

**HOUSE COMMITTEE ON COMMERCE**

**SUBCOMMITTEE ON TELECOMMUNICATIONS AND TRADE**

April 30, 1997 Hearing Room 343

8:15 AM Tapes 64 - 66

**MEMBERS PRESENT:**

Rep. Jim Hill, Chair

Rep. Ron Adams

Rep. Tom Whelan

Rep. Cynthia Wooten

**STAFF PRESENT:**

Julie Neburka, Administrator

Coben Tistadt, Administrative Support

**MEASURE/ISSUES HEARD:**

**HB 2060 - Public Hearing and Work Session**

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 64, A</b>		
<b>003</b>	<b>Chair Hill</b>	<b>Calls meeting to order at 8:17 AM. Opens work session on HB 2060.</b>
<b><u>HB 2060 - WORK SESSION</u></b>		
<b>012</b>	<b>Rep. Adams</b>	<b>Discusses the immediate history and the present status of the bill. Suggests compiling the various parties' desires in the interest of moving forward. States that the bill has to go to the Revenue Committee and then to the Senate. States that "it is time to move."</b>
<b>064</b>	<b>Kathryn VanNatta</b>	<b>Oregon Energy Coalition and Industrial Users.</b>
<b>070</b>	<b>Chair Hill</b>	<b>Asks if they want competitive neutrality with revenues left intact.</b>
<b>077</b>	<b>VanNatta</b>	

		Answers yes. Notes that basic services provided by cities are at risk. Notes that changes in the industry may result in cost shifts.
104	Chair Hill	Asks if the witness requests that the entire burden of the franchise fees be placed on ratepayers.
107	VanNatta	Answers no, that the fee should be a cost of business.
112	Chair Hill	Asks about the breakdown of the charges.
121	VanNatta	Returns to the cost shift issue and requests that additional burdens not be placed on large consumers. States that a model based on volumetrics better suits the changing electricity industry.
132	Chair Hill	Asks members if they desire a discussion on volumetrics.
141	Rep. Whelan	Asks that they devote an entire meeting to the topic.
144	Chair Hill	Asks the witness if they want the calculations of franchise fees to be based on volumetrics.
145	VanNatta	Answers yes for the electricity industry.
148	Rep. Wooten	Asks if they want a combination assessment for major industrial users.
155	VanNatta	Answers that they haven't considered that option.
158	Chair Hill	Asks if the percentages should remain the same, and if we have that data.
166	VanNatta	Answers that the information is available
169	Chair Hill	Asks about telecommunications.
172	Sarah Hackett	League of Oregon Cities. Answers that they wouldn't change the revenue base of the cities.
190	Susan Schneider	Government Relations Office for the City of Portland. Submits written materials (EXHIBIT A).
230	Kathleen Curtis Dotten	Oregon Metals Industry Council. Submits and reads written testimony (EXHIBIT B).
294	Rep. Adams	Asks when a company is located in a unincorporated area if they don't pay franchise fees.
311	VanNatta	Answers that she doesn't know.
321	Tom Gallagher	Oregon Energy Coalition and Industrial Users. Answers yes. Notes that that "inequity" is in current law.
333	Chair Hill	States that 2% of PGE's rates are franchise fees, so that all companies pay those rates.
344	Gallagher	Notes that the PGE's amendments propose to pass on the entire fee to consumers.
362	Rep. Wooten	Asks if he would support the status quo.
370	Gallagher	Answers yes.
373		

	<b>Rep. Wooten</b>	<b>Mentions pilot projects. Asks if PGE should set the standard or if there is an existing formula.</b>
<b>391</b>	<b>Gallagher</b>	<b>Supports the formula in statute.</b>
<b>402</b>	<b>Chair Hill</b>	<b>Asks if they feel that "something should happen."</b>
<b>406</b>	<b>Gallagher</b>	<b>Mentions a PGE formula which shorts the cities.</b>
<b>430</b>	<b>Rep. Wooten</b>	<b>Asks about the possibility of tabling the bill.</b>
<b>440</b>	<b>Curtis</b>	<b>Answers that they could live with that.</b>
<b>TAPE 65, A</b>		
<b>009</b>	<b>Chair Hill</b>	<b>Asks if they would voluntarily pay franchise fees.</b>
<b>017</b>	<b>Gallagher</b>	<b>Answers that, as lobbyists, they can't bind individual companies to that.</b>
<b>022</b>	<b>Curtis</b>	<b>Adds that they would be willing to pay based on the present fee structure.</b>
<b>026</b>	<b>Rep. Wooten</b>	<b>Asks if their clients wouldn't be upset if HB 2060 went away and the Public Utility Commission made these decisions.</b>
<b>035</b>	<b>Gallagher</b>	<b>Answers that that is his second choice. Prefers solving the issue with the committee.</b>
<b>039</b>	<b>Curtis</b>	<b>Prefers the same.</b>
<b>042</b>	<b>Mary Ann Hutton</b>	<b>Northwest Industrial Gas Users. Prefers no change for natural gas.</b>
<b>048</b>	<b>VanNatta</b>	<b>Agrees. Mentions the objective of keeping cities whole. Prefers giving guidance to the PUC on how to govern pilot projects.</b>
<b>058</b>	<b>Rep. Whelan</b>	<b>Asks if objections to franchise fees were because they are unrelated to rights of way.</b>
<b>064</b>	<b>Curtis</b>	<b>Answers yes and that large consumers pay a disproportionate share of franchise fees.</b>
<b>069</b>	<b>Gallagher</b>	<b>States that for large consumers the franchise fees become a tax. Notes that the franchise fee structure is different for the electricity industry.</b>
<b>080</b>	<b>Rep. Adams</b>	<b>Asks if the 2.1% would apply in unincorporated area.</b>
<b>088</b>	<b>Chair Hill</b>	<b>Answers yes within PGE's service territory.</b>
<b>090</b>	<b>Rep. Adams</b>	<b>Asks what creates a higher rate</b>
<b>095</b>	<b>Chair Hill</b>	<b>Answers that cities can add a 1.5% privilege tax.</b>
<b>100</b>	<b>Rep. Adams</b>	<b>Clarifies that the limit is 5% and that the minimum is 2.1%.</b>
<b>104</b>	<b>Gallagher</b>	<b>Clarifies the process through which these taxes are spread out through the rate base and the PUC's role.</b>
<b>116</b>	<b>Chair Hill</b>	<b>Asks about tariffs on different classes of consumers.</b>

120	Curtis	Answers that some companies have special agreements with PGE.
126	Chair Hill	Asks if companies pay the same 2.1%.
138	Denise McPhail	Portland General Electric. Submits written materials (EXHIBIT C). Answers that companies with special agreements pay less than the 2.1%.
146	Rep. Whelan	Asks how they get from 3.5% to 2.1%.
152	McPhail	Answers that the 3.5% charged by cities is spread out throughout the state determining the minimum 2.1%.
165	Jim Anderson	Pacificorp. Indicates that the same situation exists for his company.
183	Chair Hill	Asks if they want -12 amendments.
184	McPhail	Answers yes.
204	Rep. Adams	Asks if the large providers feel that they need legislation to assist PUC in managing deregulation and pilot projects.
210	McPhail	Answers yes. Mentions PGE's upcoming merger with Enron.
224	Chair Hill	Clarifies that currently, PUC has nothing to do with franchise fees.
232	McPhail	States that customers outside of cities shouldn't pay for services provided only in the city.
262	Chair Hill	Asks the legislative counsel how they can require the PUC to extend contractual obligations held by distribution companies on "third parties."
284	McPhail	Notes that companies don't want their deals with customers known. States that PGE doesn't want to be the tax collector, suggesting that the cities collect the tax.
310	Chair Hill	Notes that competitors don't have franchise agreements. Asks how they can charge PGE for money received by someone else. Adds that PGE has no access to the competitor's receipts.
326	Eric Ruona	Legislative Counsel. Suggests that the PUC might have a creative approach to that.
333	Anderson	Answers that there will be a registration and certification process so that the suppliers will be known.
341	Chair Hill	Notes the possibility that if revenues go up the PUC would still require the same amount to be paid to the cities.
360	Tom Berry	Northwest Natural Gas. Mentions pilot projects and the uncertainty of whether the PUC has that authority.
372	Rep. Wooten	Asks if a solution can be found.
374	Berry	Answers yes, in committee, but that the commission doesn't have the statutory authority.
385	Rep. Wooten	Asks if the standards governing pilot projects should be included in HB 2060 or in HB 2821.
388	McPhail	Answers that HB 2060 would be fine.

400	Anderson	Opines that HB 2821 won't come out of the Power Deregulation Committee in its present form, but suggests that HB 2821 is a better vehicle.
422	Berry	Notes the different amount of time devoted to the subject in the other committee.
TAPE 64, B		
008	McPhail	States that PGE doesn't see this as a temporary fix. Notes that keeping cities whole means that they must have the ability to tax the array of services.
016	Rep. Adams	Mentions that Willamette Industries now has a direct connection to the I-5 natural gas pipeline, and that the revenue stream is gone for the city of Albany.
027	Chair Hill	Asks if the pipeline runs through that city.
029	Berry	Answers that the pipeline runs through the Willamette Valley.
034	Chair Hill	States that if they connect without using rights of way that there is no basis for the tax.
036	Berry	Agrees.
040	Rep. Adams	Notes that this issue adds to the bill's difficulties. Asks if franchise fees are considered a tax with regards to the requirement that taxes be shown on customers' bills.
048	McPhail	Responds that the -12 amendments take away the franchise fee structure. Adds that when competition arrives the city must renegotiate their franchise fee agreements.
063	Rep. Adams	Asks if in EXHIBIT C, number 5, "taxes based on distribution charges" invokes the distribution system, distribution charges, or both.
070	McPhail	Explains that a tax based on distribution will shift the burden to residents.
079	Chair Hill	Asks if industrial users in incorporated areas move to a competitor if the incumbents would charge everyone else more to keep the cities whole.
108	McPhail	Answers that the customer who moved to the competitor would still pay 3.5%
110	Chair Hill	Notes that the competitor doesn't have the large rate base through which to spread out the cities' additional taxes.
135	McPhail	Answers that with the 2.1% would be spread through their distribution costs.
152	Chair Hill	Asks if a competitor would mimic what the incumbents are doing.
164	Berry	Notes that most of the proposals use similar percentages and would not be corrective.
168	Rep. Adams	Asks Mr. Berry if he believes that cities should remain revenue neutral.

175	Berry	Answers that "total neutrality" wouldn't be accurate due to decreasing costs.
180	Rep. Adams	Agrees that moving to a competitor should decrease the revenue stream.
186	Chair Hill	Mentions the possibility of large industrial users shifting to a competitor who can fulfill their needs worldwide but their costs are higher in the state. Asks if their franchise fees would increase.
200	McPhail	Answers yes.
204	Rep. Whelan	Asks why it is a tax and not a rent.
208	McPhail	Answers that the "measure of the present structure" has nothing to do with use of the rights of way
240	Rep. Whelan	Asks how a rights of way user can escape the logic justifying a rent.
264	McPhail	Notes that they are paying additional fees.
269	Rep. Whelan	States that they have been given what amounts to a cap on their rent charges. Expresses curiosity as to the true value of the use of rights of way.
283	Rep. Adams	Offers as an analogy the Portland Airport which has the most valuable property in the city. Notes that rights of way are public property and that they are used to access valuable customers.
312	McPhail	Notes that PGE isn't objecting to paying the fee.
321	Berry	Notes that a distinction with the analogy of the airport is that these services are basic and necessary.
338	Rep. Wooten	States that a "package" from the committee to the Power Deregulation Committee would be helpful. Asks if there has been attempts to come to an agreement with the cities regarding pilot projects.
367	McPhail	Responds that there have been discussions with the cities on that issue.
386	Rep. Wooten	States that there are two options for the parties: either compromise or the committee will arbitrate the issues. Expresses desire to get past "circular conversations."
TAPE 65, B		
004	Diane Cowan	Oregon People's Utility District Association. Notes that the PUDs don't have PUC oversight and so have discretion.
012	Chair Hill	Asks if they consider the franchise fees a rent or a tax.
013	Cowan	Answers a tax.
015	Rep. Adams	Asks what PUDs will do when competition comes.
019	Cowan	Answers that their revenues would decrease.
021		

	<b>Rep. Adams</b>	Notes that the cities "gross" would go down as the PUDs lose revenue. Asks if the committee should prevent that from happening, noting that the PUDs are left with a higher rate.
<b>022</b>	<b>Cowan</b>	Responds that their franchise fees are relatively low compared with investor-owned utilities.
<b>028</b>	<b>Chair Hill</b>	Asks if the PUD's boards would be willing to increase distribution charges to offset decreases in franchise fees.
<b>036</b>	<b>Cowan</b>	States that their board would take on that responsibility.
<b>038</b>	<b>Chair Hill</b>	Asks if the PUDs can participate in the pilot projects.
<b>039</b>	<b>Cowan</b>	Answers that they can not.
<b>040</b>	<b>Bob Cantine</b>	Association of Oregon Counties. Agrees. States that competitors would pay the same in lieu of rates as do PUDs.
<b>045</b>	<b>Cowan</b>	Adds that the "co-ops" hold the same position as the PUDs.
<b>055</b>	<b>Cantine</b>	Notes discrimination against counties. Mentions the suggestion that they remove the amount county residents currently pay, but that that doesn't address the issue of whether counties should collect for use of their rights of way. Requests that counties be allowed to recover the costs of their rights of way.
<b>082</b>	<b>Rep. Wooten</b>	Asks how counties assess the value of the rights of way.
<b>094</b>	<b>Cantine</b>	States that this isn't a rights of way issue. Mentions the costs of rights of way. Expresses support for the -12 amendments.
<b>108</b>	<b>Chair Hill</b>	Asks if they tax telecommunications and electric companies differently in terms of "intangible taxes."
<b>114</b>	<b>Cantine</b>	Answers that regulated utilities' intangible value is centrally assessed and that the taxes are levied out of a segregated tax account.
<b>120</b>	<b>Rep. Adams</b>	Asks if counties have the ability to charge fees for new pipelines.
<b>126</b>	<b>Cantine</b>	Answers no, that they are specifically prohibited from doing that.
<b>128</b>	<b>Rep. Adams</b>	Asks if the county has to give access to the rights of way and has to help with engineering without compensation.
<b>138</b>	<b>Cantine</b>	Answers yes. Mentions that utilities are interested in removing the intangible tax, which would further hurt counties.
<b>142</b>	<b>Rep. Whelan</b>	Asks if the intangible tax is the Revenue Department's assessment of the value of the utility properties in an county.
<b>146</b>	<b>Cantine</b>	Believes that intangible value includes permits allowing exclusive operations in an area and perhaps stocks and bonds.
<b>160</b>	<b>Rep. Adams</b>	Asks if the privilege tax on cable is based on rights of way.
<b>168</b>	<b>Cantine</b>	Notes that that standard was set in federal law.
<b>189</b>	<b>Fred Logan</b>	GTE. States that GTE accepts the -14 amendments.
<b>192</b>	<b>Chair Hill</b>	Asks if GTE "wants" the -14 amendments.

193	Logan	Answers yes.
194	Gary Bauer	Oregon Independent Telephone Association. Mentions discussions with the larger cities and subsequent improvements to the -14 amendments.
200	Rep. Adams	Asks about the clause in the -14 amendments setting a cap on cable at 5%, and about the cities' disagreement with that cap.
214	Bauer	Responds that they would still want the -14 amendments without that clause. Mentions that that clause doesn't deviate from current federal law.
225	Rep. Adams	Notes that cities have come to agreements beyond the 5%.
242	Rep. Whelan	Asks if the "cable act" allows cities to charge 5% for use of rights of way.
254	Bauer	Answers yes and that cities can levy up to 7% for telecommunications, 4% of which goes into rates and 3% of which shows on the bill.
268	Chair Hill	Asks if that is required in law or by the PUC.
269	Bauer	Answers that the "4 and 3" was established by the PUC, and that the 7% limit is in statute
290	Rep. Adams	Asks if the 4% is distributed through both cities and counties.
297	Bauer	Answers that the 4% is distributed through all customers.
305	Rep. Adams	Asks if telephone companies could provide the committee percentages indicating where the taxes are being collected.
314	Bauer	Answers yes.
317	Rep. Adams	Mentions the issue of fairness when 4 % is collected from all consumers and distributed back to municipalities.
328	Rep. Whelan	Asks if that situation is justified by the concentration of facilities in the cities.
339	Bauer	Suggests that that was the original concept.
337	Chair Hill	Asks for testimony from someone who was around when the PUC made that determination.
348	Ginny Lang	US West. Introduces Dennis Tooley.
353	Dennis Tooley	Manager for US West. Answers that the justification was that central offices, serving both urban and rural customers, are located in the cities and so additional cable is needed to reach the rural customers.
369	Chair Hill	Asks if that is in statute.
371	Tooley	Answers no, that it was in administrative rules.
381	David Olsen	City of Portland. States that in the '89 session the legislature changed the privilege tax from 5% of local revenues to 7% of "dial-tone." Mentions the PUC's reasoning behind the "4 and 3" breakdown.
413		



	<b>Rep. Adams</b>	<b>Agrees that the franchise fee structure shouldn't be based solely on where the money is collected but also on where the investment has been placed.</b>
<b>420</b>	<b>Rep. Wooten</b>	<b>Asks how, if they don't adopt a consistent statewide plan, they are to accommodate county ratepayers while simplifying the system, becoming more efficient, and promoting competition.</b>
<b>TAPE 66, A</b>		
<b>015</b>	<b>Cantine</b>	<b>Answers that they could treat it as a privilege tax on the local level.</b>
<b>017</b>	<b>Rep. Wooten</b>	<b>Notes that her question assumed that they maintain the franchise fee framework.</b>
<b>019</b>	<b>Cantine</b>	<b>Responds that he was suggesting that a portion of charge could be a privilege tax similar to how the cities currently operate.</b>
<b>030</b>	<b>Rep. Wooten</b>	<b>Clarifies that Mr. Cantine is suggesting allowing a utilities sales tax on ratepayers outside incorporated city limits.</b>
<b>032</b>	<b>Cantine</b>	<b>Further suggests "freeing up" the 2.5% currently paid by county ratepayers so that that they would see no increase in their rates.</b>
<b>042</b>	<b>Rep. Adams</b>	<b>Asks if the 4% is collected only on customers residing within the city.</b>
<b>044</b>	<b>Chair Hill</b>	<b>Answers yes.</b>
<b>046</b>	<b>Rep. Whelan</b>	<b>Asks about the argument that there is a concentration of facilities in the city serving rural customers.</b>
<b>048</b>	<b>Cantine</b>	<b>Answers that the tax would be generated from revenue collected in the counties.</b>
<b>052</b>	<b>Rep. Whelan</b>	<b>States that in that scenario rural customers wouldn't pay for the right of way value extending services to their area.</b>
<b>054</b>	<b>Cantine</b>	<b>Mentions county roads located within city limits from which they receive no franchise fee compensation.</b>
<b>059</b>	<b>Laurie Itkin</b>	<b>Governor's Telecommunications Policy Advisor. Talks of the effects of Measure 47 and the cities' dependence on franchise fees. States that the governor doesn't want to discourage investment and competition. States that they need to move from implicit subsidies to explicit subsidies, i.e., that the 4% should not be absorbed into rates. Mentions the Oregon Transportation Initiative and the possibility of adding a fee to telephone bills.</b>
<b>117</b>	<b>Chair Hill</b>	<b>Asks if she represents the governor on electrical issues.</b>
<b>120</b>	<b>Itkin</b>	<b>Answers no.</b>
<b>124</b>	<b>Rep. Wooten</b>	<b>Asks Ms. Itkin for critical comments on HB 3246 as soon as she is able.</b>
<b>137</b>	<b>Pat Hickey</b>	<b>AT&amp;T. States that "we" support the -14 amendments.</b>
<b>141</b>	<b>Rep. Wooten</b>	<b>Asks who is "we."</b>
<b>144</b>	<b>Hickey</b>	

		Notes communications with GST Telecom and Electric Lightwave, Inc. Adds that he can't speak for all competitors.
149	Rep. Wooten	Asks if the competitors will be ready to testify on HB 3246 next week.
158	Hickey	Assumes yes.
160	Chair Hill	Asks the members if the meeting has been helpful.
161	Rep. Whelan	States that it has been helpful.
161	Chair Hill	Asks what else is needed.
162	Rep. Adams	Suggests that the interested parties need to come to an agreement or live with the committee's discretion.
181	Chair Hill	Notes that all the parties have come up with amendments.
188	Rep. Wooten	Requests that they report back next Tuesday on how to proceed with pilot projects and how to create a long-term solution for telecommunications and electricity.
210	Chair Hill	Asks if the committee is willing to attempt long-term solutions.
213	Rep. Adams	Prefers a short-term solution.
216	Rep. Whelan	Agrees.
221	Rep. Wooten	Suggests considering telecommunications and electricity in different bills.
230	Rep. Adams	States that he isn't ready to do away with HB 2060.
241	Rep. Wooten	Requests that the members look at HB 3246.
246	Chair Hill	Clarifies that that bill has nothing to do with franchise fee agreements.
254	Julie Neburka	States that the bill is a placeholder and that amendments are available.
262	Chair Hill	Adjourns meeting at 10:30 AM.

Submitted By, Reviewed By,

Coben Tistadt, Julie Neburka,

Administrative Support Administrator

#### **EXHIBIT SUMMARY**

A - HB 2060, written materials, Susan Schneider, 2 pp.

B - HB 2060, written material, Kathleen Curtis Dotten, 1 p.

C - HB 2060, written material, Denise McPhail, 1 p.