

Utility Access to and Use of the Right-of-Way ordinance (12.15) Administrative Rules

Admin Rule 1 – Definition of Gross Revenue – “Any and All Revenue”

“[A]ny and all revenue” will be determined by assessing whether the revenue generated would have occurred but-for the utility operation, service, or use of facilities within the city. If such revenue would not have been received in the absence of such utility operation, service, or use of facilities within the city, facilities, then it will be included in “any revenue” and included in gross revenues.

Example 1: Late Fees. Customer does not pay for their utility service(s) on time and the utility service provider assesses and collects a late fee from the customer. Because the late fee would never have been collected but-for the utility service consumed, the late fees will be included in gross revenue.

Admin Rule 2 - Definition of Gross Revenue – “Derived from the operation or use of utility facilities in the City of Portland”

Revenues will be deemed derived from the city and included in gross revenues where they can be sourced to the city. This can be directly, from the service address, or indirectly, by apportionment.

Example 1: Directly Sourced – Service Address. Utility service provider receives revenue from a utility service provided to an address located in Portland, Oregon, but the customer’s billing address is in Seattle, WA. Because the service address (the address where the utility service was consumed) is in Portland, the revenues will be included in gross revenues. This example only applies to utility operators that own facilities and provision Natural Gas or Electric services.

Example 2: Indirectly Sourced – Apportionment. Utility service provider receives advertising revenues within the State of Oregon. Because there is no service address to source the revenues earned, apportionment will prevail. The city is not confined by a particular apportionment methodology to determine the correct amount of revenues attributable to the city, as long as the apportionment methodology is reasonable and not arbitrary and capricious. Apportionment by gross revenues or customer count are examples of reasonable apportionment methodologies.

Admin Rule 3 – Definition of Gross Revenues – Fee Recovery

All revenue received by the utility service provider that are the result of fees imposed on the utility service provider, and not the customer, that the utility service provider passes through to their customers, will be included in gross revenues. These are typically fees assessed by a government, whether city, state or federal on the utility service provider and not the customer.

Example 1: Right-of-way access and use fees. The utility service provider pays based on gross revenues (as defined by Portland City Code (PCC) 12.15), under a franchise agreement, or utility license law (PCC 7.14). If a utility service provider passes that fee onto their customers, that amount will be included in gross revenues.

Example 2: Sales Taxes. This type of revenue would not be included in gross revenues. In some states, certain purchases are subject to a sales tax. This tax is levied on the consumer, rather than the utility service provider, to be held by the business as a liability until the funds are remitted to the state.

Admin Rule 4– Definition of Gross Revenues – Billing, Collection Fees

Billing and collection fees, including but not limited to non-sufficient funds (NSF) charges, late fees, connection fees, upgrade fees, downgrade fees, service calls shut off fees or disconnect fees, convenience fees, equipment rental fees and administrative fees will be included in gross revenues.

Admin Rule 5 – Not gross revenues

The following fees and charges will not be included within the definition gross revenues. This is an exhaustive list of exclusions which the city will periodically review and revise.

1. **Public purpose charges:** Specific charges collected by a utility service provider selling electrical energy or gas for public purposes will be excluded from gross revenues. For example, a charge or surcharge to a utility customer that the utility service provider is required or authorized to collect by federal or state statute, administrative rule, or by tariff approved by the Oregon Public Utility Commission, that raises revenue for a public purpose and not as compensation for either the provision of utility services or for the use, rental, or lease of the utility service provider’s facilities within the city. The list represents an exclusive and exhaustive list of public purpose charges excluded from gross revenues.

Specific public purpose charges excluded from gross revenues:

- energy efficiency programs
- market transformation programs
- low-income energy efficiency programs
- carbon offset programs

2. **Residential Exchange Program (Bonneville Power Administration credits):** The program created by the Northwest Electric Power Planning and Conversation Act to provide residential and farm customers of Pacific Northwest regional utilities a form of access to low-cost Federal power <https://www.bpa.gov/Finance/ResidentialExchangeProgram/Pages/default.aspx>
3. **Oregon and Federal Universal Service Funding:** Revenues associated with Universal Service funding requirements under the federal universal service fund, 47 U.S.C. § 254, or the Oregon universal service fund, ORS 759.425 (2020).
4. **Revenues associated with taxes for emergency communications under ORS Chapter 403.**
5. **E9-1-1:** The calculation of gross revenues for telecommunications utilities will not include revenues from any tariffed or non-tariffed charge or service applicable to any connection, circuit or equipment which brings an E9-1-1 call to the appropriate responding Public Safety Answering Point, regardless of where the E9-1-1 call is originated.
6. **Sales of bonds, mortgages, or other evidence of indebtedness, securities or stocks.**

Admin Rule 6 – Definition of Utility Facility

“Utility Facility” as defined in PCC 12.15 also includes any place, amenity, or piece of equipment used for the purpose of facilitating the production, storage, transmission, delivery or to otherwise provide a utility service. This includes any and all revenue from leases, indefeasible right of use agreements (IRUs), and other similar agreements, for the Portland portion of the utility service provider’s system for dark or lit fiber.

Example 1: Equipment rental. Customer leases a telephone from a utility service provider which they use to consume telecommunications services. The telephone is considered a utility facility and all revenues generated from the lease of that equipment will be included in the gross revenues of the utility service provider.

Example 2: Revenue from the lease of Rack space. Utility service provider A leases to utility service provider B rack space for utility service provider B’s telecommunications equipment. The rack space is a place to store utility facilities and will be considered a utility facility under PCC 12.15.030(T). As a result, all revenues generated from the lease of rack space will be included in the gross revenues of the utility service provider.

Example 3: Revenues from the lease of Dark fiber. Utility service provider A leases to utility service provider B dark fiber which utility operator B “lights up” to use in their own system, uses to provision utility services, or to lease to another utility service provider. The dark fiber which is leased is a piece of equipment that is used for the purpose of provisioning a utility service and all revenues generated from that lease will be included in gross revenues.

Admin Rule 7 – Refunds by City to Licensee – Statute of Limitations

The utility service provider may request a refund by filing with the city a written request within three (3) years from the date payment is due. The written request will state the specific reason upon which the claim is based. The request will include sufficient documentation, for the city to easily verify the claim. The utility service provider will provide, at no cost to the city, any additional information the city deems necessary to verify the claim. If the claim is approved by the city, the verified claim amount may be credited against any amount due and payable.

Example: Payment Due Date. Licensee’s 1st calendar quarter of 2022 remittance was due on May 14th, 2022. The city received the remittance on August 31st, 2022. Licensee’s three (3) year statute of limitations to file a written request for a refund is on or before May 14th, 2025. Licensee will submit all information required or requested by the city on or before the statute of limitation expires or the claim will be denied.

Admin Rule 8 – Fees Paid Per Linear Foot

For the purposes of PCC 12.15.140, the utility service provider will include the following when calculating the linear feet fee:

- Any conduit or fiber owned by the utility service provider
- Any fiber owned by the utility service provider that passes through a leased conduit
- For multiple strands of fiber owned by a utility service provider through a single conduit length, the utility service provider will count only the equivalent length of one strand from the bundle.

For multiple strands of fiber through a single conduit length, the linear foot is measured by the length of the longest fiber strand.

- For a utility service provider providing multiple types of services via multiple lengths of infrastructure in the same trench, such as strands of fiber through a single trench or conduit, the utility service provider will count the linear feet per strand, which is dedicated to a separate line of service, even if the infrastructure is occupying similar space in the right-of-way.

Example: A utility service provider has two lines of business: (1) cable, and (2) telecommunications. The utility service provider has two strands of fiber within a single trench and/or conduit, one for their cable services and one for their telecommunications services. The utility service providers will pay fees per linear feet for each strand of fiber, regardless of whether those strands are in the same trench and/or conduit.

If any linear feet of conduit or fiber is leased, the city will determine ownership by referencing Financial Accounting Standards Board (FASB) 13, "Statement of Financial Accounting Standards No. 13 – Accounting for Leases."¹ Any lease which falls into the category of "capital lease" will be treated as ownership for the purposes of calculating utility service providers' per linear foot fee.

If there is one conduit with strands of fiber owned by multiple utility service providers inside the conduit, each utility service provider will pay a separate linear per foot fee, if applicable.

Admin Rule 9 – Attachment Fee

Attachment fees pursuant to PCC 12.15.140 will be paid quarterly, in arrears, for each calendar quarter, within forty-five (45) calendar days after the end of each calendar quarter. Fees will begin on the date the utility service provider receives approval for a street opening permit from the Bureau of Transportation (PBOT).

Attachment fees do not include any fees for placement of equipment or facilities within the right-of-way.

Example: A utility service provider obtains a permit from PBOT on January 20th, the utility service provider will pay the quarterly fee. A utility service provider obtains a permit on February 15th, the utility service provider will pay two-thirds (2/3) of the quarterly fee.

¹ <https://www.fasb.org/resources/ccurl/62/358/fas13.pdf>