

ADMINISTRATIVE RULE

Utility Access to and Use of the Right-of-Way (PCC Chapter 12.15)

I. Purpose and Scope

The purpose and intent of this Administrative Rule is to establish the process and examples for what to include in gross revenue calculations under Portland City Code (PCC) Chapter 12.15 for utility license payments. This Administrative Rule applies to all companies who require access to the public right-of-way (ROW) when the activities of the company are regulated as set forth in PCC Chapter 12.15.

II. Administrative Rules

A. 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 person’s operation, service, or use of utility facilities within the City. If such revenue would not have been received in the absence of such utility operation, service, or use of utility facilities within the City, then it will be considered part of “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 operator assesses and collects a late fee from the customer. Because the late fee would not have been imposed or collected but-for the utility service consumed, the late fees will be included in gross revenue.

B. Gross Revenue – “Derived from the Operation or Use of Utility Facilities in the City of Portland”

Revenues will be deemed derived from the use or operation of utility facilities in the City and included in gross revenues where they can be sourced to the City. Revenues can be sourced directly, from the service address, or indirectly, by apportionment.

Example 1: Directly Sourced – Service Address. Utility operator receives revenue from a utility service provided to an address located in Portland, Oregon, but the customer’s billing address is in Seattle, Washington. 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 provide natural gas or electric services.

Example 2: Directly Sourced – Apportionment. Utility operator has a private line, with node A located in Portland, OR, and node Z located in Salt Lake City, UT. The revenues

generated from this private line shall be apportioned 50% to the City of Portland and 50% outside the City of Portland.

Example 3: Indirectly Sourced – Apportionment. Utility operator receives advertising revenue from multiple jurisdictions within the State of Oregon, none of which are sourced to a particular jurisdiction. Because there is no specific asset or service address to source the revenues earned, the provider will apportion the revenues to each jurisdiction. 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 and by customer count are examples of reasonable apportionment methodologies.

C. Gross Revenues – Billing, Collection Fees, and Charges

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 or disconnect fees, convenience fees, equipment rental fees, and administrative fees will be included in gross revenues.

D. Fees and Charges that Are Not Gross Revenues

The following fees and charges will not be included within the definition of 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 operator 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 operator is required or authorized to collect by federal or state statute, or administrative rule, or by a 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 operator’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. Utility License Fees:** Utility license fees payable under Portland City Code (PCC) Chapter 12.15.

3. **Residential Exchange Program (Bonneville Power Administration Credits):** The program created by the Pacific Northwest Electric Power Planning and Conservation Act to provide residential and farm customers of Pacific Northwest regional utilities is a form of access to low-cost federal power. See <https://www.bpa.gov/energy-and-services/power/residential-exchange-program>.
4. **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).
5. **Revenues associated with taxes for emergency communications under ORS Chapter 403.**
6. **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 that brings an E9-1-1 call to the appropriate responding Public Safety Answering Point, regardless of where the E9-1-1 call is originated.
7. **Sales of bonds, mortgages, or other evidence of indebtedness, securities, or stocks.**
8. **Net Uncollectable:** Uncollectable revenues are only those uncollectable amounts that can be directly sourced to service(s) provided within the City.
9. **Wholesale Energy Sales:** Proceeds from the sale of energy to another utility when the purchasing utility is not the ultimate consumer of the energy.
10. **Wheeling:** Revenues for distribution services provided to a third-party for its sale or supply of electricity to its customers.
11. **Transmission Services:** Revenues from the sale of transmission capacity to a third-party supplier of electricity to its customers.

E. Utility Facility; Leases

“Utility Facility” as defined in PCC Chapter 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 that a utility operator derives from leases, indefeasible right of use agreements (IRUs), and other similar agreements, for the Portland portion of the utility operator’s system for dark fiber or for lit fiber services.

Example 1: Revenues from the lease of dark fiber. Utility operator A leases to utility operator B dark fiber, which utility operator B “lights up” to use in its own system to provide utility services, or leases to another utility operator. The dark fiber that 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.

F. Refunds by City to Licensee – Statute of Limitations

The utility operator may request a refund by filing with the City a written request within five (5) 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 operator 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 to the City.

Example: Payment Due Date. Licensee’s remittance for the first calendar quarter of 2022 was due on May 14, 2022. The City received the remittance on August 31, 2022. Licensee’s five (5) year statute of limitations to file a written request for a refund is on or before May 14, 2027. 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.

G. Fees Paid for Leased Facilities

A utility operator that provides services within the City, by means of leased facilities, will pay fees based on a percentage of gross revenue. Notwithstanding the foregoing, wireless communication facilities will be charged on a per-facility basis.

H. Fees Paid Per Linear Foot if No Services are Provided within the City

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

- Any conduit or fiber owned by the utility operator.
- Any fiber owned by the utility operator that passes through a leased conduit.
- For multiple strands of fiber owned by a utility operator through a single conduit length, the utility operator 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 operator 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 operator 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 operator has two lines of business: (1) cable and (2) telecommunications. The utility operator 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 operator 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 there is one conduit with strands of fiber owned by multiple utility operators inside the same conduit, each utility operator will pay a separate linear per foot fee, if applicable.

I. Attachment Fee

Attachment fees pursuant to PCC 12.15.090.A. 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 operator 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: If a utility operator obtains a permit from PBOT on January 20, the utility operator will pay the quarterly fee. If a utility operator obtains a permit on February 15, the utility operator will pay two-thirds (2/3) of the quarterly fee.

J. Notice of Intent to Review

If either a payment or return was not received by the date both the payment and return were due, the 5-year term under PCC 12.15.150.A. extends one day for each day, or portion thereof, the payment is outstanding. If no payment was made, the statute of limitation extends indefinitely from the due date for that payment and all other payments due thereafter.

Example: Licensee filed a return but failed to remit payment for the 1Q17 period, due May 15, 2017. On May 15, 2022, payment was received for the 1Q17 period. Revenue sends licensee a notice of intent to audit on Oct. 15, 2022.

Normally, if both a return and payment were submitted on the due date, the review period for a notice of intent sent Oct. 15, 2017, would be for all payments due from Oct. 15, 2012, to Oct. 14, 2017.

If the payment was received 5 years after the due date, the eligible review period can start as far back as May 15, 2012. However, because the City did not file the notice of intent to audit until Oct. 15, 2022, 5 months after the payment was received, the review period can start only as far back as Oct. 15, 2012.

III. Responsibility

The Bureau of Planning and Sustainability is responsible for managing and implementing this Rule.

IV. History

Date Adopted: _____

Effective Date: **October 1, 2023**