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FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/11
 SPONSOR HHGAC LAST UPDATED 03/10/11 HB 488/HHGACS
 SHORT TITLE Public Utility Hearing Intervenor Legal Costs SB _____
 ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Public Regulation Commission (PRC)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Health and Government Affairs Committee substitute for House Bill 488 proposes to enact a new section of Chapter 62, Article 10 NMSA 1978 to allow the Public Regulation Commission (PRC) to order public utilities to pay legal costs, expert witness fees, and other reasonable costs incurred by a customer for participating in a PRC hearing when:

- (1) the PRC finds that the customer has made a substantial contribution to the adoption of the PRC's decision;
- (2) the customer demonstrates that, without the award of fees or costs, the customer would endure significant financial hardship; and
- (3) the customer complies with PRC rules promulgated to implement this new provision.

The bill also requires the PRC to adopt rules to implement this provision including procedures:

- (1) for providing notice of intent to claim compensation'
- (2) to demonstrate that a customer has made a substantial contribution to the outcome of a proceeding;
- (3) for demonstrating financial hardship;
- (4) any other procedures the PRC deems necessary to comply with the act.

The bill entitles the Attorney General's Office (AGO) to seek compensation for all reasonable

expert fees incurred for participating in a public utility hearing where the AGO has made a substantial contribution to the PRC's final determination of the matter.

The bill provides a definition for “customer”, “small business”, and “substantial contribution.”

FISCAL IMPLICATIONS

This bill could increase the advocacy costs of utilities, which may be folded into the next rate case and has the possibility of thereby raising public utility rates. Public utilities have rates that take into account their “prudently-incurred” costs and a fair return on their investment. Thus, consumers may ultimately bear them if they are found to be “prudently incurred.” However, a more informed public utility consumer constituency may make it more difficult to obtain public utility rate increases.

The substitute bill's addition of the AGO as an entity eligible for an award of costs does not substantially change the significant issues identified, except that, in the case of awards to the AGO, a utility's customers may ultimately be funding the AGO's participation. This can be viewed as requiring taxpayers to augment the AGO's budget without a formal appropriation of funds.

SIGNIFICANT ISSUES

The bill enacts intervenor legislation to ensure that public utility customers have the financial resources to bring their concerns and interests to the PRC during formal proceedings. By hearing from different perspectives, the PRC may be better able to make informed decisions. Public utility rate cases are often long, complicated, and expensive undertakings that individual customers and small business owners may well not be able to afford to participate in.

The substitute bill would apply to Chapter 62, Article 10; however, Article 10 generally deals with complaints against public utilities. If the intent of the bill is to improve and broaden advocacy before the PRC, the bill should apply to all hearings and matters before the PRC.

There are many undefined standards in this bill, affording the PRC substantial discretion in the exercise of its authority. For example how will the PRC define the terms “substantial contribution” or “significant financial hardship”.

Further, it is likely that any utility would contest such claims, leading to additional and potentially protracted proceedings at the PRC.

The bill is not clear as to whether large power users are entitled to recover their attorney fees and costs in rate cases, and if not, is it constitutional to allow one group of interveners to recover costs and deny another group that same right.

If enacted this bill has the potential to improve and broaden advocacy before the PRC.

RELATIONSHIP

HB 215 Implementation Of Utility Rates W/O Hearing
HB 544 Limit Public Utility Rate Increases

SB 4 Remove Certain Telecomm Rates From PRC
SB 209 Adjust Water Utility Rates Without Notice
SB 245 Coordination Of Utility Planning
SB 276 Utility Cost Test Cost Effectiveness
SB 415 Utility Cost Limits
SB 543 Limit Public Utility Rate Increases
SB 549 Renewable Energy Utility & Customer Costs
SB 50 Utility Legal & Admin Cost Recovery

TECHNICAL ISSUES

The bill does not define several standards in the bill, affording the PRC substantial discretion in the exercise of its authority including:

- “Other Reasonable Costs”
- “Hearing” – Not sure if the is limited to rate hearings or other hearings including an application, complaint, or investigation, rulemaking, alternative dispute resolution, or other formal proceeding before the commission.
- “Significant Financial Hardship”

The bill does not require a pre-hearing projection of likely reimbursable costs.

The bill does allow or limit public utilities from passing on intervenor costs to ratepayers.

The PRC notes:

As to customers, this bill would probably not accomplish its well-intended goal. The first requirement for reimbursement, in paragraph A. (1), is that “the customer intervenes in a public utility matter pursuant to that article.” The article, Article 10 in Chapter 62 NMSA, however, deals substantially with complaints against public utilities. In these complaint cases, customers rarely, if ever, intervene; the customer is the complainant, not an intervenor. Complainants are not eligible for reimbursement under the provisions of the bill. Although Article 10 also gives the Commission general authority to conduct hearings, rate cases and other matters in which a customer is more likely to intervene are handled pursuant to other statutory authority. If the intent is to include such matters, the bill should be amended.

Finally, the bill is not clear as to the meaning of the AG’s authority to “seek compensation.” If the intent is to require the Commission to order a public utility to pay these costs, as it does in the case of customers, the bill should clearly state this.

The AOC notes:

In addition, one of the elements of qualification for compensation to a non-AG intervenor (substantial contribution to the adoption of the PRC’s decision) may be inconsistent with qualification for compensation to the AG (substantial contribution to the PRC’s “final determination” of the matter).

OTHER SUBSTANTIVE ISSUES

California initiated the Intervenor Compensation Program in 1981. A few years later, the California Legislature adopted laws to govern the program. According to Justia.Com, California

enacted a similar bill regarding intervener compensation in 2009:

[Article 5. Intervenor's Fees And Expenses - California Public Utilities Code - Section 1801-1812 - California Code :: Justia -- US Laws, Codes, Statutes & Cases -- Justia](#)

Several other states have public utility intervenor statutes including Oregon, Wisconsin, and Florida

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