



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Philip L. Bartlett, II
CHAIRMAN

R. Bruce Williamson
Randall D. Davis
COMMISSIONERS

Harry Lanphear
ADMINISTRATIVE DIRECTOR

March 3, 2021

Honorable Mark W. Lawrence, Senate Chair
Honorable Seth A. Berry, House Chair
Energy, Utilities and Technology Committee
100 State House Station
Augusta, Maine 04333

Re: LD 251 Work Session Follow-Up

Senator Lawrence, Representative Berry, and Members of the EUT Committee, the Public Utilities Commission writes to provide answers to questions posed at last week's public hearing on [LD 251](#), *An Act Regarding Public Utility Assessments, Fees and Penalties*. We hope the following information is of value as you consider this legislation.

At the public hearing on LD 251, the Commission was asked for "more concrete visibility into what type of time clock system" we use and whether that system would have the technical capacity to add a new feature to allow PUC staff to track by the category of utility ownership (i.e., consumer-owned or investor-owned). The Commission was also asked about updating current statutory fees and penalties in accordance with inflation.

All Commission staff track time through the state government's time management system called TAMS. TAMS allows the staff that work directly on utility cases to track their time by industry type (e.g. water, gas, electric, and telecommunications).

The Commission also allocates time spent on consumer assistance activities and Dig Safe activities by industry. For example, in 2020, 90% of consumer complaints were related to electric utilities, so we allocated those costs to the electric industry.

Contracts and consultants used by the Commission are assigned to the relevant industry. For example, time or consulting costs associated with an audit of a gas utility's procurement practices would be assigned to the gas industry.

Only with modifications to the TAMS database and timekeeping practices (both of which are possible to implement) would members and Commission staff be able to track time and assign those costs, and all other costs, to investor-owned utilities (IOUs) and consumer-owned utilities (COUs) within an industry. Even so, some costs cannot be directly assigned to an industry. The Commission accounts for these difficult-to-allocate or “unallocated” costs using the percentages of time spent on each industry. For example, if 65% of all Commission time spent on an industry were related to electric utilities, then 65% of unallocated costs would also be allocated to electric utilities.

It is important to consider that a significant portion of the Commission’s work cannot be easily assigned to a COU or IOU, or even to a single industry.¹ For example, some rulemakings apply to all utilities in an industry, or to all industries. Policy implementation, such as renewable procurements, are for the benefit of all consumers, not just those of IOUs or COUs. Other examples of unallocated costs include consumer protection practices, administrative and human resources activities, technology costs, and staff time related to vacations and lost time.

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. First, there is the matter of who or what causes the costs. Cases may be initiated not only as result of utility actions, but also in response to actions taken or requests made by entities ranging from ratepayers to private companies to the federal government, or even global issues. While we would generally agree that cost causality is a fair principle, again, it is important to consider how costs would be assigned to these non-industry-requested cases, some of which have lasted well over a year. Please also keep in mind that time spent by the Commission to resolve a case does not necessarily correlate with the size of a private or public entity, even if industry were to pay all costs.

Assigning costs to individual utilities would have a direct and potentially dramatic impact to the smaller utilities who often seek Commission guidance on utility matters. For example, this past year the Commission provided significant guidance and support to a water district that serves a town with a population of about 1,000 people. If costs were assigned by utility, the Commission estimates those customers’ assessments would have increased by at least a factor of ten. This approach could deter utilities from asking for critical guidance from the Commission due to budget constraints.

¹ In 2020, about 40% of the Commission’s costs could not be directly allocated to an industry.

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. If the Committee would like the Commission to track time by utility, which as noted above the Commission cautions against, we would respectfully propose the following amendment language for the purpose of minimizing potential spikes in utility assessments and, therefore customer fees, by smoothing assessment amounts in a way that is workable though burdensome for Commission staff:

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

With respect to updating fiscal provisions in accordance with inflation, section 7 of LD 251 states:

Fee and penalty revision. The Public Utilities Commission shall submit legislation to the Second Regular Session of the 130th Legislature to adjust the dollar value of filing fees and penalties required under the Maine Revised Statutes, Title 35-A based on the actuarially compounded Consumer Price Index for each filing fee or penalty since it was enacted or established, rounding to the nearest multiple of \$100 if the filing fee or penalty is below \$10,000 and to the nearest multiple of \$1,000 if the filing fee or penalty is \$10,000 or greater.

The following is a list of filing fees and penalties in various sections of Title 35-A that governs the majority of Commission activity. The inflation calculations were conducted utilizing the Federal Bureau of Labor Statistics Consumer Price Index (CPI) calculator available online [here](#).

Filing fees:

- [708](#) (50k as of 1987) adjusted = \$117,617.81 as of Jan. 2021
- [3132](#), [3133](#), [3133A](#) (included FYI, statute is 2/10 and 4/10 of 1% of the contract)
- [3306](#) (\$1k in 1999) = \$1,592.10
- [4358](#) (\$50k in 1987) = \$117,617.81

Penalties:

- [759](#) (\$1k as of 1995) - \$1,740.40
- [1508-A](#) (\$500k as of 2011) – \$593,902.54
- [2706](#), [2707](#), [2708](#) (\$2,500 as of 2007) – \$3,230.75
- [3206-A](#) (\$100k as of 2003) – \$143,963.68
- [4516-A](#) (\$2m as of 2013) – \$2,271,860.34
- [4702-A](#) (\$5k as of 2011) - \$5,939.03
- [4705-A](#) (\$200k - \$2m as of 2013) – \$227,186.03 - \$2,271,860.34
- [7106](#) (\$5k, \$40k, and \$110k as of 2003) - \$7,198.18, \$57,585.47, \$158,360.04
- [7107](#) (\$1k as of 2003) - \$1,439.64

The Commission will be available to provide additional information or answer questions at the Work Session.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Corbin", is displayed within a white rectangular box.

Garrett Corbin
Legislative Liaison

cc: Energy, Utilities, and Technology Committee Members
Deirdre Schneider, Legislative Analyst