

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco**M e m o r a n d u m**

Date: March 25, 2015

To: The Commission
(Meeting of March 26, 2015)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) – Sacramento

Subject: **SB 697 (Hertzberg) – Public utilities: certificates of public convenience and necessity: fees.
As introduced: February 27, 2015**

RECOMMENDED POSITION: SPONSOR**SUMMARY OF BILL**

This bill would amend Section 1904 of the Public Utilities Code (PU Code) to update for inflation a \$75 fee set over forty years ago. Specifically, this bill would:

Require the California Public Utilities Commission (CPUC) to collect a fee of \$500 for each application for a Certificate of Public Convenience and Necessity (CPCN).

Require that certain fees collected by the CPUC and currently deposited into the General Fund be deposited into the Public Utilities Commission Utilities Reimbursement Account instead.

CURRENT LAW

- PU Code Section 409 – CPUC Fees and Surcharges Paid by Utilities to be deposited in the Public Utilities Commission Utilities Reimbursement Account.
- PU Code Sections 1001-1005.5 – CPCN Applications.
- PU Sections 1904 and 1906 -- Official Documents and Fees.

AUTHOR'S PURPOSE

Obtaining a certificate for utility operation – known as a Certificate of Public Convenience and Necessity, or CPCN – is a necessary precondition for providing utility service in California. Since 1969, CPCN fees have been fixed in statute at \$75. In the ensuing 46 years, the Consumer Price Index has increased by over 500%. If calculated from the date the CPCN fee was originally approved by the Legislature, \$75 is now worth \$477.60. While fees imposed in 1969 might have been adequate at that time, inflation makes the fixed fee a greater and greater cost shift to consumers with each passing day.

DIVISION ANALYSIS (Communications Division)

- This bill authorizes the CPUC to fully implement Decision (D.) 13-05-035, a 2013 Decision which ordered the CPCN fee increased to \$500 pending legislative approval. The CPUC would be further authorized to adjust the fee upward at a later date in accordance with inflation. The fee could not exceed the cost of certification and all fee revenues would be channeled back to ratepayers.
- PU Code Section 1904(a) sets the application fee at \$75.00 for telephone corporations and other utilities except for passenger stage corporations covered by PU Code Section 1036(a). The \$75.00 fee also applies to applications for the mortgage, lease, transfer, or assignment of a CPCN.
- The \$75.00 fee has been in place since 1969, does not reflect the current administrative costs to review CPCN requests, and is relatively low compared to other fees charged by the CPUC for other types of operating authority. An application of over 40 years of Consumer Price Index inflation adjustments to the \$75.00 CPCN fee in 1969 dollars would show that the CPCN fee should be reset at \$477.60 in 2015 dollars.
- Higher applications fees have been established for other CPCN-related applications. PU Code Section 1036(a), noted above, sets the CPCN application fee for passenger stage corporations at \$500.00. In 2010, the CPUC adopted a registration fee of \$250.00 for non-dominant interexchange carriers (NDIECs) or applications filed pursuant to PU Code Section 1013. (See Decision 10-09-017; September 2, 2010). The passenger stage corporation and NDIEC fees are not constrained by statute.
- The workload associated with processing a CPCN application is significantly greater than that for processing an NDIEC registration. An NDIEC registration application basically consists of a set of questions which the registration applicant completes. An NDIEC registration is processed on the understanding, absent other information or protests, that the information is correct, and staff can approve a registration application pursuant to delegated ministerial authority. If the information is complete and satisfies the response pattern necessary to qualify for registration, the application decision is generally completed 90 days from filing.
- A CPCN application, on the other hand, requires more extensive review and evaluation by an Administrative Law Judge, is subject to a 30-day protest period, is assigned to the Communications Division to review tariffs and other technical aspects of the application, may require hearings due to protests filed by another party or by the CPUC's Safety and Enforcement Division (SED) due to fitness issues, (e.g. prior regulatory problems in another jurisdiction which the applicant did not disclose) may require hearings, and may involve California Environmental Quality Act (CEQA) review if the applicant is proposing to build facilities. Depending

on the initial review, staff may require that the applicant submit additional information. After all the necessary information is provided, a draft decision is prepared which may be sent out for a 30-day comment period. The CPUC votes on the matter after comments are addressed. CPCN applications are classified as proceedings and are generally resolved 18 months from date of filing.

- The \$75.00 CPCN application fee does not reflect the current cost of CPUC resources needed to conduct the above described review and background checks on entities applying for a CPCN to operate as a telephone corporation in California. It is also not appropriate that the more thorough review effort is less costly than the simplified process.
- Finally, in 2007, the State Controller's Office (SCO) issued an audit report presenting the results of the SCO review of the CPUC's practices and procedures for accounting and collecting fines and restitution imposed against the companies it regulates. In that audit, the SCO termed the \$75 certificate fee "nominal".

SAFETY IMPACT

The increase in the application fee is expected to discourage unqualified or marginal applicants (those that are minimally financially and technically qualified to apply), thereby reducing the likelihood of "bad actors" entering the communications market through the CPCN process.

RELIABILITY IMPACT

None.

RATEPAYER IMPACT

As addressed in CPUC D.13-05-035, ratepayer advocates (TURN and ORA) supported the rulemaking goal of better protecting the state's ratepayers by equalizing the standard for CPCN applicants and wireless registrants on par with that for other registrants. This legislation helps to carry out the goal in D.13-05-035.

FISCAL IMPACT

The bill is not anticipated to change CPUC workload significantly. The financial impact is expected to be nominal. Given that there are approximately 20 CPCN filings in a typical year, an increase of CPCN license fees to \$500 would mean an additional revenue source of \$8,500 each year. Such revenues would be expected to offset other revenue sources to fund the CPUC's regulatory program.

ECONOMIC IMPACT

This proposal is anticipated to minimally impact the economy. Except for an increase in the CPCN licensing contribution to the state general fund, there is no effect on local government operations or employment impacts.

LEGAL IMPACT

None.

LEGISLATIVE HISTORY

- SB 631 (Hueso, 2015) – Introduced on February 27, 2015 – is a similar measure that proposes to require the CPCN license fee to not exceed the reasonable costs to the CPUC for filing these applications. The bill would authorize the fee in an amount not to exceed \$500 and would authorize the CPUC to adjust this fee based on the Consumer Price Index. SB 631 is pending a hearing in the Senate Energy, Utilities and Communications Committee on April 7, 2015.
- SB 711 (Padilla, 2014) was a similar bill with CPCN fee amendment language that required the same filing fees proposed in SB 631 (Hueso, 2015). SB 711 died in the Assembly Utilities and Commerce Committee.
- AB 1409 (Bradford, 2013) contained language to revise the statutory cap on fees necessary to obtain a certificate of public convenience and necessity (CPCN) from the CPUC to adjust for inflation, as well as numerous other provisions added late in the legislative session. AB 1409 was vetoed by the Governor. In the message, it states:

"... The last minute amendments included in this bill would legislatively preempt the outcome of this proceeding that has taken public comment from hundreds of California citizens. While I am sensitive to the concerns of some in the cable industry about the length of time this process has taken, I prefer to give that public process a chance to be completed before I decide whether legislation of this type is needed.

One final note; I urge the Public Utilities Commission to meet with the cable industry to explore ways it can participation in the Lifeline Program with some reasonable level of oversight."

PROGRAM BACKGROUND

A Certificate of Public Convenience and Necessity (CPCN) is a license to operate. One method of regulation is to limit the right to enter a business. Any public utility business must get permission to operate, in the form of a CPCN, from the CPUC.

OTHER STATES' INFORMATION

Unknown.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

This bill should be supported for the following reason(s):

- (1) The amendment will allow the CPUC to adjust the fee based on changes in the Consumer Price Index.
- (2) The amendment proposed will ensure that the filing fees pay for the actual costs of CPCN-related application reviews.

- (3) The amendment will make the Communications CPCN application fee on par with other CPCN application fee for other industries such as passenger stage corporations.

SUMMARY OF SUGGESTED AMENDMENTS

None.

STATUS:

SB 697 is pending consideration in the Senate Energy, Utilities and Communications Committee on April 21, 2015.

SUPPORT/OPPOSITION:

None.

VOTES

None.

STAFF CONTACTS

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BILL LANGUAGE**SECTION 1.**

Section 1904 of the Public Utilities Code is amended to read:

1904.

The commission shall also charge and collect the following fees:

(a) Except as otherwise provided in Section 1036 for filing each application for a certificate of public convenience and necessity, or for the mortgage, lease, transfer, or assignment thereof, ~~seventy-five dollars (\$75).~~ *five hundred dollars (\$500). The commission may adjust this fee based on the Consumer Price Index. The fee charged and collected pursuant to this subdivision shall not exceed the reasonable costs to process the application.*

(b) For a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness, two dollars (\$2) for each one thousand dollars (\$1,000) of the face value of the authorized issue or fraction thereof up to one million dollars (\$1,000,000), one dollar (\$1) for each one thousand dollars (\$1,000) over one million dollars (\$1,000,000) and up to ten million dollars (\$10,000,000), and fifty cents (\$0.50) for each one thousand dollars (\$1,000) over ten million dollars (\$10,000,000), with a minimum fee in any case of fifty dollars (\$50). No fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note or other evidence of indebtedness on which a fee has theretofore been paid to the commission. If the commission modified the amount of the issue requested in any case and the applicant thereupon elects not to avail itself of the commission's authorization, no fee shall be paid, and if such fee is paid prior to the issuance of such certificate by the commission, such fee shall be returned.

SEC. 2.

Section 1906 of the Public Utilities Code is repealed.

1906.

~~All fees collected under this chapter shall be paid, except as provided in Chapter 6 (commencing with Section 5001) of Division 2, at least once each month into the State Treasury to the credit of the General Fund.~~