

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: July 1, 2003**

REGULAR \_\_\_\_\_ CONSENT  X  EFFECTIVE DATE \_\_\_\_\_ Upon filing with the  
Secretary of State

**DATE:** June 24, 2003

**TO:** Commissioners Hemmingway and Beyer

**FROM:** Lauri Salsbury, Administrative Rules Coordinator through  
John Savage, Director of Utility

**REVIEWED BY:** Terry Lambeth, Rules Project Coordinator

**SUBJECT:** AR 458: Adopt rule revisions to clarify what utilities may tell their  
customers regarding city fees and taxes included in monthly  
charges.

**STAFF RECOMMENDATION:**

The Commission should adopt the rule amendments as set forth in Appendix A in the attached order.

**DISCUSSION:**

The Commission has established caps on the amounts of cities' assessments that will be allowed in state wide rates (revenue requirement), and determined that the excess amounts must be separately billed to customers. For cities' assessments upon public utilities, 3 to 3½ percent of aggregate city privilege taxes are allowed to flow through general rates with the excess to be charged to city residents. For cities' assessments upon telecommunications utilities, 4 percent of aggregate city taxes area allowed to flow through general rates with the excess to be charged to city residents.

Oregon Telecommunications Association (OTA) believes the rules for telecommunica-  
tions utilities and cooperatives (OARs 860-022-0042 and 860-034-0330) 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.

While the rules do not prohibit companies from describing the charges, 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.

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.

OTA, Verizon and Sprint submitted comments in support of the proposed rulemaking.

OTA's comments, in part: "This rulemaking is a response to HB 2359 (72<sup>nd</sup> Legislative Assembly). The goal of HB 2359 was to give authority to telecommunications utilities to express on their customers' bills the full amount of any franchise fees paid by the utility. The OTA believes AR 458 captures the goal of HB 2359."

Verizon: "It should be clear that telecommunications companies have the flexibility to use billing statements to inform their customers of the direct and indirect impact of city fees and taxes."

Sprint: "The proposed rules will make it clear that utilities may disclose on customer bills the amount of city fees and taxes that are allowed as an operating expense in general rates."

**PROPOSED COMMISSION MOTION:**

Adopt the rule revisions as set forth in Appendix A of this report.

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ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 458

In the Matter of a Rulemaking to Clarify )  
the Rules Relating to City Fees, Taxes, and ) ORDER  
Other Assessments Imposed Upon Utilities )  
and Telecommunications Cooperatives )

DISPOSITION: Rules Amended

On March 31, 2003, the Public Utility Commission (Commission) initiated this rulemaking proceeding. On April 14, 2003, the Commission filed the Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact with the Secretary of State. Notice of the rulemaking was published in the *Oregon Bulletin* on May 1, 2003. Interested persons were given until May 21, 2003, to file written comments. The Oregon Telecommunications Association (OTA), Verizon and Sprint filed timely comments. No request was made for a public hearing.

On July 2, 2003, the Commission deliberated this matter at its regular public meeting and entered the decisions set out in this order.

**Background**

The Commission has established caps on the amounts of cities' assessments that will be allowed in statewide rates (revenue requirement), and determined that the excess amounts must be separately billed to customers. For cities' assessments upon public utilities, 3 to 3½ percent of aggregate city privilege taxes are allowed to flow through general rates with the excess to be charged to city residents. For cities' assessments upon telecommunications utilities, 4 percent of aggregate city taxes area allowed to flow through general rates with the excess to be charged to city residents.

Oregon Telecommunications Association (OTA) believes the rules for telecommunications utilities and cooperatives (OARs 860-022-0042 and 860-034-0330) 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.

While the rules do not prohibit companies from describing the charges, 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 and 860-036-0745. Staff's clarification will also be added to 860-37-0555, currently under revision in AR 405.

Staff has added the following section to the end of each rule, as shown in Appendix 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.

### Comments

OTA, Verizon and Sprint filed written comments in support of the proposed rulemaking.

#### Comments of OTA:

"This rulemaking is a response to HB 2359 (72<sup>nd</sup> Legislative Assembly). The goal of HB 2359 was to give authority to telecommunications utilities to express on their customers' bills the full amount of any franchise fees paid by the utility. The OTA believes AR 458 captures the goal of HB 2359."

#### Comments of Verizon:

"It should be clear that telecommunications companies have the flexibility to use billing statements to inform their customers of the direct and indirect impact of city fees and taxes."

#### Comments of Sprint:

"The proposed rules will make it clear that utilities may disclose on customer bills the amount of city fees and taxes that are allowed as an operating expense in general rates."

**ORDER**

IT IS ORDERED that:

1. The modifications to the rules as set forth in Appendix A, attached to and made part of this order, are adopted.
2. The amended rules shall become effective upon filing with the Secretary of State.

Made, entered, and effective \_\_\_\_\_.

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**Roy Hemmingway**  
Chairman

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**Lee Beyer**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

**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,

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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,

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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)