

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: May 28, 2002**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ Upon filing with
Secretary of State

DATE: May 15, 2002

TO: Commissioners Hemmingway, Beyer, and Smith

FROM: Ruth Crowley, ALJ

SUBJECT: AR 421, Request adoption of amendments to OAR 860-022-0040 adding language for gas, electric, and steam heat utilities about cities' fees, taxes, and other assessments to clarify what costs may be included in the rate-making process.

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

Adopt the proposed amendments to the rule as set forth in the attached order and its Appendix A.

DISCUSSION:

These rule amendments reflect Northwest Natural's concern that our rules clarify the nature of financial requirements imposed by cities on energy utilities that can be collected directly from customers. All active participants in the docket support the final modification of the proposed amendments set forth in Appendix A to the draft order.

In sections (1) and (2) of the rule, the amendments add "heat" after steam to clarify what kind of steam utility the rule addresses. The amendments also delete the phrase "or other similar exactions" from section (1) and the phrase "of other exaction" from section (6) and replace those phrases with "monetary charges or monetary payments in section (1) and "monetary charge or monetary payment" in section (6). Participants explained that the word "exaction" had a negative connotation and that "monetary charges or monetary payments" is more precise than the originally proposed "costs."

PROPOSED COMMISSION MOTION:

I move that the proposed amendments to OAR 860-022-0040 set forth in Appendix A to the draft order in AR 421, be adopted.

DRAFT

ORDER NO.

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 421

In the Matter of a proposed rulemaking opened)
as of result of AR 395 (Triennial Review) to)
amend 860-022-0040 by adding language for)
gas, electric, and steam heat utilities about cities')
fees, taxes, and other assessments to clarify)
what costs may be included in the rate-making)
process.)

ORDER

DISPOSITION: RULE AMENDMENT ADOPTED AS MODIFIED

Pursuant to ORS 183.545, the Commission reviews its rules every three years. As a result of the triennial rule review, docketed as AR 395, Northwest Natural Gas (NNG) proposed amendments to OAR 860-022-0040 to clarify the nature of financial requirements cities may impose on energy utilities that can be collected directly from customers. A Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact was filed with the Secretary of State on September 6, 2001. Copies of the Notice were served to the telecommunications, gas, and electric service lists via mail on September 20, 2001. The League of Oregon Cities (League), an association with 10 or more members, requested a hearing on the rule on October 22, 2001.

A hearing was originally set for January 23, 2002. At the request of NNG, the hearing was rescheduled for May 14, 2002, to allow participants to continue discussions and refine the rule change. Notice of the rescheduled hearing was served on April 9, 2002. Prior to the hearing, the Commission received two rounds of comments on the proposed rule amendment from the League, NNG, and Commission Staff.

NNG's originally proposed amendment to the rule's sections (1) and (2) is set out below. Language added to the existing rule is given in bold face and underlined:

OAR 860-022-0040. Relating to City Fees, Taxes, and Other Assessments Imposed Upon Electric, Gas, and Steam Heat Utilities.

(1) The aggregate amount of all business or occupation taxes, license, franchise or operating permit fees, or other similar exactions or costs, excepting volumetric-based fees in section (3) of this rule, imposed upon gas, electric, or steam heat utilities by any city in Oregon for engaging in business within such city or for use and occupancy of city

streets and public ways, which does not exceed 3 percent for gas utilities or 3.5 percent for electric and steam **heat** utilities, applied to gross revenues as defined herein, shall be allowed as operating expenses of such utilities for ratemaking purposes and shall not be itemized or billed separately. **All other costs not allowed as operating expenses shall be itemized or billed separately.**

(2) Except as otherwise provided herein, “gross revenues” means revenues received from utility operations within the city less related net uncollectibles. Gross revenues of gas, electric, and steam **heat** utilities shall include revenues from the use, rental, or lease of the utility’s operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks. Sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

NNG, Staff, and the League met to work on language and after some negotiation were able to agree on final proposed changes to the rule, which NNG filed on May 7, 2002. At the hearing on May 14, 2002, NNG, the League, and Staff appeared and confirmed that they were in agreement on the May 7 filing. No one else appeared at the hearing.

The participants agreed to add “heat” after “steam” in the rule, in sections (1) and (2) and the rule title. They further agreed that the original proposal’s term “costs” was overly broad. It could be construed to include indirect costs that a utility incurs that are not owed to a city or its residents. For instance, a utility could incur increased (or decreased) operating expenses such as personnel costs due to changes in a city’s requirements. Allowing such costs to be includable under OAR 860-022-0040 would change the scope and intent of the rule, which is limited to direct charges imposed by cities.

The participants negotiated more descriptive language than “costs.” They jointly proposed to add “or monetary charges or monetary payments” in place of “costs,” and to delete the original rule’s “or similar exactions” from sections (1) and (6). Participants agreed that the word “exactions” has a negative connotation and is no longer necessary if some form of “charges” is added to the rule.

According to Staff and NNG, “charges” is intended to include payments required by cities that are made directly to residents or other entities. “Charges” fall within the grouping of taxes and fees, apart from the permit fees allowed under section (4) of the rule.

Staff supported, and other participants eventually agreed to, removal of the proposed sentence at the end of section (1): “All other costs not allowed as operating expenses shall be itemized or billed separately.” Staff argued that the sentence was unnecessary and confusing because the existing section (6) of the rule already specifies how excess amounts (above the 3 and 3.5 percent limits in section (1)) must be charged to customers of the city and stated on the bill.

The modified amended rule is set out in Appendix A and incorporated herein by reference.

At its Public Meeting of May 28, 2002, the Commission considered and adopted the amended rule as modified, as contained in Appendix A.

ORDER

IT IS ORDERED that:

1. The modifications to Oregon Administrative Rule 860-022-0040, attached as Appendix A, are adopted.
2. The amended rule shall be effective upon filing with the Secretary of State.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

APPENDIX A

860-022-0040**Relating to City Fees, Taxes, and Other Assessments Imposed Upon Electric, Gas, and Steam Heat Utilities**

(1) The aggregate amount of all business or occupation taxes, license, franchise or operating permit fees, or **monetary charges, or monetary payments**~~other similar exactions~~, excepting volumetric-based fees in section (3) of this rule, imposed upon gas, electric, or steam **heat** utilities by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, which does not exceed 3 percent for gas utilities or 3.5 percent for electric and steam **heat** utilities, applied to gross revenues as defined herein, shall be allowed as operating expenses of such utilities for rate-making purposes and shall not be itemized or billed separately.

(2) Except as otherwise provided herein, “gross revenues” means revenues received from utility operations within the city less related net uncollectibles. Gross revenues of gas, electric, and steam **heat** utilities shall include revenues from the use, rental, or lease of the utility’s operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

(3) Each electric utility subject to volumetric-based privilege taxes or fees shall determine for each city imposing such volumetric charges a base volumetric rate for each customer class calculated as 3.5 percent of the class 1999 gross operating revenues within the city divided by the amount of electric energy in kilowatt-hours delivered to the class in 1999. In cases where 1999 data is not available for a particular city and/or class, the utility’s total 1999 Oregon revenues and kilowatt-hour deliveries for the customer class shall be used to calculate the base volumetric rate. An amount equal to the base volumetric rates multiplied by the corresponding amount of electric energy in kilowatt hours delivered in the 12-month period used to determine the utility’s revenue requirement shall be allowed as operating expenses and shall not be itemized or billed separately. The privilege tax shall be allocated across an electric company’s customer classes in the same proportional amounts as levied by cities against the electric company.

(4) Permit fees or similar charges for street opening, installations, construction, and the like to the extent such fees or charges are reasonably related to the city’s costs for inspection, supervision, and regulation in exercising its police powers, and the value of any utility services or use of facilities provided on November 6, 1967, to a city without charge, shall not be considered in computing the percentage levels set forth in sections (1) and (3) of this rule. Any such services may be continued within the same category or type of use. The value of any additional category of utility service or use of facilities provided after November 6, 1967, to a city without charge shall be considered in computing the percentage levels herein set forth.

(5) This rule shall not affect franchises existing on November 6, 1967, granted by a city. Payments made or value of service rendered by a utility under such franchises shall not be

itemized or billed separately. When compensation different from the percentage levels in section (1) of this rule is specified in a franchise existing on November 6, 1967, such compensation shall continue to be treated by the affected utility as an operating expense during the balance of the term of such franchise. Any tax, fee, or other exaction set forth in section (1) of this rule, unilaterally imposed or increased by any city during the unexpired term of a franchise existing on November 6, 1967, and containing a provision for compensation for use and occupancy of streets and public ways, shall be charged pro rata to local users as herein provided.

(6) Except as provided in section (5) of this rule, to the extent any city tax, fee, **monetary charge, or monetary payment** ~~or other exaction~~ referred to in sections (1) and (3) of this rule exceeds the percentage levels allowable as operating expenses in sections (1) and (3) of this rule, such excess amount shall be charged pro rata to utility customers within said city and shall be separately stated on the regular billings to such customers.

(7) The percentage levels in sections (1) and (3) of this rule may be changed if the Commission determines after such notice and hearing, as required by law, that fair and reasonable compensation to a city or all cities should be fixed at a different level or that by law or the particular circumstances involved a different level should be established.

Stat. Auth.: ORS 183,756 & 757

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 3-1990, f. & cert. ef. 4-6-90 (Order No. 90-417); PUC 14-1990, f. & cert. ef. 7-11-90 (Order No. 90-1031); PUC 7-1998, f. & cert. ef. 4-8-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 17-2000, f. & cert. ef. 9-29-00 (Order No. 00-596); PUC 16-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)