



Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Building Codes Division

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Electrical and Elevator Board

Meeting agenda includes an **outside of public meeting**

Thursday, March 22, 2018, 9:30 a.m.

Agenda amended at the meeting adding VIII.F.

Conference Room A

Board meetings are temporarily
unavailable via the [Internet](#)

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 [January 25, 2018](#)
- E. Date of the next regularly scheduled meeting: May 24, 2018
- F. Farewell to board member Steven Trapp (and past chair of the CIEB)

II. Outside of public meeting

(Break to clear audience from room for deliberations during outside of public meeting)

Outside of public meeting pursuant to [ORS 192.690\(1\)](#) to deliberate on Proposed Order for M&S Electric, LLC

(Break to allow audience back in room. No votes were taken during outside of public meeting)

Consideration of Proposed Order in the matter of [M&S Electric, LLC](#)

III. 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).*

IV. Reports

- A. [Summary](#) of enforcement actions previously taken by the division outlined on the enforcement board report (*No board action required*)
- B. [Conditioned licenses](#) previously taken by the division outlined on the enforcement board report (*No board action required*)
- C. Elevator program update
- D. Electrical program update

V. Communications - None

VI. Appeals - None

VII. Unfinished business

Board consideration of proposed amendments to electrical [minor label rules](#)

VIII. New business

- A. Review and approve committee recommendations for [new continuing education course and instructor applications](#)
- B. Request received from EC&M for [retroactive approval](#) of course 2017 National Electrical Code change conference (*Held over from January 25 board meeting*)
- C. Request received from Oregon Solar Energy Industries Association for [retroactive approval](#) of Solar PV Systems course based on the 2017 National Electrical Code
- D. Request received from Oregon Solar Energy Industries Association for [retroactive approval](#) of Solar PV Systems Best Practices & Energy Trust Installation Requirements course
- E. Request received from Chester Garrett for [retroactive approval for correction](#) to code change class credit hours instead of code related hours given
- F. *Request received from [Brad Sall to ask the board](#) to reinstate his electrical supervisor license No. 5116S*

IX. Announcements - None

X. Adjournment

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](#).

Electrical and Elevator Board
Meeting minutes
January 25, 2018

- Members present:** Heather Miller, journeyman electrician, chair
Thomas Kyle, electrical contractor, vice-chair
Jon Flegel, journeyman electrician
Thomas Faires, elevator manufacturing
Warren Jackson, building official
Vern Palmrose, power and light industry
Joseph Pugh, public member
Randy Smith, electrical inspector
- Members absent:** Scott Hall, electrical equipment supplier
Robert Pyne, journeyman elevator installer
James Totten, owner/manager of a commercial office building
Steven Trapp, electrical contractor
Vacant, commercial underwriter
Vacant, electrical equipment manufacturing rep
Vacant, industrial plant employing electricians
- Staff present:** Mark Long, Administrator, Building Codes Division
Katharine Lozano, Assistant Attorney General
Tyler Anderson, Assistant Attorney General
Shane Sumption, manager, Policy and Technical Services
Keith Anderson, electrical program chief, Policy and Technical Services
Andrea Simmons, enforcement manager, Enforcement Services
Alana Cox, senior policy advisor, Policy and Technical Services
Shannon Flowers, contested case representative, Enforcement Services
Nick Howard, contested case representative, Enforcement Services
Jeff Starkey, assistant manager, Statewide Services
Warren Hartung, elevator program chief, Statewide Services
Roseanne Nelson, assistant manager, Statewide Services
Sarah Blam-Linville, contested case representative, Enforcement Services
Todd Smith, policy analyst, Policy and Technical Services
Juliet Wiersma, executive support specialist, Enforcement Services
Brook Burgess, office specialist, Enforcement Services
Holly Tucker, manager's assistant, Policy and Technical Services
Debi Barnes-Woods, boards administrator, Policy and Technical Services
- Guests present:** Nathan Philips, NECA
Randy Carmony, Local 23
Bill Gray Sr., enforcement case
Luke Kishpaugh, self
Scott Schnuck, Madden enforcement case
Richard Lauderback, IUOE 701
Darren Glebe, IUOE 701

I. Board business

A. Call to order

Chair Heather Miller called the Electrical and Elevator Board meeting of January 25, 2018, to order at 9:30 a.m. The meeting was held at the Building Codes Division in Conference Room A, 1535 Edgewater Street NW, Salem, Oregon.

B. Roll call

Scott Hall, Robert Pyne, James Totten, and Steven Trapp were all excused.

The Electrical and Elevator Board has three vacancies: commercial underwriter, electrical equipment manufacturer representative, and industrial plant representative.

C. Approval of the agenda and order of business

Chair Miller amended the agenda changing the executive session item to discussion by division Administrator and assistant attorney general Agenda Item II.C.

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

D. Approval of the board meeting draft minutes of November 16, 2017

Chair Miller **RULED** the board meeting draft minutes of November 16, 2017, final.

E. Date of the next regularly scheduled meeting: March 22, 2018.

F. Farewell to member Timothy Frew (Vice-chair and member of the CIEB)

Because Mr. Frew was not able to attend this board meeting, a certificate of appreciation from the Governor and a thank you letter from the Division Administrator were mailed.

G. Welcome new member Jon Flegel, journeyman electrician

Jon has replaced Timothy Frew in the journeyman electrician's position. Jon has been a licensed journeyman electrician since 1995 and looks forward to being on the board. Jon is currently the business manager for IBEW. His 4-year term began November 17, 2017.

H. Board vote on vice-chair position

Randy Smith nominated Thomas Kyle for the vice-chair position on the Electrical and Elevator Board. No other members were nominated. Thomas Kyle accepted the nomination.

Thomas Kyle was unanimously voted vice-chair by the Electrical and Elevator Board members.

I. Board vote on membership to the Construction Industry Energy Board for a member who has practical experience in the electrical industry

Thomas Kyle, vice-chair, nominated Heather Miller, chair, for membership to the Construction Industry Energy Board. No other members were nominated. Heather Miller, chair, accepted the nomination.

Heather Miller, chair, was unanimously voted a member of the Construction Industry Energy Board.

II. Outside of public meeting and executive session

(Break to clear audience from room at 9:40 a.m. for deliberations during outside of public meeting)

A. Outside of public meeting pursuant to ORS 192.690(1) to deliberate on Proposed Order issued by Administrative Law Judge Andrew Holmes-Swanson for Gary Knight II., Case No. C2017-0149

B. Outside of public meeting pursuant to ORS 192.690(1) to deliberate on Proposed Order issued by Administrative Law Judge Joe L. Allen for Madden Industrial Craftsmen Inc., Case No. C2016-0162

(Break to allow audience back in room at 10:40 a.m. No votes were taken during outside of public meeting)

A.1. Consideration of Amended Proposed Order in the matter of Gary Knight II. Case No. C2017-0149

Motion by Thomas Kyle, vice-chair, to adopt the second amended proposed order for Gary Knight II, Case No. C2017-0419.

Motion carried unanimously.

B.1. Consideration of Proposed Order in the matter of Madden Industrial Craftsmen Inc., Case No. C2016-0162

Scott Schnuck, Altus Law LLC, was present to represent and speak on behalf of Madden Industrial Craftsmen, Inc. Mr. Schnuck said that Madden Industrial did not dispute ALJ Allen's ruling or his proposed order. Since it aligned with ALJ Allen's ruling, they were not disputing the division's proposed change that withdrew the Boise Street allegation. They did disagree with the proposed changes to the civil penalties and wanted ALJ Allen's interpretation to be upheld and no changes made on that matter in the proposed order.

Motion by Thomas Kyle, vice-chair, to adopt the amended proposed order for Madden Industrial Craftsmen Inc., Case No. C2016-0162.

Motion carried unanimously.

(This item was changed from Executive session)

C. Division Administrator and Assistant Attorney General's update discussion

Discussion on Governor's Executive Order No. 17-20: Mark Long,

Administrator, reminded the board of his discussion at the last Electrical and Elevator Board meeting of November 16, 2017. He gave a presentation on the Governor's Executive Order No. 17-20. Administrator Long said that EO No. 17-20 directs state agencies to implement the order using the least cost methods available.

The task for the board is to set up a committee to create a cost analysis tool required by the Executive Order. The committee should consist of five to seven members. Administrator Long suggested that the group consist of a variety of interested stakeholders, electrical contractors, utilities or manufacturers.

Chair Miller asked members interested in serving on this committee to email her.

Discussion on third-party authority: Katharine Lozano, Assistant Attorney General, said that the DOJ's office is focusing on whether state agencies can delegate to third-party companies.

There is a focus on municipalities that administer and enforce an approved building inspection programs. The DOJ is specifically looking at whether they are establishing and maintaining the minimum standards, policies, and procedures set forth in rule, who should be available at the jurisdictions to make final code calls, and, if what is established in rule is being followed.

III. Public comment - None

IV. Reports

A. Consideration of final order in the matter of Duane Robert Snyder, dba High Desert Plumbers and dba High Desert Plumbing and Remodeling Case No. C2017-0265

Sarah Blam-Linville, contested case representative, Enforcement Services, said the division issued a Notice of Proposed Assessment of Civil Penalties to Duane Robert Snyder, dba High Desert Plumbers and dba High Desert Plumbing and Remodeling, for allegedly engaging in the business of making electrical installations without a supervising or journeyman electrician's license and performing electrical installations without a supervising or journeyman electrician's license. Mr. Snyder requested a hearing.

Administrative Law Judge Samantha A. Fair found in favor of the division and issued a Ruling on Motion for Summary Determination and Proposed Order affirming the Notice of Proposed Assessment of Civil Penalties.

Motion by Joseph Pugh to adopt the proposed order and issue a final order for Duane Robert Snyder, dba High Desert Plumbers and dba High Desert Plumbing and Remodeling, Case No. C2017-0265.

Motion carried unanimously.

B. Consideration of final order in the matter of CMB Solutions Inc., Case No. C2017-0273

Ms. Blam-Linville, said that after the division issued a Notice of Proposed Civil Penalties to CBM Solutions Inc. for allegedly making electrical installations without the proper license, or without first purchasing a permit, a hearing was requested.

Administrative Law Judge Monica A. Whitaker found in favor of the division and issued a Ruling on Motion for Summary Determination and Proposed Order affirming the Notice of Proposed Assessment of Civil Penalties.

Motion by Joseph Pugh to adopt the proposed order and issue a final order for CMB Solutions Inc., Case No. C2017-0273.

Motion carried unanimously.

C. Consideration of Final Order in the matter of Justin Stalford, Case No. C2017-0271

Ms. Blam-Linville said that after the division issued a Notice of Proposed Civil Penalties to Justin Stalford for allegedly making electrical installations without the proper licenses, Mr. Stalford requested a hearing.

Administrative Law Judge Monica A. Whitaker found in favor of the division and issued a Ruling on Motion for Summary Determination and Proposed Order affirming the Notice of Proposed Assessment of Civil Penalties.

Motion by Thomas Kyle, vice-chair, to adopt the proposed order and issue a final order for Justin Stalford, Case No. C2017-0271.

Motion carried unanimously.

D. Consideration of Final Order in the matter of Douglas A. Jones Case No. 2017-0083

Shannon Flowers, contested case representative, Enforcement Services, said that after the division issued a Notice of Proposed Civil Penalties to Douglas A. Jones for allegedly making electrical installations without the proper licenses, Mr. Jones requested a hearing.

Administrative Law Judge Samantha A. Fair found in favor of the division and issued a Ruling on Motion for Summary Determination and Proposed Order affirming the Notice of Proposed Assessment of Civil Penalties.

Motion by Joseph Pugh to adopt the proposed order and issue a final order for Douglas A. Jones Case No. 2017-0083.

Motion carried unanimously.

Before Ms. Flowers moved on to the summary of enforcement report, she introduced the newest Contested Case Representative Nick Howard.

E. Summary of enforcement actions previously taken by the division outlined on the enforcement board report. (No board action required)

Ms. Flowers was available for any questions.

F. Suspension, revocations and conditioned licenses previously taken by the division outlined on the enforcement board report. (No board action required)

Ms. Flowers was available for any questions.

D. Elevator program update

Warren Hartung, elevator program chief, Statewide Services, reported on November and December accident and overdue reports.

E. Electrical program update

Keith Anderson, electrical program chief, said that the Electrical Minor Label Rules will be before the board at its next scheduled meeting March 22, 2018, with an anticipated effective date of April 1, 2018.

V. Communications

Update on Appeal No. 2018-01 EL Field Fabrications

Chief Anderson said that the installation performed by Cherry City was designed, planned, and laid out by a supervising electrician in compliance with ORS 479.860. The installation was then completed in a workmanlike manner in compliance with the 2017 Oregon Electrical Specialty Code. The raceways and cables entering through the bottom of the field modified enclosures do not need to be mechanically continuous, as allowed by Exception 2 to Section 300.12.

VI. Appeals – None

VII. Unfinished business – None

VIII. New business

A. William A. Gray Jr. requests the board to consider issues regarding the reinstatement of a signing supervisor's license after expiration

William A. Gray Jr., said that he paid the renewal of his electrical supervisors license No. 980S, but found out after it had expired that the funds were not withdrawn from his account. Mr. Gray did not verify whether the check was cashed at the time because his family was going through “so much trauma.” He completed all required continuing education and asked the board to reconsider allowing him to pay to reinstate his license. Mr. Gray said he did not know that he did not have a valid license at the time he made an electrical installation.

Sarah Blam-Linville, contested case representative, Enforcement Services, said Mr. Gray made an electrical installation at a commercial property in Springfield, Oregon without the appropriate licenses or permit October 18, 2017.

Andrea Simmons, manager, Enforcement Services, explained that there is a one-year grace period to complete all requirements for electrical licensure. Mr. Gray's supervisor's license expired October 1, 2017.

Motion by vice-chair Kyle to disapprove the request to reinstate Oregon Supervisor License No. 980S because Mr. Gray had a grace period of one year.

Motion carried unanimously.

B. Eugene Water & Electric Board is asking the board to consider adopting an exemption according to ORS 479.540(10) of the UL-approved, Global Power Products Generlink meter-mounted transfer switch

Shane Sumption, manager, Policy and Technical Services, said that when the division first reviewed this issue the information provided was not accurate. The statute supports the meter base and how it preforms. He said that the division would need additional information before supporting this item.

Nathan Phillips, NECA, said that during the national code committee review process, this item was discussed in detail and was found to be exempt. Mr. Phillips said that there was not enough information in the product standard on how the product is installed.

The board wanted to review the additional information on how the product is installed before making a decision.

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

Todd Smith, policy analyst, Policy and Technical Services, was available for any questions or concerns.

Motion by Thomas Faires to approve the committee's recommendations for approval or denial of courses or instructors.

Motion carried unanimous.

D. Request received from EC&M for retroactive approval of course 2017 National Electrical Code change conference

Because an Electrical and Elevator Board member was on the class roster for completion of this class, the member abstained from the vote. An abstention is not counted as an affirmative or negative vote to make up the minimum number of concurring votes required to pass or reject a motion.

This board requires eight members present to form a quorum. Because of absentees and vacancies, there were only eight members present. Therefore, this item will be heard at the next scheduled meeting of March 22, 2018.

E. Request received from Oregon Solar Energy Industries Association for retroactive approval of course 2017 code change

Motion by Thomas Kyle, vice-chair to disapprove the request received from Oregon Solar Energy Industries Association for retroactive approval.

Motion carried unanimously.

F. Board appointment of a cost analysis subcommittee

This item was discussed under Item I.C.

IX. Announcements - None

X. Adjournment

Chair Miller adjourned the meeting at 12:07 p.m.

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

Agenda Item II.

State of Oregon

Board memo

Building Codes Division

March 22, 2018

To: The Electrical and Elevator Board

From: Sarah Blam-Linville, contested case representative, Enforcement Services

Subject: Final Order for Case No. C2016-0090, In the Matter of M&S Electric, LLC

Action requested:

To consider the adoption of a Proposed Order and issue a Final Order.

Background:

On June 28, 2016, the Building Codes Division (Division), acting on behalf of the Electrical and Elevator Board (Board), issued a Notice of Proposed Civil Penalties, Notice of Proposed Suspension of Electrical Contractor License Number 24-73C, and Notice of Final Order on Default (Notice) to M & S Electric, LLC (Respondent). The Notice proposed to assess total civil penalties of \$21,000.00, for violating OAR 918-282-0010(1) for seven years (\$3,000.00 per year), because Respondent failed to continuously employ at least one full-time general supervising electrician from in and around 2009 through 2016.

On or about July 14, 2016, Respondent, through its attorney, requested a hearing.

On September 23, 2016, the Division referred the matter to the Office of Administrative Hearings (OAH). On November 10, 2016, the Division filed a Motion for Summary Determination with ALJ Marni Davis. On February 8, 2017, Respondent filed its response to the Division's motion for Summary Determination. The Division did not file a reply. On March 20, 2017, Presiding ALJ John Mann informed the parties that the case had been reassigned to Senior ALJ Jennifer H. Rackstraw (ALJ Rackstraw).

On April 26, 2017, ALJ Rackstraw issued a Ruling on the Division's Motion for Summary Determination, granting summary determination as to the violation of OAR 918-282-0010(1), but finding that material facts remained as to how the Division determined the proposed sanctions.

On July 10, 2017, ALJ Rackstraw held a telephone hearing regarding Respondent. The Division appeared and was represented by Attorney Tyler Anderson (Anderson) and Respondent was represented by Attorney Joshua Lay-Perez (Lay-Perez). Andrea Simmons, BCD Enforcement

Manager, testified on behalf of the Division. Also testifying were: Michael Weise, the owner of M & S Electric; Kevin Harrison, a Salem-based developer who has contracted with M & S Electric; Jeffrey Thomas, president of Pilgrim's Custom Cabinets and Construction; and Vince Arais, an electrical inspector with the City of Salem.

On September 15, 2017, ALJ Rackstraw issued a Proposed Order, concluding that the Division may assess civil penalties of \$21,000 against Respondent and suspend Respondent's electrical contractor license for a period of one year, because of the failure to continuously employ at least one full time general supervising electrician, as ruled upon in the Ruling for the Summary Determination filed by the Division.

On October 5, 2017, Respondent filed exceptions to the Proposed Order alleging that ALJ Rackstraw erred when she determined that Leonard McDowell did not qualify as a continuously employed full time supervising electrician. Respondent also alleged that OAR 918-282-0010(1) failed to comply with ORS 183.335(2)(b)(E) because the proposed rulemaking did not contain a "statement of fiscal impact" and therefore is subject to invalidation by the courts. Finally, Respondent alleged that ALJ Rackstraw erred when she approved the Division's proposed sanctions for the following reasons: she failed to allow into evidence prior consent orders which, according to Respondent, suggested the civil penalties assessed against Respondent were not consistent with past sanctioning of first-time offenders, that a one year license suspension was disproportionate to the offense and inconsistent with sanctions imposed in prior actions, and that the civil penalty exceeded the allowable maximum.

On October 9, 2017, Respondent filed an amendment to their filed exceptions to correct a witness name and title which they had cited.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
BUILDING CODES DIVISION**

IN THE MATTER OF:) **PROPOSED ORDER**
)
M & S ELECTRIC, LLC) OAH Case No. 2016-ABC-00058
) Agency Case No. C2016-0090
)

HISTORY OF THE CASE

On June 28, 2016, the Elevator and Electrical Board, Building Codes Division (Division) issued a “Notice of Proposed Assessment of Civil Penalties, Notice of Proposed Suspension of Electrical Contractor License Number 24-73C, and Notice of Final Order on Default” to M & S Electric, LLC (M & S Electric). On July 14, 2016, M & S Electric, through its attorney, requested a contested case hearing. On September 23, 2016, the Division referred the matter to the Office of Administrative Hearings (OAH). The OAH scheduled a hearing for December 9, 2016.

On November 10, 2016, the Division filed a Motion for Summary Determination, pursuant to OAR 137-003-0580. On or about November 21, 2016, M & S Electric, through its attorney, requested a postponement of the December 9, 2016 hearing and the scheduling of a telephonic conference. The OAH granted the postponement request and scheduled a telephone prehearing conference for December 9, 2016, with Administrative Law Judge (ALJ) Marni Davis.

On December 9, 2016, ALJ Davis held the prehearing conference. Attorney Joshua Lay-Perez represented M & S Electric. Assistant Attorney General Tyler Anderson represented the Division. The parties agreed to a telephone hearing on April 5, 2017.

On February 8, 2017, M & S Electric filed its Response to Agency’s Motion for Summary Determination. The Division did not file a reply.

On March 20, 2017, Presiding ALJ John Mann informed the parties that the OAH had reassigned the M & S Electric case to Senior ALJ Jennifer H. Rackstraw, who was also presiding over OAH Case No. 2016-ABC-00029 (concerning Leonard L. McDowell), and that the two cases would be consolidated into one hearing, in the event that the Division’s Motions for Summary Determination did not resolve all of the issues in the two cases.¹ Neither party objected to the proposed consolidation, and the April 5, 2017 hearing for M & S Electric was

¹ The two cases involved the same set of operative facts, including allegations related to Mr. McDowell’s work for M&S Electric from October 2009 through June 2016. In addition, Mr. Lay-Perez represented the respondents in both cases, and Mr. Anderson represented the Division.

subsequently canceled.

On April 25, 2017, ALJ Rackstraw issued a Ruling on Motion for Summary Determination in OAH Case No. 2016-ABC-00029 (concerning Mr. McDowell), denying summary determination. On April 26, 2017, ALJ Rackstraw issued a Ruling on Motion for Summary Determination in OAH Case No. 2016-ABC-00058 (concerning M & S Electric), granting summary determination as to the violation of OAR 918-282-0010(1), but finding that material facts remained as to how the Division determined the proposed sanctions.

On May 9, 2017, the Division issued an amended notice to Mr. McDowell. On May 11, 2017, ALJ Rackstraw held a telephone status conference regarding both cases. Mr. Lay-Perez represented Mr. McDowell and M & S Electric. Mr. Anderson represented the Division. At the parties' request, ALJ Rackstraw bifurcated the cases and scheduled separate hearings for each one.

On July 10, 2017, ALJ Rackstraw held a telephone hearing regarding M & S Electric.² Mr. Lay-Perez represented M & S Electric, and Mr. Anderson represented the Division. The following persons testified: Andrea Simmons, the Division's enforcement manager; Michael Weise, the owner of M & S Electric; Kevin Harrison, a Salem-based developer who has contracted with M & S Electric; Jeffrey Thomas, president of Pilgrim's Custom Cabinets and Construction; and Vince Arais, an electrical inspector with the City of Salem. Shannon Flowers and Anthony Estrada, both from the Division, and Mr. Weise's wife, Samantha Weise, were also present, but they did not provide testimony. The record closed on July 11, 2017, after receipt of the Division's Exhibit A11.

ISSUES

1. Whether, during the period 2009 through 2016, M & S Electric violated OAR 918-282-0010(1) by failing to continuously employ at least one full-time general supervising electrician.
2. Whether the Division may assess civil penalties of \$21,000 against M & S Electric, pursuant to ORS 455.895(1)(b) and OAR 918-001-0036, and suspend M & S Electric's electrical contractor license for a period of one year, under ORS 455.129(2)(a), (2)(m), and (3)(b).

EXHIBITS

At the hearing, the Division's Exhibits A1 through A10 and M & S Electric's Exhibits R101 through R106 and R110 were admitted into the record without objection. Exhibits R107 through R109, offered by M & S Electric, were excluded as irrelevant. The Division's Pleadings P1 through P38 were made a part of the record.

After the hearing, the Division's Exhibit A11 was admitted without objection.

² The hearing was of limited scope, pertaining only to the Division's proposed civil penalties and suspension.

FINDINGS OF FACT

1. During all times pertinent to this matter, Michael Wiese was the owner of M & S Electric, M & S Electric held electrical contractor license number 24-73C, and Leonard McDowell held a general supervising electrician license. (Exs. A1 and A2; test. of Wiese.)

2. Between October 1, 2009 and June 1, 2016, M & S Electric employed Mr. McDowell as its registered signing supervisor.³ (See Exs. A6, A7, A3 at 5-6.) M & S Electric sent approximately three to four permits to Mr. McDowell per month for his review. Mr. McDowell would occasionally call M & S Electric with questions regarding a certain job. (Ex. A3 at 5-6.)

3. Mr. McDowell worked an average of two hours per week for M & S Electric. (Ex. A3 at 5.) He received regular compensation of \$1,084.22 per month. (Ex. A5 at 2-4.) In addition to his monthly salary, M & S Electric paid Mr. McDowell \$30 per hour for any additional work he performed, such as plan review. (Ex. A3 at 5.)

4. Since at least May 5, 2014, Mr. McDowell has worked as an electrical inspector for the City of Portland on a full-time basis. His schedule with the City of Portland includes working for eight hours every other Monday, and working from 6:30 a.m. to 3:00 p.m. every Tuesday through Friday. (See Ex. A3 at 5, 7.)

5. Mr. McDowell has never been called to any of M & S Electric's job sites. He has never met with or spoken to any inspector regarding any corrections needed for work that M & S Electric has performed. (Ex. A3 at 6.)

6. In April 2016, Mr. McDowell and M & S Electric came to the Division's attention, and the Division subsequently opened investigations regarding each of them. (See Ex. A3 at 2.)

7. On May 24, 2016, Division Investigator Daniel Wittekind spoke with Mr. Wiese via phone. Mr. Wiese informed Mr. Wittekind that M & S Electric employed Mr. McDowell full time "by paying him a salary;" that he believed as long as Mr. McDowell was available whenever needed, then he was a full-time employee; and that the former electrical chief, John Powell, had told him that M & S Electric could fulfill the full-time employment requirement by paying the signing supervisor a salary. (Ex. A3 at 2-3.)

8. On June 28, 2016, the Division issued a "Notice of Proposed Assessment of Civil Penalties, Notice of Proposed Suspension of Electrical Contractor License Number 24-73C, and Notice of Final Order on Default" to M & S Electric, finding that M & S Electric violated OAR 918-282-0010(1) from 2009 through 2016, and proposing civil penalties of \$21,000 and a one-year suspension of M & S Electric's electrical contractor license. (Pleading P1.) The Division chose to assess a \$3,000 civil penalty for each year that M & S Electric violated OAR 918-282-0010(1), rather than assess a penalty for each electrical job performed during that time period. (Test. of Simmons.)

³ 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."

9. In previous, unrelated cases involving long-term (*i.e.*, extended duration) violations, the Division has similarly chosen to assess a civil penalty for each year the violation[s] occurred. (Test. of Simmons.)

10. A Division case resolved via consent order results in a less stringent sanction than what the Division originally proposed in the case. (Test. of Simmons.)

CONCLUSIONS OF LAW

1. As set forth in the April 26, 2017 Ruling on Motion for Summary Determination, during the period 2009 through 2016, M & S Electric violated OAR 918-282-0010(1) by failing to continuously employ at least one full-time general supervising electrician.

2. The Division may assess civil penalties of \$21,000 against M & S Electric, pursuant to ORS 455.895(1)(b) and OAR 918-001-0036, and suspend M & S Electric's electrical contractor license for a period of one year, under ORS 455.129(2)(a), (2)(m), and (3)(b).

OPINION

As set forth in the April 26, 2017 Ruling on Motion for Summary Determination, the Division established that from 2009 through 2016, M & S Electric violated OAR 918-282-0010(1) by failing to “continuously employ at least one full-time general supervising electrician.”⁴ The remaining issue is whether the Division may assess civil penalties of \$21,000 against M & S Electric and suspend M & S Electric's electrical contractor license for one year for the violation. As the proponent of the position that those sanctions are appropriate, the Division bears the burden of proof by a preponderance of the evidence. *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 the fact or position); *Sobel v. Board of Pharmacy*, 130 Or App 374, 379, (1994), *rev den*, 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). 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).

\$21,000 in Civil Penalties

ORS 479.995 provides that 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.” ORS 455.895 states, in relevant part:

(1)(b) The Electrical and Elevator Board may impose a civil penalty against a person as provided under ORS 479.995[.]

⁴ OAR 918-282-0010(1) states, in pertinent part, hat an electrical contractor “[s]hall continuously employ at least one full-time general supervising electrician[.]”

* * * * *

(2) The Department of Consumer and Business Services, or an appropriate advisory board, if any, may at its discretion impose a civil penalty * * * in an amount determined by the appropriate advisory board or the department of not more than \$5,000 for each offense or, in the case of a continuing offense, not more than \$1,000 for each day of the offense.

* * * * *

(5) The maximum penalty established by this section for a violation may be imposed only upon a finding that the person has engaged in a pattern of violations. The department, by rule, shall define what constitutes a pattern of violations[.]

OAR 918-001-0036 provides, in relevant part:

(1) Scope and Authority. This rule sets guidelines for assessing a civil penalty under ORS 446.995 & 455.895.

(2) Definitions. For the purposes of this rule:

(a) “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.

(b) A “directive” includes, but is not limited to, a notice or warning, citation, order, consent decree or settlement agreement, rule, law, code requirement, or agency interpretation.

(c) “Pattern of violation” means two or more prior violations during a five-year period of any provision of ORS Chapter 446, 447, 455, 460, 479, 480, or 693, or the state building code as defined in 455.010, whether or not a penalty was assessed. A pattern of violation is calculated within a five-year period from the date of the latest violation.

(3) A licensed person or contractor who performs an act resulting in an unsafe installation or a health and safety hazard, structural or financial damage, performs or allows another to perform work requiring a license without an appropriate license, violates a previous directive, or exhibits a pattern of violation may have their license, registration or certificate conditioned, suspended, or revoked.

(4) Civil penalties may be assessed by a board, the Director, or a board's designee acting as agent for a board. A board or the Director may take into account any appropriate factors, including previous directives, in determining the penalty amount or conditions within an order. The statutorily defined maximum penalty may only be assessed upon a finding of a pattern of violation.

(5) Civil penalties may be assessed in addition to, or in lieu of, the conditioning, suspension, or revocation of a license, certificate of competency, or similar authority issued by the Director.

(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 utilizes a penalty matrix, adopted pursuant to OAR 918-001-0036(6), which provides for a maximum civil penalty of \$3,000 for a first violation of OAR 918-282-0010(1). *See Exhibit A10.*

As a first-time offender, the Division could potentially assess a \$3,000 civil penalty against M & S Electric for *each job* performed while in violation of the rule. Instead, however, the Division has proposed a \$3,000 civil penalty for *each year* that the violation was in effect, for a total civil penalty of \$21,000 (\$3,000 per year multiplied by the seven years that the violation occurred). This is consistent with the Division's past practice in cases involving long-term violations. *See testimony of Simmons.*

On this record, M & S Electric has not established that the Division, in assessing \$21,000 in total civil penalties, has acted contrary to its statutory authority or otherwise abused its discretion.⁵ The Division may therefore assess civil penalties of \$21,000 against M & S Electric for violating OAR 918-282-0010(1) from 2009 through 2016.

One-Year License Suspension

The Division has proposed a one-year suspension of M & S Electric's electrical contractor license, pursuant to ORS 455.129(2)(a) and (m), which provide as follows:

⁵ 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.

(2) Subject to ORS chapter 183, a regulatory body listed in subsection (3) of this section⁶ 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.

* * * * *

(m) Has, while performing work that requires or that is related to work that requires a valid license or certificate under ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460 or 693, violated any statute or rule related to the state building code.

By failing to comply with OAR 918-282-0010(1), a rule adopted by the Electrical and Elevator Board, M & S Electric's license is subject to suspension under ORS 455.129(2)(a).

Engaging in the business of making of electrical installations, as M & S Electric does, requires an electrical contractor license under ORS 479.620(1).⁷ Because M & S Electric violated OAR 918-282-0010(1) — a rule related to the state building code — while performing work requiring an electrical contractor license, M & S Electric is also subject to license suspension under ORS 455.129(2)(m).

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: 1) the Division's past sanctioning practices; 2) the importance of a signing supervisor's duties;⁸ 3) the length of time that M & S Electric's violation occurred; and 4) whether M & S Electric should have known of the violation.

M & S Electric contends that the Division has not sufficiently articulated why a one-year suspension of its electrical contractor license is warranted, and that the absence of any rules that specifically guide the Division in that decision-making process raises due process concerns. As explained below, M & S Electric's contentions are not persuasive.

⁶ Subsection (3)(b) lists the Electrical and Elevator Board.

⁷ ORS 479.620(1) states that a person may not “[w]ithout an electrical contractor’s license, engage in the business of making electrical installations, advertise as or otherwise purport to be licensed to make electrical installations or purport to be acting as a business that makes electrical installations.”

⁸ A signing supervising electrician is responsible for signing all permits, ensuring that all electrical installations meet minimum safety standards, ensuring that proper electrical safety procedures are used, ensuring that all electrical labels and permits required to perform electrical work are used and signed, and ensuring that electricians are properly licensed for the work they perform. OAR 918-282-0140(2).

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).⁹ 230 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, M & S Electric has not established that the Division, in imposing a one-year license suspension on M & S Electric, 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 M & S Electric’s electrical contractor license.

ORDER

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

For the violation of OAR 918-282-0010(1), M & S Electric, LLC shall pay civil penalties of \$21,000 and its electrical contractor license shall be suspended for a period of one year.

Jennifer H. Rackstraw

Senior Administrative Law Judge
Office of Administrative Hearings

⁹ 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
Manager, Enforcement and Licensing
PO Box 14470
Salem, OR 97309-0404

CERTIFICATE OF MAILING

On September 15, 2017 I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 2016-ABC-00058.

By: First Class Mail

M & S Electric LLC
PO Box 515
Aumsville OR 97325

Joshua B Lay-perez
Attorney at Law
495 State St Ste 500
Salem OR 97301

By: Electronic Mail

Anthony J Estrada, 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

Lucy M Garcia
Hearing Coordinator

BEFORE THE
DEPARTMENT OF CONSUMER & BUSINESS SERVICES
BUILDING CODES DIVISION
STATE OF OREGON

In the Matter of:)	
)	OAH Case Nos: 2016-ABC-00058
M&S ELECTRIC LLC,)	2016-ABC-00029
)	
Respondent.)	RESPONDENTS' EXCEPTIONS TO
)	PROPOSED ORDER

I. BACKGROUND

On June 8, 2016, the Elevator and Electrical Division, Building Codes Division (the "Division") issued a "Notice of Proposed Assessment of Civil Penalties, Notice of Proposed Suspension of Electrical Contractor License Number 24-73C, and Notice of Final Order on Default" to M & S Electric, LLC ("M & S Electric"). In that Notice, the Division concluded that M & S Electric had violated OAR 918-282-0010(1) for a period of seven (7) years for failing to continuously employ at least one full-time general supervising electrician.¹ In particular, the Division determined that M & S Electric's registered signing supervisor, Leonard McDowell, could not be a "full-time" employee of the company for purposes of OAR 918-282-0010(1), because McDowell was employed full-time for a different entity, the City of Portland. The Division suspended M & S Electric's electric contractor license for one year under ORS 455.129(2)(a) and ORS 455.129(2)(m),² and assessed a \$21,000 civil penalty against the company

¹ OAR 918-282-0010(1) ("Electrical Contractor License") provides that an electrical contractor "[s]hall continuously employ at least one full-time general supervising electrician except as otherwise exempted[.]" The term "continuously employ" is defined in OAR 918-251-0090(8) as "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."

² That statute provides, in relevant part, that:

"(2) Subject to ORS chapter 183, a regulatory body . . . 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) [h]as failed to comply with the laws administered by the regulatory body or with the rules adopted by the regulatory body.

1 under ORS 455.895(1)(b).³

2 M & S Electric requested a contested case hearing, and that hearing was scheduled for
3 December 9, 2016. On November 10, 2016, however, the Division filed a Motion for Summary
4 Determination pursuant to OAR 137-003-0580. The scheduled hearing was postponed, and, on
5 February 8, 2017, M & S Electric filed a response opposing summary determination.⁴ Among
6 other things, counsel for M & S Electric argued that (1) the Division's interpretation of the
7 administrative terms "full time" and "continuously employ" in OAR 918-282-0010(1) were
8 legally erroneous; and (2) the Division's adoption of that rule in the first instance violated ORS
9 183.335(2)(b)(e), because no economic analysis of the rule's impact on small business was ever
10 performed. In support of the latter point, counsel submitted the rulemaking records for the 2001
11 amendments to OAR 918-282-0015 ("Electrical Contractor's Responsibilities") and OAR 918-
12 251-0090 ("Division Created Definitions").

13 On April 26, 2017, Administrative Law Judge ("ALJ") Jennifer Rackstraw granted the
14 Division's summary determination as to the underlying violation. She ruled that McDowell was
15 not a "full-time" employee of M & S Electric as a matter of law, and the company had therefore
16 violated OAR 918-282-0010(1) during the period from 2009 through 2016. But because the ALJ
17 found that there were material disputed facts regarding how the Division determined the proposed
18 sanctions, she denied summary determination as to those sanctions.

19 On July 10, 2017, the parties appeared for a telephone hearing on the issue of penalties.

20
21 "

22 "(m) [h]as, while performing work that requires or is related to work that requires a valid license or
certificate under . . . this chapter . . . violated any statute or rule related to the state building code."

23 ORS 455.129(2)(a), (m).

24 ³ That statute provides, in relevant part, that the Division "may impose a civil penalty against a person" for
violations of ORS 479.510 to ORS 479.945 (the Electrical Safety Law). The guidelines for civil penalties are set forth
in OAR 918-001-0036.

25 ⁴ This case was initially consolidated with the related Office of Administrative Hearings ("OAH") Case No.
26 2016-ABC-00029 (concerning Leonard McDowell). At the parties' request, however, ALJ Rackstraw later bifurcated
the cases for hearing.

1 Witnesses included, among others, Michael Weise, owner of M & S Electric; and Andrea
2 Simmons, the Division's enforcement manager. The Division's Exhibits A1 through A10 were
3 admitted into the record without objection; as were M & S Electric's Exhibits R101 through R106
4 and R110. M & S Electric's proposed Exhibit R107 (select excerpts from OAR 340-012
5 regarding the schedule for civil penalties under the Department of Environmental Quality code),
6 Exhibit R108 (an example of application of the civil penalty formula under OAR 340-012-0145),
7 and Exhibit R109 (select excerpts from OAR 603-025 regarding the schedule of civil penalties
8 under the Department of Agriculture code) were excluded as irrelevant. Counsel for M & S
9 Electric also attempted to introduce into evidence various consent orders in which the Division
10 had approved less severe sanctions in similar circumstances. Those orders were apparently not
11 admitted into evidence. The record closed on July 11, 2017.

12 On September 15, 2017, the ALJ issued a Proposed Order. In that Proposed Order, the
13 ALJ reiterated her prior determination that M & S Electric had violated OAR 918-282-0010(1).
14 She further concluded that the Division was entitled to proceed with its proposed one-year
15 suspension of M & S Electric's license and civil penalty in the amount of \$21,000.

16 II. EXCEPTIONS

17 M & S Electric submits the following written exceptions to the ALJ's Proposed Order:

18 **A. The ALJ erred as a matter of law when she concluded that Leonard McDowell did**
19 **not qualify as a "full-time" supervising electrician.**

20 The Division argued—and the ALJ accepted—that Mr. McDowell did not qualify as a
21 "full-time" supervising electrician under OAR 918-282-0010(1), and, therefore, M & S Electric
22 was in violation of that rule. See OAR 918-282-0010(1) (requiring that an electrical contractor
23 "continuously employ at least one full-time general supervising electrician"). But the ALJ's
24 interpretation of that term, as it is used in OAR 918-282-0010(1), is inconsistent with the
25 regulatory context and the rulemaking history.

26 ////

1 To ascertain the meaning of an administrative rule, Oregon agencies and courts “employ
2 essentially the same framework” as for interpreting a statute. *Noble v. Dep’t of Fish & Wildlife*,
3 355 Or 435, 448, 326 P3d 589 (2014). This means that they “consider the text of the rule in its
4 regulatory and statutory context,” *id.*, along with any useful rulemaking history. *State v. Lykins*,
5 357 Or 145, 158, 348 P3d 231 (2015). Where, as here, the term in question is not defined by
6 statute or rule, agencies and courts generally begin with the dictionary definition.

7 As the ALJ observed in her ruling on summary determination, the term “full time” is
8 generally defined as “employed for or working the amount of time considered customary or
9 standard.”⁵ But rather than considering what the “custom” or “standard” might be in the context
10 of this particular industry, the ALJ simply concluded that there was “no plausible interpretation of
11 ‘full-time’ that would encompass employment of less than 10 hours per month.”⁶ That was in
12 error, because it disregards the actual scope of work of a general supervising electrician in this
13 state.

14 First, and most critically, other rules promulgated by the agency confirm that the
15 supervising electrician of a project need not be on site 40 hours per week in order to carry out his
16 or her responsibilities. OAR 918-282-0140 provides that that a general supervising electrician
17 must “[b]e continuously employed as a general supervising electrician on the electrical
18 contractor’s regular payroll and *be available during working hours to carry out the duties of a*
19 *supervising electrician.*” (Emphasis added.) Relatedly, OAR 918-282-0015(1) provides that a
20 registered signing supervising electrician may provide direct supervision and control over an
21 electrical installation by doing any *one* of the following:

- 22 (a) Be on the job site;
- 23 (b) Have on the job site a continuously employed full-time supervising

24
25 ⁵ *In the Matter of M & S Electric, LLC*, OAH Case No. 2016-ABC-00058, Ruling on Motion for Summary
26 Determination 6 (Apr 26, 2017) (citing *Webster’s Third New Int’l Dictionary* 919 (unabridged ed 2012)) (hereinafter
“OAH Case No. 2016-ABC-00058, Ruling on SD”).

⁶ *Id.*

1 electrician; or

2 (c) *Be available in person, or have a supervising electrician available to meet*
3 *with the jurisdictional inspector at the job site within two business days following*
4 *the request.*

5 (Emphasis added.) There is nothing in the rules to prohibit or even discourage a supervising
6 electrician from pursuing other employment—even full-time employment—as long as that
7 employment does not interfere with his or her ability to *be available*⁷ to perform the duties of a
8 supervising electrician.⁸ Here, M & S Electric and Mr. McDowell agreed that Mr. McDowell
9 would perform his supervisory duties in compliance with OAR 918-282-0015(1)(c), and that
10 approach is endorsed by the Division’s own rules.

11 Second, the arrangement between M & S Electric and Mr. McDowell is also affirmed by
12 the agency’s own guidance documents. A document describing the duties and responsibilities of a
13 general supervising electrician reads as follows:

14 A general supervising electrician, when working for or as an electrical contractor:

- 15 1) Signs permits prior to requesting an inspection;
- 16 2) Signs for only one contractor;
- 17 3) Is continuously employed by the contractor they are signing for and must
18 be available to meet with inspectors upon request;
- 19 4) *Must be available when electrical work they are responsible for is being*
20 *performed;* and
- 21 5) Is allowed to design, plan, and layout electrical installations for customers
22 of the electrical contractor.”

23 ⁷ As an alternative interpretation, supervision by remote means or virtual presence should satisfy this
24 requirement and the record supports such a conclusion.

25 ⁸ Other provisions of the Oregon Administrative Rules specifically contemplate that “full-time” employment
26 might constitute something less than a traditional 40-hour week. The rules governing unemployment insurance, for
example, define “full-time work” as “40 hours of work in a week *except in those industries, trades or professions in*
which most employers due to custom, practice, or agreement utilize a normal work week or more or less than 40 hours
in a week.” OAR 471-030-0022. The rule governing child support determinations, OAR 137-050-0360, contains the
same definition. *See also LaFavor and LaFavor*, 151 Or App 257, 264, 949 P2d 313 (1997) (measure of full-time
employment for purposes of child support calculations “is not determined solely by the amount of income earned, but
whether the parent ‘is employing his or her abilities on a full-time basis,’ a determination that must be made on a case-
by-case basis”). Therefore, if the custom and practice in the electrical contracting industry is for supervising
electricians to work on an on-call basis, it is entirely possible that “full-time,” as that term is used in OAR 918-282-
0010(1), was intended to denote something other than a traditional 40-hour work week.

1 Building Codes Division, *Licensing Clarification: General Supervising Electrician* (rev Dec. 3,
2 2008) (emphasis added).⁹

3 Third, under these circumstances, Oregon courts have adopted a broad definition of the
4 term “full time.” Where, as here, a worker is “at all times required to be available for work even
5 though his [or her] services might not be required,” the Oregon Supreme Court has adopted the
6 following definition of “full-time employment”:

7 Full time employment does not mean full time pay. It means *being available for*
8 *full employment*, and *full employment does not mean a hand at the helm through*
9 *the entire voyage*; it means standing by to take over when the exigencies of the
10 passage required to application of one’s skill acquired over many journeys of the
11 past.

12 *Bakkensen v. John Hancock Mut. Life Ins. Co.*, 222 Or 484, 491-92, 353 P2d 558 (1960) (quoting
13 *Harlan v. Washington Nat’l Ins. Co.*, 388 Pa 88, 89-90, 130 A2d 140 (1957)) (emphases added);
14 *see Harlan*, 388 Pa at 89-90 (the phrase “can mean and usually does mean a person who is
15 engaged at his [or her] given job for the full daily and weekly period which his duties require, *it is*
16 *not by any means restricted to that meaning alone*” (emphasis added)). Applying that definition
17 to the plaintiff in *Bakkensen*, a seasonal fire watcher at logging operations—who worked only
18 four days in May, four days in June, and ten days in July prior to an injury—the court concluded
19 that he was a “full-time employee” for purposes of eligibility for disability benefits. Extending
20 the same principles to a supervising electrician, the fact that he or she is actually on the job site for
21 fewer than ten hours per month is certainly not dispositive.

22 In light of the above interpretations of the term “full-time employment,” the fact that Mr.
23 McDowell was a full-time employee of the City of Portland would not preclude him from *also*
24 being a full-time employee of M & S Electric for purposes of OAR 918-282-0010(1). In fact, that
25 interpretation would be consistent not only with industry pattern and practice, but also with the
26 agency’s own rules and guidance documents. For the foregoing reasons, the ALJ erred when she

⁹ That document was proffered by M & S Electric as Exhibit B in opposition to summary determination.

1 ended her analysis without considering the regulatory context and/or rulemaking history of OAR
2 918-282-0010(1).¹⁰

3 **B. Leonard McDowell was “continuously employed” as a supervising electrician for M**
4 **& S Electric.**

5 In light of her determination that M & S Electric “did not employ Mr. McDowell on a full-
6 time basis,” the ALJ concluded that the Division had established a violation of OAR 918-282-
7 0010(1) and did not go on to consider whether McDowell was “continuously” employed by the
8 company.¹¹ If the ALJ had continued the analysis, however, the text, context, and rulemaking
9 history of OAR 918-251-0090 would have compelled her to conclude that Mr. McDowell *was*
10 continuously employed by M & S Electric for purposes of OAR 918-282-0010(1).

11 Again, to ascertain the meaning of an administrative term, Oregon agencies and courts
12 employ the familiar statutory/administrative construction framework, beginning with the text of
13 the rule. *Noble*, 355 Or at 448. Here, “continuously employ” is actually defined by rule to mean:

14 [A] person, including a person leased from a worker leasing company licensed
15 under ORS 656.850, *during time periods when electrical work for which they are*
16 *responsible is performed*, devotes their entire time of employment to tasks of
17 supervising, designing, laying out, planning, controlling, and making electrical
installations for the electrical contractor for which the supervisor is registered as
signing supervisor.

18 OAR 918-251-0090(8) (emphasis added).

19 In its motion for summary determination, the Division conflated the meaning of “continuously
20 employ” with its (presumed) meaning of “full-time.” But that would be inconsistent with
21 Oregon’s rules of construction. *See State v. Laemoa*, 20 Or App 516, 524-25, 533 P2d 370 (1975)
22 (Oregon courts give independent meaning to each statutory term). To be “continuously
23 employed” must necessarily mean something different than to be employed “full-time.”

24
25 ¹⁰ M & S Electric has made a public records request for the rulemaking history of OAR 918-282-0010(1) and
its predecessors and may rely on those records in the event of an appeal.

26 ¹¹ OAH Case No. 2016-ABC-00058, Ruling on SD 4 n 3.

1 As a textual matter, the above definition does not presume that a supervising electrician
2 devotes all of his or her working hours to the same electrical installation. Rather, it simply
3 contemplates that the supervising electrician is fully devoted to the installation at hand during a
4 specified period, *i.e.*, “when electrical work for which they are responsible is performed.”

5 Furthermore, the rulemaking history of the term reveals that the definition was added to
6 the regulatory scheme in 2001 for one purpose: To clarify that electrical contractors are entitled to
7 utilize leasing agencies and that “leased” supervising electricians are still considered
8 “continuously employed” by the contracting electrician for purposes of OAR 918-282-0010(1).
9 State of Oregon, Building Codes Division, *Interoffice Memo: Hearings Officer’s Report on*
10 *Proposed Rule Changes Relating to Electrical Contractor Responsibilities 2* (Apr 26, 2001).¹² In
11 particular, the definition was intended to encompass those types of “long-term relationships”
12 between an electrical contractor and a “leased” supervising electrician, but to specifically exclude
13 “temporary employees who are assigned to various employers for various tasks from week to
14 week or month to month.” *Id.*

15 In short, a supervising electrician is “continuously employed” by an electrical contractor if
16 the two parties maintain a long-term employment relationship. Here, it is undisputed that Mr.
17 McDowell was at all times the supervising electrician for M & S Electric from October 1, 2009,
18 through June 1, 2016—a period of more than five years. Accordingly, Mr. McDowell was
19 “continuously employed” by M & S Electric for purposes of OAR 918-282-0010(1), and the
20 company did not violate that rule.

21 **C. Even if the ALJ accepts the Division’s broad interpretation of OAR 918-282-0010(1),**
22 **that rule is invalid in light of the Division’s failure to comply with ORS**
23 **183.335(2)(b)(E).**

24 ORS 183.335(2)(b)(E), which has been in effect in some form since the late 1980s,
25 requires that all notices of proposed rulemaking contain a “statement of fiscal impact” that

26

¹² That document was proffered by M & S Electric as Exhibit A in opposition to summary determination.

1 “project[s] any significant economic effect of that action on businesses[,] which shall include a
2 cost of compliance effect on small businesses affected.” *See Oregon Funeral Directors Ass’n v.*
3 *Oregon State Mortuary & Cemetery Bd.*, 132 Or App 318, 323, 888 P2d 104 (1995) (“Whether
4 [such a notice] substantially complies with the requirements of this section must be measured
5 against the purpose of the notice, which is to state the subject matter and purpose of the intended
6 action in sufficient detail to inform a person that the person’s interest may be affected.”). That
7 statement of cost compliance must include the following:

8 (a) An estimate of the number of small businesses subject to the proposed rule
9 and identification of the types of businesses and industries with small
10 businesses subject to the proposed rule;

11 “(b) A brief description of the projected reporting, recordkeeping and other
12 administrative activities required for compliance with the proposed rule,
13 including costs of professional services;

14 “(c) An identification of equipment, supplies, labor and increased
15 administration required for compliance with the proposed rule; and

16 “(d) A description of the manner in which the agency proposing the rule
17 involved small businesses in the development of the rule.

18 ORS 183.336(1). If that statement reflects that a rule will have a significant adverse effect on
19 small businesses, the agency is required to take action to reduce that impact. ORS 183.540.

20 There is no record in either the 1987 rulemaking history (when the predecessor to OAR
21 918-282-0010 was first adopted) or the 2001 rulemaking history (when the definition of
22 “continuously employed” was added to OAR 918-251-0090) that such an impact study was ever
23 properly conducted. In 1987, the notice of rulemaking simply describes the fiscal and economic
24 impact as “none.” Building Codes Division, Department of Commerce, Notice of Proposed
25 Rulemaking Hearing 4 (May 15, 1987); *but see Fremont Lumber Co. v. Energy Facility Siting*
26 *Council (In re Amendment of Rules OAR 345 Div 50)*, 325 Or 256, 265, 936 P2d 968 (1997)
27 (“The adequacy of a statement of fiscal impact must be assessed in terms of the *actual* fiscal
28 impact of the proposed action, rather than the agency’s *perception* of its impact.” (Emphases in
29 original.)). The 2001 notice of rulemaking is even more problematic, explicitly providing that

RESPONDENTS’ EXCEPTIONS TO PROPOSED
ORDER: *In the Matter of M & S Electric, LLC et al.*

1 “[t]he impact on businesses and the division are *unknown at this time.*” Department of Consumer
2 and Business Services, Building Codes Division, Notice of Rulemaking Hearing 2 (Mar 15, 2001)
3 (emphasis added).

4 In light of that failure, OAR 918-282-0010(1) is subject to invalidation by the courts. *See*
5 ORS 183.400(4) (a court shall declare a rule invalid if it finds that the rule “[w]as adopted without
6 compliance with applicable rulemaking procedures”). Here, at a minimum, the ALJ has an
7 obligation to limit, alter, or forego its application against M & S Electric. Accordingly, the ALJ
8 erred when she held the company to be in violation of that rule.

9 **D. Even assuming one or more violations, the ALJ erred when she approved the**
10 **Division’s proposed sanctions.**

11 The Division proposed, and the ALJ approved, a one-year license suspension and \$21,000
12 civil penalty. But the Division failed to meet its burden to prove, by a preponderance of the
13 evidence, that those sanctions were appropriate under the circumstances. *See* ORS 183.450(2)
14 (“The burden of presenting evidence to support a fact or position in a contested case rests on the
15 proponent of the fact or position.”). Accordingly, the ALJ erred when she imposed the Division’s
16 proposed sanctions.

17 **1. The ALJ improperly excluded and/or failed to credit evidence suggesting a**
18 **different pattern and practice of sanctioning first-time offenders than that**
19 **presented by the agency.**

20 A witness for the Division testified that both its proposed suspension and its proposed
21 civil penalty were consistent with past agency practice.¹³ To contravene that testimony, M & S
22 Electric sought to introduce into evidence various consent orders in which the Division had
23 approved much less severe sanctions in similar circumstances. Those exhibits were excluded.¹⁴

24 ¹³ *In the Matter of M & S Electric, LLC*, OAH Case No. 2016-ABC-00058, Proposed Order 6-7 (Sept 15, 2017)
(hereinafter “OAH Case No. 2016-ABC-00058, Proposed Order”).

25 ¹⁴ ORS 183.450(1) states that: “Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous
26 rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the
rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their
serious affairs shall be admissible.” This evidence is relevant, material and needs to be considered by the agency in
support of Respondents arguments of inconsistent treatment by an administrative agency. *See* ORS 183.482(8)(b)(B).
RESPONDENTS’ EXCEPTIONS TO PROPOSED

ORDER: *In the Matter of M & S Electric, LLC et al.*

1 The exclusion of the consent orders was error. That evidence was relevant to show that
2 the Division's actual pattern and practice of sanctioning first-time offenders was not as its witness
3 testified. It was further relevant to show that the proposed sanctions in this case were inconsistent
4 with prior agency practice, which undercuts their reasonableness. *See* ORS 183.482(8)(B) (court
5 shall remand agency order if the agency's exercise of discretion was "[i]nconsistent with . . . prior
6 agency practice, if the inconsistency is not explained by the agency"). And, ultimately, it tends to
7 support much less punitive sanctions than those which were imposed under ORS 455.129, ORS
8 455.895, and related regulations. Accordingly, the ALJ erred when she excluded the consent
9 orders from evidence.

10 **2. The one-year license suspension was grossly disproportionate to the offense**
11 **and inconsistent with sanctions imposed in prior actions.**

12 The ALJ suspended M & S Electric's license for one year under ORS 455.129(2)(a) and
13 (m), which provide, in relevant part:

14 Subject to ORS Chapter 183, a regulatory body . . . may deny a license, certificate,
15 registration or application or may suspend, revoke, condition or refuse to renew a
16 license, certificate or registration if the regulatory body finds that the licensee,
certificate holder, registrant or applicant . . .

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

18

19 (m) Has, while performing work that requires or is related to work that requires a
20 valid license or certificate . . . violated any statute or rule related to the state
21 building code.

21 There is no penalty matrix to guide the Division with respect to license suspensions.¹⁵
22 Nonetheless, the ALJ credited the Division's testimony that the suspension was appropriate in
23 light of (1) its purported past sanctioning practices; (2) the importance of a signing supervisor's
24 duties; (3) the duration of the violation; and (4) the fact that M & S Electric should have known of

26 ¹⁵ Although such a matrix is not required by rule, *see* OAR 918-001-0036, the lack of guidelines with respect to
license suspensions raises due process concerns.

1 the violation. Accordingly, she approved the one-year suspension.

2 That ruling was in error, and it was based on several intermediate errors. First, as
3 discussed above, the ALJ improperly excluded and/or failed to credit evidence (*i.e.*, consent
4 orders) suggesting a different pattern and practice of sanctioning first-time offenders than that
5 presented by the agency. Second, the ALJ failed to properly consider the various mitigating
6 circumstances, including the fact that M. & S Electric designed its arrangement with Mr.
7 McDowell based in part on guidance received from former Division electrical chief John Powell.
8 Third, and finally, the ALJ discounted evidence that the technical violation at issue and proposed
9 penalty had no meaningful connection to the Division's safety enforcement goals.¹⁶ See ORS
10 455.020(1) (state building code intended to establish uniform standards to safeguard health,
11 safety, welfare, comfort, and security of Oregon residents).

12 For the foregoing reasons, the ALJ erred when she approved the Division's one-year
13 suspension of M & S Electric's license.

14 **3. The civil penalty imposed exceeded the maximum allowable by law.**

15 The ALJ imposed the \$21,000 civil penalty against M & S Electric under ORS 455.895,
16 which provides, in relevant part:

17 (1)(b) The Electrical and Elevator Board may impose a civil penalty against a
18 person as provided under ORS 479.995[.]

19

20 (2) The Department of Consumer and Business Services, or an appropriate
21 advisory board, if any, may at its discretion impose a civil penalty . . . in an
22 amount determined by the appropriate advisory board or the department of not
23 more than \$5,000 for each offense or, in the case of a continuing offense, not more
24 than \$1,000 for each day of the offense.

25

26 (5) The maximum penalty established by this section for a violation may be
imposed only upon a finding that the person has engaged in a pattern of violations.
The department, by rule, shall define what constitutes a pattern of violations[.]

¹⁶ These arguments apply equally to the imposition of the civil penalty and are incorporated into subsection D(3) by reference.

1 The term “continuing offense,” in turn, is defined as a “violation of a code, rule or law on one or
2 more additional days after having been notified of the violation or ordered to correct the act, or the
3 failure to act. A continuing violation is subject to a civil penalty each day the violation continues
4 after notification.” OAR 918-001-0036(2)(a). The term “pattern of violations” means “two or
5 more prior violations during a five-year period . . . whether or not a penalty was assessed. A
6 pattern of violation is calculated within a five-year period from the date of the latest violation.”¹⁷
7 OAR 918-001-0036(2)(c).

8 Applying the Division’s penalty matrix, the ALJ found that M & S Electric was a “first-
9 time offender.”¹⁸ Notwithstanding that finding, however, the ALJ went on to reason that the
10 Division “could potentially assess a \$3,000 civil penalty against [the company] for *each job*
11 performed while in violation of the rule.”¹⁹ The ALJ cites no authority for that proposition, and
12 M & S Electric is aware of none.

13 It is true that ORS 455.895 authorizes imposition of civil penalty of up to \$3,000 for each
14 first-time “offense” under OAR 918-282-0010. However, the conduct at issue here must
15 constitute a *single* offense for purposes of the statute. That is because ORS 455.895 contains
16 specific criteria that must be met in order to impose a heightened penalty—the ALJ must find that
17 the conduct constituted a “continuing violation” as that term is defined in OAR 918-001-
18 0036(2)(a)—and that standard is not met here. It is undisputed that M & S Electric received no
19 prior notifications, must less orders, regarding the alleged past violations. Accordingly, not only
20 would the Division have been precluded from imposing a \$3,000 per job penalty, but it also
21

22
23 ¹⁷ The Division’s rules governing the imposition of civil penalties are extremely sparse compared to those of
24 other agencies. See M & S Electric’s proposed Exhibit R107 (select excerpts from OAR 340-012 regarding the
25 schedule for civil penalties under the Department of Environmental Quality code), Exhibit R108 (an example of
26 application of the civil penalty formula under OAR 340-012-0145), and Exhibit R109 (select excerpts from OAR 603-
025 regarding the schedule of civil penalties under the Department of Agriculture code). Each of the foregoing
exhibits was excluded as irrelevant, and those intermediate rulings were in error.

¹⁸ OAH Case No. 2016-ABC-00058, Proposed Order 6.

¹⁹ *Id.* (emphasis in original).

1 cannot lawfully impose a \$3,000 per *year* penalty under ORS 455.895.²⁰ Even if this were, in
2 fact, consistent with the Division's "past practice in cases involving long-term violations," it is not
3 authorized by statute.

4 In short, M & S Electric cannot be assessed a civil penalty in excess of \$3,000 under ORS
5 455.895. Even if the ALJ found that the company engaged in a "pattern of violations," OAR 918-
6 001-0036(2)(c), the maximum allowable penalty in the absence of a continuing violation is
7 \$5,000. ORS 455.895(2), (5). Therefore, the ALJ erred when she approved the Division's
8 proposed \$21,000 penalty.²¹

9 10 III. CONCLUSION

11
12 M & S Electric takes exception to the ALJ's Proposed Order. In particular, M & S
13 Electric asserts that the ALJ made at least five fundamental errors:

14 (1) In concluding that Mr. McDowell did not qualify as a "full-time," continuously
15 employed supervising electrician within the meaning of OAR 918-282-0010(1);

16 (2) In accepting the Division's broad interpretation of OAR 918-282-0010(1),
17 notwithstanding the fact that the rule was adopted in violation of ORS 183.335(2)(b)(E);

18 (3) Excluding and/or disregarding certain evidence that tended to undercut the
19 reasonableness of the Division's proposed sanctions;

20 (4) In imposing a suspension that was grossly disproportionate to the offense and
21 inconsistent with sanctions imposed in prior actions; and

22
23 ²⁰ Not only would this be inconsistent with the "continuing violation" provision of ORS 455.895, but there is
24 also no authority for enhancing a penalty based on conduct dating back a full *seven* years (rather than five). See OAR
25 918-001-0036(2)(c) (defining "pattern of violations" to mean "two or more prior violations *during a five-year period* .
26 . . . whether or not a penalty was assessed"); State of Oregon Building Codes Division, Advisory Board Civil Penalty
Matrix, <http://www.oregon.gov/bcd/enforcement/Documents/penalty-matrix.pdf> (Mar 7, 2017) ("The violation type
(first, second, or third) is based upon the number of violations committed within five years of the date of the present
violation.").

²¹ See ORS 183.482(8)(b) (order shall be remanded to agency if the agency's exercise of discretion is inconsistent with
an agency rule)
RESPONDENTS' EXCEPTIONS TO PROPOSED
ORDER: *In the Matter of M & S Electric, LLC et al.*

1 (5) In approving a civil penalty that exceeded the maximum allowable by law. For the
2 foregoing reasons, M & S Electric respectfully requests that the ALJ's Proposed Order be
3 modified.

4
5 DATED this 5th day of October, 2017.

6
7
8
9 GARRETT HEMANN ROBERTSON P.C.

10 

11 _____
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19
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26
4852-7325-1921, v. 1

CERTIFICATE OF SERVICE

I certify that I served the RESPONDENTS' EXCEPTIONS TO PROPOSED ORDER on the following:

Certified Mail

Return Receipt No: 7016 1370 0000 7297 1195

Department of Consumer and Business Services
Building Codes Division
Enforcement and Licensing
1535 Edgewater Street NW
PO Box 14470
Salem, OR 97309-0404

Certified Mail

Return Receipt No: 7016 1370 0000 7297 1201

Anthony J. Estrada, Agency Representative
Building Codes Division
1535 Edgewater Street NW
PO Box 14470
Salem, OR 97309-0404

Certified Mail

Return Receipt No: 7016 1370 0000 7297 1218

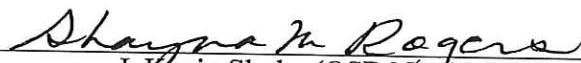
Tyler E. Anderson, Assistant Attorney General
Department of Justice
1162 Court St. NE
Salem, OR 97301

in the following manner:

- Mailing via Certified Mail a true and complete copy to the addresses shown above in a sealed, first class prepaid envelope and depositing it with the United States Postal Service.
- Hand delivering a true and complete copy to the addresses shown above.
- Faxing a true and complete copy to the fax number shown above.
- Selecting Efile & Eservice on Odyssey to the email address above.
- Emailing a true and complete copy (courtesy) to the email address above.

DATED this 5th day of October, 2017.

GARRETT HEMANN ROBERTSON P.C.



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4852-7325-1921, v. 1



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October 9, 2017

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Return Receipt No: 7016 1370 0000 7297 1225

BUILDING CODES DIVISION
Enforcement & Licensing
Attn: Manager Andrea Simmons
1535 Edgewater Street NW
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Salem, OR 97309-0404

RE: In the Matter of M & S Electric LLS and In the Matter of Leonard L. McDowell
OAH Case Nos. 2016-ABC-00058 and 2016-ABC-00029
Agency Case Nos: C2016-0090 and C2016-0091
DOJ File No: 440918-GB0594-16 and 440918-GB595-196

Dear Ms. Simmons:

I represent M & S Electric, LLC and Michael Wiese in the above-referenced matter. On October 5, 2017, my office filed written exceptions to Administrative Law Judge (“ALJ”) Jennifer H. Rackstraw’s Proposed Order. The purpose of this letter is to amend our October 5, 2017 written exceptions to make an additional exception to a finding of fact contained in ALJ Rackstraw’s Proposed Order.

In my written exceptions, I stated that the former electrical chief, John Powell, had endorsed the employment relationship between M & S Electric and supervising electrician Leonard McDowell. Specifically, I wrote that “M & S Electric designed its arrangement with Mr. McDowell based in part on guidance received from former Division electrical chief John Powell.” That statement was consistent with the ALJ’s seventh finding of fact: That Mr. Wiese had been informed by Mr. Powell that “M & S Electric could fulfill the full-time employment requirement by paying the signing supervisor a salary.”

In fact, the record should reflect that it was Chief Inspector Dennis Clemmons, not Mr. Powell, who provided that information to Mr. Wiese and M & S Electric.



October 9, 2017

Page 2

On behalf of my clients, I respectfully request that my exceptions be modified to include the above, and any final order be drafted, to reflect that change. Please consider this letter an addendum to my filing of October 5, 2017.

If you have questions or concerns, please do not hesitate to contact me.

Sincerely,



Ryan P. Hunt
rhunt@ghrlawyers.com

RPH:smr/tbm

c: Anthony J. Estrada, Agency Representative, *Certified Mail, Return Receipt No. _7016
1370 0000 7297 1249*
Tyler E. Anderson, Assistant Attorney General, *Certified Mail, Return Receipt No. 7016
1370 0000 7297 1232*
M&S Electric, LLC, *Via Email Only*

4847-5449-3777, v. 1



Electrical and Elevator Board Enforcement Report for March 22, 2018

Agenda Item IV.A.

Summary Report - Cases Previously Resolved by Division							
Case #	Name	Violation	Location of Violation	Date of Violation	Penalty Assessed	Penalty to Pay	Other Comments
C2017-0312 Mike	Thein, Michael	Installation of new electrical panels and electrical wiring. ●No journeyman electrical license	Klamath Falls	July 2017	\$2,000	\$750	Consent Order Complaint submitted by license enforcement person
C2017-0430 Russ	Morrison, Paul L.	Installation of new LED lights, connected LED lights to power supply and installation of 3 power supply units. ●No journeyman electrical license	Salem	October 2017	\$2,000	\$2,000	Default Order Complaint submitted by BCD field investigator
C2017-0361	Alcatraz Electric	License was denied on past enforcement history and unpaid civil penalties of one of the members.	Oregon	September 2017			Default Order Complaint submitted by BCD licensing
C2017-0412 Russ	Hodel, Matthew dba Zen Electric	Installation of wiring for a circuit; a range hood and wiring; light fixture; new outlets, junction boxes, and outdoor ground box. ●No journeyman electrical license ●No electrical contractor license ●Unsafe installation	Mulino	September 2017	\$9,000	\$9,000	Default Order Complaint submitted by homeowner
C2017-0227 Russ	Soaring Eagle Electric, LLC	●Contractor not continuously employing a full time general supervising electrician	Oregon	February 2014 through April 2017	\$3,000	\$750	Consent Order Complaint submitted by BCD field investigator
C2018-0002 Tracey	United Electric, LLC	Pulled wire through studs. ●Allowing an unlicensed individual to perform electrical work	Beaverton	December 2017	\$2,000	\$2,000	Default Order Complaint submitted by license enforcement person

*Total civil penalty assessed for more than one program

Electrical and Elevator Board Enforcement Report for March 22, 2018

Summary Report - Cases Previously Resolved by Division							
Case #	Name	Violation	Location of Violation	Date of Violation	Penalty Assessed	Penalty to Pay	Other Comments
C2017-0425 TJ	Gray, William A., Jr. dba Bill's Electric	Installation of electrical wire at a commercial property. <ul style="list-style-type: none"> ●No journeyman electrician license ●No electrical contractor license ●No electrical permit 	Springfield	October 2017	\$6,000	\$2,000	Consent Order Complaint submitted by license enforcement person
C2017-0383 Mike	Sunthurst Energy, LLC	Installation of 58 electrical inverters. <ul style="list-style-type: none"> ●Allowing unlicensed individuals to do electrical work ●No electrical contractor license ●No electrical permit 	Klamath Falls	August 2017	\$6,000	\$2,000	Consent Order Complaint submitted by license enforcement person
C2017-0198 Chris	Pronto Signs LLC	Installation of 3 electrical signs. <ul style="list-style-type: none"> ●No electrical contractor license ●Allowing unlicensed individuals to do electrical work 	Lebanon	February 2017	\$5,000	\$1,500	Consent Order Complaint submitted by industry
C2017-0424 Mike	Hale, Daniel	Installation of 58 electrical inverters. <ul style="list-style-type: none"> ●No journeyman electrician license 	Klamath Falls	August 2017	\$2,000	\$750	Consent Order Complaint submitted by license enforcement person

*Total civil penalty assessed for more than one program

Electrical and Elevator Board Enforcement Report for March 22, 2018

**Agenda
Item
IV.B.**

License Suspensions, Revocations and Conditioned			
Case #	Name	Suspension/Revocation/Conditioned Information	Other Comments
C2017-0227 Russ	Soaring Eagle Electric, LLC	Respondent's electrical contractor license is conditioned for 12 months. It is conditioned as follows: quarterly reports for 12 months to include a list of all jobs with each customers name and address, copies of all permits for each job, a list of job site visits made by signing supervising electrician and copies of all payroll records to included number of hours worked by signing supervising electrician.	Consent Order
C2017-0383 Mike	Sunthurst Energy, LLC	Respondent's electrical contractor license is conditioned for 12 months. It is conditioned as follows: quarterly reports for 12 months to include a list of all jobs performed in Oregon with each customers name and address, copies of all permits for each job, copies of all invoices for each job and copies of all payroll records to included each employees job titles, responsibilities and licenses.	Consent Order

Agenda Item VII.

State of Oregon

Board memo

Building Codes Division

March 22, 2018

To: Electrical and Elevator Board

From: Todd Smith, policy analyst, Policy and Technical Services

Subject: Electrical Minor Label Rules

Action Requested:

Electrical and Elevator Board review and consideration of proposed amendments to electrical minor label rules.

Background:

Minor labels can be used in lieu of a full permit for certain installations. Minor labels are less expensive than full permits, and generally one in ten minor labels receives an inspection. The scope for electrical minor labels has not been reviewed in over 10 years and there was a desire to explore whether the scope could be updated to include additional installations. The division worked with several key industry stakeholder representatives to develop these proposed revisions to the electrical minor label rules.

The division presented proposed rules to the board at its November 16, 2017, meeting. Following discussion, the board approved the concept for formal rulemaking with the understanding that the division would bring the rules back to the board before permanent adoption. The division proceeded with the rulemaking process and held a public hearing on November 21, 2017. The division subsequently extended the public comment period and continued to work with stakeholders on a new draft of the rules to address the scoping of specific provisions as well as to improve the clarity of the rules.

Options:

The board has the following options:

- Approve the permanent rule.
- Disapprove the permanent rule.

918-309-0210

Use of Minor ~~Installation Labels~~

~~(1) Persons who may be issued and use minor labels. Minor installation labels may only be issued to and used for installations under the minor label programs permitted by OAR 918-100-0000 through 918-100-0060 by:~~

~~(a) An electrical contractor employing a properly licensed general supervising electrician only as authorized by OAR 918-309-0220;~~

~~(b) A limited maintenance specialty contractor or a limited maintenance specialty contractor-HVAC/R only as authorized by OAR 918-309-0220;~~

~~(c) A restricted energy contractor only as authorized by OAR 918-309-0220;~~

~~(d) A limited renewable energy contractor only as authorized by OAR 918-309-0220;~~

~~(e) A limited pump installation specialty contractor only as authorized by OAR 918-309-0220;~~

~~(f) A limited energy contractor only as authorized by OAR 918-309-0220; and~~

~~(g) A registered telecommunications service provider only as authorized by OAR 918-309-0220.~~

~~(2) Except as allowed under OAR 918-309-0220(3)(a) and (b), minor labels shall not be used for:~~

~~(a) Underground electrical installations;~~

~~(b) Electrical installations that require a cover inspection;~~

~~(c) Installations involving GFCI or AFCI devices other than 15 or 20 amp, 125-volt receptacles and circuit breakers;~~

~~(d) Any electrical installations that are covered by Chapter 5 or Article 680 (Swimming Pools, Fountains, or Similar Installations) of the National Electrical Code, as adopted in OAR 918-305-0100, or Chapter 41 of the One and Two Family Dwelling Specialty Code, as adopted in OAR 918-480-0005;~~

~~(e) Protective signaling; and~~

~~(f) New construction.~~

(1) The use of a minor label is an alternative option which allows a person to use a minor label instead of a permit. No new permit requirements are created.

(2) A minor label may be used for an installation that is exempt from permitting, but otherwise eligible for a minor label, including when the installation involves one or more components of an appliance exempted from permitting under OAR 918-261-0020.

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

Stat. Auth.: ORS 479.540, ORS 455.154, & ORS 455.155

Stats. Implemented: ORS 479.540, ORS 455.154, & ORS 455.155

Hist.: BCA 10-1988, f. & cert. ef. 7-20-88; BCD 5-1994, f. 2-25-94, cert. ef. 7-1-94; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-310-0030; BCD 4-1999, f. & cert. ef. 4-1-99; BCD 4-2002, f. 3-8-02, cert. ef. 4-1-02; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04; BCD 22-2004, f. & cert. ef. 10-1-04

918-309-0220

Scope of Electrical Work Allowed with Minor Installation Label

Except as provided in OAR 918-309-0200 which allows a person to insist on using a permit rather than a label, or where the transaction involves a component of an appliance exempted under OAR 918-261-0020, minor installation labels shall be used by:

(1) A contractor with a signing supervisor, where the installation does not exceed 240 volts for:

(a) Extension of not more than two existing branch electrical circuits limited to 30 amps each and, if relevant, connection of an appliance authorized under sections (2) and (3) of this rule;

(b) Installation of one new electrical circuit limited to 30 amps and, if relevant, connection of an appliance authorized under sections (2) and (3) of this rule;

(c) Repair or replacement of damaged components of existing electrical equipment including services not to exceed 200 amps, provided a reconnect is not required by the serving utility. For reconnects, see OAR 918-309-0040(10) for services; and

(d) The single installation of the appliances, repair or replacement activities authorized by sections (2) and (3) of this rule;

(e) Replacement of multiple switches, circuit breakers, receptacles, light fixtures, smoke detectors, or GFCI or AFCI circuit breakers and receptacles of 15-20 amp, 125-volt in a dwelling unit.

(2) A limited maintenance specialty contractor or a limited maintenance specialty contractor-HVAC/R where the installation does not exceed 120-240 volts single phase for repair or replacement of:

(a) A furnace, oil or gas, not to exceed 20 amps;

(b) A fan not to exceed 20 amps;

(c) A dishwasher or garbage disposal, not to exceed 20 amps;

(d) A water heater, which involves an electrical circuit, not to exceed 30 amps;

(e) An electrical furnace, air conditioning unit or refrigeration unit;

(f) A defective ballast, or up to five ballasts under one label. (For more than five ballasts, inspections shall be performed as a branch circuit permit or hourly rate authorized under OAR 918-309-0070(8)); or

(g) An item in this section and any related transaction under section (3) of this rule if the contractor employs a licensed general supervising electrician or Class "A" or "B" limited energy technician, the work is within the person's scope of license, and that person does the work allowed.

(3) A restricted energy contractor, limited energy contractor, registered telecommunications service provider, or an electrical contractor using an appropriately licensed person if required to make the installation, may use a minor installation label for:

(a) Installation, repair and replacement in new or existing construction of one and two family dwellings, of HVAC, telephone, garage door, vacuum systems, door bells, burglar, fire alarm and security systems, and audio/stereo systems not exceeding 100 volt-amperes, in Class 2 or 3 installations; or

(b) Installation, repair and replacement of up to 5 devices under one label for the following installations not exceeding 100 volt-amperes in Class 2 or 3 installations in other existing buildings, provided:

(A) The equipment is not located in an area classified as hazardous, as described in Chapter 5 of the National Electrical Code, as adopted in OAR 918-305-0100;

(B) The system does not penetrate any fire protection system(s) or air handling space(s), as defined in the currently adopted Oregon Electrical Specialty Code; and

(C) The installation is limited to the following:

(i) Thermostats;

(ii) Data communication devices;

(iii) Intercom, music and paging devices;

(iv) Door or gate control, monitor or access devices;

(v) Cable television and closed circuit television devices;

(vi) Burglar, security and fire alarm devices, including "Power Limited Fire Alarm Circuits" as defined in Article 760 of the National Electrical Code, as adopted in OAR 918-305-0100; or

(vii) Notwithstanding the 5 devices in subsection (3)(b) of this rule, central vacuum clean control devices, one label per system.

(4) This rule does not allow any person to make an installation that is not authorized by the scope of the person's license.

(5) A limited renewable energy contractor or an electrical contractor using a licensed journeyman or limited renewable energy technician may use a minor label for repair and maintenance of renewable electrical energy systems as set forth in ORS 479.630(17)(a).

(6) A limited pump installation specialty contractor may use a minor label for repair, replacement and maintenance of installed pump or irrigation systems of the same horsepower and voltage, as set forth in ORS 479.630(13).

(1) Minor labels may only be used in accordance with the minor label programs allowed by OAR 918-100-0000 through 918-100-0060.

(2) Electrical minor label use is regulated by license type. An electrical license that includes the scope of work listed in this rule may also use a minor label for that scope of work. This rule does not allow any person to make an installation or perform any work that is not authorized by the scope of the person's license.

(3) A minor label may be used for new construction only for the following:

(a) As allowed by section (6)(a) of this rule; and

(b) As allowed by section (6)(b) of this rule.

(4) A minor label may not be used for:

(a) An underground electrical installation;

(b) An electrical installation that requires a cover inspection;

(c) An installation where plan review is required; or

(d) Any electrical installation that is located in an area classified as hazardous, as described in Article 500, or is subject to the requirements of Article 680 (Swimming Pools, Fountains, or Similar Installations) of the Oregon Electrical Specialty Code, as adopted in OAR 918-305-0100.

(5) A limited maintenance specialty contractor or a limited maintenance specialty contractor-HVAC/R may use a minor label for the following:

(a) Where the installation does not exceed 150 volts to ground, single-phase, for repair or replacement of:

(A) A furnace, oil or gas, not to exceed 20 amps;

(B) A fan not to exceed 20 amps;

(C) A dishwasher or garbage disposal, not to exceed 20 amps;

(D) A water heater, which involves an electrical circuit, not to exceed 30 amps; or

(E) An electrical furnace, air conditioning unit, or refrigeration unit.

(b) Applications up to 300 volts to ground for the replacement or retrofit of ballasts or other components in up to 10 light fixtures under one minor label. (For more than 10 light fixtures, inspections shall be performed as a branch circuit permit or hourly rate as authorized under OAR 918-309-0070(8)).

(6) A restricted energy contractor, limited energy contractor, registered telecommunications service provider, or an electrical contractor using an appropriately licensed person for applications not exceeding 100 volt-amperes, in Class 2 or 3 installations, may use a minor label for the following:

(a) Installation, repair, and replacement in new or existing construction of one- and two-family dwellings, of HVAC, telephone, garage door, vacuum systems, door bells, burglar, fire alarm and security systems, and audio/stereo systems; or

(b) Alteration, repair, and replacement of up to 50 devices in existing construction, or a new installation of up to 10 devices in new or existing construction, for the following installations provided the system does not penetrate any fire-rated assembly, as defined in the currently adopted Oregon Structural Specialty Code as adopted in OAR 918-460-0010:

(A) Thermostats;

(B) Data communication devices;

(C) Intercom, music, and paging devices;

(D) Door or gate control, monitor, or access devices;

(E) Cable television and closed circuit television devices;

(F) Burglar, security, and fire alarm devices, including "Power Limited Fire Alarm Circuits" as defined in Article 760 of the Oregon Electrical Specialty Code, as adopted in OAR 918-305-0100; and

(G) Notwithstanding the device allowances of Section (6)(b) of this rule, central vacuum cleaner control devices, one minor label per system.

(7) A properly licensed electrical contractor with a properly licensed signing supervising electrician may use a minor label for the following single-phase or three-phase electrical installations:

(a) Installation or extension of not more than three new electrical circuits limited to 60 amps and not more than 150 volts to ground;

(b) Installation or extension of not more than one new electrical circuit limited to 30 amps and not more than 300 volts to ground;

(c) Repair, replacement, or installation of components within existing electrical equipment or services, not to exceed 200 amps and 150 volts to ground, provided a reconnect is not required by the serving utility. For reconnects, see OAR 918-309-0040(9) for services. The complete replacement of a service is not allowed with a minor label;

(d) Replacement of multiple switches, circuit breakers, receptacles, light fixtures and light fixture components, and smoke detectors;

(e) In dwelling units, replacement of multiple 15 and 20 amp, 125-volt, GFCI or AFCI circuit breakers and receptacles;

(f) Installation of a grounding electrode when a metal water service is replaced with a non-metallic pipe; or

(g) Installation of a fan connected to existing duct work, without an additional mechanical permit when:

(A) The fan is replacing an existing fan;
(B) The replacement fan is 200 cfm or less;
(C) The person performing the replacement connects the new fan to the existing duct work; and

(D) No changes are made to the existing duct system.

(8) A limited renewable energy contractor or an electrical contractor using a licensed journeyman electrician or limited renewable energy technician may use a minor label for repair and maintenance of renewable electrical energy systems as set forth in ORS 479.630(16)(a).

(9) A limited pump installation specialty contractor may use a minor label for repair, replacement, and maintenance of installed pump or irrigation systems of the same horsepower and voltage, as set forth in ORS 479.630(13).

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

Stat. Auth.: ORS **455.154, 455.155**, 479.540

Stats. Implemented: ORS **455.154, 455.155**, 479.540

Hist.: BCA 10-1988, f. & cert. ef. 7-20-88; BCD 5-1994, f. 2-25-94, cert. ef. 7-1-94; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-310-0040; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 4-2001, f. 3-30-01, cert. ef. 4-1-01; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 4-2002, f. 3-8-02, cert. ef. 4-1-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

State of Oregon

Board memo

Building Codes Division

March 22, 2018

To: The Electrical and Elevator Board

From: Todd Smith, 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 met on February 6, 2018, to review continuing education course and instructor applications. Rod Belisle, Craig Perkins and Cindy Regier attended this meeting. The committee reviewed 104 applications from 21 organizations:

- 24 courses were recommended for approval.
- 6 courses were recommended for denial.
- 48 instructors were recommended for approval.
- 26 instructors were recommended for denial.
- 0 applications are pending waiting for additional information from the provider.

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
03/22/18**

Courses

	Applicant	Course Name	Committee Recommendation	Board Action
1	@Home Prep	Oregon Electrical Rules and Laws (4 hours ORL)	Approve – 2017 code cycle	
2	Berg Electric Corp	Forklift Operator Safety Training (4 hours CR)	Deny, not electrical code related	
3	Berg Electric Corp	2017 NEC Changes (8 hours CC)	Approve – 2017 code cycle	
4	Berg Electric Corp	Electrical Safety program – NFPA 70E (8 hours CR)	Approve – 2017 code cycle	
5	Chester Garrett	2017 NEC Changes (8 hours CC)	Approve – 2017 code cycle	
6	City of Portland	2015 NFPA 70E Electrical Safe Work Practices (8 hours CR)	Approve – 2017 code cycle	
7	Columbia Safety TC	HeartSaver CPR and First Aid (4 hours CR)	Approve – 2017 code cycle	
8	Ewing-Foley	Thermal Imaging: Inspections and Safety (4 hours CR)	Deny, not sufficient code material for 70E class.	
9	Heartlink Health Services	CPR AED FirstAid (4 hours CR)	Approve – 2017 code cycle, reduce hours from 6 to 4 CR	
10	Olsson Industrial Electric	First Aid, CPR, AED (4 hours CR)	Approve – 2017 code cycle	
11	Oregon Solar Energy Industry Association	Solar PV Based on the 2017 NEC (4 hours CC, 4 hours CR)	Approve – 2017 code cycle	
12	Oregon Solar Energy Industry Association	Solar PV Systems Best Practices and Energy Trust Installation Requirements (2 hours CR)	Approve – 2017 code cycle	
13	Schneider Electric	Electrical Safety in the Workplace NFPA 70E	Approve – 2017 code cycle, increase requested hours from 7 to 8.	
14	Touchstone Consulting LLC	NFPA 70E Electrical Safe Work Practices (4 hours CR)	Deny, no approved instructor, no code references in outline	
15	Touchstone Consulting LLC	NFPA 70E Electrical Safe Work Practices (8 hours CR)	Deny, no approved instructor, no code references in outline	
16	UA 290	Basic Life Support/First Aid (4 hours CR)	Approve – 2017 code cycle, reduce requested hours from 8 to 4 CR	

17	UA 290	OSHA 10 (4 hours CR)	Approve – 2017 code cycle, reduce requested hours from 30 to 4	
18	UA 290	OSHA 30 (16 hours CR)	Approve – 2017 code cycle, reduce requested hours from 30 to 16	
19	UA 290	Confined Space (8 hours CR)	Deny, not code related material	
20	Jade Learning	Commercial & Industrial Wiring (2017 NEC) (8 hours CR)	Approve – 2017 code cycle	
21	Jade Learning	Residential Wiring (2017 NEC) (8 hours CR)	Approve – 2017 code cycle	
22	Jade Learning	OESC and Oregon Rules (4 hours ORL)	Approve – 2017 code cycle	
23	Ewing-Foley	Lock Out/Tag Out (4 hours CR)	Deny, not electrical code related	
24	Honeywell	Arc Flash 70E (4 hours CR)	Approve – 2017 code cycle	
25	John Kempa	2017 Code Change (8 hours CC)	Approve – 2017 code cycle	
26	John Kempa	2017 Oregon Rule and Law (4 hours ORL)	Approve – 2017 code cycle	
27	Pacific Inside JATC	2017 NEC Analysis (8 hours CC)	Approve – 2017 code cycle	
28	Pacific Inside JATC	Fault Current Calculations (4 hours CR)	Approve – 2017 code cycle	
29	Pacific Inside JATC	NEC Calculations (8 hours CR)	Approve – 2017 code cycle	
30	Pacific Inside JATC	Grounding and Bonding (16 hours CR)	Approve – 2017 code cycle	

Instructors

	Applicant	Committee Recommendation	Board Action
1	Nate Vitagliano (CC, CR) Berg Electric Corp	Approve – 2017 code cycle	
2	James Brett Welland (CR) City of Portland	Approve – 2017 code cycle	
3	Jeffrey J Copeland (CR) City of Portland	Approve – 2017 code cycle	
4	Francisco Castillo (First Aid CR) Columbia Safety TC	Approve – 2017 code cycle	
5	Kale Guerin (First Aid CR) Columbia Safety TC	Approve – 2017 code cycle	

6	Michael Hendricks (First Aid CR) Columbia Safety TC	Approve – 2017 code cycle	
7	Nathan Kennedy (First Aid CR) Columbia Safety TC	Approve – 2017 code cycle	
8	Paul Martin (First Aid CR) Columbia Safety TC	Approve – 2017 code cycle	
9	Matt McCoy (First Aid CR) Columbia Safety TC	Approve – 2017 code cycle	
10	Jake Mokler (First Aid CR) Columbia Safety TC	Approve – 2017 code cycle	
11	Kristina Lachenmeier (First Aid CR) Heartlink Health Services	Approve – 2017 code cycle	
12	Katie Kazmierczak (First Aid CR) Heartlink Health Services	Approve – 2017 code cycle	
13	Eli Anderson (First Aid CR) HSI	Deny, card expired	
14	Bret W Bennett (First Aid CR) HSI	Approve – 2017 code cycle	
15	Sherri Bratton (First Aid CR) HSI	Deny, card expired	
16	Melissa Bucher (First Aid CR) HSI	Approve – 2017 code cycle	
17	Brad Burns (First Aid CR) HSI	Deny, card expired	
18	James R Clack (First Aid CR) HSI	Approve – 2017 code cycle	
19	Jeff Coffman (First Aid CR) HSI	Approve – 2017 code cycle	
20	Tom Coleman (First Aid CR) HSI	Deny, card expired	
21	Heather A Demos (First Aid CR) HSI	Approve – 2017 code cycle	

22	David Drixx (First Aid CR) HSI	Approve – 2017 code cycle	
23	Gunnar Faller (First Aid CR) HSI	Deny, card expired	
24	Gabriel Farmer (First Aid CR) HSI	Deny, card expired	
25	Julie Ferguson (First Aid CR) HSI	Deny, card expired	
26	Kathleen Fitts (First Aid CR) HSI	Deny, card expired	
27	Shawn Gibbs-Kempas (First Aid CR) HSI	Deny, card expired	
28	Dorene Giblin (First Aid CR) HSI	Approve – 2017 code cycle	
29	Bruce A. Goetsch (First Aid CR) HSI	Approve – 2017 code cycle	
30	Paul J Hames (First Aid CR) HSI	Deny, card expired	
31	Lisa Hammonds (First Aid CR) HSI	Deny, card expired	
32	Lisa Hill (First Aid CR) HSI	Deny, card expired	
33	Forest L Ledbetter (First Aid CR) HSI	Deny, card expired	
34	Jon W Lester (First Aid CR) HSI	Approve – 2017 code cycle	
35	Gregory Lytton (First Aid CR) HSI	Approve – 2017 code cycle	
36	Greg MacNab (First Aid CR) HSI	Approve – 2017 code cycle	
37	Michael Marostica (First Aid CR) HSI	Approve – 2017 code cycle	

38	Phaline Mays (First Aid CR) HSI	Deny, card expired	
39	Bonny McCoy (First Aid CR) HSI	Approve – 2017 code cycle	
40	Ronnie Mitchell (First Aid CR) HSI	Deny, card expired	
41	Chris Mortensen (First Aid CR) HSI	Deny, card expired	
42	Jerry Nesseth (First Aid CR) HSI	Approve – 2017 code cycle	
43	Dean Osborn (First Aid CR) HSI	Approve – 2017 code cycle	
44	Jason Paul (First Aid CR) HSI	Approve – 2017 code cycle	
45	David W Peterson (First Aid CR) HSI	Deny, card expired	
46	Renee Pollick (First Aid CR) HSI	Approve – 2017 code cycle	
47	Douglas G Primmer (First Aid CR) HSI	Approve – 2017 code cycle	
48	Jason Primmer (First Aid CR) HSI	Approve – 2017 code cycle	
49	Ryan Samms (First Aid CR) HSI	Approve – 2017 code cycle	
50	Patrick Samples (First Aid CR) HSI	Approve – 2017 code cycle	
51	Chad Scott (First Aid CR) HSI	Approve – 2017 code cycle	
52	James Simpson (First Aid CR) HSI	Deny, card expired	
53	Kevin Stockton (First Aid CR) HSI	Deny, card expired	

54	Bonnie Timberlake (First Aid CR) HSI	Deny, card expired	
55	Bryan Tooley (First Aid CR) HSI	Approve – 2017 code cycle	
56	Desiree Toro-Montgomery (First Aid CR) HSI	Deny, card expired	
57	Ralph VanderKooy (First Aid CR) HSI	Deny, card expired	
58	Tina Vendever (First Aid CR) HSI	Approve – 2017 code cycle	
59	John Waggoner (First Aid CR) HSI	Deny, card expired	
60	Steven H Wertz (First Aid CR) HSI	Deny, card expired	
61	Kenjiro Williams (First Aid CR) HSI	Deny, card expired	
62	Ilene Ferrell (CC, CR) NECA IBEW	Approve – 2017 code cycle	
63	Howard McBride (First Aid CR) Olsson Industrial Electric	Approve – 2017 code cycle	
64	Carlos Morales (CR) Schneider Electric	Approve – 2017 code cycle	
65	Curtis McCombs (CR) Schneider Electric	Approve – 2017 code cycle	
66	Grant Hull (CR) Schneider Electric	Approve – 2017 code cycle	
67	Roosevelt Jean-Baptiste (CR) Schneider Electric	Approve – 2017 code cycle	
68	Tim Heather (CR) Schneider Electric	Approve – 2017 code cycle	
69	Levi Knapp (First Aid, OSHA CR) UA 290	Approve - 2017 code cycle	

70	Joseph Tavares (First Aid, OSHA CR) UA 290	First Aid: Approve – 2017 code cycle OSHA: Deny, OSHA cert expired	
71	Chris Finn (CR) e-hazard	Approve – 2017 code cycle	
72	Brian Bash (CR) Honeywell	Approve – 2017 code cycle	
73	John Kempa (CC, ORL) John Kempa	Approve – 2017 code cycle	
74	John Sherman (CC, CR) Pacific Inside JATC	Approve – 2017 code cycle	

**Agenda
Item
VIII.B.**

December 5, 2017

Keith Anderson
State of Oregon
Building Codes Division
1525 Edgewater NW
Salem, OR 97309-0404

Dear Keith,

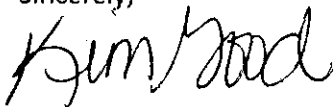
Attached is the documentation that you suggested I resubmit for the EC&M Code Change conference course that was previously approved for 4 credit hours. At the time the course was submitted the textbook and course materials were not available to send as they had not been published yet.

Per your suggestion I have filled out a new course application and am submitting the text book that is used for the students. The Power point presentation files that Mike Holt uses to teach from have also been sent to you via a dropbox link from his office.

As I mentioned I need to get the course retro activated for the attendees that already took the course in 2016-2017 when it was only approved for 4 credit hours. Those attendees need the 16 hours of credit. Attached is a list of students with Oregon license numbers, hour amount requested, time and date of course.

I appreciate your help in this matter.

Sincerely,



Kim Good
Event Manager
Penton Media/EC&M Workplace Learning Center

Student/Licensee Name	Course Hours	OR License Number	Course Date	Course Time
Joey D. Wade	16	5868S	September 12-13, 2017	8am - 5pm each day
John Patelski	16	16288	January 11-12, 2017	8am - 5pm each day
Nicholas DeMercurio	16	78706PE	October 18-19, 2016	8am - 5pm each day
Christopher A. Phillip	16	91160PE	December 6-7, 2016	8am - 5pm each day
Duane Kraxberger	16	1204PS	December 6-7, 2016	8am - 5pm each day
David Marinos	16	4043S	December 6-7, 2016	8am - 5pm each day
Vernon Palmrose	16	3743S	December 6-7, 2016	8am - 5pm each day
Jim Townsend	16	4701S	December 6-7, 2016	8am - 5pm each day
Chad Merritt	16	4840PJ	December 6-7, 2016	8am - 5pm each day
Kenneth Randall	16	4023S/8382J	December 6-7, 2016	8am - 5pm each day
Andrew Crall	16	5428S	December 6-7, 2016	8am - 5pm each day
Shannon English	16	19362PE	December 6-7, 2016	8am - 5pm each day

New application



Continuing Education Course Approval Application

Department of Consumer and Business Services
Building Codes Division
1535 Edgewater NW, Salem, Oregon
Mailing address: P.O. Box 14470, Salem, OR 97309-0404
503-373-1268 • Fax: 503-378-2322 Web: bcd.oregon.gov

Date received by BCD: _____

INSTRUCTIONS

Two easy steps: 1. Print clearly. 2. Include all requested information.
An incomplete application will delay evaluation of your course(s).

Your contact information provided below will be published on the Building Codes Division Web site.

Company name: EC&M Workplace Learning Center Contact person: Kim Good
Address (street or P.O. Box): 9800 Metcalf Avenue
City: Overland Park State: KS ZIP: 66212
Phone: 913-967-1865 Fax: 913-514-6865
E-mail: klm.good@penton.com Web address: www.ecmweb.com

COURSE INFORMATION

Course name: EC&M's 2017 NEC Code Change Conference
Course approval requested for: Boiler Electrical Plumbing
Total course hours (min. 2 hrs.): 16 hours
Has BCD approved this course previously? No Yes If yes, year of approval: 2013-2014
Check the appropriate category:
 Code-change: Model Code only Oregon Rule and Law
 Code-change: Model Code with Oregon Rule and Law materials Code -related
Course is offered (check all that apply):
 Live To the public
 Online By correspondence

Please include the following:

- Brief description of the course.
- Detailed course outline, including:
 - Course content and time spent on each content area.
 - Course objectives.
 - Learning outcomes.
- Name or names of instructors and qualifications (Form 440-2505). Previously approved instructors do not need to resubmit instructor application.
- Course prerequisites, if any.
- For code-change courses, be sure to include:
 - A specific statement that the course meets the minimum code-change requirements for the license types in the matrix approved by the appropriate board.
 - Oregon Rule and Law will count towards the code-change hours requirement. Course content must include permit process and requirements. Scope of work for specific license relevant to the course, and rule and law changes including alternate method ruling and changes.
- List of all program materials.

Are there limitations on who may attend? No Yes (specify): _____
By my signature, I authorize the Oregon Building Codes Division to monitor and evaluate the continuing education course described in this application.
Signature: Kim Good Date: 12/5/17

DEPARTMENT USE ONLY

Application complete? Yes No* Course information attached? Yes No
Course outline attached? Yes No Course has division-approved instructor? Yes No
* If application is not complete, return it to applicant for completion and resubmission.
 Approved from _____ to _____ Signature: _____ Date: _____
MM/DD/YYYY MM/DD/YYYY
 Denied Signature: _____ Date: _____
Comments: _____

Copy of Original application submitted



Continuing Education Course Approval Application

3

Department of Consumer and Business Services
Building Codes Division
1535 Edgewater NW, Salem, Oregon
Mailing address: P.O. Box 14470, Salem, OR 97309-0404
503-373-1268 • Fax: 503-378-2322 Web: bcd.oregon.gov

Date received by BCD: 07.01.16 *BER*

INSTRUCTIONS

Two easy steps: 1. Print clearly. 2. Include all requested information.

An incomplete application will delay evaluation of your course(s).

Your contact information provided below will be published on the Building Codes Division Web site.

Company name: *ECM Workplace Learning Ctr.* Contact person: *Kim Good*
Address (street or P.O. Box): *9800 Metcalf Avenue*
City: *Overland Park* State: *KS* ZIP: *66212*
Phone: *913-967-1865* Fax: *913-514-6865*
E-mail: *Kim.good@perfor.com* Web address: *www.ecmweb.com*

COURSE INFORMATION

Course name: *ECM's 2017 NEC Code Change Conference*

Course approval requested for: Boiler Electrical Plumbing

Total course hours (min. 2 hrs.): *16*

Has BCD approved this course previously? No Yes If yes, year of approval: *2013*

Check the appropriate category:

Code-change: Model Code only Oregon Rule and Law
 Code-change: Model Code with Oregon Rule and Law materials Code-related

Course is offered (check all that apply):

Live To the public
 Online By correspondence

Please include the following:

- Brief description of the course.
- Detailed course outline, including:
 - Course content and time spent on each content area.
 - Course objectives.
 - Learning outcomes.
- Name or names of instructors and qualifications (Form 440-2505). Previously approved instructors do not need to resubmit instructor application.
- Course prerequisites, if any.
- For code-change courses, be sure to include:
 - A specific statement that the course meets the minimum code-change requirements for the license types in the matrix approved by the appropriate board.
 - Oregon Rule and Law will count towards the code-change hours requirement. Course content must include permit process and requirements, scope of work for specific license relevant to the course, and rule and law changes including alternate method ruling and changes.
- List of all program materials.

Are there limitations on who may attend? No Yes (specify):

By my signature, I authorize the Oregon Building Codes Division to monitor and evaluate the continuing education course described in this application.

Signature: *Kim Good*

Date: *6/20/16*

DEPARTMENT USE ONLY

Application complete? Yes No* Course information attached? Yes No
Course outline attached? Yes No Course has division-approved instructor? Yes No

* If application is not complete, return it to applicant for completion and resubmission.

MAIL ROOM

Approved from _____ to _____ Signature: _____ Date: _____

Denied _____ Signature: _____ Date: _____

Comments:



January 9, 2018

Dear Oregon BCD Electrical Board,

I am writing in regards to one of Oregon Solar Energy Industry Association’s (OSEIA) courses, *Solar PV Systems based on the 2017 NEC*. OSEIA has two requests for this course. First, this is a course (10817) that has been previously approved by you for 8 hours of Code Related credit. We are resubmitting this application to ask that this course be approved to offer 4 hours of *Code Change: Model Code only* credit and 4 hours of Code Related credit.

Our second request is that upon approval, the below Oregon BCD license holders retroactively receive the approved amount of code change and code related credits for the course they attended between 9/29/17 and the time this course is approved to offer Code Change credit.

We thank you for your consideration.

Sincerely,

Meghan B. Craig

Meghan@oseia.org
 Program Manager
 Oregon Solar Energy Industries Association

License No	Last Name	First Name	Course Title	Course No	Date Taken
75LRT	Abney	Dean	Solar PV Systems based on the 2017 NEC	10817	10/27/17
057LRT	Hewitt	Mike	Solar PV Systems based on the 2017 NEC	10817	10/27/17

4934S	Mathis	Ralph	Solar PV Systems based on the 2017 NEC	10817	10/27/17
022LRT	Loken	Newt	Solar PV Systems based on the 2017 NEC	10817	10/27/17
80LRT	Bloch	David	Solar PV Systems based on the 2017 NEC	10817	10/20/17
54LRT	Cheshire	Rhine	Solar PV Systems based on the 2017 NEC	10817	10/20/17
67LRT	Crawford	John	Solar PV Systems based on the 2017 NEC	10817	10/20/17
13478J	Creal	Greg	Solar PV Systems based on the 2017 NEC	10817	10/20/17
22526J	Reismiller	James	Solar PV Systems based on the 2017 NEC	10817	10/20/17
39LRT	Stimac	John	Solar PV Systems based on the 2017 NEC	10817	10/20/17

5218S	Craig	John	Solar PV Systems based on the 2017 NEC	10817	10/20/17
5253S & 20095J	DenOuden	Ken	Solar PV Systems based on the 2017 NEC	10817	10/20/17
5873S and 23590J	Armstrong	Nick	Solar PV Systems based on the 2017 NEC	10817	10/20/17
23356J	Bradley	David	Solar PV Systems based on the 2017 NEC	10817	10/20/17
929LR	Eshoo	Daniel	Solar PV Systems based on the 2017 NEC	10817	10/20/17
5925S	Miller	Nathan	Solar PV Systems based on the 2017 NEC	10817	10/20/17
4504S	Novak	Don	Solar PV Systems based on the 2017 NEC	10817	10/20/17
25162J	Phillips	Lauren	Solar PV Systems based on the 2017 NEC	10817	10/20/17

27204J	Tonkovich	Casey	Solar PV Systems based on the 2017 NEC	10817	10/20/17
46LRT	Wickstrom	Brion	Solar PV Systems based on the 2017 NEC	10817	10/20/17
22081J	Winters	Sondra	Solar PV Systems based on the 2017 NEC	10817	10/20/17
23205J	Aryeff	Lance	Solar PV Systems based on the 2017 NEC	10817	10/19/17
25LRT	Khalsa	Kirpal	Solar PV Systems based on the 2017 NEC	10817	10/19/17

January 9, 2018

**Agenda
Item
VIII.D.**

Dear Oregon BCD Electrical Board,

I am writing in regards to one of Oregon Solar Energy Industry Association's (OSEIA) courses, *Solar PV Systems Best Practices & Energy Trust Installation Requirements*. OSEIA has two requests for this course. First, this is a course be approved to offer 2 hours of Code Related credit. You will see in the course outline that nearly 3 hours of the course discuss various code related items.

Our second request is for retroactive approval for course attendees from the November 9, 2017 course to receive approved credits. This course was originally submitted in July 2017 however, for a number of reasons it has not been fully approved yet. We ask that the following OR BCD license holders receive the approved credits for attending the November 9, 2017 course.

License No	Last Name	First Name	Course Title
83LRT	Battjes	Matt	Solar PV Best Practices & Energy Trust Installation Requirements
13478J	Creal	Gregory	Solar PV Best Practices & Energy Trust Installation Requirements
33LRT	Weisman	Jordan	Solar PV Best Practices & Energy Trust Installation Requirements

We thank you for your consideration.

Sincerely,

Meghan B. Craig

Meghan@oseia.org
Program Manager
Oregon Solar Energy Industries Association

Chester Garrett
9815 NE 157th Avenue
Vancouver, WA 98682
360-601-0076

**Agenda
Item
VIII.E.**

January 8, 2018

State of Oregon

(ATTN: Building Code Division)

1535 Edgewater NW

Salem, OR 97309

Dear Sir/Ma'am,

On September 17, 2017, I sent a request to teach 2017 NEC Code Change. Unfortunately, I made an administrative error on my submission. The request was for NEC Code Change, but I accidentally marked "Code Related" instead of "Code Change." I am writing to request that my administrative error be corrected and my approval includes code change instead on code related, as originally intended. I sincerely apologize for this inconvenience and greatly appreciate your attention to this matter. I want to ensure electricians are able to get credit for the training they have received.

In addition, on December 2, 2017, I taught a Code class. I am respectfully requesting that you offer credit to attendees for code change rather than code related. Again, I apologize for the error and sincerely appreciate your assistance.

If you have any questions or concerns, please feel free to contact me.

Thank you again.

Sincerely,



Chester Garrett

March 20th, 2018

**Agenda amended
to include
Item VIII.F.**

Mr. Chairman and Members of the Board,

Thank you for the opportunity to present my case to you today. I have been doing electrical work for the past 33 years beginning with the US Coast Guard followed by many years as an electrical contractor in California. I have been a Supervising Electrician and owner of an electrical company in Bend, Oregon for the past fourteen years. On November 2nd, 2017 it came to my attention that my license had expired. I immediately contacted the building codes division to find out why I hadn't received my renewal form. It turns out that my previous address was on file at building codes so the renewal went to an old address. I can't explain why my attempt to change my address online did not go through other than possibly there was a new zip code added to Bend and I was in it. We have experienced problems with getting bumped out on other online entries using the new zip code. I have had no issues with my past four renewals so this came as quite a shock. I would point out that my change of address with the Contractor's Board did go through with no problem. I entered the change of address online the same day for both my CCB license and my BCD licenses.

After emailing Roseanne Nelson at BCD on Thursday November 2nd to explain my situation I immediately completed all continuing education that same weekend. Unfortunately on Monday Ms. Nelson informed me that I would either have to retest or go before this board and explain my situation. Because this board didn't meet in December I retested but unfortunately fell short.

I have been diligent in the past with regard to my license renewals. While I know it is solely my responsibility to keep my license current I, like many others, use the renewal notice as my trigger for completing the necessary requirements.

I have slowly built up a customer and contractor base in Bend over the years and with my current situation these business relationships are in jeopardy. I am currently unable to provide income for my family.

I am writing to you in the hope that you will waive the retest for my license and let me get back to work.

Thank you for your time.

Brad Sall

Sall Electric
5116S (Supervisor's Lic. not renewed)
CCB #158040

Continuing Ed. Completed

- Rule and Law for Electricians (AYPO, 4 hours ORL)
- Photovoltaic Systems (AYPO, 4 hours CR)
- 2017 NEC Review (AYPO, 4 hours CC)
- 2017 NEC Code Changes, Part 1 (Jade Learning, 8 hours CC)
- Oregon Grounding and Bonding 2017 (Jade Learning, 4 hours CR)