

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 31, 2003**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** _____ **NA** _____

DATE: March 24, 2003

TO: John Savage

FROM: Terry Lambeth through Cynthia Van Landuyt and Phil Nyegaard

SUBJECT: AR 458: Initiate a Rulemaking to Clarify the Rules Relating to City Fees, Taxes, and Other Assessments Imposed Upon Utilities and Telecommunications Cooperatives

STAFF RECOMMENDATION:

Open a rulemaking to make housekeeping changes to the Commission's rules relating to city fees, taxes, and other assessments imposed upon public utilities, telecommunications utilities, and telecommunications cooperatives. The docket number will be AR 458.

DISCUSSION:

ORS 759.105 allows "the cost of such privilege tax or other similar exactions [to be] charged pro rata to telephone users within each taxing municipality unless the Public Utility Commission determines on a statewide basis that such pro rata charges would be inequitable." ORS Chapter 757 does not contain a similar statute for public utilities.

The Commission has established caps on the amounts that will be allowed in statewide rates (revenue requirement), and determined that the excess amounts must be separately billed to customers.¹ For cities' assessments upon public utilities, OARs 860-022-0040, 860-036-0745, and 860-037-0555 allow 3 to 3½ percent of aggregate city privilege taxes to flow through general rates with the excess to be charged to the city residents. For cities' assessments upon telecommunications utilities, OARs 860-022-0042 and 860-034-0330 allow 4 percent of aggregate city taxes to flow through general rates with the excess to be charged to the city residents.

¹ The Commission has addressed caps on the amounts of city fees and taxes that will be allowed in state wide rates in dockets UF 2134 (1958), UF 2620 (1966), AR 218 (1989), AR 329 (1998), AR 347 (1998), AR 384 (2000), and AR 395 (2001).

Oregon Telecommunications Association (OTA) believes the rules for telecommunications utilities and cooperatives (OARs 860-022-0042 and 860-034-0330)² do *not* allow telecommunications utilities and cooperatives to tell their customers the amounts of city fees and taxes that are under the cap and included in their monthly charges.

Staff believes the rules do not prohibit the companies from describing the charges and, therefore, *do* allow the companies to describe these amounts on their customers' bills. However, staff believes the rules can be clarified to eliminate any misunderstanding. Staff also believes such changes should be made for public utilities in OARs 860-022-0040, 860-036-0745, and 860-037-0555.³ Staff proposes to add the following section to the end of each rule, as shown in Attachment A:

The amount allowed as an operating expense may be described on customers' bills in a manner determined by the [company].

Staff believes its changes clarify the Commission's intent and do not change the meanings of the existing rules.

OAR 860-037-0555 for wastewater utilities is currently under revision in docket AR 405. Therefore, staff's proposed clarification will be added to OAR 860-037-0555 in AR 405.

² OARs 860-022-0042 and 860-034-0330 state:

(1) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a [telecommunications utility or cooperative] by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, whether applied to regulated revenues, net income, or other bases, shall be allowed as operating expenses of the [telecommunications utility or cooperative] for rate-making purposes, subject to sections (2) through (4) of this rule . . .

(4) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a small [or large] telecommunications utility by a city, which does not exceed 4 percent of local access revenues, shall be allowed as operating expenses for rate-making purposes and shall not be itemized or billed separately. All privilege taxes and fees and other assessments in excess of 4 percent of local access revenues shall be charged pro rata to users of local access services within the city and the aggregate excess amount shall be separately itemized on customers' bills or billed separately.

³ OARs 860-022-0040, 860-036-0745, and 860-037-0555 state:

(1) The aggregate amount of all business or occupation taxes, license, franchise or operating permit fees, or other similar exactions or costs . . . imposed upon [public 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 [and water and wastewater 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 . . .

(5) Except as provided [above], to the extent any city tax, fee, or other exaction referred to in section (1) of this rule exceeds the percentage levels allowable as operating expenses in section (1) 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.

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PROPOSED COMMISSION MOTION:

Open a rulemaking to make housekeeping changes to OARs 860-022-0040, 860-022-0042, 860-034-0330, and 860-036-0745.

Attachment

AR458 pm.doc

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 rate-making 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 a 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, 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.

(8) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the energy utility.

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); PUC 15-2002, f. & cert. ef. 6-14-2002 (Order No. 02-366)

860-022-0042

Relating to City Privilege Taxes, Fees, and Other Assessments Imposed Upon a Large Telecommunications Utility

(1) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a large telecommunications utility by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways,

whether applied to regulated revenues, net income, or other bases, shall be allowed as operating expenses of the large telecommunications utility for rate-making purposes, subject to sections (2) through (4) of this rule.

(2) As used in this rule:

(a) "Fees and other assessments" means business or occupation taxes or licenses; franchise or operating permit fees; sales, use, net income, gross receipts, and payroll taxes, levies, or charges; and other similar exactions imposed by cities, other than ad valorem taxes, upon revenues or income received from regulated telecommunications services by a large telecommunications utility;

(b) "Local access revenues" means those revenues derived from exchange access services within the city, as defined in ORS 401.710, less related net uncollectibles;

(c) "Privilege taxes" means taxes levied and collected by cities from a large telecommunications utility for use and occupancy of city streets, alleys, or highways, as provided under ORS 221.515;

(d) "Regulated revenues" means those revenues derived from regulated telecommunications services within the city less related net uncollectibles. Regulated revenues include, but are not limited to, local access revenues.

(3) Separate fees for street opening, installations, construction, and maintenance of fixtures or facilities to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in the exercise of its police powers shall be allowed as operating expenses of a large telecommunications utility for rate-making purposes. Such fees shall not be deducted in computing the percentage level set forth in section (4) of this rule.

(4) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a large telecommunications utility by a city, which does not exceed 4 percent of local access revenues, shall be allowed as operating expenses for rate-making purposes and shall not be itemized or billed separately. All privilege taxes and fees and other assessments in excess of 4 percent of local access revenues shall be charged pro rata to users of local access services within the city, and the aggregate excess amount shall be separately itemized on customers' bills or billed separately.

(5) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the large telecommunications utility.

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

Stat. Implemented: ORS 759.105

Hist.: PUC 14-1990, f. & cert. ef. 7-11-90 (Order No. 90-1031); PUC 7-1998, f. & cert. ef. 4-8-98 (Order No. 98-125); PUC 16-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)

860-034-0330

Relating to City Privilege Taxes, Fees, and Other Assessments Imposed Upon a Small Telecommunications Utility or Type 2 Cooperative

(1) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a company, as defined in section (2) of this rule, by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, whether applied to regulated revenues, net income, or other bases, shall be allowed as operating expenses of the company for rate-making purposes, subject to sections (2) through (4) of this rule.

(2) As used in this rule:

(a) "Company," as used in this rule, means a small telecommunications utility or Type 2 cooperative, as defined in OAR 860-034-0010;

(b) "Fees and other assessments" means business or occupation taxes or licenses; franchise or operating permit fees; sales, use, net income, gross receipts, and payroll taxes, levies, or charges; and other similar exactions imposed by cities, other than ad valorem taxes, upon revenues or income received from regulated telecommunications services by a company;

(c) "Local access revenues" means those revenues derived from exchange access services within the city, as defined in ORS 401.710, less related net uncollectibles;

(d) "Privilege taxes" means taxes levied and collected by cities from a company for use and occupancy of city streets, alleys, or highways, as provided under ORS 221.515;

(e) "Regulated revenues" means those revenues derived from regulated telecommunications services within the city less related net uncollectibles. Regulated revenues include, but are not limited to, local access revenues.

(3) Separate fees for street opening, installations, construction, and maintenance of fixtures or facilities to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in the exercise of its police powers shall be allowed as operating expenses of a company for rate-making purposes. Such fees shall not be deducted in computing the percentage level set forth in section (4) of this rule.

(4) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a small telecommunications utility by a city, which does not exceed 4 percent of local access revenues, shall be allowed as operating expenses for rate-making purposes and shall not be itemized or billed separately. All privilege taxes and fees and other assessments in excess of 4 percent of local access revenues shall be charged pro rata to users of local access services within the city and the aggregate excess amount shall be separately itemized on customers' bills or billed separately.

(5) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a Type 2 cooperative by a city, which does not exceed 4 percent of local

access revenues, shall be allowed as operating expenses for rate-making purposes and shall not be itemized or billed separately. All privilege taxes and fees and other assessments in excess of 4 percent of local access revenues shall not be included in joint rates and rates for through services.

(6) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the company.

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

Stat. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 7-1998, f. & cert. ef. 4-8-98 (Order No. 98-125); PUC 17-2001, f. & cert. ef. 6-21-01 (Order No. 01-488)

860-036-0745

Relating to City Fees, Taxes, and Other Assessments

(1) The aggregate amount of all business or occupation taxes, licenses, franchise or operating permit fees, or other similar exactions imposed upon water 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 3.5 percent, applied to gross revenues as defined herein, shall be allowed as operating expenses of such water 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 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 water utility purchasing the service is not the ultimate customer.

(3) 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 water 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 herein set forth. Any such services may be continued within the same category or type of use. The value of any additional category of water 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.

(4) This rule shall not affect franchises existing on November 6, 1967, granted by a city. Payments made or value of service rendered by a water 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

water 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.

(5) Except as provided in section (4) of this rule, to the extent any city tax, fee, or other exaction referred to in section (1) of this rule exceeds the percentage levels allowable as operating expenses in section (1) of this rule, such excess amount shall be charged pro rata to water utility customers within said city and shall be separately stated on the regular billings to such customers.

(6) The percentage levels in section (1) 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.

(7) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the water utility.

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

Stat. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468)