

Office of Policy and Legal Analysis

Date: March 25, 2021
To: Joint Standing Committee on Energy Utilities and Technology
From: Deirdre Schneider, Legislative Analyst
Re: LD 251, An Act Regarding Public Utility Assessments, Fees and Penalties

Summary

This bill does the following:

1. It requires the Public Utilities Commission and the Public Advocate, respectively, in calculating assessments charged to public utilities to apportion the assessment within each category of public utility(transmission and distribution, gas, telephone and water) between investor-owned utilities and consumer-owned utilities based on an accounting of the portion of the commission's resources and the Public Advocate's resources devoted to matters related to investor-owned utilities and the portion devoted to matters related to consumer-owned utilities.
2. It requires the commission, in its annual report, to report on any filing fees or penalties collected from public utilities in the previous year that have not been adjusted in the previous 5 years and to provide draft legislation to adjust the dollar value of filing fees and penalties based on the actuarially compounded Consumer Price Index for each fee and penalty since the last adjustment.
3. It requires the commission and the Public Advocate to report annually, beginning in 2022, on the portion of resources devoted to matters related to investor-owned utilities and the portion of resources devoted to matters related to consumer-owned utilities and on commission and Public Advocate expenses, respectively, per dollar of intrastate gross operating revenue for investor-owned utilities and consumer-owned utilities.
4. It amends the law governing filing fees for reorganizations of utilities to authorize the commission to order a filing fee of up to .05% of the estimated total value of the reorganization and to require the commission to order payment of a filing fee equal to .05% of the estimated total value of the reorganization if a reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility. Under current law the commission may charge a filing fee of up to \$50,000 to an applicant seeking approval for a reorganization.
5. It requires the commission to submit legislation to the Second Regular Session of the 130th Legislature to adjust all fees and penalties paid by public utilities based on the actuarially compounded Consumer Price Index for each fee or penalty since enactment.

History

During the 129th Legislature, the committee amendment to LD 1881 contained the same language as this bill. That bill was voted out of committee with a divided report (OTP-AM/ONTP). LD 1881 died upon adjournment of the 129th Legislature.

List of People that Submitted Written Testimony and/or Spoke at the Hearing

Proponents: Representative Berry (Sponsor); Debra Hart, Dirigo Electric Cooperative; and Sue Ely, NRCM

Opponents: Ben Sanborn, Telecommunications Association of Maine

Neither for nor against: Kathleen Newman, CMP; David Parent, MWUA; Garrett Corbin, PUC; Barry Hobbins, OPA; Bradley Sawyer, MRWA;

Suggested Amendments

- **Garrett Corbin, PUC**
 - This bill could result in an increase in assessments to consumer-owned water utilities, including small water utilities – the committee may want to consider capping year-over-year increases to reduce the impact on these utilities.
 - A full year of cost data should be compiled before implementation – this would mean the first assessments reflecting costs apportioned to COU’s and IOU’s would occur in May 2022.
 - The language relating to reorganization approval - .05% of the estimated “total value of the corporation or entity resulting from the proposed reorganization” is unclear. The committee might want to consider tying the value to the “purchase price” or “transaction value” as determined by the commission.
 - In section 5 of the bill it specifies the commission may order a filing fee, except, that if the reorganization would result in the transfer of ownership and control of the utility or its parent, the commission is required to order a filing fee be paid. The committee may want to clarify that the commission can return any filing fee amount that is not used to process the reorganization application or that no filing fee would be required if it is not needed to process the application.
 - The commission suggests instead of requiring the commission to propose legislation in future legislative sessions, the commission in its annual report, would include calculations of all fees and penalties compounded by the Consumer Price Index since enactment.

Subsequent to the public hearing, the commission submitted a memo to the committee. The memo specified the following points, included additional information related to these points and the commission’s current system to track time and provided example of fees adjusted for inflation:

- “While it varies, in most years less than half of our overall time could be specifically allocated based on consumer or investor ownership. We would need, and welcome, guidance from the Committee related to how costs which are not clearly allocated by ownership and/or industry should be allocated by Commission staff to best meet the intent of the proposed legislation.”
- “Even though there is a technical capacity to track time by individual utility, the Commission would urge against assigning costs on a per-utility basis, for several reasons.”
- “While we generally agree that smoothing assessments over time could be helpful in the case of small water districts such as the one discussed above, the Commission is not persuaded that a

three-year rolling average of costs assigned to classes would be helpful and would not directly align Commission costs to industries which we believe is one of the goals of this legislation.”

- **Ben Sanborn, TAM** – In response to questions at the public hearing on TAM’s testimony in opposition to the bill, Ben Sanborn provided the following amendment to section 5 of the bill. It retains the existing \$50,000 filing fee cap for reorganizations that do not result in a change of control or ownership of a public utility. It permits, but does not require the commission, for transactions that will result in a change of ownership or control, to collect a filing fee that is \$100,000 or .05% of the transaction value of the reorganization, whichever is less

Sec. 5. 35-A MRSA §708, sub-§4, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

4. Filing fee. Within 30 days after the application for approval of a reorganization is filed pursuant to subsection 2, the commission may order the applicant to pay a filing fee not to exceed \$50,000, ~~.05% of the estimated total value of the corporation or entity resulting from the proposed reorganization~~ if the commission determines that the application may involve issues ~~which will that would~~ necessitate significant additional costs to the commission, ~~except that, if a reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, the commission shall may order the applicant to pay to the commission a filing fee in an amount equal to:~~ not to exceed 100,000 or .05% of the estimated total value of the corporation or entity resulting from transaction value of the proposed reorganization, whichever is less. The applicant may request the commission to waive all or a portion of the filing fee. The commission shall rule on the request for waiver within 30 days. Notwithstanding any other provision of law, filing fees paid as required in this subsection ~~shall must~~ be segregated, apportioned and expended by the commission for the purposes of processing the application. Any portion of the filing fee that is received from an applicant and is not expended by the commission to process the application ~~shall must~~ be returned to the applicant.

- **Bradley Sawyer, MRWA**
 - If proceeding with the bill, the committee may want to consider amending the bill to require that the PUC and OPA notify utilities at least 90 days in advance of a predicted assessment increase of 25% or more.
- **David Parent, MWUA from testimony**
 - In order to decrease the volatility of regulatory assessments, the committee can consider
 - Implementing a system whereby the basis of allocating PUC and OPA assessments is based on a 3-year rolling average
 - Another option would be for the PUC and OPA to create a reserve for their operations that can be used to moderate assessment increases in years when significant budget increases are needed.
 - PUC and OPA could be required to adopt a process whereby the invoices for annual assessments could be sent in advance of the water utilities’ budget season making it easier to budget for any increase – or send the invoices in the normal course, but give utilities the option of moving any increase to their next budget year.
 - Under section 5 of the bill the reorganization filing fee moves from a set fee to a more variable fee, however, another approach would be to set the initial filing fee in a manner that approximates the net cost of processing the case.

Subsequent to the public hearing, MWUA submitted the following draft amendment to the bill (the full draft was submitted along with a memo to the committee). The amendment does the following:

- Requires that the PUC and OPA assessments be allocated to utility classes based on a rolling three year average of costs assigned to each class of utility.
- Requires that, when the PUC submits a bill to the Legislature with recommendations for adjustments in fees and penalties, such bill may reflect a recommended increase or no change.
- Requires that filing fees for reorganizations be based on estimated costs, not to exceed \$100,000.

- **Amend section 1 of the bill by adding the following paragraph:**

F. The percentage of costs allocated to classes of utilities used to determine assessments shall be based on a three-year rolling average of costs assigned to such classes.

- **Amend section 2 of the bill by adding the following paragraph:**

D. The percentage of costs allocated to classes of utilities used to determine assessments shall be based on a three-year rolling average of costs assigned to such classes.

- **Amend section 3 of the bill as follows:**

2-A. Filing fees and penalties; legislation. Any filing fees or penalties collected in the previous year under this Title that have not been adjusted in the previous 5 years. For filing fees or penalties reported pursuant to this subsection, the commission shall submit, along with the annual report, draft legislation to adjust the dollar value of the filing fee or penalty based on the actuarially compounded Consumer Price Index since the fee or penalty was last adjusted, or justification for leaving the fee or penalty at the current level, based on actual costs or desired level of deterrence. After receiving the annual report, the committee may report out a bill based on the draft legislation submitted pursuant to this subsection;

- **Amend section 5 of the bill as follows:**

4. Filing fee. Within 30 days after the application for approval of a reorganization is filed pursuant to subsection 2, the commission may order the applicant to pay a filing fee based on estimated costs, not to exceed \$100,000, \$50,000, 0.05% of the estimated total value of the corporation or entity resulting from the proposed reorganization, if the commission determines that the application may involve issues which will that would necessitate significant additional costs to the commission, except that, if a reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, the commission shall order the applicant to pay to the commission a filing fee in an amount equal to 0.05% of the estimated total value of the corporation or entity resulting from the proposed reorganization. The applicant may request the commission to waive all or a portion of the filing fee. The commission shall rule on the request for waiver within 30 days. Notwithstanding any other provision of law, filing fees paid as required in this subsection shall must be segregated, apportioned and expended by the commission for the purposes of processing the application. Any portion of the filing fee that is received from an applicant and

is not expended by the commission to process the application ~~shall~~ must be returned to the applicant.

Notes/Issues

- The first sentence of section 3 of the bill appears to be missing information.

2-A. Filing fees and penalties; legislation. Any filing fees or penalties collected in the previous year under this Title that have not been adjusted in the previous 5 years. For filing fees or penalties reported pursuant to this subsection, the commission shall submit, along with the annual report, draft legislation to adjust the dollar value of the filing fee or penalty based on the actuarially compounded Consumer Price Index since the fee or penalty was last adjusted. After receiving the annual report, the committee may report out a bill based on the draft legislation submitted pursuant to this subsection;

This may be a better way to draft this (if this is the intent)

For filing fees or penalties collected in the previous year under this Title that have not been adjusted in the previous 5 years, and reported pursuant to this subsection, the commission shall submit, along with the annual report, draft legislation to adjust the dollar value of the filing fee or penalty based on the actuarially compounded Consumer Price Index since the fee or penalty was last adjusted. After receiving the annual report, the committee may report out a bill based on the draft legislation submitted pursuant to this subsection;

Fiscal Impact

- Not yet received; however, the committee amendment for LD 1881 during the 129th Legislature required a fiscal note and included future biennium revenue increase in Other Special Revenue Funds and minor cost increase – Other Special Revenue Funds (these increases were anticipated to be minor and absorbed within existing budgeted resources).