically caused shocks, fires and explosions and to protect property situated in Oregon from the hazard of electrically caused fires and explosions." To accomplish that purpose, the Legislative Assembly, in ORS 479.520(1), (2), and (4), recognized the importance of having procedures for the administration and enforcement of the Electrical Safety Law by the Department of Consumer and Business Services (DCBS) and the Division's Elevator and Electrical Board, for determining where and by whom electrical installations are made, and for assuring the public that persons making electrical installations have the requisite experience and training. Mr. Rood has not proven that the Division's promulgation of OAR 918-251-0090(8) exceeds the legislature's broad grant of rule-making authority. Moreover, his arguments that the definitional rule is internally inconsistent, that it contains an unreasonable definition of the term "continuously, and that it is at odds with a statute (or OAR 918-282-0010(1), OAR 918-282-0015, or OAR 918-282-0140) are without merit.

Applying the definition contained in OAR 918-251-0090(8), for Mr. Rood to be deemed "continuously employed" as Alameda's full-time signing supervisor during the period at issue (*i.e.*, January 1, 2016 through October 11, 2018), he would have needed to devote his entire time of employment with Alameda to the tasks of supervising, designing, laying out, planning, controlling, and making electrical installations for Alameda during all time periods when Alameda performed such work.

At hearing, Mr. Thompson testified that although 7:00 a.m. to 3:00 p.m. are the standard hours for electrical union workers' contracts, he considers Alameda to be a 24 hour a day/7 day a

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<sup>15</sup> Although Mr. Rood cites to OAR 918-282-0090(3) in his Closing Argument, there is no such administrative rule, and he is presumably referring to OAR 282-251-0090(8). (*See* Rood Closing Argument at 3-4.)

<sup>16</sup> In his Closing Argument, Mr. Rood makes several references to "the statute" (*e.g.*, arguing in favor of "a plain reading of the statu[t]e." (*See* Rood Closing Argument at 3-4.) However, he does not actually cite to any specific statute and is presumably referring to the administrative rule cited in his written argument, OAR 918-282-0140.

<sup>17</sup> *See also* ORS 455.138 (establishing the 15-member Electrical and Elevator Board to assist DCBS in administering the electrical program described in ORS 479.510 to 479.945).

week business. He testified that if he can find available labor and permits, then Alameda will perform work at any time. Nonetheless, the preponderance of credible evidence establishes that at least 70 percent of Alameda's service calls were received, and work performed, during its standard business hours.

The Division contends that because Alameda performed the majority of its electrical work during the hours of 7:00 a.m. and 3:00 p.m., and Mr. Rood's regular work hours at the Port were 7:00 a.m. to 3:30 p.m., Mr. Rood did not "devote [his] entire time of employment" with Alameda to supervising, designing, laying out, planning, controlling, and making electrical installations during time periods when he was responsible for the electrical work Alameda was performing. *See* Division's Closing Argument at 9-10.

Indeed, Mr. Rood's customary work hours at the Port and Alameda's typical operating hours significantly overlapped during the time period at issue. And, no matter how flexible Mr. Rood's Port employment and schedule may have been, and even if he kept in frequent electronic contact with Mr. Thompson, fielded questions from Alameda employees via various electronic means, and performed other Alameda tasks as they came up during his work day at the Port, Mr. Rood was not devoting his "entire time of employment" with Alameda to the activities and duties for which he, as Alameda's signing supervisor, was responsible *during the time period when approximately 70 percent of Alameda's work was occurring* — 7:00 a.m. to 3:00 p.m., Monday through Friday.

In sum, the Division has proven that during the period January 1, 2016 through the date of the Second Amended Notice (October 11, 2018), while functioning as Alameda's sole signing supervisor, Mr. Rood was not "continuously employed" in that position, in violation of OAR 918-282-0140(2)(c).

## **2. Alleged Violation of OAR 918-282-0140(2)(a)**

Next, the Division contends that, as the general signing supervising electrician for Alameda during the period January 1, 2016 through October 11, 2018, Mr. Rood violated OAR 918-282-0140(2)(a) by failing to sign all permits.

During his March 16, 2017 interview with Investigator Darling, Mr. Rood reported that Alameda's permits were typically obtained electronically by journeyman personnel, and he would become aware of the permits via his daily review of iCalendar. The Division has not provided sufficient evidence, however, to establish that Mr. Rood failed to sign all permits. Consequently, on this record, the Division has not proven a violation of OAR 918-282-0140(2)(a).

## **3. Alleged Violation of OAR 918-282-0140(2)(d)**

The Division also alleges that, as the general signing supervising electrician for Alameda during the period January 1, 2016 through October 11, 2018, Mr. Rood violated OAR 918-282-0140(2)(d) by failing to ensure that proper electrical safety procedures were used.

Irrespective of whether Mr. Rood made and received phone calls or engaged in other electronic communications at various times during his Port workday, and whether he occasionally left his Port job to undertake Alameda business, the record nonetheless shows that during the vast majority of Alameda's working hours (*i.e.*, approximately 70 percent), Mr. Rood was at his Port worksite, responsible for performing Port business, and claiming Port working hours.

In addition, the record establishes that Mr. Rood only occasionally visited Alameda's job sites during the period at issue. And when questioned by Investigator Darling on March 16, 2017 about recent job site visits, Mr. Rood identified three, but admitted that no Alameda employees had been present during those visits. When Investigator Darling asked Mr. Rood how he was able to ensure that all Alameda electrical installations meet minimum safety standards, Mr. Rood responded that Alameda has "qualified individuals who are licensed" and that there is an "open line of communication" among employees. Exhibit A4 at 3. Mr. Rood further reported to Investigator Darling that if an electrician's work led to Alameda receiving correction notices, the electrician's work product would become more closely monitored.

As previously discussed, a general signing supervisor is required to devote their "entire time of employment to tasks of supervising, designing, laying out, planning, controlling, and making electrical installations for the electrical contractor," during all times in which such work is performed by the contractor. *See* OAR 918-251-0090(8). Against such a backdrop, it is simply not reasonable to conclude that Mr. Rood satisfied his obligation to ensure that proper electrical safety procedures were used by Alameda employees — when he only occasionally made Alameda site visits, he had little to no in-person contact with employees at such site visits, he performed no onsite supervision of Alameda employees, and he devoted the majority of his time and attention to another employer while Alameda performed the bulk of its electrical work. For these reasons, the Division has proven a violation of OAR 918-282-0140(2)(d) for the time period at issue.

#### **4. Alleged Violation of OAR 918-282-0140(2)(e)**

Next, the Division contends that, as the general signing supervising electrician for Alameda during the period January 1, 2016 through October 11, 2018, Mr. Rood violated OAR 918-282-0140(2)(d) by failing to ensure that all electrical labels and permits required to perform electrical work were used and signed.

As discussed above, in conjunction with Mr. Rood's failure to properly ensure that Alameda employees used proper electrical safety procedures, Mr. Rood scarcely visited Alameda job sites, he had minimal in-person contact with Alameda employees, he performed no onsite supervision of Alameda employees, and his full-time responsibilities at the Port overlapped with Alameda's primary work hours. Given these circumstances, it is not possible that Mr. Rood satisfied his obligation to ensure that all electrical labels and permits required to perform electrical work were used and signed. The Division has therefore proven a violation of OAR 918-282-0140(2)(e) for the time period at issue.

#### **5. Alleged Violations of OAR 918-282-0140(2)(f)**

Finally, the Division contends that on October 3, 2017, as Alameda's general signing supervising electrician, Mr. Rood failed to prevent one or more employees from performing electrical installations for which they were not properly licensed, in violation of OAR 918-282-0140(2)(f).

OAR 918-282-0140(2)(f) states that the general signing supervising electrician must, "[e]nsure electricians have proper licenses for the work performed, and may not permit either by assent or by failure to prevent, an individual to perform work for which they are not properly licensed[.]"

*A. Mr. Hepler*

The Division alleges that on October 3, 2017, Mr. Rood allowed Mr. Hepler to perform an electrical installation for which he was not properly licensed.

ORS 479.620(3) states that, subject to ORS 479.540,<sup>18</sup> a person may not:

Except as provided in subsection (5) of this section,<sup>19</sup> make any electrical installation without a supervising or journeyman electrician's license.

ORS 479.530 provides the following relevant definitions:

(10) "Electrical installations" means the construction or installation of electrical wiring and the permanent attachment or installation of electrical products in or on any structure that is not itself an electrical product[.]

(11) "Electrical product" means any electrical equipment, material, device or apparatus that, except as provided in ORS 479.540, requires a license or permit to install and either conveys or is operated by electrical current.

The parties do not dispute that the pulling of high-voltage Romex electrical wiring during the construction of a home is an electrical installation, as defined in ORS 479.530, and therefore requires an electrician's license. The parties also do not dispute that Mr. Hepler lacked such a license on October 3, 2017. The only contested issue is whether he pulled high-voltage Romex electrical wiring at the property on October 3, 2017.

For the reasons discussed under the previous subsection titled "Credibility Considerations," the record establishes, more likely than not, that Mr. Hepler pulled high-voltage Romex electrical wiring on the date at issue. Because he did not hold an electrician's license when performing that electrical installation, his conduct on that date violated ORS 479.620(3).

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<sup>18</sup> ORS 479.540 sets forth many exemptions, none of which are relevant in the present matter.

<sup>19</sup> Subsection (5) of ORS 479.620 contains an exception for electrical installations performed on certain single or multifamily dwelling units, but nonetheless requires a limited residential electrician's license, which Mr. Hepler, Mr. Palm, and Mr. Rodocker did not have on October 3, 2017.

The Division has therefore established that Mr. Rood failed to prevent an unlicensed person from performing work for which the person was not properly licensed, in violation of OAR 918-282-0140(2)(f).

*B. Mr. Palm and Mr. Rodocker*

The Division alleges that Mr. Rood allowed electrical apprentices Palm and Rodocker to work outside the allowable scope of their electrical apprentice licenses on October 3, 2017, because the apprentices were not supervised by a sufficient number of journeyman electricians on that date.

ORS 479.630(7) provides that DCBS shall issue an electrical apprentice's license to a person who has complied with ORS 660.002 to 660.210 (titled "Apprenticeship and Training") as an electrical apprentice, who has paid the applicable application fee, and who has complied with ORS 479.510 to 479.945 (titled "Electrical Safety Law") and the rules adopted under ORS 455.117<sup>20</sup> and 479.510 to 479.945.

BOLI's administrative rule OAR 839-011-0280 pertains to electrical apprentices and states, in relevant part:

(2) All electrical apprentices must be directly supervised in accordance with OAR 839-011-0143, unless approved for indirect supervision.

\* \* \* \* \*

(5) All apprentices count towards the ratio specified in the standards, regardless of supervision status.

OAR 839-011-0143(6) states:

In licensed trades, an apprentice must be supervised by a journey worker in the same or a higher license classification than the apprentice, unless the local committee that the apprentice is registered to has approved supervision by a journey worker holding a license covering the specific work being performed by the apprentice on the job site.

The Division's administrative rule OAR 918-282-0270 provides, in part:

(1)(c) [An apprentice] [m]ay assist an appropriately licensed electrician on the same job site and the same shift in performing electrical work authorized in the trade, or branch of the trade, in which the licensee is registered[.]

\* \* \* \* \*

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<sup>20</sup> ORS 455.117 authorizes certain regulatory bodies, such the Electrical and Elevator Board, to adopt rules to administer the licensing, certification, and/or registration of persons regulated by the body.

(5) Notwithstanding subsection (1)(c) of this rule, a final period apprentice licensed under \* \* \* this rule \* \* \* may be issued an indirect supervision electrical apprentice license, allowing the apprentice to work under indirect supervision at the discretion of the responsible supervisor[.]

The record establishes that, on October 3, 2017, Mr. Palm held an inside electrical apprentice license and Mr. Rodocker held a limited residential electrical apprentice license. At no relevant time did either Mr. Palm or Mr. Rodocker hold an indirect supervision electrical apprentice license, a journeyman electrician license, or a supervising electrician license. Thus, any electrical installation(s) they performed on October 3, 2017 required direct journeyman supervision in the appropriate ratio of journeyman electrician to apprentice.

For residential electrical apprentices, the ratio requirement is one journeyman worker per apprentice at a job site (*i.e.*, a 1:1 ratio). For inside electrical apprentices, the ratio requirement is three journeyman workers for every two apprentices at a job site (*i.e.*, a 3:2 ratio). And, in no case shall the number of apprentices exceed the number of journeyman workers at a job site. Exhibit A10 at 1; testimony of Simmons.

OAR 839-011-0070(14)(a) defines a “job site,” for purposes of the construction trades, as “the area covered by an approved building permit, plan of development or contract number, or contractual agreement for new construction or renovation[.]”

On October 3, 2017, apprentices Palm and Rodocker performed electrical work for Alameda at a home located at 15306 SW Hudson Avenue. Although the home was one of several in the subdivision for which Alameda had a work contract, the permit under which apprentices Palm and Rodocker were working on October 3, 2017 was solely for 15306 SW Hudson Avenue. Thus, the “job site” for purposes of their work, and for purposes of their apprentice supervision on that date, did not extend beyond the home located at 15306 SW Hudson Avenue.

It is undisputed that journeyman Schildmeyer was present at the job site with, and provided direct supervision to, apprentices Palm and Rodocker while they performed electrical installation work on October 3, 2017. The issue is whether journeyman Bozied was similarly present and provided direct supervision to one or both apprentices while the apprentices performed work from approximately 7:00 a.m. to 1:45 p.m. on October 3, 2017.

At hearing, Mr. Bozied testified that for some period of time on October 3, 2017, he may have performed electrical work in another subdivision home that was adjacent to or near the home where Mr. Palm and Mr. Rodocker were working. As explained above, during any time period that Mr. Bozied worked somewhere besides the home located at 15306 SW Hudson Avenue, he was not at the same job site as the apprentices, and he did not provide appropriate direct supervision to apprentice Palm or Rodocker.

Moreover, sometime between 8:30 a.m. and 1:45 p.m. on October 3, 2017, for approximately one to two hours Mr. Bozied performed electrical installation work in the crawl

space of the home located at 15306 SW Hudson Avenue. The apprentices did not accompany him into the crawl space, Mr. Bozied could not visually observe the apprentices while he was in the crawl space, and there is no evidence that the apprentices refrained from performing any electrical installation work during those one to two hours. Rather, a preponderance of the evidence establishes that between approximately 8:30 a.m. and 1:45 p.m. on October 3, 2017, apprentices Palm and Rodocker performed electrical installation work despite their belief that Mr. Bozied was not present at the job site and that Mr. Schildmeyer was the only journeyman present during that time period.

Although neither the legislature, BOLI, nor the Division has defined what constitutes “direct” or “indirect” supervision for purposes of apprentice supervision under OAR chapters 839 and 918, direct supervision is logically a more stringent level of supervision than indirect supervision. And, it is hard to conceive that between approximately 8:30 a.m. and 1:45 p.m. on October 3, 2017, Mr. Bozied could be construed under any plausible definition to have provided “direct” supervision to apprentices Palm and Rodocker under the circumstances that existed during that time period — *i.e.*, the two apprentices were present at a job site performing electrical installation work; they did not see or have contact with Mr. Bozied during that entire time period; they worked with the belief and understanding that Mr. Bozied was away from the job site; and if Mr. Bozied was at the job site for some period of time, he was in a crawl space where he could not visually observe the apprentices.

Given the above, the record persuasively establishes that between approximately 8:30 a.m. and 1:45 p.m. on October 3, 2017, Mr. Bozied did not provide direct supervision to apprentices Palm and Rodocker while they performed electrical installation work during that time period. Even without considering the higher ratio requirement for inside electrical apprentices, Alameda and Mr. Rood failed to meet the threshold requirement of having at least as many journeyman workers on the job site (performing direct supervision) as apprentices. *See* Exhibit A10 at 1; *see also* OAR 839-011-0280(2), 839-011-0143(6), and 918-282-0270(1)(c) and (5). The Division has therefore established that Mr. Rood failed to prevent Mr. Palm and Mr. Rodocker from working outside the allowable scope of their electrical apprentice licenses, in violation of OAR 918-282-0120(1).

## **6. Proposed Civil Penalty**

ORS 455.895(1)(b) authorizes the Division to assess a civil penalty for the established violations against Mr. Rood and states that “[t]he Electrical and Elevator Board may impose a civil penalty against a person as provided under ORS 479.995.” ORS 479.995 provides:

The Electrical and Elevator Board may impose a civil penalty for a violation of ORS 479.510 to 479.945 or rules adopted for the administration or enforcement of ORS 479.510 to 479.945 and this section. The board shall impose a civil penalty authorized by this section as provided in ORS 455.895.

OAR 918-001-0036 is titled “Guidelines for Civil Penalties” and states, in part:

(6) The Director may, subject to approval of a board, develop a penalty matrix for the board's use to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.

The Division has adopted a penalty matrix. *See* Exhibit A11 at 1-2; testimony of Simmons. That penalty matrix provides that for a first-time violator, such as Mr. Rood, the standard civil penalty for a violation of OAR 918-282-0140 is \$3,000 per violation. *See* Exhibit A11 at 2.

For the alleged violation of OAR 918-282-0140(2)(f), the Division assessed a \$3,000 civil penalty against Mr. Rood. That violation has been established.

For the alleged violations of OAR 918-282-0140(2)(a), (c), (d), and (e), the Division chose to assess only a single \$3,000 civil penalty. *See* October 11, 2018 Second Amended Notice at 7; testimony of Simmons. However, as the Division pointed out in its Closing Argument, pursuant to the penalty matrix, the Division only needed to prove a single violation of either OAR 918-282-0140(2)(a), (c), (d), or (e) to warrant the assessment of a \$3,000 civil penalty against Alameda for such violation. Division's Closing Argument at 25-26. Because the Division established violations of OAR 918-282-0140(2)(c), (d), and (e), a \$3,000 civil penalty for those violations is warranted.

On this record, Alameda has not established that the Division, in assessing \$6,000 in total civil penalties (\$3,000 + \$3,000) against Mr. Rood, has acted contrary to its statutory authority or otherwise abused its discretion.<sup>21</sup> The Division may therefore assess civil penalties of \$6,000 for the proven violations of OAR 918-282-0140(2)(c), (d), (e), and (f).

## **7. Proposed License Revocation**

The Division has also proposed to revoke Mr. Rood's supervising electrician license, pursuant to ORS 455.129(2)(a), which provides as follows:

(2) Subject to ORS chapter 183, a regulatory body listed in subsection (3) of this section<sup>22</sup> may deny a license, certificate, registration or application

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<sup>21</sup> ORS 183.482 pertains to judicial review of contested cases and states, in part:

(8)(b) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

<sup>22</sup> Subsection (3)(b) lists the Electrical and Elevator Board.



or may suspend, revoke, condition or refuse to renew a license, certificate or registration if the regulatory body finds that the licensee, certificate holder, registrant or applicant:

(a) Has failed to comply with the laws administered by the regulatory body or with the rules adopted by the regulatory body.

By failing to comply with OAR 918-282-0140(2)(c), (d), (e), and (f), a rule adopted by the Electrical and Elevator Board, Mr. Rood's supervising electrician license is subject to suspension under ORS 455.129(2)(a).

At hearing, the Division's enforcement manager, Andrea Simmons, testified that the Division considered the following when determining that license revocation was appropriate: 1) the Division's past sanctioning practices; 2) the importance of a signing supervisor's duties; 3) the length of time that the signing supervisor violations occurred; 4) the risk to the public from the performance of improperly supervised and unlicensed electrical work; and 5) Mr. Rood's experience as a continuing education electrical instructor and assumed knowledge of electrical safety laws and regulations.

Agencies generally have considerable discretion in deciding what sanctions to impose for violations, and Oregon case law does not require an agency to provide a licensee with a specific, structured analysis of how it utilizes its discretion in choosing a sanction. For example, *Olsen v. State Mortuary and Cemetery Bd*, 230 Or App 376 (2009) stands for the proposition that, once an agency is statutorily authorized to impose a range of sanctions, the choice of which sanction to impose is a matter within that agency's discretion. In *Olson*, the Mortuary and Cemetery Board revoked the petitioners' licenses and imposed a civil penalty of \$500 for each of 88 proven violations (for a total of \$44,000).<sup>23</sup> 230 Or App 386-387. In rejecting the petitioners' assertion that the Mortuary and Cemetery Board erred in imposing those sanctions, the Court of Appeals held that "[t]he imposition and choice of penalty for violation of laws governing funeral service providers and funeral homes is a matter within the board's discretion." *Id.* at 393-394. The Board then noted that the petitioners had identified no basis for asserting that the Mortuary and Cemetery Board had abused its discretion when deciding on the appropriate sanction. *Id.* at 394.

More recently, the Court of Appeals held in a disciplinary case involving the Board of Accountancy that when selecting an appropriate sanction in a given case, "[n]othing precludes the board from relying on its own knowledge of its prior decisions without placing those prior decisions in the evidentiary record." *Gustafson v. Bd of Accountancy*, 270 Or App 447, 457 (2015). The court rejected the petitioner's argument that the Board of Accountancy had abused its discretion.

Given Mr. Rood's extensive experience as an electrician, he reasonably should have known that he was providing inadequate supervision by routinely working for another employer during Alameda's primary operating hours, rarely meeting with or observing Alameda's electricians and apprentices, and rarely visiting job sites. His extensive experience would also

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<sup>23</sup> At that time, ORS 692.180(1) provided, in part, that "the board may impose a civil penalty of not more than \$1,000 for each violation, suspend or revoke a license to practice or to operate under this chapter[.]"

make him conversant with the significant risks posed to lives and property from inadequate electrical installations.

It is within the Division's discretion to revoke Mr. Rood's supervising electrician license and, on this record, the Division has demonstrated sufficient justification to do so.

### **ORDER**

*I propose that the Building Codes Division, on behalf of the Electrical and Elevator Board, issue the following order:*

1. Kyle J. Rood is liable to pay a total civil penalty of \$6,000 for violations of OAR 918-282-0140(2)(c), (d), (e), and (f).

2. Kyle J. Rood's supervising electrician license number 4871S is revoked, commencing on the date of entry of a final order in this matter.

**Jennifer H. Rackstraw**

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Senior Administrative Law Judge  
Office of Administrative Hearings

### **APPEAL PROCEDURE**

This is the Administrative Law Judge's Proposed Order. You have the right to file written exceptions and argument to be considered per OAR 137-003-0650. Your exceptions and argument must be received within 20 calendar days after the service date of this Proposed Order. Send them to:

Building Codes Division  
PO Box 14470  
Salem, OR 97309-0404

**CERTIFICATE OF MAILING**

On December 17, 2019, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 2018-ABC-01223.

By: First Class Mail

Kyle J. Rood  
17110 S Bradley Rd  
Oregon City OR 97045

Terence S McLaughlin  
Attorney at Law  
PO Box 672  
Carlton OR 97111

By: Electronic Mail

Sarah Blam-Linville  
Agency Representative  
Building Codes Division  
PO Box 14470  
Salem OR 97309

Tyler E Anderson  
Assistant Attorney General  
Department of Justice  
1162 Court St NE  
Salem OR 97301

Anesia N Valihov  
Hearing Coordinator

**BEFORE THE BUILDING CODES DIVISION  
ELECTRICAL AND ELEVATOR BOARD**

IN THE MATTER OF: )  
 )  
 ) OAH Reference #2018-ABC-01221  
 )  
**ALAMEDA ELECTRIC, LLC.** )  
 ) Agency Case # C2016-0480

**BUILDING CODES DIVISION  
1535 EDGEWATER ST. NW  
SALEM, OR 97304**

APPEAL OF THE PROPOSED ORDER OF ADMINISTRATIVE LAW JUDGE

Respondent appeals the 12/16/19 proposed order of ALJ Jennifer Rackstraw. Respondent specifically excepts to the finding that a 1 year suspension of Alameda Electric’s license was supported by the facts in this case. ALJ Rackstraw determined that Alameda’s employment of a well qualified licensed signing supervisor warranted a suspension of its license in the complete absence of facts supporting the *proposed order*.

The record reflects that Alameda Electric, LLC retained Kyle J. Rood, a licensed signing supervisory electrician throughout the relevant time period. Further, that during the last 18 months he has worked solely for Alameda Electric, LLC. If we are to accept the findings of ALJ Rackstraw we reach the bizarre conclusion that Alameda Electric, LLC would have been better off to have never had a signing supervisory electrician. That would have warranted only a fine.

Alameda further excepts to the ALJ’s acceptance of the Division’s definition of continuous employment. While the Board can make reasonable rules, that legislative latitude does not extend to redefining time, place and manner to reach an impermissible outcome.

Citing OAR 918-282-0090(3) BCD’s basis for any and all action against Alameda and Rood is its definition of “continuously employ” which, based upon BCD’s reading of its own definition, is claimed to limit the employment of Kyle Rood.

The statute requires only that a signing supervising electrician be “continuously employed.” Respondents are entitled to a plain reading of the statute. Relying on the Oxford English Dictionary “continuously” is defined as follows:

***continuously***

**ADVERB**

• **1** *Without interruption or gaps.*  
*'these images loop continuously'*

**1.1** *Repeatedly without exceptions or reversals.*  
*'their performance has continuously improved'*

<https://www.lexico.com/en/definition/continuously>

Thus, Mr. Rood's employment must be without interruption or gaps. The plain meaning of the statute is that you could not have a signing supervisor hired on a job by job basis or hourly basis. This makes quite a bit of sense and provides continuity for all concerned.

By contrast, OAR 918-282-0090(3) is an unconstitutional exercise of BCD's authority to make "reasonable rules." The definition adopted by BCD is internally inconsistent, at odds with the statute, and beyond reasonable definition of the term "continuously" and beyond its grant of authority by the Legislature.

CONCLUSION

For the reasons above the proposed Order should be amended to find in favor of Alameda Electric, LLC or, in the alternative, a maximum fine of \$6000.00 should be imposed on Alameda Electric, LLC.

Dated this 3rd day of January, 2020.

*/s/ Terence S. McLaughlin*

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Terence S. McLaughlin  
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CERTIFICATE OF SERVICE

I, Terence S. McLaughlin, hereby certify that I served a true copy of the Supplementary Argument by email on:

Tyler E. Anderson  
Assistant Attorney General  
General Counsel Division  
1162 Court St. NE  
Salem, OR 97301-4096

Dated this 3rd day of January, 2020.

*/s/ Terence S. McLaughlin*

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**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
BUILDING CODES DIVISION  
ELECTRICAL AND ELEVATOR BOARD**

IN THE MATTER OF: ) **PROPOSED ORDER**  
 )  
**ALAMEDA ELECTRIC, LLC** ) OAH Case No. 2018-ABC-01221  
 ) Agency Case No. C2016-0480

**HISTORY OF THE CASE**

On July 18, 2017, the Electrical and Elevator Board of the Building Codes Division (Division) issued a “Notice of Proposed Assessment of a Civil Penalty, Notice of Proposed Suspension of Electrical Contractor License Number C923, and Notice of Final Order on Default” to Alameda Electric, LLC (Alameda). On July 31, 2017, Alameda requested a hearing through its attorney. On November 9, 2017, the Division, acting on behalf of the Board, issued an “Amended Notice of Proposed Assessment of Civil Penalties, Amended Notice of Proposed Suspension of Electrical Contractor License Number C923, and Amended Notice of Final Order on Default” (Amended Notice) to Alameda.<sup>1</sup>

On January 10, 2018, the Division referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Jennifer H. Rackstraw was assigned to preside at hearing.

On March 27, 2018, ALJ Rackstraw held a prehearing conference. At the conference, Assistant Attorney General Tyler Anderson represented the Division, and Attorney Terence McLaughlin represented Alameda, as well as appellants Kyle Rood (OAH Case No. 2018-ABC-01223) and Dustin Hepler (OAH Case No. 2018-ABC-01225) from two related contested case matters. The three matters were set to be heard consecutively on October 2, 3, and 4, 2018.

On September 28, 2018, ALJ Rackstraw granted the parties’ joint request to postpone the hearings set for October 2 through 4, 2018 in the Alameda, Rood, and Hepler matters. On October 2, 2018, ALJ Rackstraw held a status conference to reschedule the hearings. Mr. Anderson represented the Division, and Mr. McLaughlin represented Alameda, Mr. Rood, and Mr. Hepler. The three matters were reset to be heard consecutively on December 19, 20, and 21, 2018.

On December 13, 2018, the OAH assigned the matters to Senior ALJ Richard Barber. On December 19, 2018, ALJ Barber granted the parties’ joint request to postpone the hearings scheduled for December 19 through 21, 2018. The three matters were reset to be heard

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<sup>1</sup> The Amended Notice is dated November 7, 2017, and the Division alleges therein that a violation of OAR 918-282-0010(1) occurred through the date of the notice. (*See* Pleading P3 at 8-9.)

consecutively on May 15 and 16, 2019, with ALJ Rackstraw assigned to preside over the hearings.

On April 9, 2019, ALJ Rackstraw granted Mr. McLaughlin's unopposed request to postpone the hearings scheduled for March 15 and 16, 2019. The three matters were reset to be heard consecutively on August 27, 28, and 29, 2019

On August 27, 28, and 29, 2019, ALJ Rackstraw held a hearing in Salem, Oregon. Mr. Anderson represented the Division, and Mr. McLaughlin represented Alameda, Mr. Rood, and Mr. Hepler.<sup>2</sup> Sarah Blam-Linville was present as an agency representative. Andy Skinner, the Division's Acting Enforcement Manager, was present at the hearing as an observer. David Thompson, the owner of Alameda Electric; Kyle Rood; and Dustin Hepler were each present and testified. The following persons also testified: Russ Darling, Division Compliance Investigator; Shannon Flowers, Division Senior Policy Advisor; Andrea Simmons, Division Acting Fiscal & Customer Services Manager;<sup>3</sup> Joe Bozied, an electrician employed by Alameda; and David Danielson, owner of Danielson Contracting, Inc.

The record remained open until October 21, 2019, for the receipt of written closing arguments. On September 30, 2019, the parties filed their respective written closing arguments. With its closing argument, the Division included Attachments A and B. On October 21, 2019, Alameda filed a supplemental written closing argument. With its supplemental argument, Alameda moved to strike Division Attachments A and B from the record, as well as any Division arguments relying on those attachments. On that same date, the Division responded with written objections to Alameda's motion, and Alameda thereafter filed a response to those objections. The record closed after receipt of those filings on October 21, 2019.

## ISSUES

1. Whether during the period January 1, 2016 through November 7, 2017, Alameda failed to continuously employ at least one full-time general supervising electrician, in violation of OAR 918-282-0010(1).
2. Whether on October 3, 2017, Alameda allowed one or more employees to perform electrical installations for which they were not properly licensed, in violation of OAR 918-282-0120(1).
3. If the above violations are established, whether the Division may assess total civil

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<sup>2</sup> On August 27, 2019, the parties agreed to consolidate the three matters onto one hearing record, instead of having the individual cases heard consecutively on separate records. *See* OAR 137-003-0525(1)(c) (allowing the OAH or ALJ to consolidate contested cases, subject to agency approval). However, a separate Proposed Order with appeal rights specific to the individual appellant is being issued for each case.

<sup>3</sup> Ms. Simmons was formerly a Division Policy Analyst and Senior Policy Advisor. In 2012, she became the Division's Enforcement Manager. Although that is still her official position, in approximately mid-2018, she began a job rotation as the Fiscal & Customer Services Manager. (Test. of Simmons.)



penalties of \$5,000 against Alameda, pursuant to ORS 455.895(1)(b) and OAR 918-001-0036, and suspend Alameda's electrical contractor license for one year, pursuant to ORS 455.129(2)(a) and (3)(b).

## **EVIDENTIARY RULINGS**

### *At the hearing*

Alameda's Exhibit R1 and the Division's Exhibits A1 through A13 were admitted into the record without objection.<sup>4</sup> Alameda's Exhibits R4, R5, and R6 were admitted over the Division's objections that they were not offered in a timely manner and that they lack indicia of authenticity as to date, time, and location.<sup>5</sup>

### *After the hearing*

On October 21, 2019, Alameda moved to strike Attachments A and B, which the Division provided with its written closing argument, and any Division arguments that rely on those attachments. Alameda argued that because the Division had not previously provided Attachments A and B to the ALJ or Alameda, and it had not previously offered the documents as hearing exhibits, the Division was precluded from doing so after the close of the evidentiary record. In response, the Division asserted that it offered the Attachments to "directly and factually rebut testimony offered by Respondents at hearing." See Division's October 21, 2019 Email Response to Motion to Strike.

The Division did not request that the evidentiary record remain open after the hearing so that it might offer rebuttal evidence, and it has offered no explanation for the untimely offering of the evidence.<sup>6</sup> To the extent that the Division's inclusion of Attachments A and B with its written closing argument is construed as a request to reopen the evidentiary record, the request is denied as untimely. Attachments A and B are therefore excluded from consideration in this matter.

## **CREDIBILITY CONSIDERATIONS**

One of an administrative law judge's chief responsibilities is to reconcile conflicting evidence in the record and determine which evidence is more likely than not true. Because of the nature of the conflicting testimony in the present matter, I must assess the credibility of various witnesses offering testimony to reconcile the conflicting evidence.

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<sup>4</sup> Exhibits A1 through A13, referenced in this Proposed Order, are specific to the Alameda case. The Rood and Hepler cases have their own designated exhibits.

<sup>5</sup> Alameda did not offer any Exhibits R2 or R3.

<sup>6</sup> In an email to the ALJ dated August 28, 2019, counsel for the Division specifically stated that the Division "will not be submitting any additional exhibits." See Division's August 28, 2019 Email Regarding Division Recall of Witness for Tomorrow.

While a witness is presumed to speak the truth, the presumption may be overcome “by the manner in which the witness testifies, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence.” ORS 44.370. A determination of witness credibility may also be based on the inherent probability of the evidence, whether the evidence is corroborated, whether the evidence is contradicted by other testimony or evidence, whether there are internal inconsistencies, and “whether human experience demonstrates that the evidence is logically incredible.” *Tew v. DMV*, 179 Or App 443, 449 (2002), citing *Lewis and Clark College v. Bureau of Labor*, 43 Or App 245, 256 (1979) *rev den* 288 Or 667 (1980) (Richardson, J., concurring in part, dissenting in part).

### **1. Mr. Hepler – Issue of Unlicensed Electrical Installation**

One issue in this case is whether, on October 3, 2017, while working as a materials handler for Alameda, Mr. Hepler performed an electrical installation without holding the requisite license. It is undisputed that Mr. Hepler had no Oregon journeyman or general supervising electrician license on the date at issue. Thus, the only remaining question is whether Mr. Hepler did, in fact, perform an electrical installation on October 3, 2017.

Investigator Darling contends that when he arrived at a newly constructed home located at 15306 SW Hudson Avenue (the job site) in the Polygon subdivision on October 3, 2017 to perform a licensing “spot check,” he directly observed Mr. Hepler drilling holes into a wooden ceiling stud and using both hands to pull dangling Romex electrical wiring through the holes. Testimony of Darling; *see* Exhibit A9 at 1-2. Mr. Hepler and Alameda deny that he pulled any Romex electrical wiring on October 3, 2017, and insist that he was merely pulling low-voltage coaxial cable and phone wiring when observed by Investigator Darling. It is undisputed that pulling high-voltage Romex electrical wiring constitutes an electrical installation, and that pulling low-voltage cable and phone wiring does not.

#### *Investigator Darling*

Although Investigator Darling is not a licensed electrician, he has been performing field investigations for the Division since November 2014. Prior to that time, he worked as a licensed private investigator in Hawaii and California, primarily in the field of insurance and fraud. *See* testimony of Darling.

At hearing, Investigator Darling asserted that after spending nearly five years inspecting construction sites, and having had some personal experience pulling Romex electrical wiring at his own residence, he was certain that the wiring he observed Mr. Hepler pulling through drill holes on October 3, 2017 was Romex, and not coaxial cable or phone wiring. Moreover, a journeyman electrician on-duty at the job site on October 3, 2017, Scott Schildmeyer, told Investigator Darling on that date that he believed Mr. Hepler was a licensed electrical apprentice whose job duties included pulling electrical wiring.<sup>7</sup> And, licensed electrical apprentice Kevin Palm, who had been working with Mr. Hepler on October 3, 2017, similarly expressed to

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<sup>7</sup> Pursuant to OAR 918-282-0270(1)(a) and (b), an electrical apprentice must meet various minimum requirements and be licensed.

Investigator Darling on that date that he had believed Mr. Hepler to be an electrical apprentice. *See Exhibit A9 at 2-4.*

Investigator Darling's hearing testimony regarding Mr. Hepler's alleged actions on October 3, 2017 was consistent with the information contained in his Investigative Report dated October 10, 2017. *See testimony of Darling and Exhibit A9.*

In its closing arguments, Alameda contends that Investigator Darling's hearing testimony was "riddled with inconsistent statements and evasive answers," and that Investigator Darling produced investigative reports in the Hepler, Alameda, and Rood cases that "were designed" to result in the filing of violations against all three appellants. *See Alameda Supplemental Closing Argument at 3; Alameda Closing Argument at 4.* Those contentions are not borne out by the evidentiary record and they are not persuasive.

In sum, Investigator Darling, an experienced Division investigator, demonstrated his familiarity with different types of wiring and credibly testified that Mr. Hepler pulled Romex electrical wiring while working for Alameda on October 3, 2017.

*Mr. Hepler*

Mr. Hepler began working for Alameda as a materials handler in approximately mid-2016. His duties included, among other things, pulling low voltage coaxial cable and telephone wiring and handling and transporting high-voltage Romex electrical wire. Mr. Hepler had no electrical experience prior to working for Alameda. *See testimony of Hepler.*

Mr. Hepler testified at hearing that when Investigator Darling arrived at the job site on October 3, 2017, he (*i.e.*, Mr. Hepler) was drilling holes and pulling low voltage coaxial cable and telephone wire in the garage area. He further testified that although there was high-voltage Romex wire next to where he was drilling, he did not pull any high-voltage Romex wire on that date.

To support Mr. Hepler's testimony, Alameda offered Exhibits R4 and R5, which are Alameda photographs taken the day after Investigator Darling's inspection that show various low voltage wiring that Mr. Hepler purportedly pulled at the job site on October 3, 2017.<sup>8</sup> However, as the Division has pointed out, the photographs do not provide any indication as to who performed the work depicted in the exhibits or when such work was completed. Moreover, the scale of the photographs provides no context as to what portion of the job site they represent or whether they even depict work performed at the job site in question. *See Division's Closing Argument at 24.*

Furthermore, when Investigator Darling made contact with Mr. Hepler on October 3, 2017, Mr. Hepler initially claimed that he was an electrical apprentice. After Investigator Darling asked for his apprentice license, Mr. Hepler then admitted to Investigator Darling that he

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<sup>8</sup> At hearing, licensed journeyman electrician Joe Bozied testified that Exhibits R4 and R5 were taken in the garage at the job site on October 4, 2017, one day after Investigator Darling's inspection. (Test. of Bozied.)

was a materials handler and not an apprentice. At hearing, Mr. Hepler acknowledged the dishonest statement made to Investigator Darling. He explained that his dishonesty to Investigator Darling was because he gets nervous around individuals in positions of authority, and he admitted that it had been “stupid” for him to lie. Testimony of Hepler. The Division suggests that Mr. Hepler, more likely than not, lied to Investigator Darling about being an apprentice to cover for the fact that Investigator Darling may have observed him pulling Romex electrical wiring on October 3, 2017. While Mr. Hepler’s admitted dishonesty to Investigator Darling on October 3, 2017 does not mean that Mr. Hepler’s hearing testimony automatically lacks credibility as a whole, it does call into question his reliability on the material issue of whether he pulled Romex electrical wiring on October 3, 2017. It is more logically credible that Mr. Hepler would falsely claim to be an electrical apprentice because he had just pulled electrical wiring in the presence of a Division inspector rather than making such a claim through simple nervousness around authority figures.

Finally, Mr. Hepler has motive to be untruthful in this matter. The Division has proposed a fairly significant financial sanction (\$2,000) against him, and the alleged violation, if proven, would subject his employer, Alameda, to disciplinary action.

In weighing the above considerations, Mr. Hepler’s testimony regarding whether he performed an electrical installation at the job site on October 3, 2017 is less persuasive than the testimony of Investigator Darling. Greater weight is therefore accorded to Mr. Darling’s testimony.

## **2. Mr. Bozied – Issue of Apprentice Supervision**

Another issue in this case is whether, on October 3, 2017, there was a sufficient ratio of journeyman electricians to electrical apprentices at the job site. The following facts are undisputed: 1) Scott Schildmeyer and Joe Bozied were journeyman electricians, Kevin Palm and Matthew Rodocker were electrical apprentices, and Mr. Hepler was an unlicensed material handler on October 3, 2017; 2) Mr. Schildmeyer, Mr. Bozied, Mr. Palm, Mr. Rodocker, and Mr. Hepler were each present at the job site at approximately 7:00 a.m. on October 3, 2017, and each worked at the job site for some period of time on that date; 3) when Investigator Darling arrived at the job site at approximately 1:45 p.m. on October 3, 2017, he made contact with and subsequently spoke to Mr. Schildmeyer, Mr. Palm, Mr. Rodocker, and Mr. Hepler; and 4) Investigator Darling and Mr. Bozied did not see or speak to one another at the job site on October 3, 2017.

The Division concedes that Mr. Schildmeyer was present while apprentices Palm and Rodocker worked at the job site from approximately 7:00 a.m. to 1:45 p.m. on October 3, 2017, and the Division concedes that Mr. Schildmeyer provided direct journeyman supervision to the apprentices during that time. The Division argues, however, that Mr. Bozied was not present at the job site after approximately 8:30 a.m. on October 3, 2017, and that he did not provide direct supervision to apprentices Palm and Rodocker while they performed electrical installation work from approximately 8:30 a.m. to 1:45 p.m. The Division further argues that even if Mr. Bozied was actually working at or near the job site on October 3, 2017 from approximately 8:30 a.m. to

1:45 p.m., he was not working in a location where he could see, hear, and actually provide direct supervision to apprentices Palm and Rodocker.

Alameda contends that Mr. Bozied was, in fact, present at the job site from approximately 7:00 a.m. to 2:30 p.m. on October 3, 2017, which includes the time period during which apprentices Palm and Rodocker performed electrical installation work that day. Moreover, Alameda asserts that the “job site” for purposes of apprentice supervision would include adjacent houses under construction in the subdivision where Alameda employees were working on October 3, 2017. Alameda argues that because there were two journeyman electricians (Mr. Schildmeyer and Mr. Bozied) present at the job site while the two apprentices (Mr. Palm and Mr. Rodocker) performed work on October 3, 2017, Alameda maintained an acceptable 1:1 journeyman/apprentice ratio.

*Hepler, Palm, Rodocker, and Schildmeyer Statements on October 3, 2017*

When Investigator Darling arrived at the job site at approximately 1:45 p.m. on October 3, 2017, he observed Mr. Hepler, Mr. Schildmeyer, Mr. Palm, and Mr. Rodocker. At no time during his site visit did Investigator Darling observe Mr. Bozied in or around the home located at 15306 SW Hudson Avenue.

When Investigator Darling questioned Mr. Hepler during the site visit, Mr. Hepler identified the journeyman electrician on the job site as Mr. Schildmeyer. Mr. Hepler did not identify Mr. Bozied as a journeyman who was present at the job site.

When Investigator Darling questioned Mr. Schildmeyer during the site visit, Mr. Schildmeyer stated that he had been the sole journeyman at the job site since Mr. Bozied left the site at approximately 8:30 a.m. that morning to go to a different job site.

When Investigator Darling questioned Mr. Palm during the site visit, Mr. Palm stated that Mr. Bozied had been present at the job site at 7:00 a.m. that day but left sometime that morning, and Mr. Schildmeyer was then the only journeyman present to supervise the apprentices.

When Investigator Darling questioned Mr. Rodocker during the site visit, Mr. Rodocker stated that Mr. Bozied had been present at the job site when he arrived that morning at 7:00 a.m., but Mr. Bozied left at approximately 8:30 a.m. and did not return thereafter. Mr. Rodocker further stated that he, Mr. Hepler, Mr. Palm, and Mr. Schildmeyer worked throughout the day until Investigator Darling arrived onsite. Mr. Rodocker admitted that he was uncertain of the proper journeyman/apprentice ratio, but stated he believed one journeyman worker might be sufficient to supervise two apprentices.

*Bozied Hearing Testimony*

At hearing, Mr. Bozied testified that, although he could not recall where he was from hour to hour on October 3, 2017, his best estimate was that he arrived at the job site at 7:00 or 8:00 a.m. that day, at some point he worked for one to two hours alone in the crawlspace under

the house,<sup>9</sup> he was unable to observe the apprentices and their work while in the crawl space, he visually observed Mr. Hepler perform work for more than four hours that day, he may have spent some time working at another house under construction on the same street, he departed the job site at approximately 2:30 p.m. (after Mr. Darling, Mr. Schildmeyer, Mr. Hepler, Mr. Palm, and Mr. Rodocker had all left), and he learned of Investigator Darling's site visit via a phone call from Mr. Hepler shortly thereafter.

At hearing, when asked by the Division's counsel whether he had been in a journeyman role supervising an apprentice at the job site on October 3, 2017, Mr. Bozied responded, "I believe so." Testimony of Bozied. He further testified that while he was working in the crawlspace, and therefore unable to directly observe one of the apprentices, an apprentice would have been required to take off his tool belt and refrain from performing any electrical installation work during that period of time. Mr. Bozied admitted at hearing, however, that he did not know if one of the apprentices followed that protocol for the one to two hours that Mr. Bozied was in the crawlspace.

*Thompson Statement on October 3, 2017, Thompson Hearing Testimony, and Exhibit R6*

On October 3, 2017, shortly after arriving at the job site and speaking with Mr. Hepler and Mr. Schildmeyer, Investigator Darling had a brief phone conversation with Alameda's owner, David Thompson. During their conversation, Investigator Darling questioned Mr. Thompson about, among other things, a single journeyman being responsible for two apprentices. Mr. Thompson informed Investigator Darling that two journeyman workers should have been present at the job site that day. When Investigator Darling mentioned that Mr. Bozied had departed the job site at approximately 8:30 a.m. that day, Investigator Darling lost phone contact with Mr. Thompson. *See Exhibit A9 at 3; testimony of Darling.*

Mr. Thompson testified at hearing that approximately one-half hour after speaking with Investigator Darling, he used an application called "Find Friends" to ascertain Mr. Bozied's location. Testimony of Thompson. Mr. Thompson further testified that the application showed that Mr. Bozied was at the job site and he took a screen shot of the application's results some time on October 3, 2017.

Mr. Thompson testified that around the same time he identified Mr. Bozied's location through "Find Friends," he spoke with Mr. Bozied by phone (after having been unsuccessful in reaching Mr. Bozied during his first phone call attempt), and Mr. Bozied stated he was "at the subdivision." Testimony of Thompson.

Nearly two years later, at the hearing in August of 2019, Alameda presented as Exhibit R6 a copy of a screen shot from Mr. Thompson's cell phone showing "Find Friends" results for "Electrician Joe" (which Mr. Thompson testified refers to Mr. Bozied). *See Exhibit R6; testimony of Thompson.* The screen shot shows an orange locator dot on an unnamed street. The screen shot does not show a date or a specific location, but it does list a time of "12:10

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<sup>9</sup> Mr. Bozied testified at hearing that he may have been working in the crawlspace during Investigator Darling's site visit, but he was not sure. (Test. of Bozied.)

p.m.,” include the notation “Portland, OR – now,” and show “SW Cabernet Drive” as the nearest named street to the orange dot. *See* Exhibit R6.

According to Mr. Thompson, Exhibit A6 shows that at the time Mr. Thompson checked Mr. Bozied’s location on October 3, 2017, Mr. Bozied was at the job site.

### *Discussion*

First, the contemporaneous, consistent statements from Mr. Hepler, Mr. Schildmeyer, Mr. Palm, and Mr. Rodocker to Investigator Darling on October 3, 2017 are more reliable and persuasive than Mr. Bozied’s hearing testimony nearly two years after the incident at issue.

The statements from Mr. Hepler, journeyman Schildmeyer, and apprentices Palm and Rodocker to Investigator Darling persuasively establish that Mr. Bozied was visibly present at the home located at 15306 SW Hudson Avenue from approximately 7:00 a.m. to 8:30 a.m. on October 3, 2017. Their statements also establish that they believed Mr. Bozied left the home as of approximately 8:30 a.m. that day; they did not see Mr. Bozied at the home at any time after 8:30 a.m.; they believed Mr. Schildmeyer was the only journeyman electrician at the home as of 8:30 a.m.; and they each performed work until approximately 1:45 p.m., when Mr. Darling arrived there.

By contrast, at hearing, Mr. Bozied could not with any specificity remember where he had been, and when, between 8:30 a.m. and approximately 1:45 p.m. on October 3, 2017. For example, he testified that he was in the crawlspace of the home for between one to two hours, but he could not recall when that occurred. He testified that he may have been working at another, nearby home in the same subdivision, but he could not provide details as to when that occurred, if at all. And, he could not reliably recall where he had been when Mr. Darling was at the job site from approximately 1:45 p.m. until sometime after 2:00 p.m.

In addition, Mr. Bozied testified that he visually observed Mr. Hepler performing work for at least four hours on October 3, 2017.<sup>10</sup> Such testimony conflicts with other, more credible evidence establishing that Mr. Bozied was *not* present with Mr. Hepler (and he therefore could not have visually observed him) for such an extended period of time on October 3, 2017. At most, Mr. Bozied could have observed Mr. Hepler’s work (and directly supervised one or both apprentices) from approximately 7:00 a.m. to 8:30 a.m. that day.

Finally, the “Find Friends” screenshot designated as Exhibit A6 does not constitute persuasive, reliable evidence of Mr. Bozied’s whereabouts between 8:30 a.m. to 1:45 p.m. on October 3, 2017. The exhibit itself lacks specificity and sufficient indicia of reliability and, at most, shows *generally* where Mr. Bozied was when Mr. Thompson used the application sometime on the afternoon of October 3, 2017, roughly between 2:00 and 3:00 p.m.

The Findings of Fact that follow are made in accordance with the above considerations.

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<sup>10</sup> Mr. Bozied offered this testimony in conjunction with his assertion that Mr. Hepler did not perform any electrical installations on October 3, 2017. (*See* test. of Bozied.)

## FINDINGS OF FACT

### *Alameda*

1. Since 2013, David Thompson has been the owner and operator of Alameda, an electrical contractor with its principal place of business in Oregon. During all times pertinent to this matter, Alameda held electrical contractor license number C923 and Kyle Rood held general supervising electrician license number 4871S. (See Exs. A4 at 1-2, A6 at 2, A7 at 1-2; test. of Thompson and Rood.)

2. The majority of Alameda's work assignments consist of "service calls and short order work" received through the Yelp website. (Exs. A1 at 2-3, A4 at 2-3; test. of Thompson.) Most Alameda employees begin their workday at 5:30 or 6:00 a.m. on weekdays. Alameda will respond to emergency requests and sometimes perform electrical work on evenings and weekends. Alameda advertises its business hours as 7:00 a.m. to midnight on the Yelp website. Mr. Thompson does not advertise that Alameda performs work 24 hours per day because he wants to reduce the number of service calls received at unusual hours. Approximately 30 percent of Alameda's service calls come in during these unusual hours, with the remainder of the calls received no later than 6:00 or 7:00 p.m. (Test. of Thompson; *see also* Ex. A4 at 2-3.)

### *Mr. Rood's Employment*

3. Since 1998, Kyle Rood has been in the electrical industry. From 1993 to 1996, he participated in an electrical apprenticeship program in Coos Bay. In December 1996, he became a general journeyman electrician. He is licensed as a general journeyman in Oregon, California, Washington, and Montana. In August 2001, he received his Oregon supervising electrician's license. In December 2001, he received his electrical inspector certification. (Test. of Rood.)

4. From December 12, 2005 to approximately December 4, 2018, Mr. Rood worked as an electrical inspector for the Port of Portland (Port) on a full-time basis. (Exs. A1 at 4, A4 at 4; test. of Rood.) His regular work hours at the Port were from 7:00 a.m. to 3:30 p.m., Monday through Friday. (Exs. A1 at 4, A4 at 4; test. of Rood.) Although the Port initially required that he adhere to a rigid work schedule, his schedule became increasingly flexible over time. Some days, he was not required to report to the Port work site at all. The Port paid him at an hourly rate, and he kept track of his Port work hours in a book. (Test. of Rood.) Timesheets from the Port for the period January 1, 2016 to July 1, 2017, show that Mr. Rood consistently reported working 40 hours per week at the Port. (Test. of Flowers; *see* Rood Ex. R7.)

5. Since January 1, 2016, Alameda has employed Mr. Rood as its registered signing supervisor. (See Exs. A4 at 2, A13 at 1; test. of Rood.) On January 4, 2016, Alameda's previous signing supervisor of record submitted his official resignation to the Division. (Ex. A13.) Since January 4, 2016, Mr. Rood has consistently served as Alameda's sole designated signing supervisor. (Ex. A1 at 2; test. of Thompson and Rood.)

6. While working for the Port, Mr. Rood generally communicated with Mr. Thompson and Alameda employees via telephone and various electronic means such as email, text message,



FaceTime, iCalendar, and a Voxer messenger application. (Test. of Thompson and Rood; Ex. A4 at 2-5.) On occasion, Mr. Rood left the Port during Port work hours to visit Alameda job sites. His visits to Alameda job sites did not generally occur when other Alameda employees were present. (Ex. A4 at 4; test. of Rood.) Two of Mr. Rood's four supervisors at the Port were aware of his concurrent employment with Alameda. (Test. of Rood.)

7. While Mr. Rood was concurrently working as Alameda's signing supervisor and an electrical inspector for the Port, Alameda paid Mr. Rood a salary of \$500 per week, or approximately \$2,000 per month. (Test. of Rood and Thompson; Ex. A4 at 2, 4.)

8. For approximately 11 years, including during the time period that he worked concurrently for the Port and for Alameda, Mr. Rood was a part-time journeyman electrician continuing education instructor with NECA/IBEW. He primarily taught classes on Tuesday and Thursday evenings, averaging approximately 16 hours of work per month for NECA/IBEW. (Test. of Rood; *see* Ex. A4 at 2, 4.)

*Division's investigation re: Alameda and Mr. Rood*

9. Sometime prior to February 7, 2017, Division personnel learned that Mr. Rood was employed as Alameda's signing supervisor while also working as a full-time employee at the Port. In response, the Division opened an investigation regarding Alameda and Mr. Rood. (*See* Exs. A1 at 1-2, A4 at 1-2; test. of Darling.)

10. On February 7, 2017, Investigator Darling conducted an interview with Mr. Thompson. During the interview, Mr. Thompson stated that Alameda had, at that time, nine electricians on staff and a total of 18 employees. He further stated that Alameda typically operated from 7:00 a.m. to 3:00 p.m., Monday through Friday, but would also respond to emergency requests and sometimes perform work on evenings and weekends. He told Investigator Darling that he and Alameda employees communicated with Mr. Rood via telephone, a Voxer "walkie-talkie" messenger application, email, text message (with photos and/or video if necessary), FaceTime, and iCalendar. (Ex. A4 at 2-3.) He reported that those communications primarily occurred during Mr. Rood's Port breaks and lunches, evening hours, and weekends. He estimated that on weekdays, he and Mr. Rood talked three to four times per day to discuss Alameda projects. He stated that there was rarely an urgent need to reach Mr. Rood, and that their weekday conversations typically took place when Mr. Rood returned calls during his Port breaks or Port lunch hour. He explained that topics of discussion with Mr. Rood have included the scope of work on a project, general details involving projects, specific questions regarding the size of conduit or wiring for an installation, and the best product to use for an installation. He estimated that within the past six months, he had used FaceTime with Mr. Rood approximately seven or eight times to allow Mr. Rood to review a blueprint or some aspect of an electrical installation. He explained that the iCalendar feature allowed him and Mr. Rood to view information for each job location, including the assigned electrician, invoice number for the job, estimate or bid numbers, and notes from the electrician regarding the work performed. He told Mr. Darling about two recent instances where Mr. Rood had visited Alameda work sites: 1) in December 2016, Mr. Rood visited a work site in Boring to "double check" that the work had been done properly; and 2) in February 2017, Mr. Rood accompanied Mr. Thompson to a

work site in Troutdale after performing load calculations for the project. (*Id.*)

11. On March 16, 2017, Investigator Darling interviewed Mr. Rood, with attorney McLaughlin present. (Ex. A4 at 3.) Mr. Rood stated that Alameda's operating hours were typically from 7:00 a.m. to 3:00 p.m., Monday through Friday, with occasional work performed after hours. He reported that his typical work hours at the Port were from 7:00 a.m. to 3:30 p.m. He acknowledged teaching continuing education evening classes on a part-time basis for NECA-IBEW. He reported that Alameda's permits are typically obtained electronically by journeyman personnel, and he becomes aware of the permits via his daily review of iCalendar. He stated that he has occasionally left his Port job site during Port work hours to visit an Alameda job site. When asked when he last visited an Alameda job site, he provided as examples of recent site visits a "grow operation" he visited in Boring, the Firestone job site, and the Gunderson railcar job site. (*Id.* at 4.) He reported that no Alameda employees had been present at the job sites during his visits. He described having performed a "plan review" with load calculations for the "grow operation" in Boring. (*Id.*) When asked whether he had ever met with an electrical inspector regarding correction notices for any Alameda jobs, he stated that he once communicated with Gary Lyle of Clackamas County regarding one such notice, and that he had communicated with the City of Portland a "myriad of times." (*Id.*) When asked to discuss when he has designed or planned electrical installations for Alameda, Mr. Rood stated that he performed such work "almost daily" and that it usually involved phone conversations with Mr. Thompson during Mr. Rood's breaks at the Port. He described one such instance that occurred in early March 2017, when Mr. Thompson called him regarding the installation of a heat pump at the "grow operation." (*Id.*) When asked how he can control the making of an electrical installation for Alameda while working full-time for the Port, Mr. Rood stated that prior to the start of a project, he talks with Alameda employees regarding wiring methodology and fault current, conduit and wire size, and grounding and bonding issues. He provided a recent example where an Alameda journeyman electrician sent him a text message with a photograph and asked a question regarding grounding and bonding. He reported that he responded to the electrician with his own message advising that the electrician could not do what he was requesting to do. When asked whether he had visited the job site that had the grounding/bonding issue, Mr. Rood replied "not yet." (*Id.* at 5.) He estimated that typically he receives five or six phone calls per day from Mr. Thompson and Alameda journey personnel. When asked how he is able to ensure that all Alameda electrical installations meet minimum safety standards, he stated that Alameda has "qualified individuals who are licensed" and that there is an "open line of communication" among employees. (*Id.*) He further stated that if an electrician's work leads to Alameda receiving correction notices, the electrician's work product is more closely monitored. (*Id.*)

12. After resigning from the Port on or about December 4, 2018, Mr. Rood continued his employment with Alameda as its signing supervisor. At that time, Alameda increased his pay to a wage equal to a general foreman's wage under the union collective bargaining agreement. At hearing, Mr. Rood estimated that his new Alameda salary (as of approximately December 4, 2018) was around \$4,000 per month. (Test. of Rood.)

13. At the time of the hearing, Mr. Thompson and Mr. Rood were working towards establishing a business partnership. (Test. of Rood.)

*October 3, 2017 site visit*

14. In approximately mid-2016, Mr. Hepler began working as a materials handler for Alameda. His primary responsibilities included pulling low voltage coaxial cable and telephone wiring, performing clean-up duties, drilling holes, and handling and transporting high-voltage Romex electrical cables to Alameda's electricians. (Test. of Hepler.) At all times relevant to this matter, Mr. Hepler was not an electrical apprentice and he did not hold any Oregon electrician's license.<sup>11</sup> (Test. of Hepler and Darling; *see* Ex. A9 at 2.) At the time of the hearing, Alameda continued to employ Mr. Hepler. (Test. of Hepler.)

15. In 2017, Alameda was performing electrical work on single-family residential homes in the Polygon Estates subdivision in Tigard, Oregon (the subdivision). (*See* Exs. A9 at 1-2, A11 at 1-2; test. of Darling.) The entire subdivision consisted of approximately 86 homes. Phase Four of the subdivision included approximately 25 homes. (Test. of Thompson.) In June 2017, Alameda obtained a "Residential – Master Permit" from the City of Tigard to perform work on a home located at 15306 SW Hudson Avenue (Lot 16) in Phase Four of the subdivision. (Ex. A11 at 1-2; test. of Flowers.)

16. Joe Bozied and Scott Schildmeyer are licensed journeyman electricians. (Test. of Bozied; *see* Ex. A9 at 2-3.) At all times relevant to this matter, Alameda employed Matthew Rodocker and Kevin Palm as electrical apprentices. Mr. Rodocker was a limited residential apprentice, and Mr. Palm was an inside electrical apprentice. At no relevant time did either Mr. Palm or Mr. Rodocker hold an indirect supervision electrical apprentice license, a journeyman electrician license, or a supervising electrician license. (*See* Exs. A9 at 3-4, A10 at 1.)

17. At approximately 7:00 a.m. on October 3, 2017, Mr. Bozied arrived at the home located at 15306 SW Hudson Avenue. Mr. Hepler, journeyman Schildmeyer, and electrical apprentices Palm and Rodocker were also present at the home at that time. (*See* Ex. A9 at 3-4; test. of Bozied.) At some point during the day, Mr. Bozied spent approximately one to two hours performing electrical wiring work in the crawlspace under the home. Neither Mr. Rodocker nor Mr. Palm accompanied Mr. Bozied into the crawlspace. Mr. Bozied could not visually observe Mr. Palm or Mr. Rodocker while he was in the crawlspace. (Test. of Bozied.)

18. Mr. Hepler, journeyman Schildmeyer, and apprentices Palm and Rodocker did not see Mr. Bozied at any time after approximately 8:30 a.m. on October 3, 2017. Between approximately 8:30 a.m. and 1:45 p.m., Mr. Hepler, journeyman Schildmeyer, and apprentices Palm and Rodocker worked at the home with the belief that Mr. Schildmeyer was the only journeyman electrician present during that time period. (*See* Ex. A9 at 2-4.)

19. At approximately 1:45 p.m. on October 3, 2017, Investigator Darling visited the

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<sup>11</sup> Several months later, in early February 2018, Mr. Hepler did become an electrical apprentice with Alameda. (Test. of Hepler.)

home located at 15306 SW Hudson Avenue to perform a licensing “spot check.”<sup>12</sup> (Test. of Darling; Ex. A9 at 1-2.) When Mr. Darling arrived at the home, Mr. Hepler was working in an open garage area. Investigator Darling observed that Mr. Hepler was standing on a ladder, drilling holes into a wooden ceiling stud, and using both hands to pull high-voltage Romex electrical wiring that had been dangling above from ceiling rafters through the holes. (Test. of Darling; Ex. A9 at 1-2.) Investigator Darling also observed Mr. Palm and Mr. Rodocker working in the garage area. (Test. of Darling; *see* Ex. A9 at 3-4.)

20. Investigator Darling made contact with Mr. Hepler and asked him to produce his license. In response, Mr. Hepler falsely informed Investigator Darling that he was an electrical apprentice. (Test. of Darling and Hepler.) A couple minutes later, after Investigator Darling asked for proof of his apprenticeship, Mr. Hepler admitted to Investigator Darling that he was not an apprentice, that he did not hold an electrical license, and that he actually worked as a material handler for Alameda. (Test. of Darling and Hepler; Ex. A9 at 2.) Mr. Hepler identified the journeyman electrician on the job site as Mr. Schildmeyer. (*See* Ex. A9 at 2.)

21. Investigator Darling next spoke with Mr. Schildmeyer, who informed Investigator Darling that Mr. Hepler was an electrical apprentice who had worked for Alameda for approximately five months. Mr. Schildmeyer stated that Mr. Hepler’s job duties included drilling holes for electrical wiring and pulling the wiring through walls and ceilings. When Investigator Darling asked Mr. Schildmeyer if Mr. Hepler was a licensed electrical apprentice in a BOLI (Bureau of Labor and Industries) program, Mr. Schildmeyer responded in the affirmative. Mr. Schildmeyer then appeared surprised when Investigator Darling informed him that Mr. Hepler was not a licensed apprentice. Mr. Schildmeyer informed Investigator Darling that he was not responsible for checking the licenses of crew members. He further stated that he was the only journeyman working at the job site since Mr. Bozied had left the site at approximately 8:30 a.m. that morning. (Ex. A9 at 2-3.)

22. Mr. Schildmeyer subsequently contacted his immediate supervisor, Mr. Thompson, by phone to inform him of Investigator Darling’s site visit. Mr. Schildmeyer provided the phone to Investigator Darling so he could speak directly to Mr. Thompson. When Inspector Darling questioned Mr. Thompson about Mr. Hepler performing electrical installation work without a license, Mr. Thompson stated that Mr. Hepler was merely a material handler and should not have been engaged in electrical installation work. When Investigator Darling questioned Mr. Thompson about a single journeyman being responsible for two apprentices, Mr. Thompson stated that two journeyman workers should have been present at the job site that day. When Investigator Darling mentioned that Mr. Bozied had departed the job site at approximately 8:30 a.m. that day, telephone contact with Mr. Thompson was lost. (Ex. A9 at 2-3.)

23. At approximately 2:00 p.m. on October 3, 2017, Investigator Darling spoke with Mr. Rodocker, who reported that he had arrived at the job site at approximately 7:00 a.m. that day. He further reported that two journeyman electricians were present when he arrived, Mr. Schildmeyer and Mr. Bozied, but Mr. Bozied left the job site at approximately 8:30 a.m. and did

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<sup>12</sup> Investigator Darling performs approximately two or three licensing “spot checks” per week at various work sites. Although he had started an investigation into Alameda and Mr. Rood prior to October 3, 2017, his visit to the job site on that date was unrelated to that investigation. (Test. of Darling.)

not return thereafter. Mr. Rodocker informed Investigator Darling that he, Mr. Hepler, Mr. Palm, and Mr. Schildmeyer worked throughout the day, until Investigator Darling arrived. When asked about his understanding of apprentice ratios, Mr. Rodocker expressed that he was unsure if more than one journeyman electrician was required to supervise two electrical apprentices. (Ex. A9 at 3; test. of Darling.)

24. At approximately 2:05 p.m. on October 3, 2017, Investigator Darling spoke to Mr. Palm, who stated that he had arrived at the job site at approximately 7:00 a.m. that day, journeyman electricians Bozied and Schildmeyer were both present when he arrived, Mr. Bozied left the job site at some point that morning, and Mr. Schildmeyer was then the only journeymen present while Mr. Palm, Mr. Hepler, and Mr. Rodocker worked. Mr. Palm reported that up until the investigator arrived at the job site that day, he had believed that Mr. Hepler was a licensed electrical apprentice. He further reported that because he had only been working for Alameda for two days, he was not aware of Mr. Hepler's exact job duties. (Ex. A9 at 4.)

25. Mr. Bozied and Investigator Darling did not see, or otherwise have any contact with, one another during Investigator Darling's visit to the home located at 15306 SW Hudson Avenue on October 3, 2017. (Test. of Darling and Bozied; *see* Ex. A9 at 2-4.)

26. Mr. Bozied believes that the correct ratio of journeyman electricians to apprentices is one-to-one (*i.e.*, 1:1). He has occasionally supervised electricians from adjacent or nearby structures. He considers the "job site," for purposes of apprentice supervision, to be where Alameda's construction is generally occurring. (Test. of Bozied.)

27. Later on October 3, 2017, in response to Investigator Darling's site visit, Mr. Rood drafted a document that outlined employee roles and responsibilities and included such topics as apprentice ratios and material handler duties. He distributed the document to Alameda employees during a meeting on the morning of October 4, 2017. (Test. of Rood, Bozied, and Thompson.)

28. For residential electrical apprentices, the ratio of journeyman workers to apprentices must be 1:1. For inside electrical apprentices, the ratio requirements are as follows:

Each job site shall be allowed a ratio of two (2) apprentices for every three (3) journeymen or fraction thereof[.]

In no case shall the number of apprentices exceed the number of journeymen on the job.

(Ex. A10 at 1; test. of Simmons.)

### *Sanctions*

29. The Division has adopted a penalty matrix for determining the appropriate civil penalty for violations of the electrical code and other trade specialty codes. (Ex. A12 at 1-2; test. of Simmons.) Alameda has no previous disciplinary history with the Division. (*See* Exs. A4 at

1, A6 at 1.) For a first-time violator, the standard civil penalty for allowing an unlicensed individual to perform specialty work is \$2,000 per violation, and the standard penalty for failing to continuously employ at least one full-time general supervising electrician is \$3,000. For a continuing offense,<sup>13</sup> the Division may assess up to \$1,000 per day. (Ex. A10 at 1-2.) The penalty matrix further provides:

The entire penalty is imposed in all cases. \* \* \*. A stay of some portion of a penalty is within the sole discretion of the board or the division acting on the board's behalf for purposes of settling cases prior to hearing.<sup>14</sup>

(*Id.* at 1.)

30. The Division chose to assess only a single \$2,000 civil penalty against Alameda for the two alleged violations of OAR 918-282-0120(1) (*i.e.*, the alleged violation involving Mr. Hepler and the alleged violation involving Mr. Palm and Mr. Rodocker and proper apprentice ratios). (*See* November 7, 2017 Amended Notice at 7; test. of Simmons.) The Division could have, alternatively, elected to assess separate \$2,000 civil penalties for each of the two alleged violations of OAR 918-282-0120(1). (Test. of Simmons.)

31. Electrical shortages and other electrical-related issues are the main cause of fires in the State of Oregon. Failing to continuously employ a full-time signing supervisor and allowing individuals to perform electrical installations without proper licensure pose a risk to the public's health and safety. (Test. of Simmons.)

## CONCLUSIONS OF LAW

1. During the period January 1, 2016 through November 7, 2017, Alameda failed to continuously employ at least one full-time general supervising electrician, in violation of OAR 918-282-0010(1).

2. On October 3, 2017, Alameda allowed three employees to perform electrical installations for which they were not properly licensed, in violation of OAR 918-282-0120(1).

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<sup>13</sup> OAR 918-001-0036(2)(a) defines a "continuing offense" or "continuing violation" as follows:

"Continuing offense" or "continuing violation" means violation of a code, rule or law on one or more additional days after having been notified of the violation or ordered to correct the act, or the failure to act. A continuing violation is subject to a civil penalty each day the violation continues after notification.

<sup>14</sup> At hearing, Ms. Simmons reiterated that the Division does not assess less than the standard civil penalty unless the violator enters into a settlement or "consent" agreement with the Division. (Test. of Simmons.) She also explained that only in the context of settlement negotiations will the Division consider potentially mitigating factors such as a person's state of mind or intent, and whether a respondent took any corrective actions. (*Id.*)

3. For the established violations, the Division may assess total civil penalties of \$5,000 against Alameda, pursuant to ORS 455.895(1)(b) and OAR 918-001-0036, and suspend Alameda’s electrical contractor license for one year, pursuant to ORS 455.129(2)(a) and (3)(b).

### OPINION

The Division bears the burden of establishing by a preponderance of the evidence that the alleged violations occurred, and that the proposed sanctions (*i.e.*, \$5,000 civil penalty and one-year license suspension) are warranted. *See* ORS 183.450(2) (“The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position”); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of a fact or position); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (preponderance standard of proof generally applies in agency proceedings). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

#### 1. Alleged Violation of OAR 918-282-0010(1)

OAR 918-282-0010(1) requires that an electrical contractor “continuously employ at least one full-time general supervising electrician[.]”

OAR 918-282-0015 states, in part:

Electrical contractors engaged in the business of making electrical installations that require a signing supervising electrician<sup>15</sup> shall assure that all electrical work is made by, or under the direct supervision or control of, a continuously employed full-time signing supervising electrician acting within the scope of their license.

(Emphasis added.)

OAR 918-282-0140 sets forth a signing supervising electrician’s rights and duties, in relevant part, as follows:

(1) A general supervising electrician when working for \* \* \* an electrical contractor requiring a signing supervisor:

(a) Directs, supervises, makes, or controls the making of electrical installations;

(b) May design, plan, and lay out work for the customers of the contractor with whom the supervising electrician is continuously employed; and

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<sup>15</sup> OAR 918-251-0090(39) defines a “Signing Supervising Electrician” or “Signing Supervisor” as “a licensed supervising electrician who has been authorized by the electrical contractor to sign permits.”

(c) Is the only individual authorized to direct, supervise, or control the installation or alteration of an electrical service.

(2) The general signing supervising electrician must:

(a) Sign all permits;

(b) Ensure all electrical installations meet minimum safety standards;

(c) Be continuously employed as a general supervising electrician on the electrical contractor's regular payroll and be available during working hours to carry out the duties of a supervising electrician under this section;

(d) Ensure proper electrical safety procedures are used;

(e) Ensure all electrical labels and permits required to perform electrical work are used and signed;

(f) Ensure electricians have proper licenses for the work performed, and may not permit either by assent or by failure to prevent, an individual to perform work for which they are not properly licensed;

(g) Comply with corrective notices issued by the inspecting authority;

(h) Notify the division in writing within five days if the signing supervising electrician terminates the relationship with the electrical contractor; and

(i) Not act as a supervising electrician for more than one employer.

(Emphasis added.)

The Division contends that Alameda failed to continuously employ a full-time signing supervisor during the period January 1, 2016 through November 7, 2017, because Alameda's sole signing supervisor during that period, Mr. Rood, was concurrently employed on a full-time basis with another employer (the Port) and his work hours with that other employer substantially overlapped with Alameda's work hours.

Alameda asserts, however, that Mr. Rood worked as Alameda's signing supervisor on a full-time basis, without interruption in that employment (*i.e.*, for the full approximately 22-month period), and that despite his Port employment, he fulfilled all the required duties of a signing supervisor for Alameda in a professional, competent manner.

In its administrative rule in OAR 918-251-0090(8), the Division defines the phrase "continuously employ," as the phrase is used in OAR chapter 918, division 282:



“Continuously Employ” means a person \* \* \*, during time periods when electrical work for which they are responsible is performed, devotes their entire time of employment to tasks of supervising, designing, laying out, planning, controlling, and making electrical installations for the electrical contractor for which the supervisor is registered as signing supervisor.

Alameda appears to take issue with the Division’s promulgation of the above definition,<sup>16</sup> arguing that the definitional rule is an “unconstitutional exercise of BCD’s authority to make ‘reasonable rules.’” Alameda’s Closing Argument at 3. Alameda further argues that the definitional rule is “internally inconsistent, at odds with the statute,<sup>17</sup> \* \* \* beyond reasonable definition of the term “continuously” and beyond its grant of authority by the Legislature.

The Legislative Assembly has charged the Division’s Elevator and Electrical Board with promulgating administrative rules that, among other things, are “necessary to carry out the duties of the board under ORS 479.510 to 479.945 and 479.995.” ORS 479.680.<sup>18</sup> ORS 479.520 provides that the purpose of the Electrical Safety Law, set forth ORS 479.510 to 479.945, is to “protect the health and safety of the people of Oregon from the danger of electrically caused shocks, fires and explosions and to protect property situated in Oregon from the hazard of electrically caused fires and explosions.” To accomplish that purpose, the Legislative Assembly, in ORS 479.520(1), (2), and (4), recognized the importance of having procedures for the administration and enforcement of the Electrical Safety Law by the Department of Consumer and Business Services (DCBS) and the Division’s Elevator and Electrical Board, for determining where and by whom electrical installations are made, and for assuring the public that persons making electrical installations have the requisite experience and training. Alameda has not proven that the Division’s promulgation of OAR 918-251-0090(8) exceeds the legislature’s broad grant of rule-making authority. Moreover, Alameda’s arguments that the definitional rule is internally inconsistent, that it contains an unreasonable definition of the term “continuously, and that it is at odds with a statute (or OAR 918-282-0010(1), OAR 918-282-0015, or OAR 918-282-0140) are without merit.

Applying the definition contained in OAR 918-251-0090(8), for Mr. Rood to be deemed “continuously employed” as Alameda’s full-time signing supervisor during the period at issue (*i.e.*, January 1, 2016 through November 7, 2017), he would have needed to devote his entire time of employment with Alameda to the tasks of supervising, designing, laying out, planning, controlling, and making electrical installations for Alameda during all time periods when Alameda performed such work.

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<sup>16</sup> Although Alameda cites to OAR 918-282-0090(3) in its Closing Argument, there is no such administrative rule, and Alameda is presumably referring to OAR 282-251-0090(8). (*See* Alameda Closing Argument at 3-4.)

<sup>17</sup> In its Closing Argument, Alameda makes several references to “the statute” (*e.g.*, arguing in favor of “a plain reading of the statu[t]e.” (*See* Alameda Closing Argument at 3-4.) However, Alameda does not actually cite to any specific statute and is presumably referring to the administrative rule cited in its written argument, OAR 918-282-0140.

<sup>18</sup> *See also* ORS 455.138 (establishing the 15-member Electrical and Elevator Board to assist DCBS in administering the electrical program described in ORS 479.510 to 479.945).

At hearing, Mr. Thompson testified that although 7:00 a.m. to 3:00 p.m. are the standard hours for electrical union workers' contracts, he considers Alameda to be a 24 hour a day/7 day a week business. He testified that if he can find available labor and permits, then Alameda will perform work at any time. Nonetheless, the preponderance of credible evidence establishes that at least 70 percent of Alameda's service calls were received, and work performed, during its standard business hours.

The Division contends that because Alameda performed the majority of its electrical work during the hours of 7:00 a.m. and 3:00 p.m., and Mr. Rood's regular work hours at the Port were 7:00 a.m. to 3:30 p.m., Mr. Rood did not "devote [his] entire time of employment" with Alameda to supervising, designing, laying out, planning, controlling, and making electrical installations during time periods when he was responsible for the electrical work Alameda was performing. *See* Division's Closing Argument at 9-10.

Indeed, Mr. Rood's customary work hours at the Port and Alameda's typical operating hours significantly overlapped during the time period at issue. And, no matter how flexible Mr. Rood's Port employment and schedule may have been, and even if he kept in frequent electronic contact with Mr. Thompson, fielded questions from Alameda employees via various electronic means, and performed other Alameda tasks as they came up during his work day at the Port, Mr. Rood was not devoting his "entire time of employment" with Alameda to the activities and duties for which he, as Alameda's signing supervisor, was responsible *during the time period when approximately 70 percent of Alameda's work was occurring* — 7:00 a.m. to 3:00 p.m., Monday through Friday.

In sum, the Division has proven that during the period January 1, 2016 through the date of the Amended Notice (November 7, 2017), Alameda failed to continuously employ at least one full-time signing supervisor, in violation of OAR 918-282-0010(1).

## **2. Alleged Violations of OAR 918-282-0120(1)**

The Division contends that Alameda violated OAR 918-282-0120(1), which states that "[n]o person or entity shall allow any individual to perform electrical work for which the individual is not properly registered or licensed."

ORS 479.620(3) states that, subject to ORS 479.540,<sup>19</sup> a person may not:

Except as provided in subsection (5) of this section,<sup>20</sup> make any electrical installation without a supervising or journeyman electrician's license.

ORS 479.530 provides the following relevant definitions:

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<sup>19</sup> ORS 479.540 sets forth many exemptions, none of which are relevant in the present matter.

<sup>20</sup> Subsection (5) of ORS 479.620 contains an exception for electrical installations performed on certain single or multifamily dwelling units, but nonetheless requires a limited residential electrician's license, which Mr. Hepler, Mr. Palm, and Mr. Rodocker did not have on October 3, 2017.

(10) “Electrical installations” means the construction or installation of electrical wiring and the permanent attachment or installation of electrical products in or on any structure that is not itself an electrical product[.]

(11) “Electrical product” means any electrical equipment, material, device or apparatus that, except as provided in ORS 479.540, requires a license or permit to install and either conveys or is operated by electrical current.

*A. Mr. Hepler*

The Division alleges that on October 3, 2017, Alameda allowed Mr. Hepler to perform an electrical installation for which he was not properly licensed. The parties do not dispute that the pulling of high-voltage Romex electrical wiring during the construction of a home is an electrical installation, as defined in ORS 479.530, and therefore requires an electrician’s license. The parties also do not dispute that Mr. Hepler lacked such a license on October 3, 2017. The only contested issue is whether he pulled high-voltage Romex electrical wiring at the property on October 3, 2017.

For the reasons discussed under the previous subsection titled “Credibility Considerations,” the record establishes, more likely than not, that Mr. Hepler pulled high-voltage Romex electrical wiring on the date at issue. Because he did not hold an electrician’s license when performing that electrical installation, his conduct on that date violated ORS 479.620(3). The Division has therefore established that Alameda allowed an unlicensed person to make an electrical installation, in violation of OAR 918-282-0120(1).

*B. Mr. Palm and Mr. Rodocker*

The Division alleges that Alameda allowed electrical apprentices Palm and Rodocker to work outside the allowable scope of their electrical apprentice licenses on October 3, 2017, because the apprentices were not supervised by a sufficient number of journeyman electricians on that date.

ORS 479.630(7) provides that DCBS shall issue an electrical apprentice’s license to a person who has complied with ORS 660.002 to 660.210 (titled “Apprenticeship and Training”) as an electrical apprentice, who has paid the applicable application fee, and who has complied with ORS 479.510 to 479.945 (titled “Electrical Safety Law”) and the rules adopted under ORS 455.117<sup>21</sup> and 479.510 to 479.945.

BOLI’s administrative rule OAR 839-011-0280 pertains to electrical apprentices and states, in relevant part:

(2) All electrical apprentices must be directly supervised in accordance with OAR 839-011-0143, unless approved for indirect supervision.

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<sup>21</sup> ORS 455.117 authorizes certain regulatory bodies, such the Electrical and Elevator Board, to adopt rules to administer the licensing, certification, and/or registration of persons regulated by the body.

\* \* \* \* \*

(5) All apprentices count towards the ratio specified in the standards, regardless of supervision status.

OAR 839-011-0143(6) states:

In licensed trades, an apprentice must be supervised by a journey worker in the same or a higher license classification than the apprentice, unless the local committee that the apprentice is registered to has approved supervision by a journey worker holding a license covering the specific work being performed by the apprentice on the job site.

The Division's administrative rule OAR 918-282-0270 provides, in part:

(1)(c) [An apprentice] [m]ay assist an appropriately licensed electrician on the same job site and the same shift in performing electrical work authorized in the trade, or branch of the trade, in which the licensee is registered[.]

\* \* \* \* \*

(5) Notwithstanding subsection (1)(c) of this rule, a final period apprentice licensed under \* \* \* this rule \* \* \* may be issued an indirect supervision electrical apprentice license, allowing the apprentice to work under indirect supervision at the discretion of the responsible supervisor[.]

The record establishes that, on October 3, 2017, Mr. Palm held an inside electrical apprentice license and Mr. Rodocker held a limited residential electrical apprentice license. At no relevant time did either Mr. Palm or Mr. Rodocker hold an indirect supervision electrical apprentice license, a journeyman electrician license, or a supervising electrician license. Thus, any electrical installation(s) they performed on October 3, 2017 required direct journeyman supervision in the appropriate ratio of journeyman electrician to apprentice.

For residential electrical apprentices, the ratio requirement is one journeyman worker per apprentice at a job site (*i.e.*, a 1:1 ratio). For inside electrical apprentices, the ratio requirement is three journeyman workers for every two apprentices at a job site (*i.e.*, a 3:2 ratio). And, in no case shall the number of apprentices exceed the number of journeyman workers at a job site. Exhibit A10 at 1; testimony of Simmons.

OAR 839-011-0070(14)(a) defines a "job site," for purposes of the construction trades, as "the area covered by an approved building permit, plan of development or contract number, or contractual agreement for new construction or renovation[.]"

On October 3, 2017, apprentices Palm and Rodocker performed electrical work for Alameda at a home located at 15306 SW Hudson Avenue. Although the home was one of several in the subdivision for which Alameda had a work contract, the permit under which apprentices Palm and Rodocker were working on October 3, 2017 was solely for 15306 SW Hudson Avenue. Thus, the “job site” for purposes of their work, and for purposes of their apprentice supervision on that date, did not extend beyond the home located at 15306 SW Hudson Avenue.

It is undisputed that journeyman Schildmeyer was present at the job site with, and provided direct supervision to, apprentices Palm and Rodocker while they performed electrical installation work on October 3, 2017. The issue is whether journeyman Bozied was similarly present and provided direct supervision to one or both apprentices while the apprentices performed work from approximately 7:00 a.m. to 1:45 p.m. on October 3, 2017.

At hearing, Mr. Bozied testified that for some period of time on October 3, 2017, he may have performed electrical work in another subdivision home that was adjacent to or near the home where Mr. Palm and Mr. Rodocker were working. As explained above, during any time period that Mr. Bozied worked somewhere besides the home located at 15306 SW Hudson Avenue, he was not at the same job site as the apprentices, and he did not provide appropriate direct supervision to apprentice Palm or Rodocker.

Moreover, sometime between 8:30 a.m. and 1:45 p.m. on October 3, 2017, for approximately one to two hours Mr. Bozied performed electrical installation work in the crawl space of the home located at 15306 SW Hudson Avenue. The apprentices did not accompany him into the crawl space, Mr. Bozied could not visually observe the apprentices while he was in the crawl space, and there is no evidence that the apprentices refrained from performing any electrical installation work during those one to two hours. Rather, a preponderance of the evidence establishes that between approximately 8:30 a.m. and 1:45 p.m. on October 3, 2017, apprentices Palm and Rodocker performed electrical installation work despite their belief that Mr. Bozied was not present at the job site and that Mr. Schildmeyer was the only journeyman present during that time period.

Although neither the legislature, BOLI, nor the Division has defined what constitutes “direct” or “indirect” supervision for purposes of apprentice supervision under OAR chapters 839 and 918, direct supervision is logically a more stringent level of supervision than indirect supervision. And, it is hard to conceive that between approximately 8:30 a.m. and 1:45 p.m. on October 3, 2017, Mr. Bozied could be construed under any plausible definition to have provided “direct” supervision to apprentices Palm and Rodocker under the circumstances that existed during that time period — *i.e.*, the two apprentices were present at a job site performing electrical installation work; they did not see or have contact with Mr. Bozied during that entire time period; they worked with the belief and understanding that Mr. Bozied was away from the job site; and if Mr. Bozied was at the job site for some period of time, he was in a crawl space where he could not visually observe the apprentices.

Given the above, the record persuasively establishes that between approximately 8:30 a.m. and 1:45 p.m. on October 3, 2017, Mr. Bozied did not provide direct supervision to

apprentices Palm and Rodocker while they performed electrical installation work during that time period. Even without considering the higher ratio requirement for inside electrical apprentices, Alameda failed to meet the threshold requirement of having at least as many journeyman workers on the job site (performing direct supervision) as apprentices. *See* Exhibit A10 at 1; *see also* OAR 839-011-0280(2), 839-011-0143(6), and 918-282-0270(1)(c) and (5).

In sum, the preponderance of the evidence establishes that Alameda allowed Mr. Palm and Mr. Rodocker to make electrical installations outside the allowable scope of their electrical apprentice licenses, in violation of OAR 918-282-0120(1).

### **3. Sanctions**

#### *A. Civil Penalty*

ORS 455.895(1)(b) authorizes the Division to assess a civil penalty for the established violations against Alameda and states that “[t]he Electrical and Elevator Board may impose a civil penalty \* \* \* as provided under ORS 479.995.” ORS 479.995 provides:

The Electrical and Elevator Board may impose a civil penalty for a violation of ORS 479.510 to 479.945 or rules adopted for the administration or enforcement of ORS 479.510 to 479.945 and this section. The board shall impose a civil penalty authorized by this section as provided in ORS 455.895.

OAR 918-001-0036 is titled “Guidelines for Civil Penalties” and states, in part:

(6) The Director may, subject to approval of a board, develop a penalty matrix for the board’s use to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.

The Division has adopted a penalty matrix. *See* Exhibit A12 at 1-2; testimony of Simmons. That penalty matrix provides that for a first-time violator, such as Alameda, the standard civil penalty for allowing an unlicensed individual to perform specialty work is \$2,000 per violation, and the standard penalty for failing to continuously employ at least one full-time general supervising electrician is \$3,000. *See* Exhibit A12 at 1-2.

The Division elected to assess only a single \$2,000 civil penalty against Alameda for the two alleged violations of OAR 918-282-0120(1) (*i.e.*, the alleged violation involving Mr. Hepler and the alleged violation involving Mr. Palm and Mr. Rodocker and proper apprentice ratios). *See* November 7, 2017 Amended Notice at 7; testimony of Simmons.<sup>22</sup>

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<sup>22</sup> As the Division pointed out in its Closing Argument, pursuant to the penalty matrix, the Division only needed to prove one violation of OAR 918-282-0120(1) to warrant the assessment of a \$2,000 civil penalty against Alameda for such violation. Division’s Closing Argument at 9.

On this record, Alameda has not established that the Division, in assessing \$5,000 in total civil penalties, has acted contrary to its statutory authority or otherwise abused its discretion.<sup>23</sup> The Division may therefore assess civil penalties of \$5,000 against Alameda for the proven violations of OAR 918-282-0010(1) and OAR 918-282-0120(1).

*B. One-Year License Suspension*

The Division has also proposed a one-year suspension of Alameda's electrical contractor license, pursuant to ORS 455.129(2)(a), which provides as follows:

(2) Subject to ORS chapter 183, a regulatory body listed in subsection (3) of this section<sup>24</sup> may deny a license, certificate, registration or application or may suspend, revoke, condition or refuse to renew a license, certificate or registration if the regulatory body finds that the licensee, certificate holder, registrant or applicant:

(a) Has failed to comply with the laws administered by the regulatory body or with the rules adopted by the regulatory body.

By failing to comply with OAR 918-282-0010(1) and OAR 918-282-0120(1), rules adopted by the Electrical and Elevator Board, Alameda's electrical contractor license is subject to suspension under ORS 455.129(2)(a).

At hearing, the Division's enforcement manager, Andrea Simmons, testified that the Division considered the following when determining that a one-year license suspension was appropriate for Alameda: 1) the Division's past sanctioning practices; 2) the importance of a signing supervisor's duties; 3) the length of time that Alameda's signing supervisor violation occurred; and 4) the risk to the public from improperly supervised and unlicensed electrical work.

Agencies generally have considerable discretion in deciding what sanctions to impose for violations, and Oregon case law does not require an agency to provide a licensee with a specific, structured analysis of how it utilizes its discretion in choosing a sanction. For example, *Olsen v. State Mortuary and Cemetery Bd*, 230 Or App 376 (2009) stands for the proposition that, once an

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<sup>23</sup> ORS 183.482 pertains to judicial review of contested cases and states, in part:

(8)(b) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

<sup>24</sup> Subsection (3)(b) lists the Electrical and Elevator Board.

agency is statutorily authorized to impose a range of sanctions, the choice of which sanction to impose is a matter within that agency's discretion. In *Olson*, the Mortuary and Cemetery Board revoked the petitioners' licenses and imposed a civil penalty of \$500 for each of 88 proven violations (for a total of \$44,000).<sup>25</sup> 230 Or App 386-387. In rejecting the petitioners' assertion that the Mortuary and Cemetery Board erred in imposing those sanctions, the Court of Appeals held that "[t]he imposition and choice of penalty for violation of laws governing funeral service providers and funeral homes is a matter within the board's discretion." *Id.* at 393-394. The Board then noted that the petitioners had identified no basis for asserting that the Mortuary and Cemetery Board had abused its discretion when deciding on the appropriate sanction. *Id.* at 394.

More recently, the Court of Appeals held in a disciplinary case involving the Board of Accountancy that when selecting an appropriate sanction in a given case, "[n]othing precludes the board from relying on its own knowledge of its prior decisions without placing those prior decisions in the evidentiary record." *Gustafson v. Bd of Accountancy*, 270 Or App 447, 457 (2015). The court rejected the petitioner's argument that the Board of Accountancy had abused its discretion.

On this record, Alameda has not established that the Division, in imposing a one-year license suspension, has acted outside the range of discretion delegated by statute, acted inconsistent with an agency rule or past practice, or otherwise abused its discretion. *See* ORS 183.482(8)(b). The Division may therefore impose a one-year suspension of Alameda's electrical contractor license.

## ORDER

*I propose that the Building Codes Division, on behalf of the Electrical and Elevator Board, issue the following order:*

1. Alameda Electric, LLC is liable to pay a total civil penalty of \$5,000 for violations of OAR 918-282-0010(1) and 918-282-0120(1).
2. Alameda Electric, LLC's electrical contractor license number C923 is suspended for a period of 12 months, commencing on the date of entry of a final order in this matter.

Jennifer H. Rackstraw

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Senior Administrative Law Judge  
Office of Administrative Hearings

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<sup>25</sup> At that time, ORS 692.180(1) provided, in part, that "the board may impose a civil penalty of not more than \$1,000 for each violation, suspend or revoke a license to practice or to operate under this chapter[.]"



## **APPEAL PROCEDURE**

This is the Administrative Law Judge's Proposed Order. You have the right to file written exceptions and argument to be considered per OAR 137-003-0650. Your exceptions and argument must be received within 20 calendar days after the service date of this Proposed Order. Send them to:

Building Codes Division  
PO Box 14470  
Salem, OR 97309-0404

**CERTIFICATE OF MAILING**

On December 16, 2019, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 2018-ABC-01221.

By: First Class Mail

Alameda Electric LLC  
3415 NE 44th Ave  
Portland OR 97213

David Thompson  
3415 NE 44th Ave  
Portland OR 97213

Terence S McLaughlin  
Terence S McLaughlin, Attorney At Law  
PO Box 672  
Carlton OR 97111

By: Electronic Mail

Sarah Blam-Linville  
Agency Representative  
Building Codes Division  
PO Box 14470  
Salem OR 97309

Tyler E Anderson  
Assistant Attorney General  
Department of Justice  
1162 Court St NE  
Salem OR 97301

Anesia N Valihov  
Hearing Coordinator

**State of Oregon**

**Board memo**

**Building Codes Division**

**March 26, 2020**

**To:** Electrical and Elevator Board

**From:** Nick Howard, contested case representative, Enforcement Services

**Subject:** Consent orders for cases resolved on behalf of the Electrical and Elevator Board

**Action requested:**

To consider the adoption of recent consent orders and issue final orders.

**Background:**

The board, through division staff, implemented a civil penalty matrix for electrical violations. The penalty matrix establishes civil penalties based upon the type and number of violations committed within five years of the date of the present violation. The penalty matrix further provides that a stay of some portion of a penalty is within the sole discretion of the board or the division acting on the board's behalf for purposes of settling cases prior to hearing.

The Enforcement Section, acting on behalf of the board, has entered into a consent agreement in two (2) cases since the board's January 21, 2020, meeting. A summary of the consent orders are included for your review.

Each consent order contains the following conditions, any additions or exceptions to these conditions is noted with the individual case information:

- Respondent agrees to fully cooperate with the division's enforcement efforts.
- Respondent understands that further enforcement action may be taken for any other violations.
- Respondent understands that failure to comply with the consent order may be used as a basis for the denial, suspension, revocation, or conditioning of a license, certificate, or registration.

In these cases the penalty amounts assessed, amounts suspended, and amounts due and payable are consistent with the board's penalty matrix.

## Electrical and Elevator Board Enforcement Report for March 26, 2020

<b>Summary Report</b>						
<b>Case #</b>	<b>Name</b>	<b>Violation</b>	<b>Location</b>	<b>Date of Violation</b>	<b>Civil Penalty</b>	<b>Other Comments</b>
C2019-0237 Russ/Nick	Workdlink Integration Group	Installation of Cat 5 data cable for multiple point of sale cash registers. <ul style="list-style-type: none"> <li>●No electrical contractor license</li> <li>●Allowing an unlicensed individual to perform electrical work</li> </ul>	Portland	October 2019	Assessed: \$5,000 Imposed: \$1,500 Suspended: \$3,500 This is a first time violator.	Respondent agrees to fully cooperate with the Division's enforcement efforts in other cases that rely on the facts underlying this case.

## Electrical and Elevator Board Enforcement Report for March 26, 2020

<b>Agenda Item III.C.</b>
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<b>Summary Report - Cases Previously Resolved by Division</b>							
Case #	Name	Violation	Location	Date of Violation	Penalty Assessed	Penalty to Pay	Other Comments
C2019-0248 Russ/Nick	Ruiz, Juan E.	Installation of Romex electrical wiring and an electrical panel. •No electrical contractor license •No journeyman electrician license •Allowing unlicensed individuals to perform electrical work •No electrical permit	Newburg	August 2019	\$18,000	\$18,000	Complaint submitted by industry.

\*Total civil penalty assessed for more than one program

**State of Oregon**

**Board memo**

**Building Codes Division**

**March 26, 2020**

**To:** Electrical and Elevator Board

**From:** Tyler Glaze, Policy Analyst, Policy and Technical Services

**Subject:** 2020 Oregon Electrical Specialty Code Review Committee recommendation regarding adoption of the 2020 National Electrical Code with amendments

**Action requested:**

The board review and approve the provisions of the 2020 Oregon Electrical Specialty Code (OESC) and recommend the Administrator proceed with rulemaking.

**Background:**

At its November 21, 2019, board meeting, the Electrical and Elevator Board established a code review committee, and recommended the 2020 National Electrical Code (NEC) as the model code for Oregon.

The OESC Review Committee completed an analysis of the 2020 NEC changes, existing Oregon code amendments, statewide interpretations, and alternate method rulings. The committee met four times beginning December 18, 2019, finalizing its recommendations to the board on January 22, 2020.

The board packet includes a matrix of the technical model code review committee recommendations, and Table 1-E, which encompasses all of the recommendations of the OESC Review Committee.

Concerns were identified with the language of section 210.8(F) and (G), and the division has worked with committee members to develop an alternate proposal. This alternate language amends section 210.8(F) to encompass the committee's intent regarding the original proposed 210.8(G) section:

**210.8 (F) Outdoor Receptacles—~~Outlets~~.** All outdoor—~~outlets~~—general-purpose receptacles for other than dwellings units, ~~other than those covered in 210.8(A)(3)~~, ~~Exception to (3)~~, that are supplied by single-phase branch circuits rated 150 volts to

ground or less, 50 amperes or less, shall have ground-fault circuit-interrupter protection for personnel.

[Informational Note: This requirement does not apply to specific-use receptacles that are regulated by other sections in this code such as 551.70.](#)

### **Discussion:**

The committee recommends that the board adopt the 2020 NEC as the base model code with amendments and forward the code to the Administrator for rulemaking and subsequent adoption. The committee also requests that the board recommend adoption of the low-rise residential electrical provisions of the code to the Residential and Manufactured Structures Board.

### **Options:**

- Approve the proposed code language and amend the committee's recommendation to include the alternate language amending section 210.8(F), removing section 210.8(G) and forward to the Administrator for rulemaking and subsequent adoption, with the finding that the added cost, if any, is necessary to the health and safety of the occupants or the public or necessary to conserve scarce resources. In addition, recommend that the Residential and Manufactured Structures Board approve the amended language where it relates to low-rise residential electrical provisions.
- Approve the proposed code language, without the alternate amendments to section 210.8 and forward to the Administrator for rulemaking and subsequent adoption, with the finding that the added cost, if any, is necessary to the health and safety of the occupants or the public or necessary to conserve scarce resources. In addition, recommend that the Residential and Manufactured Structures Board approve the proposed language where it relates to low-rise residential electrical provisions.
- Amend and approve the proposed code language and forward to the Administrator for rulemaking and subsequent adoption, with the finding that the added cost, if any, is necessary to the health and safety of the occupants or the public or necessary to conserve scarce resources. In addition, recommend that the Residential and Manufactured Structures Board approve the amended proposed language where it relates to low-rise residential electrical provisions.
- Disapprove the committee's recommendation regarding the proposed code language, which would continue use of the 2017 OESC.

**2020 Oregon Electrical Specialty Code**  
**DRAFT**  
**3/26/2020**

**918-305-0005**

**Interpretations**

All electrical interpretations dated prior to October 1, ~~2017~~2020, issued by the Building Codes Division are withdrawn.

Statutory/Other Authority: ORS 479.730  
Statutes/Other Implemented: ORS 479.730

**918-305-0100**

**Adoption of Oregon Electrical Specialty Code**

- (1) The Oregon Electrical Specialty Code is adopted pursuant to OAR chapter 918, Division 8.
- (2) Effective October 1, ~~2017~~2020, the ~~2017~~2020 Oregon Electrical Specialty Code consists of the following:
  - (a) ~~2017~~2020 Edition of the NFPA 70, National Electrical Code (NEC), and as further amended by the division in OAR 918-305-0105 Table 1-E;
  - (b) 2017 Edition of the IEEE C2-2017, National Electrical Safety Code (NESC); and
  - (c) The electrical provisions of the Oregon Elevator Specialty Code adopted in OAR 918-400-0455.
- (3) In the event of a conflict between the NEC and NESC requirements, the NEC requirement, as amended in subsection (2) of this rule, applies.
- (4) As used in this rule:
  - (a) “ANSI” is the American National Standards Institute;
  - (b) “ASME” is the American Society of Mechanical Engineers;
  - (c) “IEEE” is the Institute of Electrical and Electronics Engineers; and
  - (d) “NFPA” is the National Fire Protection Association.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 479.730  
Statutes/Other Implemented: ORS 479.730

**918-306-0005**

**Standards for Product Evaluations**

The following standards shall be adopted for use when completing product evaluation:

- (1) NFPA standards on list dated October 1, ~~2017~~2020, maintained by the division titled “NFPA Standards”; and
- (2) UL standards on list dated October 1, ~~2017~~2020, maintained by the division titled “UL Standards.”

Statutory/Other Authority: ORS 479.730  
Statutes/Other Implemented: ORS 479.730



# 2020 Oregon Electrical Specialty Code

## Electrical and Elevator Board - Technical model code review committee

The following is a list of 2020 NFPA 70, National Electrical Code (NEC) changes and existing Oregon amendments to be reviewed by the technical model code review committee. This list will be changed and updated throughout the code adoption process. Abbreviations and markings denote the following:

**NEC** = Model code change      **OR A** = Existing Oregon amendment

No.	Article		Synopsis of change	Notes
<b>ARTICLE 90—INTRODUCTION</b>				
1	90.2	(A)(5)	<b>NEC:</b> Added installations supplying shore power to ships and watercraft and monitoring leakage current within the scope.	Accept NEC
		(A)(6)	<b>NEC:</b> Added installations used to export el. power from vehicle to premises wiring... within the scope.	Accept NEC
2	90.4		<b>OR A:</b> Adds information about requests for special permission and requirements for "Listed" and "Labeled."	<b>Retain amendment</b>
*			<b>BCD:</b> Occupancy. The authority to determine classification occupancy is with the design professional or the jurisdiction. <b>12/11:</b> Item is tabled to research different ways of addressing the concern, such as a statement in 90.4. <b>12/18:</b> Committee recommends adding a new section pointing to the OSSC for establishing the occupancy classification.	<b>New amendment</b>
3	All	Cable Ties	<b>OR A:</b> Oregon removes the requirement that cable ties be listed and labeled for securement and support. <b>12/11:</b> Requested to go over each section pertaining to "listed" cable ties and in section order.	See sections for cable ties
<b>ARTICLE 100—GENERAL</b>				
4	100	Def	<b>NEC:</b> Dormitory Unit. New definition of <i>dormitory unit</i> . <b>12/11:</b> Committee recommends replacing with the OSSC definition of "dormitory."	<b>Disapprove NEC</b>
5			<b>NEC:</b> Reconditioned. New definition for equipment restored to operating conditions outside the purview of normal servicing or part replacement. NEC prohibits the use of certain recondition equipment. <b>12/11:</b> Committee requested to review the provisions for reconditioned equipment in order by section. <b>12/18:</b> Committee recommends adding two informational notes explaining that used equipment inspected, tested, or repaired with listed or recognized component, is not considered to be <i>reconditioned</i> and to see ANSI EERS 2018.	<b>Accept NEC as modified</b>
6			<b>OR A:</b> Adds a definition for Fire Protection System to align with the OSSC.	<b>Retain amendment</b>
*	110.10		<b>OR A:</b> Adds two exceptions to item no. 1.	<b>Retain amendment</b>
7	110.14	(D)	<b>NEC:</b> Revised to put the proper emphasis on the correct torque values through "approved means" instead of "calibrated tool." <b>OR A:</b> It is not required that the permit holder demonstrate compliance with this section.	Accept NEC <b>Retain amendment</b>
*	110.21	(A)(2)	<b>NEC:</b> New informational note to provide guidance on what may be included with the original listing mark. <b>12/18:</b> Committee recommends adding the two informational notes that were added to the definition of reconditioned. (Item 5)	<b>New amendment</b>
8	110.26	(C)(2)	<b>NEC:</b> New requirement that open equipment doors not impede the entry to or egress from the workspace.	Accept NEC
*	110.26	(D)	<b>OR A:</b> Adds that illumination "of 10 foot candles average, measured at the floor[.]"	<b>Retain amendment</b>

No.	Article		Synopsis of change	Notes
9	110.32		<b>NEC:</b> New provisions for other equipment permitted in the workspace, prohibited storage, and guarding of exposed live parts.	Accept NEC
<b>ARTICLE 200—WIRING AND PROTECTION</b>				
10	210.8	(A)	<b>NEC:</b> Expanded GFCI protection to all 125- through 250-volt-rated receptacles supplied by single-phase circuits rated 150 volts or less to ground.	<b>Disapprove NEC</b>
12		(A)(5)	<b>NEC:</b> Expanded applicability to entire basement area. <b>OR A:</b> Adds that the exception is only applicable where the receptacle is labeled “not GFCI protected.”	<b>Disapprove NEC Retain amendment</b>
13		(A)(11)	<b>NEC:</b> Expanded GFCI protection of receptacles requirement to indoor damp and wet locations.	<b>Disapprove NEC</b>
14		(A)(Exc.)	<b>OR A:</b> Adds an exception to items (A)(2),(5),(6),(7), & (10) that GFCI protection is not required for a single receptacle serving an appliance or a duplex receptacle serving two appliances if the appliance is located within a dedicated space, is not easily moved when in normal use or is fastened in place, is cord-and-plug connected, and the receptacle is labeled as “not GFCI protected.” Adds that these receptacle(s) cannot be considered as meeting 210.52(G). <b>12/11:</b> Committee recommends retaining as modified by removing unnecessary language: “cord-and-plug connected.”	<b>Retain amendment as modified</b>
15		(A)(Exc.)	<b>NEC:</b> New exception (A) (1-3), (5-8), & (10) to cover locking support and mounting receptacles.	Accept NEC
16		(B)	<b>NEC:</b> Revised requirement on branch circuit voltage rating and specified voltage ratings of receptacles. <b>OR A:</b> Revises this section to “ <i>All 125-volt, single-phase, 15- and 20- ampere receptacles...</i> ”	<b>Retain amendment</b>
17		(B)(2)	<b>NEC:</b> Expanded applicability to other areas in addition to kitchens.	Accept NEC
*		(B)(6)	<b>NEC:</b> Expanded applicability to damp locations in addition to wet locations.. <b>12/11:</b> Committee recommends accepting the NEC change. <b>01/15:</b> After further review, the committee recommended to disapprove the code change.	<b>Disapprove NEC</b>
18		(B)(8)	<b>NEC:</b> Expanded applicability to accessory buildings.	<b>Disapprove NEC</b>
19		(B)(10)	<b>NEC:</b> Expanded applicability to entire unfinished area.	Accept NEC
20		(B)(11)	<b>NEC:</b> Expanded GFCI protection of receptacles to laundry areas. **\$ 50 / GFCI receptacles <b>12/11:</b> Committee recommends adding the exception to 210.8(A)(2), (5), (6), (7), and (10) for a single receptacle serving an appliance or a duplex receptacle serving two appliances if the appliance is located within a dedicated space, is not easily moved when in normal use or is fastened in place and the receptacle is labeled as “not GFCI protected.”	<b>Accept NEC as modified</b>
21		(B)(12)	<b>NEC:</b> Expanded GFCI protection of receptacles to bathtubs and shower stalls. **\$50 / GFCI receptacles	Accept NEC
22		(B)(Exc.)	<b>NEC:</b> New exception (B)(1-5), (8), & (10) for locking support and mounting receptacles.	Accept NEC
23		(C)	<b>OR A:</b> Adds that the requirements apply to outlets in crawl spaces " <i>at or below grade level.</i> " [2017 OESC 210.8(E)]	<b>Retain amendment</b>
24		(D)	<b>NEC:</b> Added new item (D) referring to the list of GFCI requirements for appliances in 422.5(A) and requirement to provide GFCI protection in branch circuits supplying vending machines. [Note: 2017 OESC 210.8(D) moved to 422.5(A)(7)]	Accept NEC
25		(E)	<b>NEC:</b> New requirement on GFCI protection of maintenance receptacles required by 210.63.~ \$ 50 / GFCI receptacles <b>12/11:</b> Committee recommends adding an exception for receptacles installed indoors in dwelling units.	<b>Accept NEC as modified</b>
26		(F)	<b>NEC:</b> New requirement and exception on GFCI protection of outdoor outlets supplied by single-phase branch circuits rated 150 volts or less to ground, 50 amperes or less.	<b>Disapprove NEC</b>

No.		Article		Synopsis of change	Notes
*	210.8	(G)	<p><b>01/15:</b> Committee recommends adopting a new amendment requiring GFCI protection for 125-volt through 250-volt receptacles supplied by single-phase branch circuits rated 150-volts or less to ground intended to supply mobile concession stand.</p> <p><b>01/22:</b> The committee verified the recommended language. 50 amp GFI - \$200.00</p>	<b>New amendment</b>	
27		(Exc.)	<p><b>OR A:</b> Adds an exception to 210.8(A), 210.8(B), and 210.8(C) for a single receptacle for sewage and sump pumps where the receptacle is labeled as “not GFCI protected.”</p>	See 422.5(A) Item No. 112	
28	210.12	(A)(5)	<p><b>NEC:</b> Permits all metal raceways and clarifies that all enclosures and conduits bodies shall be metal.</p>	Accept NEC	
29		(B)	<p><b>OR A:</b> Oregon removes “bathrooms” from the list of locations requiring AFCI protection in dormitory units.</p>	<b>Retain amendment</b>	
30		(C)	<p><b>NEC:</b> Expands the application to certain areas within nursing homes and limited-care facilities.</p> <p><b>OR A:</b> Guest Rooms and Guest Suites are not adopted by the State of Oregon</p> <p><b>12/18:</b> Committee recommends rescinding the amendment and accepting the new model code language.</p> <p><b>01/15:</b> Committee discussed the section further and agreed to retain the amendment not adopting this section.</p>	Accept NEC Rescind amendment	
31		(D)	<p><b>NEC:</b> Expands the application to guest rooms and guest suites, and recognizes the six acceptable methods for providing AFCI protection in branch circuits. Specifies that the portion of conductors in equipment enclosures are not counted in determining the maximum permitted conductor length.</p> <p><b>OR A:</b> Revises the requirements for protection.</p>	<b>Accept NEC in title</b> <b>Retain amendment</b>	
32	210.15		<p><b>NEC:</b> New requirement to identify types of equipment used in branch circuits that cannot be reconditioned. Those types include: GFCI devices, AFCI devices, and GFP equipment.</p>	Accept NEC	
33	210.52		<p><b>NEC:</b> Expanded the types of devices that can be used to control receptacle outlets.</p>	Accept NEC	
34		(C)	<p><b>NEC:</b> Clarifies that the receptacle outlets installed for countertop or work surfaces are not permitted to satisfy the requirement for receptacle outlet placement (wall spacing) as provided in 210.52(A).</p>	Accept NEC	
35		(C)(1)	<p><b>OR A:</b> Adds that receptacles are not required behind a range, counter-mounted cooking unit, or sink mounted in a corner.</p> <p><b>12/11:</b> Committee rescinded the amendment because it is no longer necessary.</p>	Rescind amendment	
36		(C)(2)	<p><b>NEC:</b> Revised how to determine the minimum number of receptacle outlets at peninsular and island countertops and work surfaces and where receptacle outlets are to be located at peninsulas.</p> <p><b>OR A:</b> Replaces "<i>connected perpendicular wall</i>" with "<i>connecting edge</i>" and changes the long-dimension from 24 inches to 42 inches. [2017 OESC 210.52(C)(3)]</p> <p><b>12/11:</b> Committee recommends retaining the 2017 OESC requirements within the new 2020 NEC formatting.</p>	<b>Disapprove NEC</b>	
37		(E)(3)	<p><b>NEC:</b> Specifies at least one 125- volt, 15- or 20-ampere receptacle outlet is now required to be provided for all balconies, decks, and porches that are constructed within 102 mm (4 in.) horizontally of the dwelling unit.</p> <p><b>OR A:</b> Adds an exception to balconies, decks, and porches: “Decks or porches located at grade level with an area of less than 20 sq. ft. are not required to have an additional receptacle installed.”</p> <p><b>12/11:</b> Committee recommends retaining the Oregon amendment and adding another exception for decks and porches above-grade level less than 10 ft<sup>2</sup> “Balconettes and Juliet balconies.”</p> <p><b>12/18:</b> Committee discussed this section further and revised the exception for decks and porches above-grade level with a depth of 1 ft or less.</p>	<b>Accept NEC</b> <b>Retain amendment</b> <b>as modified</b>	

No.	Article		Synopsis of change	Notes
38		(G)	<b>NEC:</b> Includes “multifamily dwellings” and added an exception to specify when receptacle outlets are required in the garages of multifamily dwellings.	Accept NEC
39	210.52	(I)	<b>OR A:</b> Replaces the “Foyers” section with an “Alcoves” section: "In dwelling units, alcoves shall have at least one receptacle installed. These outlets shall be in addition to the required hallway outlets. As used in this subsection an Alcove is an area extending from, and returning to, the common wall of hallways, foyers, entries, and landings with a depth of not less than 2 feet and a length of not less than 3 feet."	<b>Retain amendment</b>
40	210.63	(A)	<b>OR A:</b> Adds a second exception for replacing existing HVAC equipment with a receptacle outlet that is located on the same level and within 75 feet.	<b>Retain amendment</b>
41	210.65		<b>OR A:</b> Entire section for meeting rooms is not adopted by the State of Oregon. [2017 OESC 210.71]	<b>Retain amendment</b>
42	225.36		<b>OR A:</b> Adds an exception allowing for single light pole installations that have the connections to the light pole circuit in a location accessible only to qualified persons, recognized or certified in-line fuse holders, subject to special permission.	<b>Retain amendment</b>
43	230.40		<b>OR A:</b> Adds to Exception No. 3—When there are continuous metallic paths bonded to the grounding system in the buildings involved, a disconnect, a grounded conductor, and an equipment grounding conductor shall be installed to meet the provisions of Article 225, 230, and 250.	<b>Retain amendment</b>
44	230.43		<b>OR A:</b> Adds an exception that Items (13) and (15) are limited to traffic control devices and highway lighting poles.	<b>Retain amendment</b>
45	230.67		<b>NEC:</b> New requirements for surge protection on all services at dwelling units.	<b>Disapprove NEC</b>
46	230.70	(A)(1)	<b>OR A:</b> Adds an exception to readily accessible location requirements of service disconnect means for existing installs.	<b>Retain amendment</b>
47	230.71		<b>NEC:</b> Eliminated more than one service disconnecting means in the same panelboard or other enclosure. The permission for up to six service disconnects is modified to require installation in separate enclosures only.	<b>Disapprove NEC</b>
48	230.85		<b>NEC:</b> New requirement for an emergency disconnect at a readily accessible <i>outdoor</i> location for one- and two-family dwelling units. <b>12/11: Tabled. 12/18: Recommends retaining 2017 OESC provisions.</b>	<b>Disapprove NEC</b>
49	230.95	(C)	<b>OR A:</b> Revises to "persons having proper training and experience required to perform and evaluate the results of such performance testing," and "signed by the person(s) performing this test,"	<b>Retain amendment</b>
50	240.62		<b>NEC:</b> New section permitting the use of reconditioned low-voltage fuseholders and low-voltage nonrenewable fuses. <b>12/18: Added to matrix after 12/11 discussion. Committee accepted the NEC change.</b>	Accept NEC
51	240.67	(A)	<b>NEC:</b> Requires documentation specifying the arc flash mitigation method chosen.	Accept NEC
52		(B)	<b>NEC:</b> Sets parameters for fuse with respect to the available arcing current, added one additional arc flash mitigation method.	Accept NEC
53		(C)	<b>NEC:</b> New subdivision to provide requirements for performance testing. <b>12/11: Committee recommends revising the qualified persons(s) requirements with the 230.95(C) amendments: “<i>persons having proper training and experience required to perform and evaluate the results of such performance testing,</i>” and “<i>signed by the person(s) performing this test,</i>”</b>	<b>Accept NEC as modified</b>
54	240.87	(A)	<b>NEC:</b> Requires documentation specifying the arc flash mitigation method chosen.	Accept NEC
55		(B)	<b>NEC:</b> Sets parameters for the operation of a circuit breaker with respect to the available arcing current.	Accept NEC
56		(B)(5)	<b>NEC:</b> Prohibits temporary adjustment as a means to achieve energy arc reduction.	Accept NEC

No.	Article		Synopsis of change	Notes
57		(C)	<b>NEC:</b> New subdivision to provide requirements for performance testing. <b>12/11:</b> <i>Committee recommends revising the qualified persons(s) requirements with the 230.95(C) amendments: “persons having proper training and experience required to perform and evaluate the results of such performance testing,” and “signed by the person(s) performing this test.”</i>	<b>Accept NEC as modified</b>
58	240.88	(A)(1)	<b>NEC:</b> New section prohibiting the use of reconditioned molded-case circuit breakers.	Accept NEC
59		(A)(2)	<b>NEC:</b> New section permitting the use of reconditioned low- and medium-voltage power circuit breakers.	Accept NEC
60		(A)(3)	<b>NEC:</b> New section permitting the use of reconditioned high-voltage circuit breakers.	Accept NEC
61		(B)(1)	<b>NEC:</b> New section prohibiting the use of reconditioned low-voltage power circuit breaker electronic trip units.	Accept NEC
62		(B)(2)	<b>NEC:</b> New section permitting the use of reconditioned electromechanical protective relays and current transformers.	Accept NEC
63	240.102		<b>NEC:</b> New section prohibiting the use of reconditioned medium-voltage fuseholders and medium-voltage nonrenewable fuses.	Accept NEC
64	250.24	(A)(1)	<b>OR A:</b> Adds an exception for when an electric utility has installed a ground fault protection system...	<b>Retain amendment</b>
65		(B)	<b>OR A:</b> Adds a third exception for when an electric utility has installed a ground fault protection system...	<b>Retain amendment</b>
66	250.32	(B)(1)	<b>OR A:</b> Adds to exception 1 “existing and new” installations and replaces “previous versions” with the “2005 edition.” <b>12/18:</b> <i>Committee recommends rescinding the amendment because it is unnecessary and accepting the model code.</i>	Rescind amendment
67	250.52	(A)(3)	<b>OR A:</b> Adds: When an addition is remote from the service and the integrity of the grounding electrode system has been verified, connection of the remote concrete encased electrode is not required. <b>12/18:</b> <i>Committee recommends retaining the amendment and clarifying that the exception applies to where an addition “to a building or structure” is remote for clarification.</i>	<b>Retain amendment as modified</b>
68		(B)	<b>OR A:</b> Adds another item: (4).	<b>Retain amendment</b>
*	250.53	(A)(2)	<b>12/18:</b> <i>Committee recommends adding another exception to the supplemental electrode requirements for temporary services single-phase, 200 amps or less.</i>	<b>New amendment Savings</b>
69	250.64	(B)	<b>NEC:</b> Revised (2) & (3) to require Schedule 80 when PVC is the wiring method employed.	Accept NEC
70	250.94	(A)	<b>OR A:</b> Adds “or an exposed and supported length of #6 bare copper conductor” as an option to the requirement.	<b>Retain amendment</b>
71	250.118		<b>OR A:</b> Requires an equipment grounding conductor within a raceway, sized using 250.112, where metallic conduit is installed on a roof top.	<b>Retain amendment</b>
<b>ARTICLE 300—WIRING METHODS AND MATERIALS.</b>				
72	300.5	(G)	<b>OR A:</b> Permits any approved sealant.	<b>Retain amendment</b>
	300.9		<b>01/22:</b> <i>Added to the matrix with Statewide Alternate Method discussion. Committee recommends adding an exception for interior of raceways up to 8 ft in length installed solely to provide physical protection shall not be considered a wet location.</i>	<b>New amendment</b>
73	311.40		<b>OR A:</b> [Previously 2017 OESC 328.30] Oregon removes the requirement for cable ties to be listed and identified for securement and support.	<b>Retain amendment</b>
74	314.27	(C)	<b>NEC:</b> Requires outlet boxes mounted in ceilings of habitable rooms in dwelling units to be provided with a box listed for ceiling fan support or an outlet box supported independently by structural framing where a ceiling fan may be installed.	<b>Disapprove NEC</b>

No.	Article		Synopsis of change	Notes
75	320.30		<b>OR A:</b> Removes the requirement for cable ties to be listed and identified for securement and support.	<b>Retain amendment</b>
77	330.30		<b>OR A:</b> Removes the requirement for cable ties to be listed and identified for securement and support.	<b>Retain amendment</b>
78	334.12		<b>OR A:</b> Adds another exception to item (2) the installation within a dropped or suspended ceiling cavity in structures other than one- and two-family and multifamily dwellings when installed in accordance with 334.15.	<b>Retain amendment</b>
79	334.15	(B)	<b>OR A:</b> Requires that <u>Exposed nonmetallic sheathed cable shall be protected where it is installed horizontally less than 8 feet above the floor. Exposed nonmetallic sheathed cable less than 8 feet above the floor that enters the top or bottom of a panel board shall be protected from physical damage by conduit, raceway, ½-inch plywood or ½-inch drywall.</u> <b>12/18:</b> Committee recommends retaining the amendment as modified by adding “, or other approved means.”	<b>Retain amendment as modified</b>
80		(C)	<b>OR A:</b> Removes “and crawl spaces” from the requirements.	<b>Retain amendment</b>
81	334.30		<b>OR A:</b> Removes the requirement for cable ties to be listed and identified for securement and support.	<b>Retain amendment</b>
82	336.10		<b>OR A:</b> Revises to “ <u>For generators and HVAC systems.</u> ” <b>12/18:</b> Committee recommends retaining the as modified by rescinding the added language because it is unnecessary.	<b>Retain amendment as modified</b>
83	337.30		<b>NEC:</b> Requires that cables ties be listed and identified for securement and support.	<b>New amendment</b>
84	338.10	(B)(4)	<b>NEC:</b> Covers ampacity adjustment of cables installed in direct contact with certain types of materials without maintaining spacing between cables.	Accept NEC
85	348.30		<b>OR A:</b> Removes the requirement for cable ties to be listed and identified for securement and support.	<b>Retain amendment</b>
86	350.10	(4)	<b>NEC:</b> New list item to permit higher temperature rated conductors or cables installed in LFMC.	Accept NEC
87	350.30		<b>OR A:</b> Removes the requirement for cable ties to be listed and identified for securement and support.	<b>Retain amendment</b>
88	356.30		<b>OR A:</b> Removes the requirement for cable ties to be listed and identified for securement and support.	<b>Retain amendment</b>
89	362.30		<b>OR A:</b> Removes the requirement for cable ties to be listed and identified for securement and support.	<b>Retain amendment</b>
90	380.12		<b>NEC:</b> New list item to prohibit cord and plug connected.	Accept NEC
91	392.30	(B)(3) (B)(4)	<b>NEC:</b> Added multiconductor cables to (B)(3) and added a new list item (4) requiring cable ties to be listed and identified for the application and for securement and support. <b>12/18:</b> Committee recommends removing the requirement for cable ties to be listed and identified for securement and support.	Accept NEC <b>New amendment</b>
92	393.14	(A)	<b>NEC:</b> Requires that cables ties be listed and identified for securement and support. <b>12/18:</b> Committee recommends removing the requirement for cable ties to be listed and identified for securement and support.	<b>New amendment</b>
93	394.12		<b>OR A:</b> Adds an exception that the provisions of 394.12 shall not be construed to prohibit the installation of loose or rolled thermal insulating materials in spaces containing existing knob-and-tube wiring.	<b>Retain amendment</b>
<b>ARTICLE 400—EQUIPMENT FOR GENERAL USE.</b>				
94	400.10	(A)	<b>OR A:</b> Adds listed assemblies of fixtures and controllers, approved by the Federal Aviation Administration under uses allowing flexible cords and flexible cables.	<b>Retain amendment</b>
95	400.12	(5)	<b>OR A:</b> Adds second exception to (5) for certain cord sets and power-supply cords. <b>12/18:</b> Committee recommends retaining the amendment and adding “ <u>In other than Spaces Used for Environmental Air.</u> ”	<b>Retain amendment as modified</b>
96	406.3	(A)	<b>NEC:</b> Added a requirement prohibiting the use of reconditioned receptacles.	Accept NEC



No.	Article		Synopsis of change	Notes
97	406.4	(D)(4)	<b>OR A:</b> AFCI protection is not adopted by the State of Oregon.	<b>Retain amendment</b>
98	406.5	(G)(2)	<b>NEC:</b> Receptacle outlets are prohibited from being installed in the area beneath a sink in the face-up position.	Accept NEC
99	406.7		<b>NEC:</b> New requirement prohibiting reconditioning of attachment plugs, cord connectors, and flanged surface devices.	Accept NEC
100	406.9	(C)	<b>NEC:</b> Revised and added a new exception to cover the area in bathrooms where receptacles cannot be installed. <i>**Major expense</i>	<b>Disapprove NEC</b>
101	406.12		<b>OR A:</b> Items (5) and (6) requiring business offices, corridors, waiting rooms and the like...etc. and the subset of assembly occupancies described in 518.2 are not adopted by the State of Oregon.	<b>Retain amendment</b>
102			<b>NEC:</b> Expanded tamper-resistant receptacle requirements to attached/detached garages and accessory buildings of dwelling units, common areas of multifamily dwelling units, hotels and motels, and assisted living facilities. <b>12/18:</b> Committee recommends deleting item (8) and retaining the amendment. Minimal cost impact.	<b>Accept NEC as modified</b>
103	406.13		<b>NEC:</b> New requirement for the construction, identification, connecting and disconnecting of single-pole separable connectors.	Accept NEC
104	408.8		<b>NEC:</b> New section addressing the requirements for reconditioned equipment. <b>12/18:</b> The committee recommends adding “or signing supervisor” for evaluation.	<b>Accept NEC as modified</b>
105		(A)	<b>NEC:</b> New section addressing the specific requirements for Panelboards. <b>12/18:</b> The committee recommends deleting the last sentence.	<b>Accept NEC as modified</b>
106		(B)	<b>NEC:</b> New section addressing the specific requirements for switchboards and switchgear.	Accept NEC
107	410.7		<b>NEC:</b> New requirement prohibiting reconditioned equipment and the proper application of retrofit kits into existing luminaires.	<b>Disapprove NEC</b>
108	410.69		<b>NEC:</b> New requirement to prohibit the use of conductors with certain insulation colors to be used for luminaire control circuits that share the same wiring compartment with the branch circuit conductors with exception to permit field re-identification of field-connected gray control conductors.	<b>Disapprove NEC</b>
109	410.170		<b>NEC:</b> New Part XVI (410.170-410.188) containing installation requirements unique to horticultural lighting equipment. <b>12/18:</b> The committee recommends adding “and evaluated in accordance with the UL Product Spec category IFAU.”	<b>Accept NEC as modified</b>
110	411.4		<b>NEC:</b> New requirement prohibiting reconditioning listed low-voltage lighting systems or a those assembled from listed parts	Accept NEC
111		(B)	<b>NEC:</b> Specifies that listed equipment is required to be identified for the specific application.	Accept NEC
112	422.5	(A)	<b>NEC:</b> Expanded the types of appliances and conditions of use where GFCI protection is required, specified the voltage to ground rating of impacted appliances, specified Class A GFCI protection <b>OR A:</b> [See 2017 OESC 210.8(D)] The GFCI protection requirements for outlets supplying dishwashers installed in dwelling unit locations is not adopted by the State of Oregon. <b>12/18:</b> The committee recommends adding an exception to item (6) from the 2017 OESC 210.8(B) for single receptacles labeled “not GFCI protected.”	<b>Accept NEC as modified</b>
113	422.34		<b>OR A:</b> Adds that unit switches on ranges, ovens and dishwashers shall not be considered the disconnect required by section.	<b>Retain amendment</b>
114	445.6		<b>NEC:</b> New provisions added to require stationary generators of 600 volts and less to be listed. <i>**Statutory Conflict</i>	<b>Disapprove NEC</b>
115	445.18	(C)	<b>NEC:</b> New subdivision to require generators with greater than 15 kW rating be provided with a remote emergency stop switch to shut down the prime mover.	Accept NEC

No.	Article		Synopsis of change	Notes
116		(D)	<b>NEC:</b> New subdivision to require an outdoor emergency generator shutdown device for generators (other than cord-and-plug-connected generators) installed at one- and two-family dwelling units.	<b>Disapprove NEC</b>
	480.7	(B)	<b>NEC:</b> New requirement for battery system disconnecting means on the exterior of one- and two-family dwellings.	<b>Disapprove NEC</b>
117	490.49		<b>NEC:</b> New section addressing the reconditioning of switchgear and parts of switchgear. <b>12/18:</b> The committee recommends adding “or signing supervisor” for evaluation.	<b>Accept NEC as modified</b>
<b>ARTICLE 500—SPECIAL OCCUPANCIES</b>				
118	500.8	(A)	<b>OR A:</b> Revises to point to ORS 479.760 for the suitability of equipment.	<b>Retain amendment</b>
119	517.10	(B)(3)	<b>OR A:</b> Adds item 3 for health care facilities located in Type B occupancies. <b>NEC:</b> Revision exempts Type B occupancies where specific types of procedures are performed. <b>01/15:</b> Committee recommends accepting the NEC change as modified by adding the other places indicated in the existing Oregon amendment.	<b>Accept NEC as modified</b>
120	517.13	(A)	<b>NEC:</b> Revised the title to clarify it applies to equipment grounding conductors and relocates Exception No. 2 as a positive Code rule under new list item (4). <b>01/15:</b> Committee recommends accepting the NEC changes as modified by adding an exception for type PVC conduit underground or embedded in concrete in Dental Clinics located in type B occupancies as established in accordance with the building code with some requirements.	<b>Accept NEC as modified</b>
121	517.17	(D)	<b>NEC:</b> Requires (add) testing to be performed by qualified persons and correlate with testing requirements in 230.95(C). <b>01/15:</b> Committee recommends accepting the NEC change as modified by replacing “qualified” persons with those having proper training and experience... and a signature on the written record of the person performing the test.	<b>Accept NEC as modified</b>
122	518.6		<b>NEC:</b> New requirement for illumination and new control requirements for working spaces for specific types of equipment installed outdoors. <b>01/15:</b> Committee recommends disapproving NEC change by not adopting the section.	<b>Disapprove NEC</b>
123	547.5	(G)	<b>NEC:</b> Revised to exempt other than 125-volt, 15- and 20-ampere receptacles from the protection requirements in 210.8(B). <b>OR A:</b> Adds exception for single receptacle.	Accept NEC <b>Retain amendment</b>
124	547.10	(A)	<b>OR A:</b> Adds an exception to (A)(1) & (2) for those designed by a professional engineer... <b>01/15:</b> Committee recommends retaining the amendment and further modify “where required” to those areas designated by the owner and adding an informational note to see the definition of <i>equipment</i> in Article 100.	<b>Retain amendment</b> <b>New amendment</b>
125	555.35		<b>NEC:</b> Relocated requirements from 555.3 for GFPE requirements Subdivision (A) addresses GFP requirements for shore power receptacles, feeder and branch circuit conductors and GFCI for other than shore power receptacles. Subdivision (B) addresses requirements for current leakage measurement devices. <b>01/15:</b> Committee recommends accepting the NEC change as modified by adding an exception for modifications to existing systems.	<b>Accept NEC as modified</b>
126	590.4	(G)	<b>NEC:</b> New exception to permit omission of a cover for splices where permanent wiring is used for temporary power.	Accept NEC



No.	Article		Synopsis of change	Notes
127	590.8		<p><b>NEC:</b> New section for the reuse of overcurrent and service overcurrent protective devices.</p> <p><b>01/15:</b> Committee recommends accepting the NEC change as modified by removing the unenforceable requirement that the devices be “examined.”</p>	Accept NEC as modified
<b>ARTICLE 600 – SPECIAL EQUIPMENT</b>				
128	600.5	(A)	<b>NEC:</b> Revision to clarify locations not required to be provided with a sign outlet.	Accept NEC
*	600.33	(B)(1)	<b>01/15:</b> Committee recommends adopting an amendment requiring secondary wiring installation to comply with all of 300.4 and not just 300.4(D).	New amendment
129	620.5		<b>OR A:</b> Adds “ <i>Where machine room doors swing inward, the arc of the door shall not encroach on those clearances required by 110.26(A).</i> ”	Retain amendment
130	620.6		<b>NEC:</b> Relocated from 620.85 and revised to specify the conditions where GFCI protection is required for permanently installed sump pumps. 2017 OESC does not require GFCI protection.	Disapprove NEC
131	620.11	(A)	<b>OR A:</b> Adds exception where the provisions are not required by the Elevator code.	Retain amendment
132	620.37	(A)	<b>OR A:</b> Adds: “ <i>Conduits and raceways necessary for the connection of such devices shall only enter hoistways and machine rooms to the extent necessary to connect the devices(s) attached thereto.</i> ”	Retain amendment
133	620.51	(B)	<b>OR A:</b> Adds: “ <i>When provided, this disconnecting means shall be located in the elevator control room or control space. The installation shall comply with the requirements of NFPA 72 as adopted in OAR 918-306-0005.</i> ”	Retain amendment
134		(C)	<b>OR A:</b> Provides specific requirements for machine rooms.	Retain amendment
135		(C)(4)	<b>OR A:</b> Provides specific requirements for motor controllers.	Retain amendment
136		(C)(5)	<b>OR A:</b> Provides specific requirements for residential installations.	Retain amendment
137	620.86		<b>OR A:</b> Adds requirements for flexible metal conduit utilized between the disconnecting means and the elevator controller.	Retain amendment
*	625.42		<b>01/22:</b> Added to matrix with Statewide Alternate Method 09-01 discussion. Committee recommends adding an Informational Note pointing to SAM 09-01: <u>Informational Note: See Statewide Alternate Method 09-01 for the use of a demand factor table for calculating electrical vehicle charging equipment services and feeders.</u>	New amendment
138	645.2		<b>OR A:</b> Revises the definition to: An information technology equipment system that <u>has been designated by the building owner as requiring</u> continuous operation.	Retain amendment
139	645.10		<b>OR A:</b> Requires that the disconnecting means <u>be grouped and identified and shall be readily accessible at the principal exit doors, or shall</u> comply with either 645.10(A) or (B).	Retain amendment
140	670.6		<b>OR A:</b> Oregon does not adopt section 670.6 for surge protection.	Retain amendment
141	680.4		<p><b>NEC:</b> New requirement for re-inspection of permanently installed equipment covered within the scope of 680.</p> <p><b>01/15:</b> Committee recommends not adopting this NEC change.</p>	Disapprove NEC
142	680.14		<b>NEC:</b> Added a definition for corrosive environment and correlated this section by consolidating the requirements into one section and adding the new term.	Accept NEC
143	680.21	(C)	<b>NEC:</b> Expanded GFCI protection requirement to cover more types of swimming pool pump motors and to add exception for listed low-voltage motors. - *Savings	Accept NEC
144		(D)	<b>NEC:</b> New requirement for GFCI protection of replacement swimming pool pump motors.	Disapprove NEC

No.	Article		Synopsis of change	Notes
145	680.42	(B)	<b>OR A:</b> Adds “ <i>or deck</i> ” to the requirement.	Retain amendment
146	682.15		<b>NEC:</b> Revised GFCI protection requirement to include more receptacle ratings and to also include certain outlet ratings. Requirements added for equipment level ground-fault protection of circuits on piers. <b>01/15:</b> Committee recommends accepting the NEC changes as modified by not adopting 682.15(A) for outlets, and modifying the NEC requirement that feeder and branch-circuit conductors installed on piers be provided with GFP not exceeding 30 mA to “not exceeding 100mA” in alignment with ...	Accept NEC as modified
147	690.12		<b>OR A:</b> Adds that a rapid shutdown function shall be provided where an addition to an existing system is installed. <b>01/15:</b> Committee recommends retain the amendment as modified by adding that <i>the provisions of 690.12(B)(2) shall not apply to the existing system(s).</i>	Retain amendment as modified
148	690.31	(D)	<b>NEC: Renumbered from 690.31(G)</b> Specifies levels of current and voltage at which conductors must be installed in metal raceways, metal enclosures, or type MC cable, limits to indoor installations, and exception for conductors associated with PV hazard control systems. [2017 NEC 690.31(G)] Deleted requirement covering PV conductors embedded in roofing materials. [2017 NEC 690.31(G)(1)] Specifies marking of PV system wiring methods and enclosures is required where their function is not evident. [2017 NEC 690.31(G)(2)]	Accept NEC
149				
150			<b>OR A:</b> Oregon prohibits embedded circuit conductors in built-up, laminate, or membrane roofing materials in roof areas not covered by PV modules and associated equipment. [2017 OESC 690.31(G)(1)] (No longer necessary)	Rescinded
151			<b>OR A:</b> Adds requirements for beneath roofs and adds an informational note. [2017 OESC 690.31(G)(4)]	
152	690.47		<b>OR A:</b> Oregon specifies that equipment grounding conductors required by 690.47(A) or (B) shall not be smaller than 6 AWG copper or 4 AWG aluminum.	Retain amendment
<b>ARTICLE 700 – SPECIAL CONDITIONS</b>				
153	700		<b>OR A:</b> Adds an introductory paragraph requiring building officials and inspectors administering and enforcing the state building code under ORS 455.148 and 455.150, to ensure compliance with Sections 700.28, 701.27, or 708.54 by verifying receipt of a certificate signed by the Engineer of Record or the Signing Supervisor stating that the proposed installation complies with the selective coordination requirements of this code.	Retain amendment
154	700.3	(F)	<b>01/15: Added to matrix during the discussion:</b> Committee recommends a new amendment requiring these provisions only where the building owner deems necessary.	New amendment
155	700.5	(C)	<b>NEC:</b> Now prohibits the use of reconditioned automatic transfer switches.	Accept NEC
156	700.32		<b>OR A:</b> Adds selective coordination information and an exception.	Retain amendment
157	701.5	(A)	<b>NEC:</b> New requirement covering the use of meter-mounted transfer switches for legally required standby systems.	Accept NEC
158	701.32		<b>OR A:</b> Adds selective coordination requirements and an exception. [2017 OESC 701.27]	Retain amendment
159	702.4	(B)(2)	<b>OR A:</b> Adds an exception permitting manual management of the connected load in one- and two-family dwellings.	Retain amendment
160	702.7	(A)	<b>NEC:</b> Requires marking at commercial and industrial installations only and to add requirement on the location of, and necessary information on, the sign at one- and two-family dwellings. <b>01/15:</b> Committee recommends disapproving the NEC change and retain the 2017 OESC provisions.	Disapprove NEC New amendment
161	708.1		<b>OR A:</b> Oregon amends the language for critical operations.	Retain amendment
162	708.54		<b>OR A:</b> Adds selective coordination requirements.	Retain amendment

No.		Article	Synopsis of change	Notes
163	712.10	(B)	<b>NEC:</b> Requires an ID plaque or directory identifying the disconnecting means location for all power sources for a building.	Accept NEC
164	725.24		<b>OR A:</b> Oregon requires the installation to comply with all of 300.4 and 300.11. <b>1/15:</b> The NEC now aligns with the requirement to comply with all of 300.4, but the committee recommends retaining the requirement to comply with all of 300.11.	Retain amendment as modified
165	760.24		<b>OR A:</b> Oregon requires the installation to comply with all of 300.4 and 300.11. <b>1/15:</b> The NEC now aligns with the requirement to comply with all of 300.4, but the committee recommends retaining the requirement to comply with all of 300.11.	Retain amendment as modified
166	760.41		<b>OR A:</b> Oregon removes requirement to be accessible only to qualified personnel.	Retain amendment
167	760.121		<b>OR A:</b> Oregon removes requirement to be accessible only to qualified personnel.	Retain amendment
168	770.24		<b>OR A:</b> Oregon requires the installation to comply with all of 300.4 and 300.11. – No longer necessary / Aligns with NEC.	Rescinded
169	770.48		<b>OR A:</b> Adds Electrical Nonmetallic Conduit (ENT) to the list of raceways.	Retain amendment
<b>ARTICLE 800 – COMMUNICATION SYSTEMS</b>				
170	800.24		<b>OR A:</b> Oregon requires the installation to comply with all of 300.4 and 300.11. – No longer necessary / Aligns with NEC.	Rescinded
171	820.24		<b>OR A:</b> Oregon requires the installation to comply with all of 300.4 and 300.11. – No longer necessary / Aligns with NEC.	Rescinded
<b>STATEWIDE ALTERNATE METHODS</b>				
172	110.3	(B)	<b>08-02</b> – Underground Splicing of Equipment Grounding Conductors for Traffic Signal Installations	Retain SAM
173	300.9		<b>08-03</b> – NMB cable in outdoor conduit sleeves <b>01/22:</b> Add to Section 300.9: <i>Exception: The interior of raceways up to 8 ft in length installed solely to provide physical protection shall not be considered a wet location.</i>	Rescind SAM
174	625.42		<b>09-01</b> – Use of a demand factor table for calculating electrical vehicle charging equipment services and feeders <b>01/22:</b> Add to Section 625.42: <i>Informational Note: See Statewide Alternate Method 09-01 for the use of a demand factor table for calculating electrical vehicle charging equipment services and feeders.</i>	Retain SAM / New amendment
<b>STATEWIDE CODE INTERPRETATIONS</b>				
175	110.26		<b>08-02</b> – Appliance Access – Attic and Underfloor (ORSC)	Retain
176	230/250		<b>15-02</b> – Service Requirements for Meter Bases on Poles or Posts	Retain
177	250		<b>19-04</b> – Bonding of Piping Systems and Exposed Structural Metal – No longer necessary	Rescind
178	250.104		<b>08-04</b> – Bonding of Corrugated Stainless Steel Tubing	Retain
179	250.130		<b>15-01</b> – Grounding Frames of Ranges and Clothes Dryers from Existing Branch Circuits	Retain
180	422.31		<b>09-01</b> – HVAC System Disconnect Requirements	Retain
181	547		<b>19-03</b> – Application of Article 547 in Agricultural Buildings	Rescind

**Language formatting denotes the following:**

Blue underline or Red ~~striethrough~~ = New Oregon amendment

Black underline or ~~striethrough~~ = Existing Oregon amendment

Highlighted = New model code language

**DRAFT TABLE 1-E**  
**Effective October 1, 2020**

The 2020 Oregon Electrical Specialty Code (OESC) is based on the 2020 edition of the National Fire Protection Association (NFPA) 70, National Electrical Code (NEC), approved as an American National Standard on August 25, 2019.

Amendments include the addition of code language developed by Oregon or the deletion of NFPA 70, NEC code language. Language contained in the NFPA 70, NEC not listed in this table has not been amended by Oregon.

See **OAR 918-305-0030** for other codes or publications that may impact electrical installations.

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**90.4 Enforcement. ...**

By special permission, the authority having jurisdiction may waive specific requirements in this *Code* or permit alternative methods where it is assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

Requests for special permission shall be made in writing to the authority having jurisdiction. Special permission must be granted in writing by the authority having jurisdiction and shall be obtained prior to the start of the electrical installation.

This *Code* may require new products, constructions, or materials that may not yet be available at the time the *Code* is adopted. In such event, the authority having jurisdiction may permit the use of the products, constructions, or materials that comply with the most recent previous edition of this *Code* adopted by the jurisdiction.

Where the NEC requires electrical products to be “listed” or “labeled”, the words “listed” or “labeled” shall have the same meaning as “certified electrical product” under ORS 479.530.

The occupancy classification and use designations shall be established in accordance with the *Oregon Structural Specialty Code* (OSSC), as stated on the construction documents by the registered design professional and approved by the building official.

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**100 Dormitory.** A space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories, or fraternity houses. *(Source OSSC)*

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**Fire Protection System.** *Approved* devices, equipment and systems or combinations of systems used to detect a fire, activate an alarm, extinguish or control a fire, control or manage smoke and products of a fire or any combination thereof. *(Source OSSC)*

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**Reconditioned.** Electromechanical systems, equipment, apparatus, or components that are restored to operating conditions. This process differs from the normal servicing of equipment that remains within a facility, or replacement of listed equipment on a one-to-one basis.

Informational Note No.1: The term *reconditioned* is frequently referred to as *rebuilt*, *refurbished*, or *remanufactured*.

Informational Note No. 2: Used equipment that has been inspected, tested, or repaired with listed or recognized components, is not considered to be *reconditioned*.

Informational Note No. 3: See ANSI EERS 2018.

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**110.10 Circuit Impedance; Short-Circuit Current Ratings, and Other Characteristics. ...**

*Exception No. 1:* A temporary service may be energized without demonstrating compliance with this section. This exception is applied at the discretion of the supervising electrician.

*Exception No. 2:* Fault-current values provided by the serving utility may be used to satisfy the labeling requirements.

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**110.14 (D) Terminal Connection Torque.** Tightening torque values for terminal connections shall be as indicated on equipment or in installation instructions provided by the manufacturer. An approved means shall be used to achieve the indicated torque value. The permit holder is not required to demonstrate compliance with this section.

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**110.21 (A)(2) Reconditioned Equipment. ...**

Informational Note No. 4: Used equipment that has been inspected, tested, or repaired with listed or recognized components, is not considered to be *reconditioned*.

Informational Note No. 5: See ANSI EERS 2018.

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**110.24 (A) Field Marking. ...**

*Exception No. 1: A temporary service may be energized without demonstrating compliance with this section. This exception is applied at the discretion of the supervising electrician.*

*Exception No. 2: Fault-current values provided by the serving utility may be used to satisfy the labeling requirements.*

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**(B) Modifications. ...***Exception: Not adopted by the State of Oregon. The field marking requirements in 110.24(A) and 110.24(B) shall not be required in industrial installations where conditions of maintenance and supervision ensure that only qualified persons service the equipment.*

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**110.26 (C)(3) Personnel Doors.** Where equipment rated 800 amperes or more that contains overcurrent devices, switching devices, or control devices is installed in structures other than one- and two-family dwellings and individual multifamily units and there is a personnel door(s) intended for entrance to and egress from the working space less than 7.6 m (25 ft) from the nearest edge of the working space, the door(s) shall open in the direction of egress and be equipped with ~~listed~~ panic hardware or ~~listed~~ fire exit hardware.

Informational Note: Additional construction requirements are located in Section 1010.1.10 of the OSSC. This section governs panic hardware listing and installation requirements. The following OSSC sections are not part of this code but are provided here for the reader's convenience.

**OSSC Section 1010.10.10.1**

**Installation.** Where panic or fire exit hardware is installed, it shall comply with the following:

1. Panic hardware shall be listed in accordance with UL 305.
2. Fire exit hardware shall be listed in accordance with UL 10C and UL 305.
3. The actuating portion of the releasing device shall extend not less than one-half of the door leaf width.
4. The maximum unlatching force shall not exceed 15 pounds (67 N).

**OSSC Section 1010.1.10.2**

**Balanced doors.** If balanced doors are used and panic hardware is required, the panic hardware shall be the push-pad type and the pad shall not extend more than one-half the width of the door measured from the latch side.

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**(D) Illumination.** Illumination of 10 foot candles average, measured at the floor, shall be provided for all working spaces about service equipment, switchgear switchboards, switchgear, panelboards, or motor control centers installed indoors. Control by automatic means shall not be permitted to control all illumination within the working spaces. Additional lighting outlets shall not be required where the work space is illuminated by an adjacent light source or as permitted by 210.70(A)(1), Exception No. 1, for switched receptacles.

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**110.31 (A)(4) Locks.** Doors shall be equipped with locks, and doors shall be kept locked, with access allowed only to qualified persons. Personnel doors shall open in the direction of egress and be equipped with ~~listed~~ panic hardware or ~~listed~~ fire exit hardware.

Informational Note: See the OESC Section 110.26(C)(3) amendment.

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**110.33 (A)(3) Personnel Doors.** Where there is a personnel door(s) intended for entrance to and egress from the working space less than 7.6 m (25 ft) from the nearest edge of the working space, the door(s) shall open in the direction of egress and be equipped with ~~listed~~ panic hardware or ~~listed~~ fire exit hardware.

Informational Note: See the OESC Section 110.26(C)(3) amendment.

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**210.8 Ground-Fault Circuit-Interrupter Protection for Personnel.** Ground-fault circuit-interrupter protection for personnel shall be provided as required in 210.8(A) through (E) and (G). The ground-fault circuit-interrupter shall be installed in a readily accessible location.

For the purposes of this section, when determining the distance from receptacles the distance shall be measured as the shortest path the supply cord of an appliance connected to the receptacle would follow without piercing a floor, wall, ceiling, or fixed barrier, or the shortest path without passing through a window.

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(A) **Dwelling Units.** All 125-volt, single-phase, through 250-volt 15- and 20-ampere receptacles installed in the locations specified in 210.8(A)(1) through (A)(~~11-10~~) ~~and supplied by single phase branch circuits rated 150 volts or less to ground~~ shall have ground-fault circuit-interrupter protection for personnel.

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(A)(5) Unfinished portions or areas of the basement not intended as habitable rooms. ~~Basements~~

*Exception to (5): A receptacle supplying only a permanently installed fire alarm or burglar alarm system shall not be required to have ground-fault circuit-interrupter protection if the receptacle is labeled as “not GFCI protected.”*

Informational Note: See 760.41(B) and 760.121(B) for power supply requirements for fire alarm systems.

Receptacles installed under the exception to 210.8(A)(5) shall not be considered as meeting the requirements of 210.52(G).

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*Exception to (2),(5),(6),(7),(10): GFCI protection shall not be required for a single receptacle serving an appliance or a duplex receptacle serving two appliances if all of the following conditions are met:*

- a. The appliance is located within a dedicated space.*
- b. In normal use the appliance is not easily moved or is fastened in place.*
- c. The receptacle is labeled as “not GFCI protected.”*

*Receptacle(s) installed under the exception to 210.8(A)(2), (5), (6), (7), and (10) shall not be considered as meeting the requirements of 210.52(G).*

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(A)(11) Not adopted by the State of Oregon. ~~Indoor damp and wet locations.~~

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(B) **Other than Dwelling Units.** All 125-volt, single-phase, through 250-volt 15- and 20-ampere receptacles ~~supplied by single phase branch circuits rated 150 volts or less to ground, 50 amperes or less, and all receptacles supplied by three phase branch circuits rated 150 volts or less to ground, 100 amperes or less,~~ installed in the locations specified in 210.8(B)(1) through (B)(12) shall have ground-fault circuit-interrupter protection for personnel.

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(B)(6) Indoor ~~damp and~~ wet locations

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(B)(8) Garages, ~~accessory buildings,~~ service bays, and similar areas other than vehicle exhibition halls and showrooms

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(B)(11) Laundry areas.

*Exception to (11): GFCI protection shall not be required for a single receptacle serving an appliance or a duplex receptacle serving two appliances if all of the following conditions are met:*

- a. The appliance is located within a dedicated space.*
- b. In normal use the appliance is not easily moved or is fastened in place.*
- c. The receptacle is labeled as “not GFCI protected.”*

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(C) **Crawl Space Lighting Outlets.** GFCI protection shall be provided for lighting outlets not exceeding 120 volts installed in crawl spaces at or below grade level.

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(E) **Equipment Requiring Servicing.** GFCI protection shall be provided for the receptacles required by 210.63.

*Exception: Receptacles installed indoors in dwelling units shall not be required to be ground-fault circuit-interrupter protected, unless otherwise required.*

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**210.8** **(F) Outdoor Outlets.** ~~Not adopted by the State of Oregon. All outdoor outlets for dwellings, other than those covered in 210.8(A)(3), Exception to (3), that are supplied by single phase branch circuits rated 150 volts to ground or less, 50 amperes or less, shall have ground fault circuit interrupter protection for personnel.~~

~~Exception: Ground fault circuit interrupter protection shall not be required on lighting outlets other than those covered in 210.8(C).~~

**(G) Mobile Concession Stands.** All 125-volt through 250-volt receptacles supplied by single-phase branch circuits rated 150-volts or less to ground, 50 amperes or less, intended to supply a mobile food cart or concession stand shall have ground-fault circuit-interrupter protection for personnel.

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**210.12** **(A) Dwelling Units.** All 120-volt, single phase, 15- and 20-ampere branch circuits supplying outlets or devices installed in dwelling unit kitchens, family rooms, dining rooms, living rooms, parlors, libraries, dens, bedrooms, sunrooms, recreation rooms, closets, hallways, alcoves, laundry areas, or similar rooms or areas shall be protected by any of the means described in 210.12(A)(1) through (6):

**Exception No. 1:** *AFCI protection shall not be required for an individual branch circuit supplying a fire alarm system installed in accordance with 760.41(B) or 760.121(B). The branch circuit shall be installed in a metal raceway, metal auxiliary gutter, steel-armored cable, Type MC or Type AC, meeting the applicable requirements of 250.118, with metal boxes, conduit bodies, and enclosures.*

**Exception No. 2:** *AFCI protection shall not be required on branch circuits supplying receptacles located in hallways, kitchens or laundry areas and GFCI protected receptacles installed in dining rooms.*

**Exception No. 3:** *AFCI protection shall not be required for optional, dedicated outlets that supply equipment known to cause unwanted tripping of AFCI devices.*

**Exception No 4:** *AFCI protection shall not be required for branch circuits that serve an appliance that is not easily moved or that is fastened in place.*

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**(B) Dormitory Units.** All 120-volt, single-phase, 15- and 20- ampere branch circuits supplying outlets and devices installed in dormitory unit bedrooms, living rooms, hallways, closets, ~~bathrooms~~, and similar rooms shall be protected by any of the means described in 210.12(A)(1) through (6).

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**(C) Guest Rooms, Guest Suites, and Patient Sleeping Rooms in Nursing Homes and Limited-Care Facilities.** ~~Not adopted by the State of Oregon. All 120 volt, single phase, 15 and 20 ampere branch circuits supplying outlets and devices installed in guest rooms and guest suites of hotels and motels and patient sleeping rooms in nursing homes and limited care facilities shall be protected by any of the means described in 210.12(A)(1) through (6).~~

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**(D) Branch Circuit Extensions or Modifications – Dwelling Units, and Dormitory Units, and Guest Rooms and Guest Suites.** Where branch circuit wiring for any of the areas specified in 210.12(A), or (B) ~~or~~ (C is not adopted), is modified, replaced, or extended, the branch circuit shall be protected by one of with the following:

- (1) By any of the means described in 210.12(A)(1) through (A)(6)
- (2) A listed outlet branch-circuit type AFCI located at the first receptacle outlet of the existing branch circuit.

**Exception No. 1:** *Extensions or modifications of existing circuits shall not require the installation of AFCI protection.*

**Exception No. 2:** *Replacement or upgrading of a service or panelboard shall not require that existing circuits be protected by AFCI devices.*

~~Exception: AFCI protection shall not be required where the extension of the existing branch circuit conductors is not more than 1.8 m (6 ft) and does not include any additional outlets or devices, other than splicing devices. This measurement shall not include the conductors inside an enclosure, cabinet, or junction box.~~

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**210.52** **(C)(2) Island and Peninsular Countertops and work surfaces.** Receptacle outlets shall be installed in accordance with 210.52(C)(2)(a) and (C)(2)(b).

(a) At least one receptacle outlet shall be provided for ~~the first 0.84 m<sup>2</sup> (9 ft<sup>2</sup>), or fraction thereof, of the countertop or work surface. A receptacle outlet shall be provided for every additional 1.7 m<sup>2</sup> (18 ft<sup>2</sup>), or fraction thereof, of the countertop or work surface.~~

(b) At least one receptacle outlet shall be located within 600 mm (2 ft) of the outer end of a peninsular countertop or permitted to be located as determined by the installer, designer, or building owner. The location of the receptacle outlets shall be in accordance with 210.52(C)(3).

~~A peninsular countertop shall be measured from the connected perpendicular wall.~~

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**210.52 (D) Bathrooms.** Unless prohibited in 406.9(C), at least one receptacle outlet shall be installed in bathrooms within 900 mm (3 ft) of the outside edge of each basin...

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**(E)(3) Balconies, Decks, and Porches.** Balconies, decks, and porches that are within 102 mm (4 in.) horizontally of the dwelling unit shall have at least one receptacle outlet accessible from the balcony, deck, or porch. The receptacle outlet shall not be located more than 2.0 m (6½ ft) above the balcony, deck, or porch walking surface.

*Exception No. 1 to (3): Decks or porches located at grade level with an area of less than 20 sq. ft. are not required to have an additional receptacle installed.*

*Exception No. 2 to (3): Decks or porches located above grade level with a depth of 1 ft. or less are not required to have an additional receptacle installed.*

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~~**(F) Foyers.** Foyers that are not part of a hallway in accordance with 210.52(H) and that have an area that is greater than 5.6 m<sup>2</sup> (60 ft<sup>2</sup>) shall have a receptacle(s) located in each wall space 900 mm (3 ft) or more in width. Doorways, door side windows that extend to the floor, and similar openings shall not be considered wall space.~~

**(I) Alcoves.** In dwelling units, alcoves shall have at least one receptacle installed. These outlets shall be in addition to the required hallway outlets.

As used in this subsection an Alcove is an area extending from, and returning to, the common wall of hallways, foyers, entries, and landings with a depth of not less than 2 ft. and a length of not less than 3 ft.

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**210.63 (A) Heating, Air Conditioning, and Refrigeration Equipment Outlet.**

*Exception No. 1: A receptacle outlet shall not be required at one- and two-family dwellings for the service of evaporative coolers.*

*Exception No. 2: An additional receptacle outlet shall not be required to be installed when replacing existing HVAC equipment if a receptacle outlet is located on the same level and within 75 feet.*

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**210.65 Meeting Rooms.** Entire section: Not adopted by the State of Oregon

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**225.36 Type of Disconnecting Means.** The disconnecting means specified in 225.31 shall be comprised of a circuit breaker, molded case switch, general use switch, snap switch, or other approved means. Where applied in accordance with 250.32(B), Exception No. 1, the disconnecting means shall be suitable for use as service equipment.

*Exception: In single light pole installations that have the connections to the light pole circuit made in a location accessible only to qualified persons, recognized or certified in-line fuse holders shall be allowed, subject to special permission.*

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**230.40 Number of Service-Entrance Conductor Sets. ...**

*Exception No. 3: A one-family dwelling unit and its accessory structures shall be permitted to have one set of service-entrance conductors run to each from a single service drop, set of overhead service conductors, set of under-ground service conductors, or service lateral. When there are continuous metallic paths bonded to the grounding system in the buildings involved, a disconnect, a grounded conductor and an equipment grounding conductor shall be installed to meet the provisions of Article 225, 230, and 250.*

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**230.43 Wiring Methods for 1000 Volts, Nominal, or Less. ...**

*Exception: Items (13) and (15) are limited to traffic control devices and highway lighting poles.*

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**230.67 Surge Protection.** Entire section: Not adopted by the State of Oregon

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**230.70 (A)(1) Readily Accessible Location.**

*Exception: In existing installations where the service panel or meter base is being replaced, the panel and service disconnecting means may remain at the existing location if the following conditions exist:*

*(1) The existing service conductors are of sufficient ampacity to supply the load or the existing conduit is large enough to accommodate new conductors that are of sufficient size to supply the load.*

*(2) All requirements of 110.26 and 240.24 are met. If the installation was made prior to July 1, 1996, the provisions of 240.24 (F) do not apply.*

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**230.71 Maximum Number of Disconnects.** ~~Each service shall have only one disconnecting means unless the requirements of 230.71(B) are met:~~

**(A) General.** The service disconnecting means for each service permitted by 230.2, or for each set of service-entrance conductors permitted by 230.40, Exception No. 1, 3, 4, or 5, shall consist of not more than six switches or sets of circuit breakers, or a combination of not more than six switches and sets of circuit breakers, mounted in a single enclosure, in a group of separate enclosures, or in or on a switchboard or in switchgear. There shall be not more than six sets of disconnects per service grouped in any one location.

For the purpose of this section, disconnecting means installed as part of listed equipment and used solely for the following shall not be considered a service disconnecting means:

- (1) Power monitoring equipment
- (2) Surge-protective device(s)
- (3) Control circuit of the ground-fault protection system
- (4) Power-operable service disconnecting means

**(B) Two to Six Service Disconnecting Means.** Entire section: Not adopted by the State of Oregon.

**(B) Single-Pole Units.** Two or three single-pole switches or breakers, capable of individual operation, shall be permitted on multiwire circuits, one pole for each ungrounded conductor, as one multipole disconnect, provided they are equipped with identified handle ties or a master handle to disconnect all conductors of the service with no more than six operations of the hand.

Informational Note: See 408.36, Exception No. 1 and Exception No. 2, for service equipment in certain panelboards, and see 430.95 for service equipment in motor control centers.

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**230.85 Emergency Disconnects.** Entire section: Not adopted by the State of Oregon.

**230.95 (C) Performance Testing.** The ground-fault protection system shall be performance tested when first installed on site. This testing shall be conducted by a ~~qualified~~ person(s) having proper training and experience required to perform and evaluate the results of such performance testing, using a test process of primary current injection, in accordance with instructions that shall be provided with the equipment. A written record of this testing shall be made, signed by the person(s) performing this test, and shall be available to the authority having jurisdiction.

**240.67 (C) Performance Testing.** The arc energy reduction protection system shall be performance tested ~~primary current injection testing or another approved method~~ when first installed on site. The testing shall be conducted by a ~~qualified~~ person(s) having proper training and experience required to perform and evaluate the results of such performance testing, in accordance with instructions that shall be provided with the equipment.

A written record of this testing shall be made, signed by the person(s) performing this test, and shall be available to the authority having jurisdiction.

**240.87 (C) Performance Testing.** The arc energy reduction protection system shall be performance tested ~~primary current injection testing or another approved method~~ when first installed on site. The testing shall be conducted by a ~~qualified~~ person(s) having proper training and experience required to perform and evaluate the results of such performance testing, in accordance with instructions that shall be provided with the equipment.

A written record of this testing shall be made, signed by the person(s) performing this test, and shall be available to the authority having jurisdiction.

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**250.24 (A)(1) General.**

**Informational Note:** See definitions of *Service Conductors, Overhead*; *Service Conductors, Underground*; *Service Drop*; and *Service Lateral* in Article 100.

**Exception:** When the electric utility has installed a ground fault protection system ahead of the customer's service equipment, no bonding or electrical connection from the grounding electrode system shall be made to the grounded service conductor on the load side of the utility ground fault sensing device. The neutral or grounded service conductor, however, shall be grounded on the line side of the first ground fault sensor in a manner otherwise required at the customer's service equipment. The grounding electrode conductor shall be run to an equipment grounding bus or terminal at the service equipment as long as the equipment grounding conductor and the grounded neutral conductor are not connected to each other at this point. The on-site ground fault test required by 230.95 shall not be performed prior to the above installation requirements. Warning signs shall be installed.

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**250.24 (B) Main Bonding Jumper.**

*Exception No. 3: When the electric utility has installed a ground fault protection system ahead of the customer's service equipment and if the operation of the ground fault system relies on the absence of the main bonding jumper at the service equipment but includes an otherwise satisfactory main bonding jumper as a part of its sensing device, the main bonding jumper shall not be installed at the service equipment which would otherwise bond the grounded service conductor to the equipment ground. The on-site ground fault test required by 230.95 shall not be performed prior to the above installation requirements. Warning signs shall be installed.*

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**250.52 (A)(3) Concrete-Encased Electrode.** A concrete-encased electrode shall consist of at least 6.0 m (20 ft) of either (1) or (2):...

Metallic components shall be encased by at least 50 mm (2 in.) of concrete and shall be located horizontally within that portion of a concrete foundation or footing that is in direct contact with the earth or within vertical foundations or structural components or members that are in direct contact with the earth. If multiple concrete-encased electrodes are present at a building or structure, it shall be permissible to bond only one into the grounding electrode system. Where an addition to a building or structure is remote from the service and the integrity of the grounding electrode system has been verified, connection of the remote concrete encased electrode is not required.

**(B) Not Permitted for Use as Grounding Electrodes.** The following systems and materials shall not be used as grounding electrodes:

- (1) Metal underground gas piping systems
- (2) Aluminum
- (3) The structures and structural reinforcing steel described in 680.26(B)(1) and (B)(2)
- (4) In existing electrical installations, when a service change or upgrade occurs, an existing metal underground water pipe shall not be used unless the metal underground water pipe has been verified as suitable for continued use as a grounding electrode. An existing metal underground water pipe shall be bonded to the new grounding electrode system as required by 250.104(A).

Informational Note: See Chapter 6 of the Oregon Plumbing Specialty Code.

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**250.53 (A)(2) Supplemental Electrode Required.** A single rod, pipe, or plate electrode shall be supplemented by an additional electrode of a type specified in 250.52 (A) (2) through (A) (8). The supplemental electrode shall be permitted to be bonded to one of the following:

- (1) Rod, pipe, or plate electrode
- (2) Grounding electrode conductor
- (3) Grounded service-entrance conductor
- (4) Nonflexible grounded service raceway
- (5) Any grounded service enclosure

*Exception No. 1: If a single rod, pipe, or plate grounding electrode has a resistance to earth of 25 ohms or less, the supplemental electrode shall not be required.*

*Exception No. 2: A supplemental electrode shall not be required for a single-phase, 200 amps or less temporary service.*

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**250.94 (A) The Intersystem Bonding Termination Devices.** An intersystem bonding termination (IBT) or an exposed and supported length of #6 bare copper conductor for connecting intersystem bonding conductors shall be provided external to enclosures at the service equipment or metering equipment enclosure and at the disconnecting means for any additional buildings or structures. If an IBT is used it shall comply with the following:...

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**250.118 Types of Equipment Grounding Conductors. ...**

**(14) Surface metal raceways listed for grounding.**

Where metallic conduit is installed on roof tops, an equipment grounding conductor shall be provided within the raceway and sized per 250.122.

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**300.5 (G) Raceway Seals.** Conduits or raceways through which moisture may contact live parts shall be sealed or plugged at either or both ends. Spare or unused raceways shall also be sealed. ~~Sealants shall be identified for use with the cable insulation, conductor insulation, bare conductor, shield, or other components.~~

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**300.9 Raceways in Wet Locations Abovegrade.** Where raceways are installed in wet locations abovegrade, the interior of these raceways shall be considered to be a wet location. Insulated conductors and cables installed in raceways in wet locations abovegrade shall comply with 310.10(C).

*Exception: The interior of raceways up to 8 ft in length installed solely to provide physical protection shall not be considered a wet location.*

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**311.40 Support.** Type MV cable terminated in equipment or installed in pull boxes or vaults shall be secured and supported by metallic or nonmetallic supports suitable to withstand the weight by cable ties ~~listed and identified for securement and support~~, or other approved means, at intervals not exceeding 1.5 m (5 ft) from terminations or a maximum of 1.8 m (6 ft) between supports.

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**314.27 (C) Boxes at Ceiling-Suspended (Paddle) Fan Outlets. ...**

~~Outlet boxes mounted in the ceilings of habitable rooms of dwelling occupancies~~ Where spare, separately switched, ungrounded conductors are provided to a ceiling-mounted outlet box, in a location acceptable for the installation of a ceiling-suspended (paddle) fan in one-family, two-family, or multifamily dwellings, the outlet box or outlet box system shall be comply with one of the following:(1) listed for the sole support of ceiling-suspended (paddle) fans.

~~(2) An outlet box complying with the applicable requirements of 314.27 and providing access to structural framing capable of supporting of a ceiling-suspended (paddle) fan bracket or equivalent~~

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**320.30 (A) General.** Type AC cable shall be supported and secured by staples; cable ties ~~listed and identified for securement and support~~; straps, hangers, or similar fittings; or other approved means designed and installed so as not to damage the cable.

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**330.30 (A) General.** Type MC cable shall be supported and secured by staples; cable ties ~~listed and identified for securement and support~~; straps, hangers, or similar fittings; or other approved means designed and installed so as not to damage the cable.

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**334.12 (A) Types NM and NMC.** Types NM and NMC cables shall not be permitted as follows:

(2) Exposed within a dropped or suspended ceiling cavity in other than one- and two-family and multifamily dwellings.

*Exception to (2): Types NM and NMC cables may be installed within a dropped or suspended ceiling cavity in structures other than one- and two-family and multifamily dwellings when installed in accordance with 334.15.*

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**334.15 (B) Protection from Physical Damage.** Cable shall be protected from physical damage where necessary by rigid metal conduit, intermediate metal conduit, electrical metallic tubing, Schedule 80 PVC conduit, type RTRC marked with the suffix -XW, or other approved means. Where passing through a floor, the cable shall be enclosed in rigid metal conduit, intermediate metal conduit, electrical metallic tubing, Schedule 80 PVC conduit, type RTRC marked with the suffix -XW, or other approved means extending at least 150 mm (6 in.) above the floor.

Type NMC cable installed in the shallow chases or grooves in masonry, concrete, or adobe, shall be protected in accordance with the requirements in 300.4(F) and covered with plaster, adobe, or similar finish.

Exposed nonmetallic sheathed cable shall be protected where it is installed horizontally less than 8 feet above the floor. Exposed nonmetallic sheathed cable less than 8 feet above the floor that enters the top or bottom of a panel board shall be protected from physical damage by conduit, raceway, ½-inch plywood, ½-inch drywall, or other approved means.

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~~(C) In Unfinished Basements and Crawl Spaces.~~ Where cable is run at angles with joists in unfinished basements ~~and crawl spaces~~, it shall be permissible to secure cables not smaller than two 6 AWG or three 8 AWG conductors directly to the lower edge of the joists. Smaller cables shall be run either through bored holes in joists or on running boards. Nonmetallic-sheathed cable installed on the wall of an unfinished basement shall be permitted to be installed in a listed conduit or tubing or shall be protected in accordance with 300.4.

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**334.30 Securing and Supporting.** Nonmetallic-sheathed cable shall be supported and secured by staples; cable ties ~~listed and identified for securement and support~~; or straps, hangers, or similar fittings designed and installed so as not to damage the cable, at intervals not exceeding 1.4 m (4 ½ ft) and within 300 mm (12 in.) of every cable entry into enclosures such as outlet boxes, junction boxes, cabinets, or fittings. Flat cables shall not be stapled on edge.

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- 336.10 Uses Permitted.** Type TC cable shall be permitted to be used as follows:
- (9) ~~In one and two family dwelling units, Type TC-ER-JP cable containing both power and control conductors shall be permitted for branch circuits and feeders. Type TC-ER-JP cable used as interior wiring shall be installed per the requirements of Part II of Article 334 and where installed as exterior wiring shall be installed per the requirements of Part II of Article 340. ...~~
- 
- 337.30 Securing and Supporting.** Type P cable shall be supported and secured by cable ties, ~~listed and identified for securement and support~~; straps, hangers, or similar fittings; or other approved means designed and installed so as not to damage the cable.
- 
- 348.30 (A) Securely Fastened.** FMC shall be securely fastened in place by an approved means within 300 mm (12 in.) of each box, cabinet, conduit body, or other conduit termination and shall be supported and secured at intervals not to exceed 1.4 m (4½ ft). ~~Where used, cable ties shall be listed and be identified for securement and support.~~
- 
- 350.30 (A) Securely Fastened.** LFMC shall be securely fastened in place by an approved means within 300 mm (12 in.) of each box, cabinet, conduit body, or other conduit termination and shall be supported and secured at intervals not to exceed 1.4 m (4½ ft). ~~Where used, cable ties shall be listed and be identified for securement and support.~~
- 
- 356.30 356.30 Securing and Supporting. ...**
- (1) Where installed in lengths exceeding 1.8 m (6 ft), the conduit shall be securely fastened at intervals not exceeding 900 mm (3 ft) and within 300 mm (12 in.) on each side of every outlet box, junction box, cabinet, or fitting. ~~Where used, cable ties shall be listed as suitable for the application and for securing and supporting.~~
- 
- 362.30 (A) Securely Fastened.** ENT shall be securely fastened at intervals not exceeding 900 mm (3 ft). In addition, ENT shall be securely fastened in place within 900 mm (3 ft) of each outlet box, device box, junction box, cabinet, or fitting where it terminates. ~~Where used, cable ties shall be listed as suitable for the application and for securing and supporting.~~
- 
- 392.30 (B) Cables and Conductors.** Cables and conductors shall be secured to and supported by the cable tray system in accordance with (1), (2), and (3), ~~and (4)~~ as applicable: ...
- ~~(4) Cable ties shall be listed and identified for the application and for securement and support.~~
- 
- 393.14 (A) General Requirements.** Support wiring shall be installed in a neat and workmanlike manner. Cables and conductors installed exposed on the surface of ceilings and sidewalls shall be supported by the building structure in such a manner that the cable is not damaged by normal building use. Such cables shall be supported by straps, staples, hangers, cable ties ~~listed and identified for securement and support~~, or similar fittings designed and installed so as not to damage the cable.
- 
- 394.12 Uses Not Permitted.** Concealed knob-and-tube wiring shall not be used in the following:
- (5) Hollow spaces of walls, ceilings, and attics where such spaces are insulated by loose, rolled, or foamed-in-place insulating material that envelops the conductors
- Exception:*** *The provisions of 394.12 shall not be construed to prohibit the installation of loose or rolled thermal insulating materials in spaces containing existing knob-and-tube wiring, provided all the following conditions are met:*
- (1) The visible wiring shall be inspected by a certified electrical inspector or a general supervising electrician employed by a licensed electrical contractor.*
  - (2) All defects found during the inspection shall be repaired prior to the installation of insulation.*
  - (3) Repairs, alterations or extensions of or to the electrical systems shall be inspected by a certified electrical inspector.*
  - (4) The insulation shall have a flame spread rating not to exceed 25 and a smoke density not to exceed 450 when tested in accordance with ASTM E84-91A 2017 Edition. Foamed in place insulation shall not be used with knob-and-tube wiring.*
  - (5) Exposed splices or connections shall be protected from insulation by installing flame resistant, non-conducting, open top enclosures which provide three inches, but not more than four inches side clearances, and a vertical clearance of at least four inches above the final level of the insulation.*
  - (6) All knob-and-tube circuits shall have overcurrent protection in compliance with the 60 degree C column of Table 310.15(B)16 of NFPA 70-2017. Overcurrent protection shall be either circuit breakers or type S fuses. The type S fuse adapters shall not accept a fuse of an ampacity greater than permitted in 240.53.*
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400.10 (A)(12) Listed assemblies of fixtures and controllers, approved by the Federal Aviation Administration.

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400.12 **Uses not permitted.**

(5) Where concealed by walls, floors, or ceilings or located above suspended or dropped ceilings

*Exception No. 1 to (5): Flexible cord and flexible cable shall be permitted if contained within an enclosure for use in other Spaces Used for Environmental Air as permitted by 300.22(C)(3).*

*Exception No. 2 to (5): In other than Spaces Used for Environmental Air, cord sets and power-supply cords shall be permitted above accessible suspended or dropped ceilings if part of a listed assembly, other than a luminaire, and the cord length does not exceed 1.8 m (6 ft).*

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406.4 (D)(4) **Arc-Fault Circuit Interrupter Protection.** Not adopted by the State of Oregon.

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406.9 (C) **Bathtub and Shower Space.** Receptacles shall not be installed within or directly above a bathtub or shower stall, a zone measured 900 mm (3 ft) horizontally and 2.5 m (8 ft) vertically from the top of the bathtub rim or shower stall threshold. The identified zone is all-encompassing and shall include the space directly over the tub or shower stall.

*Exception: In bathrooms with less than the required zone the receptacle(s) shall be permitted to be installed opposite the bathtub rim or shower stall threshold on the farthest wall within the room.*

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406.12 **Tamper-Resistant Receptacles.** All 15- and 20-ampere, 125- and 250-volt nonlocking-type receptacles in the areas specified in 406.12(1) through (4) and (7) shall be listed tamper-resistant receptacles. (406.12(5), (6) and (8) are not adopted by the State of Oregon)

- (1) Dwelling units, including attached and detached garages and accessory buildings to dwelling units, and common areas of multifamily dwellings in all areas specified in 210.52 and 550.13
  - (2) Guest rooms and guest suites of hotels, motels, and their common areas
  - (3) Child care facilities
  - (4) Preschools and elementary education facilities
  - ~~(5) Business offices, corridors, waiting rooms and the like in clinics, medical and dental offices and outpatient facilities~~
  - ~~(6) Subset of assembly occupancies described in 518.2 to include places of waiting transportation, gymnasiums, skating rinks, and auditoriums~~
  - (7) Dormitories
  - ~~(8) Assisted living facilities~~
- 

408.8 **Reconditioning of Equipment.** Reconditioning of equipment within the scope of this article shall be limited as described in 408.8(A) and (B). The reconditioning process shall use design qualified parts verified under applicable standards and be performed in accordance with any instructions provided by the manufacturer. If equipment has been damaged by fire, products of combustion, or water, it shall be specifically evaluated by its manufacturer, ~~or~~ a qualified testing laboratory, or the signing supervisor prior to being returned to service.

(A) **Panelboards.** Panelboards shall not be permitted to be reconditioned. This shall not prevent the replacement of a panelboard within an enclosure. ~~In the event the replacement has not been listed for specific enclosure and the available fault current is greater than 10,000 amperes, the completed work shall be field labeled, and any previously applied listing marks on the cabinet that pertain to the panelboard shall be removed.~~

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408.36 **408.36 Overcurrent Protection.** In addition to the requirement of 408.30, a panelboard shall be protected by an overcurrent protective device having a rating not greater than that of the panelboard. This overcurrent protective device shall be located within or at any point on the supply side of the panelboard.

*Exception No. 1: Individual protection shall not be required for a panelboard used as service equipment with multiple disconnecting means in accordance with 230.71. In panelboards protected by three or more main circuit breakers or sets of fuses, the circuit breakers or sets of fuses shall not supply a second bus structure within the same panelboard assembly.*

*Exception No. 2: Individual protection shall not be required for a panelboard protected on its supply side by two main circuit breakers or two sets of fuses ~~in other than service equipment~~, having a combined rating not greater than that of the panelboard. A panelboard constructed or wired under this exception shall not contain more than 42 overcurrent devices. For the purposes of determining the maximum of 42 overcurrent devices, a 2-pole or a 3-pole circuit breaker shall be considered as two or three overcurrent devices, respectively.*

*Exception No. 3: For existing panelboards, individual protection shall not be required for a panelboard used as service equipment for an individual residential occupancy.*

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410.7 **Reconditioned Equipment.** Not adopted by the State of Oregon.

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410.69 **Identification of Control Conductor Insulation.** Not adopted by the State of Oregon.

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410.170 **General.** Luminaires complying with Parts I, II, III, IV, V, VI, VII, IX, X, XI, and XII of this article shall be permitted to be used for horticultural lighting. Part XVI shall additionally apply to lighting equipment specifically identified for horticultural use and evaluated in accordance with the UL Product Spec category IFAU.

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422.5 (A) **General.** Appliances identified in 422.5(A)(1) through (A)(7) rated 150 volts or less to ground and 60 amperes or less, single- or 3-phase, shall be provided with Class A GFCI protection for personnel. Multiple Class A GFCI protective devices shall be permitted but shall not be required.

(6) Sump pumps and sewage pumps

Exception to (6): Receptacle ground-fault protection shall not be required for a single receptacle if the receptacle is labeled as "not GFCI protected."

~~(7) Dishwashers~~

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422.34 **Unit Switch(es) as Disconnecting Means.** A unit switch(es) with a marked-off position that is a part of an appliance and disconnects all ungrounded conductors shall be permitted as the disconnecting means required by this article where other means for disconnection are provided in occupancies specified in 422.34 (A) through (D). Unit switches on ranges, ovens and dishwashers shall not be considered the disconnect required by this section.

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445.6 **Listing (Generators).** Entire section: Not adopted by the State of Oregon.

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445.18 (D) **Emergency Shutdown in One- and Two-Family Dwelling units.** Not adopted by the State of Oregon.

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450.43 (C) **Locks.** Doors shall be equipped with locks, and doors shall be kept locked, with access being allowed only to qualified persons. Personnel doors shall open in the direction of egress and be equipped with ~~listed~~ fire exit hardware. Informational Note: See the OESC Section 110.26(C)(3) amendment.

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480.10 (E) **Egress.** Personnel doors intended for entrance to, and egress from, rooms designated as battery rooms shall open in the direction of egress and shall be equipped with ~~listed~~-panic or ~~listed~~-fire exit hardware. Informational Note: See the OESC Section 110.26(C)(3) amendment.

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490.49 **Reconditioned Switchgear.** Switchgear, or sections of switchgear, within the scope of this article shall be permitted to be reconditioned. The reconditioning process shall use design qualified parts verified under applicable standards and be performed in accordance with any instructions provided by the manufacturer. Reconditioned switchgear shall be listed or field labeled as *reconditioned*, and previously applied listing marks, if any, within the portions reconditioned shall be removed. If equipment has been damaged by fire, products of combustion, or water, it shall be specifically evaluated by its manufacturer, ~~or~~ a qualified testing laboratory, or the signing supervisor prior to being returned to service.

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500.8 **Equipment.**

(A) **Suitability.** "Suitability of identified equipment" shall be determined by one of the following: as used in 500.8 (A) means that equipment meets the requirements of ORS 479.760.

~~(1) Equipment listing or labeling~~

~~(2) Evidence of equipment evaluation from a qualified testing laboratory or inspection agency concerned with product evaluation~~

~~(3) Evidence acceptable to the authority having jurisdiction such as a manufacturer's self-evaluation or an owner's engineering judgment.~~

~~Informational Note: Additional documentation for equipment may include certificates demonstrating compliance with applicable equipment standards, indicating special conditions of use, and other pertinent information. Guidelines for certificates may be found in ANSI/ISA 12.00.02, Certificate Standard for AEx Equipment for Hazardous (Classified) Locations.~~

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**517.10 (B) Not Covered.** Part II shall not apply to the following:

- (1) Business offices, corridors, waiting rooms, and the like in clinics, medical and dental offices, and outpatient facilities.
- (2) Areas of nursing homes and limited care facilities wired in accordance with Chapters 1 through 4 of this *Code* where these areas are used exclusively as patient sleeping rooms.
- (3) Areas used exclusively for any of the following purposes:
  - a. Intramuscular injections (immunizations)
  - b. Psychiatry and psychotherapy
  - c. Alternative medicine (*i.e.* [Acupuncture](#), [Chiropractic therapy](#), *etc.*)
  - d. Optometry
  - e. [Massage therapy](#)
  - f. [Physical therapy](#)
  - g. [Audiology](#)

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**517.13 (A) Wiring Methods. ...**

*Exception: Type PVC conduit may be installed underground or embedded in concrete in Dental Clinics located in type B occupancies, provided that a wire type equipment grounding conductor is installed to meet the requirements of 250.118 and a separate insulated equipment grounding conductor is installed to meet the requirements of 517.13(B).*

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**517.17 (D) Testing.** When equipment ground-fault protection is first installed, each level shall be performance tested to ensure compliance with 517.17(C). This testing shall be conducted by a ~~qualified~~ person(s) [having proper training and experience required to perform and evaluate the results of such performance testing](#), using a test process in accordance with the instruction provided with the equipment. A written record of this testing shall be made, [signed by the person\(s\) performing this test](#), and shall be available to the authority having jurisdiction.

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**518.6 Illumination.** ~~Not adopted by the State of Oregon. Illumination shall be provided for all working spaces about fixed service equipment, switchboards, switchgear, Panelboards, or motor control centers installed outdoors that serve assembly occupancies. Control by automatic means only shall not be permitted. Additional lighting outlets shall not be required where the workspace is illuminated by an adjacent light source.~~

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**547.5 (G) Receptacles.** All 125-volt, single phase, 15- and 20-ampere general-purpose receptacles installed in the locations listed in (1) through (4) shall have ground-fault circuit-interrupter protection:

GFCI protection shall not be required for a single receptacle supplying a dedicated load and marked “not GFCI protected”. A GFCI protected receptacle shall be located within 900 mm (3 ft) of the non-GFCI protected receptacle.

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**547.10 (A) Where Required.** Equipotential planes shall be installed where required in (A)(1) and (A)(2).

- (1) **Indoors.** Equipotential planes shall be installed [in areas designated by the owner. Where installed where required equipotential planes shall comply with in-547.10\(A\)\(1\) and \(A\)\(2\).](#)
- (2) **Outdoors.** Equipotential planes shall be installed in concrete slabs where metallic equipment is located that may become energized and is accessible to livestock.

The equipotential plane shall encompass the area where the livestock stands while accessing metallic equipment that may become energized.

*Exception to (A)(1) and (A)(2): Where the electrical system is designed by a professional engineer, as defined in ORS 672.002(2), and the electrical equipment is isolated and not accessible to livestock, and non-electrical metallic equipment is not likely to become energized.*

[Informational Note: See the definition of equipment in Article 100.](#)

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**555.35 (A)(3) Feeder and Branch-Circuit Conductors with GFPE. ...**

*Exception No. 1 to (3): Transformer secondary conductors of a separately derived system that do not exceed 3 m (10 ft) and are installed in a raceway shall be permitted to be installed without ground-fault protection. This exception shall also apply to the supply terminals of the equipment supplied by the transformer secondary conductors.*

*Exception No. 2 to (3): Modifications to existing systems shall not require GFPE.*

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**590.8 Overcurrent Protective Devices.**

(A) **Where reused.** Where overcurrent protective devices that have been previously used are installed in a temporary installation, these overcurrent protective devices shall be ~~examined to ensure these devices have been~~ properly installed, ~~properly~~ and maintained, ~~and there is~~ with no evidence of impending failure.

(B) **Service Overcurrent Protective Devices.** Not adopted by the State of Oregon. ~~Overcurrent protective devices for solidly grounded wye electrical services of more than 150 volts to ground but not exceeding 1000 volts phase to phase shall be current limiting.~~

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**600.33 (B)(1)** Wiring shall be installed and supported in a neat and workmanlike manner. Cables and conductors installed exposed on the surface of ceilings and sidewalls shall be supported by the building structure in such a manner that the cable is not damaged by normal building use. The cable shall be supported and secured at intervals not exceeding 1.8 m (6 ft). Such cables shall be supported by straps, staples, hangers, cable ties, or similar fittings designed and installed so as not to damage the cable. The installation shall also comply with 300.4~~(D)~~.

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**620.1 Scope. ...**

Informational Note No. 1: For further information, see ASME A17.1 2010/CSA B44 10, Safety code for Elevators and Escalators. ~~the Oregon Elevator Specialty Code~~ as adopted in OAR chapter 918, division 400.

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**620.2 Separate Branch Circuit.** A circuit dedicated solely for the purpose intended without other devices, systems or equipment connected to the circuit.

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**620.5 Working Clearances. ...**

Where conditions of maintenance and supervision ensure that only qualified persons examine, adjust, service, and maintain the equipment, the clearance requirements of 110.26(A) shall not be required where any of the conditions in 620.5(A) through (D) are met. Where machine room doors swing inward, the arc of the door shall not encroach on those clearances required by 110.26(A).

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**620.6 Ground-Fault Circuit-Interrupter Protection for Personnel. ...**

~~A permanently installed sump pump shall be permanently wired or shall be supplied by a single receptacle that is ground fault circuit interrupter protected.~~

A single receptacle supplying a permanently installed sump pump shall not require ground-fault circuit-interrupter protection.

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**620.11 Insulation of Conductors.** The insulation of conductors shall comply with 620.11(A) through (D).

(A) **Hoistway Door Interlock Wiring.** The conductors to the hoistway door interlocks from the hoistway riser shall be shall be one of the following:

- (1) Flame retardant and suitable for temperature of not less than 200°C (392°F). Conductors shall be Type SF or equivalent.
- (2) Physically protected using an approved method, such that the conductor assembly is flame retardant and suitable for a temperature of not less than 200°C (392°F).

**Exception:** *Where not required by the Oregon Elevator Specialty Code (ASME A17.1).*

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**620.37 (A) Uses Permitted. ...**

Conduits and raceways necessary for the connection of such devices shall only enter hoistways and machine rooms to the extent necessary to connect the device(s) attached thereto.

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**620.51 (B) Operation.** No provision shall be made to open or close this disconnecting means from any other part of the premises. If sprinklers are installed in hoistways, machine rooms, control rooms, machinery spaces, or control spaces, the disconnecting means shall be permitted to automatically open the power supply to the affected elevator(s) prior to the application of water. No provision shall be made to automatically close this disconnecting means. Power shall only be restored by manual means.

Where provided, this disconnecting means shall be located in the elevator control room or control space. The installation shall comply with the requirements of NFPA 72 as adopted in OAR 918-306-0005.

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**(C) Location.** The disconnecting means shall be located where it is readily accessible to qualified persons. Where machine rooms are provided, the disconnecting means required by 620.51 shall be located within 610 mm (24 inches) of the open side of the machine room access door. Where more than one disconnect is required for a multi-car group, the disconnects shall be adjacent to each other with the first disconnect located within 610 mm (24 inches) of the open side of the machine room access door. Measurement shall be taken from the edge of the disconnect nearest the machine room door.

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**(C)(4) On Platform Lifts and Stairway Chairlifts.** On platform lifts and stairway chairlifts, the disconnecting means shall be located within sight of the motor controller or lift and within 1.83 m (six feet) of the motor controller. The disconnecting means shall not be located in the runway enclosure.

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**620.51 (C)(5) Residential installations.** A disconnecting means shall be required to be placed within sight of the controller or lift. Where such devices are supplied with flexible cord and plug type connectors, the supply receptacle shall be switched by the disconnecting means. The disconnecting means does not require overcurrent protection, provided such protection is supplied by the branch circuit overcurrent device. In all other respects the disconnecting means shall comply with the requirements of this section.

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**620.86 Flexible Metal Conduit.** Where flexible metal conduit is utilized between the disconnecting means specified in 620.51 and the elevator controller, an equipment grounding conductor shall be provided within the raceway and sized per 250.122 and Table 250.122.

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**645.2 Critical Operations Data System.** An information technology equipment system that has been designated by the building owner as requires requiring continuous operation. for reasons of public safety, emergency management, national security, or business continuity.

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**625.42 Rating. ...**

Informational Note: See Statewide Alternate Method 09-01 for the use of a demand factor table for calculating electrical vehicle charging equipment services and feeders.

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**645.10 Disconnecting Means.** An approved means shall be provided to disconnect power to all electronic equipment in the information technology equipment room or in designated zones within the room. There shall also be a similar approved means to disconnect the power to all dedicated HVAC systems serving the room or designated zones and shall cause all required fire/smoke dampers to close. The disconnecting means shall be grouped and identified and shall be readily accessible at the principal exit doors, or shall comply with either 645.10(A) or (B).

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**670.6 Surge Protection.** Entire section: Not adopted by the State of Oregon. Industrial machinery with safety interlock control devices not effectively protected from voltage surges on the incoming supply circuit shall have surge protection installed.

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**680.4 Inspections After Installation.** Not adopted by the State of Oregon. The authority having jurisdiction shall be permitted to require periodic inspection and testing.

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**680.21 (D) Pool Pump Motor Replacement.** Not adopted by the State of Oregon. Where a pool pump motor in 680.21(C) is replaced for maintenance or repair, the replacement pump motor shall be provide with ground-fault circuit-interrupter protection.

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**682.15 Ground-Fault Protection.** The GFCI requirements in this article, unless otherwise noted, shall be in addition to the requirements in 210.8. Ground-fault protection shall be provided in accordance with 682.15(A) and (B). The protection device shall be located not less than 300 mm (12 in.) above the established electrical datum plane.

~~(A) Outlets. Not adopted by the State of Oregon. Outlets supplied by branch circuits not exceeding 150 volts to ground and 60 amperes, single phase, shall be provided with ground fault circuit interrupter protection for personnel.~~

**(B) Feeder and Branch Circuits on Piers.** Feeder and branch-circuit conductors that are installed on piers shall be provided with ground-fault protection not exceeding ~~100~~ 30 mA. Coordination with downstream ground-fault protection shall be permitted at the feeder overcurrent protective device.

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**680.42 (B) Bonding.** [equipotential bonding not required where (1) through (4) are met:]

(4) The top rim of the spa or hot tub shall be at least 710 mm (28 in.) above all perimeter surfaces that are within 760 mm (30 in.), measured horizontally from the spa or hot tub. The height of nonconductive external steps or deck for exit and entry to or exit from the self-contained spa shall not be used to reduce or increase this rim height measurement.

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**690.12 Rapid Shutdown of PV Systems on Buildings.**

PV system circuits installed on or in buildings shall include a rapid shutdown function to reduce shock hazard for firefighters in accordance with 690.12(A) through (D). Where an addition to an existing system(s) on or in a building is installed, a rapid shutdown function shall be provided for the existing system(s) on or in the building. The provisions of 690.12(B)(2) shall not apply to the existing system(s).

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**690.47 Grounding Electrodes and Grounding Electrode Conductors.** Additional grounding electrodes shall be permitted to be installed in accordance with 250.52 and 250.54. Grounding shall be permitted to be connected directly to the PV module frame(s) or support structure. A grounding electrode conductor shall be sized according to 250.66, and shall not be smaller than 6 AWG copper or 4 AWG aluminum. ...

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**700 Emergency Systems.**

Building Officials and inspectors administering and enforcing the state building code under ORS 455.148 and 455.150, shall ensure compliance with Sections 700.32, 701.27, or 708.54 by verifying receipt of a certificate signed by the Engineer of Record or the Signing Supervisor stating that the proposed installation complies with the selective coordination requirements of this code.

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**700.3 (F) Temporary Source of Power for Maintenance or Repair of the Alternate Source of Power.** If the building owner deems it necessary and the emergency system relies on a single alternate source of power, which will be disabled for maintenance or repair, the emergency system shall include permanent switching means to connect a portable or temporary alternate source of power, which shall be available for the duration ...

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**700.32 Selective Coordination.** Emergency system(s) overcurrent devices shall be selectively coordinated with all supply side overcurrent protective devices.

For the purposes of this section, supply side overcurrent protection means those protective devices on the emergency system supply side and not on the normal power supply side. The protection shall be selectively coordinated using the higher of the normal power supply fault current levels or emergency system fault current levels. Overcurrent devices shall be selectively coordinated for .01 seconds and greater.

*Exception No. 1: Selective coordination shall not be required between two overcurrent devices located in series if no loads are connected in parallel with the downstream device.*

*Exception No. 2: The requirements for selective coordination shall meet the coordination requirements in effect at the time of the original installation when the installation is being altered, maintained or repaired. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other protective devices.*

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**701.32 Selective Coordination.** Legally required standby system(s) overcurrent devices shall be selectively coordinated with all supply side overcurrent protective devices.

For the purposes of this section, supply side overcurrent protection means those protective devices on the emergency system supply side and not on the normal power supply side. The protection shall be selectively coordinated using the higher of the normal power supply fault current levels or emergency system fault current levels. Overcurrent devices shall be selectively coordinated for .01 seconds and greater.

***Exception No. 1:** Selective coordination shall not be required between two overcurrent devices located in series if no loads are connected in parallel with the downstream device.*

***Exception No. 2:** The requirements for selective coordination shall meet the coordination requirements in effect at the time of the original installation when the installation is being maintained, altered or repaired. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other protective devices.*

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**702.4 (B)(2) Automatic Transfer Equipment. ...**

***Exception:** In one- and two-family dwellings manual management of the connected load shall be permitted.*

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**702.7 (A) Standby.** A sign shall be placed at the service-entrance equipment ~~for commercial and industrial installations~~ that indicates the type and location of each on-site optional standby power source. ~~A sign shall not be required for individual unit equipment for standby illumination. For one- and two-family dwelling units, a sign shall be placed at the disconnecting means required in 230.85 that indicates the location of each permanently installed on-site optional stand-by power source disconnect or means to shut down the prime mover as required in 445.18(D).~~

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**708.1 Scope. ...** Critical operations ~~areas and critical operations~~ power systems are ~~those systems so classed by municipal, state, federal, or other codes by any governmental agency having jurisdiction or by facility engineering documentation establishing the necessity for such a~~ designated by the owner of the facility. A building official has no authority to designate or require designation of an area as requiring a critical operations power system. ~~These~~ Critical operations power systems can include but are not limited to power systems, HVAC, fire alarm, security, communications, and signaling for designated critical operations areas.

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**708.54 Selective Coordination.** Critical operations power system(s) overcurrent devices shall be selectively coordinated with all supply side overcurrent protective devices.

For the purposes of this section, supply side overcurrent protection means those protective devices on the emergency system supply side and not on the normal power supply side. The protection shall be selectively coordinated using the higher of the normal power supply fault current levels or emergency system fault current levels. Overcurrent devices shall be selectively coordinated for .01 seconds and greater.

***Exception No. 1:** Selective coordination shall not be required between two overcurrent devices located in series if no loads are connected in parallel with the downstream device.*

***Exception No. 2:** The requirements for selective coordination shall meet the coordination requirements in effect at the time of the original installation when the installation is being maintained, altered or repaired. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other protective devices.*

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**725.24 Mechanical Execution of Work.** Class 1, Class 2, and Class 3 circuits shall be installed in a neat and workmanlike manner. Cables and conductors installed exposed on the surface of ceilings and sidewalls shall be supported by the building structure in such a manner that the cable will not be damaged by normal building use. Such cables shall be supported by straps, staples, hangers, cable ties, or similar fittings designed and installed so as not to damage the cable. This installation shall also comply with 300.4 and 300.11.

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**760.24 (A) [Mechanical Execution of Work] General.** Fire alarm circuits shall be installed in a neat workmanlike manner. Cables and conductors installed exposed on the surface of ceilings and sidewalls shall be supported by the building structure in such a manner that the cable will not be damaged by normal building use. Such cables shall be supported by straps, staples, cable ties, hangers, or similar fittings designed and installed so as not to damage the cable. The installation shall also comply with 300.4 and 300.11.

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**760.41 (B) Branch Circuit.** The branch circuit supplying the fire alarm equipment(s) shall supply no other loads. The location of the branch-circuit overcurrent protective device shall be permanently identified at the fire alarm control unit. The circuit disconnecting means shall have red identification, ~~shall be accessible only to qualified personnel,~~ and shall be identified as "FIRE ALARM CIRCUIT." The red identification shall not damage the overcurrent protective devices or obscure the manufacturer's markings. This branch circuit shall not be supplied through ground-fault circuit interrupters or arc-fault circuit-interrupters.

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**760.121 (B) Branch Circuit.** The branch circuit supplying the fire alarm equipment(s) shall supply no other loads. The location of the branch-circuit overcurrent protective device shall be permanently identified at the fire alarm control unit. The circuit disconnecting means shall have red identification, ~~shall be accessible only to qualified personnel,~~ and shall be identified as "FIRE ALARM CIRCUIT." The red identification shall not damage the overcurrent protective devices or obscure the manufacturer's markings. This branch circuit shall not be supplied through ground-fault circuit interrupters or arc-fault circuit-interrupters.

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**770.48 (B) Nonconductive Cables in Raceway.** Unlisted nonconductive outside plant optical fiber cables shall be permitted to enter the building from the outside and shall be permitted to be installed in any of the following raceways:

- (1) Intermediate metal conduit (IMC)
  - (2) Rigid metal conduit (RMC)
  - (3) Rigid polyvinyl chloride conduit (PVC)
  - (4) Electrical metallic tubing (EMT)
  - (5) Electrical Nonmetallic Conduit (ENT)
-

**State of Oregon**

**Board memo**

**Building Codes Division**

**March 26, 2020**

**To:** Electrical and Elevator Board

**From:** Todd R. Smith, senior policy advisor stakeholder outreach, Administration

**Subject:** Washington General Journeyman Reciprocity Agreement

**Action Requested:**

Review and recommendation on the request from the Oregon State Association of Electrical Workers (OSAEW) and National Electrical Contractors Association - Oregon Columbia Chapter (NECA) to approve a reciprocity agreement with Washington for the general journeyman electrical license and associated rulemaking.

**Background:**

At the May 28, 2019, meeting, the board received and approved a draft reciprocal agreement with Washington for general journeyman electricians. The board directed division staff to obtain approval from Washington and to make any non-substantive changes necessary to enact the agreement.

Oregon administrative rule requires reciprocal license applicants to have obtained their license by examination in the reciprocal state with a minimum score of 75percent. Washington requires a minimum score of 70 percent to pass their general journeyman examination. In other states where the minimum passing score is below 75 percent the board has required reciprocal applicants to provide their examination score to verify the applicant meets Oregon's 75 percent requirement. However, Washington is unable to provide specific examination scores, and is only able to provide proof that an applicant passed the Washington examination. The minimum exam score requirement was a substantive change to the reciprocal agreement approved by the board, and the division was not able to move forward with implementing the reciprocal agreement.

The division, on behalf of the board, received a joint letter from OSAEW and NECA dated February 26, 2020, urging the board to recognize Washington's minimum examination score for reciprocity purposes. This letter is included in the board materials for board consideration.

If the board chooses to recognize Washington's minimum examination score for reciprocity purposes, the board will need to adjust administrative rule as well the reciprocity agreement to create a legal path for the division to implement reciprocity with Washington for general journeyman electrician licenses. Because the board had already approved the previous draft reciprocity agreement with Washington, the division has prepared draft rules and a new draft reciprocity agreement for board review and approval.

If the board chooses not to recognize Washington's minimum examination score for reciprocity purposes, no further board action is necessary.

**Draft Reciprocity Standards Summary:**

In order to qualify for reciprocity, applicants must have qualified for their journeyman license by all of the following:

- Completion of an approved apprenticeship program that included working a minimum of four (4) years (8,000 hours) in the electrical trade under the direct supervision of a licensed journeyman electrician and completion of four (4) years of electrical apprenticeship vocational education (576 classroom hours minimum).
- Received their general journeyman electrician license through examination with the minimum passing score as required in the reciprocal state. Reciprocal applicants must not have taken and failed the Oregon general journeyman electrician examination within the last two (2) years.
- Have worked under their license in the reciprocal state for a minimum of six months (1,000 hours).
- Have an active license with no violations or conditions attached within the last three years.

**Motion to approve:**

- Approve Washington's minimum examination score for reciprocity purposes, including the draft journeymen electrician reciprocal license agreement and forwarding the rule to the Administrator for rulemaking and subsequent adoption, with the allowance that additional non-substantive changes may be made to the draft journeyman electrician reciprocal agreement as necessary

**Motion to amend and approve:**

- Approve Washington's minimum examination score for reciprocity purposes, including amendments to the draft journeymen electrician reciprocal license agreement and rule and forwarding the rule to the Administrator for public rulemaking and subsequent adoption, with the allowance that additional non-substantive changes may be made to the draft journeyman electrician reciprocal agreement as necessary

**Option to disapprove:**

(No formal motion is required to disapprove Washington's minimum examination score for reciprocity purposes. However, a board member may choose to make one.)

- Disapprove Washington's minimum examination score for reciprocity purposes

## General Journeyman Electrician Reciprocal Standards

*Draft for discussion purposes only*

3/26/20

### 918-030-0045

#### Application — Oregon Reciprocal License Requirements

(1) The purpose of these rules is to assist the citizens of Oregon and reciprocating states with substantially similar electrical and plumbing licensing criteria to obtain a license without examination.

(2) For the purposes of this rule the following definitions apply:

(a) “Reciprocal Applicant” means a person applying for a reciprocal license.

(b) “Reciprocal License” means a license issued by Oregon to a person who qualifies under these rules.

(c) “Reciprocal State” means a state with a reciprocal licensing agreement with Oregon.

(d) “Work Experience” refers to work experience obtained through a registered apprenticeship program. Work experience may also refer to work experience verified in the manner established by OAR 918-030-0040 or 918-030-0050.

(3) To qualify for a license under these rules, a reciprocal applicant must prove that they:

(a) Possess an equivalent or higher license from the reciprocal state that is current and active with no violations or conditions attached within the past three (3) years;

(b) Qualified for the equivalent or higher license from the reciprocal state through required work experience and by passing an examination in the reciprocal state with a score of 75 percent or better;

(c) Have worked a minimum of six (6) months (1,000 hours) under the license in the reciprocal state;

(d) Have not taken and failed the Oregon examination within the past two (2) years for the license type they are applying to reciprocate.

**(4) A reciprocal applicant for a general journeyman electrical license may also qualify for a license under these rules by proving that they:**

**(a) Possess an equivalent or higher license from the reciprocal state that is current and active with no violations or conditions attached within the past three (3) years;**

**(b) Qualified for the equivalent or higher license from the reciprocal state through required work experience and by passing an examination in the reciprocal state with a minimum score as required in the reciprocal agreement with the reciprocal state;**

**(c) Have worked a minimum of six (6) months (1,000 hours) under the license in the reciprocal state; and**

**(d) Have not taken and failed the Oregon examination for a general journeyman electrical license within the past two (2) years.**

Statutory/Other Authority: ORS 455.117

Statutes/Other Implemented: ORS 455.117



Oregon State Association  
of Electrical Workers

- IBEW 48
- IBEW 89
- IBEW 112
- IBEW 125
- IBEW 280
- IBEW 659
- IBEW 932



**February 26, 2020**

**Oregon Building Codes Division  
Electrical & Elevator Board**

**RE: Reciprocity with Washington State**

Members of the Board;

The Oregon State Association of Electrical Workers, representing the collective Local Unions of the International Brotherhood of Electrical Workers, and the National Electrical Contractors Association, strongly urge reciprocity for Washington Electricians with an electrical examination score of 70%.

The current standard for the state of Oregon is a minimum test score of 75%, however we know that the quality of work performed is tested in the field, and the abilities of these licensed electricians is up to par for Oregon standards. Additionally, simply setting the minimum score at 75%, without a study of the tests themselves does not provide the level of detail into the knowledge of the licensed electrician, but rather an arbitrary number.

As the joint representatives of the workers and contractors in the electrical industry, we strongly support allowing reciprocity for workers who simply possess an equivalent or higher license from a reciprocal state. We are comfortable with the test score thresholds in these partner states, and believe that this model will best serve the industry.

Thank you for your time, we encourage this change to ensure fairness and opportunity in our industry.



**State of Oregon**

**Board memo**

**Building Codes Division**

**March 26, 2020**

**To:** The Electrical and Elevator Board

**From:** Tyler Glaze, policy analyst, Policy and Technical Services

**Subject:** Continuing Education Applications

**Action requested:**

Electrical and Elevator Board consideration of the Continuing Education Committee's recommendations regarding continuing education courses and instructors.

**Background:**

The Electrical and Elevator Board establishes continuing education requirements for all electrical licensees in order to ensure licensees possess up-to-date knowledge of the code and administrative requirements. They set standards for approval of courses and instructors in order to have a sufficient number and variety of continuing education courses available to licensees. The board's continuing education committee has been meeting to evaluate courses and instructors on the board's behalf. The committee reviewed the applications electronically on February 27, 2019. The committee reviewed 126 applications from 18 organizations:

- 46 courses were recommended for approval.
- 9 courses were recommended for denial.
- 68 instructors were recommended for approval.
- 3 instructors were recommended for denial.

See attached summary for more information.

In addition to the Oregon Rule and Law criteria, the committee is using the following when reviewing applications:

- NFPA 70E courses are eligible for a maximum of eight hours code-related credits.
- OSHA 10 courses are eligible for a maximum of four hours code-related credits.
- OSHA 30 courses are eligible for a maximum of sixteen hours code-related credits.
- First Aid/CPR courses are eligible for a maximum of four hours code-related credits (two hours for each course).
- For correspondence courses – Provider must submit complete course.
- For online courses – Provider must submit a log-on or screen shots of course content.

**Options:**

- Approve the committee's recommendations for approval or denial of courses or instructors.
- Amend and approve the committee's recommendation for approval or denial of courses or instructors.
- Disapprove the committee's recommendation for approval or denial of courses or instructors.

**Electrical and Elevator Board  
Committee on Continuing Education Course and Instructor Review  
March 26, 2020**

**Courses**

	<b>Applicant</b>	<b>Course Name</b>	<b>Committee Recommendation</b>	<b>Board Action</b>
1	AETech Electrical Training Center	2020 NEC Code Change Highlights 8 hours CR	Approve for 2020 Code Cycle	
2	AETech Electrical Training Center	2020 NEC Code Changes Day 1 8 hours CR	Approve for 2020 Code Cycle	
3	AETech Electrical Training Center	2020 NEC Code Changes Day 2 8 hours CR	Approve for 2020 Code Cycle	
4	BlueVolt	2020 NEC Code Changes Part 1 – 8 Hours 8 hours CC: MC Only	Deny, unable to access course materials	
5	Crater Lake Electrical JATC	2020 NEC Changes Part 1 4 hours CC: MC Only	Approve for 2020 Code Cycle	
6	Crater Lake Electrical JATC	2020 NEC Changes Part 2 4 hours CC:MC Only	Approve for 2020 Code Cycle	
7	Ewing-Foley	Lockout/Tagout: Requirements 4 hours CR	Deny, insufficient electrical safety hours	
8	Ewing-Foley	NEC Article 250 Grounding and Bonding 4 hours CC: MC Only	Deny, insufficient code change material	
9	Ewing-Foley	NEC Article 300 Wiring Methods and Materials 4 hours CC:MC Only	Deny, insufficient code change material	
10	Ewing-Foley	NEC Article 400 Devices 4 hours CC:MC only	Deny, insufficient code change material	
11	Ewing-Foley	NEC Article 500 Hazardous Locations 4 hours CC:MC only	Deny, insufficient code change material	
12	Ewing-Foley	Thermal Imaging: Inspections and Diagnostics 4 hours CR	Approve for 2 hours for 2020 Code Cycle	
13	Ewing-Foley	NFPA 70E The Arc Flash Hazard 4 hours CR	Approve for 2020 Code Cycle	
14	Ewing-Foley	Power Quality Issues: Distortions, Disruption & Harmonics 4 hours CR	Deny, not code related	

15	Ewing-Foley	Safety in Test and Measurement 4 hours CR	Approve for 2 hours for 2020 Code Cycle	
16	Mike Holt Enterprises	2020 NEC Changes Part 1, Articles 90-314 Online Course 8 hours CC:MC Only	Approve for 2020 Code Cycle	
17	Mike Holt Enterprises	2020 NEC Changes Part 2, Articles 400-805 Online Course 8 hours CC:MC Only	Approve for 2020 Code Cycle	
18	Mike Holt Enterprises	Overview of the 2020 NEC Changes Online Course 8 hours CC:MC Only	Approve for 2020 Code Cycle	
19	Mike Holt Enterprises	2020 Bonding and Grounding Online Course 8 hours CR	Approve for 2020 Code Cycle	
20	Mike Holt Enterprises	2020 NEC Changes & Electrical Safety Live Seminar 8 hours CC:MC Only	Approve for 2020 Code Cycle	
21	Mike Holt Enterprises	Understanding Low Voltage Systems & Electrical Safety Live Seminar 8 hours CR	Deny, Material is NFPA 72, not NEC	
22	NECA-IBEW Electrical Training Center	2020 NEC Changes 4 hours CC:MC Only	Approve for 2020 Code Cycle	
23	NECA-IBEW Electrical Training Center	2020 NEC Changes 8 hours CC:MC Only	Approve for 2020 Code Cycle	
24	Southwest Washington Electrical JATC	2020 NEC Changes 8 hours CC:MC Only	Approve for 2020 Code Cycle	
25	ElectricalLicenseRenewal.com	NEC 2020 Code Changes Update – 4 Hours 4 hours CC:MC Only	Deny, unable to access course materials	
26	ElectricalLicenseRenewal.com	NEC 2020 Code Changes Update – 8 Hours 8 hours CC:MC Only	Approve for 2020 Code Cycle	
27	ElectricalLicenseRenewal.com	NEC 2020 Code Changes Update – 12 Hours 12 hours CC:MC Only	Approve for 2020 Code Cycle	
28	ElectricalLicenseRenewal.com	NEC 2020 Code Changes Update – 16 Hours 16 hours CC:MC Only	Approve for 2020 Code Cycle	
29	ElectricalLicenseRenewal.com	NEC 2020 Code Changes Update Book Version – 8 Hours 8 hours CC:MC Only	Approve for 2020 Code Cycle	
30	ElectricalLicenseRenewal.com	NEC 2020 Code Changes Update Book Version 16 hours CC:MC Only	Approve for 2020 Code Cycle	
31	Puget Sound Electrical JATC	2020 NEC Changes 8 hours CC:MC Only	Approve for 2020 Code Cycle	

32	Imlah Electrical Consulting	2020 National Electrical Model Code Changes, Part 1, Chapters 1&2 4 hours CC:MC Only	Approve for 2020 Code Cycle	
33	Imlah Electrical Consulting	2020 National Electrical Model Code Changes, Part 2, Chapters 3&4 4 hours CC:MC Only	Approve for 2020 Code Cycle	
34	Imlah Electrical Consulting	2020 National Electrical Model Code Changes, Part 3, Chapters 5 & 6 to Article 682 4 hours CC:MC Only	Approve for 2020 Code Cycle	
35	Imlah Electrical Consulting	2020 National Electrical Model Code Changes, Part 4, Chapter 6 Article 690 to 695, and Chapters 7, 8, and 9 4 hours CC:MC Only	Approve for 2020 Code Cycle	
36	Joan P. Albert	2020 NEC Changes 8 hours CC:MC Only	Approve for 2020 Code Cycle	
37	Joan P. Albert	Basic NEC 8 hours CR	Approve for 2020 Code Cycle	
38	PELLCO CEU	NFPA 70E Update 4 hours CR	Approve for 2020 Code Cycle	
39	PELLCO CEU	Article 517 Health Care Facilities 4 hours CR	Approve for 2020 Code Cycle	
40	PELLCO CEU	Article 690/691 Photovoltaic Systems 4 hours CR	Approve for 2020 Code Cycle	
41	PELLCO CEU	Article 680/682 Pools and Bodies of Water 4 hours CR	Approve for 2020 Code Cycle	
42	PELLCO CEU	Article 250 Grounding and Bonding 4 hours CR	Approve for 2020 Code Cycle	
43	PELLCO CEU	2020 NEC Code Changes 8 hours CC:MC Only	Approve for 2020 Code Cycle	
44	PELLCO CEU	2020 NEC Code Changes and Definitions 12 hours CC:MC Only	Approve for 2020 Code Cycle	
45	PELLCO CEU	2020 NEC Code Change Definitions 4 hours CC:MC Only	Approve for 2020 Code Cycle	
46	American Electrical Institute	NFPA 70E Update 4 hours CR	Approve for 2020 Code Cycle	
47	American Electrical Institute	Article 517 Health Care Facilities 4 hours CR	Approve for 2020 Code Cycle	

48	American Electrical Institute	Article 690/691 Photovoltaic Systems 4 hours CR	Approve for 2020 Code Cycle	
49	American Electrical Institute	Article 680/682 Pools and Bodies of Water 4 hours CR	Approve for 2020 Code Cycle	
50	American Electrical Institute	Article 250 Grounding and Bonding 4 hours CR	Approve for 2020 Code Cycle	
51	American Electrical Institute	2020 NEC Code Changes 8 hours CC:MC Only	Approve for 2020 Code Cycle	
52	American Electrical Institute	2020 NEC Code Changes and Definitions 12 hours CC:MC Only	Approve for 2020 Code Cycle	
53	American Electrical Institute	2020 NEC Code Change Definitions 4 hours CC:MC Only	Approve for 2020 Code Cycle	
54	Christenson Electric Inc.	OSHA 30 30 hours CR	Approve for 2020 Code Cycle	
55	TPC Training	2020 National Electrical Code 16 hours CC:MC Only	Approve for 2020 Code Cycle	

### Instructors

	<b>Applicant</b>	<b>Committee Recommendation</b>	<b>Board Action</b>
1	Steve Arne AETech Electrical Training Center	Approve for 2020 Code Cycle	
2	Palmer Hickman BlueVolt	Deny, no copy of license or certification	
3	Jeffery Cordill Christenson Electric Inc.	Approve for OHSA Only for 2020 Code Cycle	
4	Eric Paul Cambell E-Hazard	Approve for 2020 Code Cycle	
5	Dustin Aldred HSI	Approve for 2020 Code Cycle	
6	Brian Reischke HSI	Approve for 2020 Code Cycle	
7	Bobby Stanhope HSI	Approve for 2020 Code Cycle	

8	Bryon Watson HSI	Approve for 2020 Code Cycle	
9	Michael Beirens HSI	Approve for 2020 Code Cycle	
10	Cory Knoop HSI	Approve for 2020 Code Cycle	
11	Charles Miller HSI	Approve for 2020 Code Cycle	
12	Johnnie Carney HSI	Approve for 2020 Code Cycle	
13	Kelley Conklin HSI	Approve for 2020 Code Cycle	
14	Joshua Cordova HSI	Approve for 2020 Code Cycle	
15	Lacindra Droegemeier HSI	Approve for 2020 Code Cycle	
16	Fred Gomez HSI	Approve for 2020 Code Cycle	
17	Gabriel Farmer HSI	Approve for 2020 Code Cycle	
18	Emmallyce Greene HSI	Approve for 2020 Code Cycle	
19	Kirt Hickley HSI	Approve for 2020 Code Cycle	
20	Richard Hinkle HSI	Approve for 2020 Code Cycle	
21	Johnathon Fucile HSI	Approve for 2020 Code Cycle	
22	Jason Hubbard HSI	Approve for 2020 Code Cycle	
23	Jama Lange HSI	Approve for 2020 Code Cycle	
24	Katherine Franklin	Approve for 2020 Code Cycle	

	HSI		
25	Kristen Livingston HSI	Approve for 2020 Code Cycle	
26	Kathleen Lloyd (Fitts) HSI	Approve for 2020 Code Cycle	
27	Leticia Neria HSI	Approve for 2020 Code Cycle	
28	Magen Lowe HSI	Approve for 2020 Code Cycle	
29	Matthew Ramsdell HSI	Approve for 2020 Code Cycle	
30	Matt Stephens HSI	Approve for 2020 Code Cycle	
31	Adam Nell HSI	Approve for 2020 Code Cycle	
32	Philip Kreger HSI	Approve for 2020 Code Cycle	
33	Renee Pollick HSI	Approve for 2020 Code Cycle	
34	Russell Ellis HSI	Approve for 2020 Code Cycle	
35	Richard Hedges HSI	Approve for 2020 Code Cycle	
36	Sean Hanna HSI	Approve for 2020 Code Cycle	
37	Scot Potter HSI	Approve for 2020 Code Cycle	
38	Ryan Samms HSI	Approve for 2020 Code Cycle	
39	James E. Simpson HSI	Approve for 2020 Code Cycle	
40	Varduhi Papazyan HSI	Approve for 2020 Code Cycle	



41	Victor Pena HSI	Approve for 2020 Code Cycle	
42	Ralph VanderKooy HSI	Approve for 2020 Code Cycle	
43	William Koellermeier HSI	Approve for 2020 Code Cycle	
44	Michael A. Worlein HSI	Approve for 2020 Code Cycle	
45	Zachary Parker HSI	Approve for 2020 Code Cycle	
46	Paul Fisher Southwest Washington Electrical JATC	Approve for 2020 Code Cycle	
47	Michael Briggs Southwest Washington Electrical JATC	Approve for 2020 Code Cycle	
48	Steven Thompson Southwest Washington Electrical JATC	Approve for 2020 Code Cycle	
49	Stephen Harper Southwest Washington Electrical JATC	Approve for 2020 Code Cycle	
50	Haley Masbruch Southwest Washington Electrical JATC	Approve for 2020 Code Cycle	
51	Barry Blackburn Southwest Washington Electrical JATC	Approve for 2020 Code Cycle	
52	Gregg Sutton TPC Training	Approve for 2020 Code Cycle	
53	Mark Johnson TPC Training	Approve for 2020 Code Cycle	
54	Michael Chambers TPC Training	Approve for 2020 Code Cycle	
55	Robert Clukey TPC Training	Approve for 2020 Code Cycle	
56	James Cole TPC Training	Approve for 2020 Code Cycle	
57	Ruben Correa TPC Training	Approve for 2020 Code Cycle	

58	Michael Leitzel TPC Training	Deny, no copy of license or certification	
59	Rich Mascarenas TPC Training	Approve for 2020 Code Cycle	
60	Rick Purvis TPC Training	Deny, no copy of license or certification	
61	Gary Rodwell TPC Training	Approve for 2020 Code Cycle	
62	Danny Ryan TPC Training	Approve for 2020 Code Cycle	
63	Jeffrey Simpson ElectricalLicenseRenewal.com	Approve for 2020 Code Cycle	
64	Chris Hoggarth Puget Sound Electrical JATC	Approve for 2020 Code Cycle	
65	Laurie Myers Puget Sound Electrical JATC	Approve for 2020 Code Cycle	
66	Bruce McBride Puget Sound Electrical JATC	Approve for 2020 Code Cycle	
67	Bradley Hansen Puget Sound Electrical JATC	Approve for 2020 Code Cycle	
68	James Imlah Imlah Electrical Consulting	Approve for 2020 Code Cycle	
69	Joan Albert Joan P. Albert	Approve for 2020 Code Cycle	
70	Doug Durham Olsson Industrial Electric	Approve for 2020 Code Cycle	
71	Mike Pellham PELLCO CEU	Approve for 2020 Code Cycle	