

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

House Bill 78 (Delegate Carr)
 Economic Matters

Public Service Commission - Participant Compensation

This bill requires the Public Service Commission (PSC) to award reasonable fees and costs of preparation for and participation in a hearing or proceeding before the commission to a “customer” under specified circumstances. The bill establishes a process for PSC to determine the compensation awarded, if any. The compensation awarded under the bill must be paid to the customer by the public service companies involved in the hearing or proceeding. PSC must adopt regulations to implement the bill.

Fiscal Summary

State Effect: Special fund expenditures from the Public Utility Regulation Fund increase by \$236,671 in FY 2015 to hire staff for PSC and for consultants for the Office of People’s Counsel (OPC). Future year expenditures reflect annualization. Special fund revenues increase correspondingly from assessments imposed on public service companies.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
SF Revenue	\$236,700	\$308,600	\$317,200	\$326,200	\$335,600
SF Expenditure	\$236,700	\$308,600	\$317,200	\$326,200	\$335,600
Net Effect	\$0	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal.

Small Business Effect: Minimal.

Analysis

Bill Summary: For purposes of the bill, “customer” includes (1) a person that represents consumers, customers, or subscribers of any public service company that is under the jurisdiction of PSC; (2) a representative who has been authorized by a customer; or (3) a representative of a group or organization authorized in accordance with its articles of incorporation or bylaws to represent the interests of residential electricity customers or small and medium-sized nonresidential customers. A “customer” does not include any State, federal, or county agency; any publicly owned public service company; or any entity that PSC determines was established or formed by a county agency for the purpose of participating in a PSC proceeding.

PSC must award reasonable attorney’s fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding before the commission to a customer (1) that meets specified notification requirements; (2) whose presentation makes a substantial contribution to the whole or partial adoption of a PSC order or decision and is regarding an issue that is not normally addressed by OPC; and (3) whose participation or intervention without an award of fees or costs imposes a significant financial hardship.

PSC must establish a procedure to be used in filing an initial or revised notice of intent to claim compensation under specified circumstances. A notice of intent to claim compensation must include specified information related to the scope and cost of the planned presentation and must also show that the customer’s participation in the hearing or proceeding without an award would pose a significant financial hardship. A process is established to allow for comment by PSC staff and other interested parties on the notice filed under the bill.

Within 30 days after receiving the notice of intent to claim compensation, PSC or the hearing examiner must issue a preliminary determination of the customer’s eligibility to receive an award of compensation. The preliminary determination must address whether a showing of significant financial hardship has been made and may also address similar positions, areas of potential duplication in showings, unrealistic expectations for compensation, and any other matter that may affect the customer’s claim for compensation.

A finding that a significant financial hardship exists creates a rebuttable presumption of eligibility for compensation in other PSC proceedings that commence within one year of the date of the finding. A customer that has been found eligible for an award of compensation may file a request for an award within 60 days after PSC issues a final order or decision in the hearing or proceeding. PSC may audit the books and records of the customer to the extent necessary to verify the basis of the award, but must preserve

the confidentiality of the customer's records. Within 20 days after completing the audit, PSC must file an audit report, to which a party to the hearing or proceeding may file a response.

On or before the later of 75 days after receiving a request for compensation, or 50 days after the filing of an audit report, PSC must determine whether the customer has made a substantial contribution to the final order or decision in the proceeding or hearing. If PSC determines that the customer has made a substantial contribution, PSC must (1) describe the contribution; (2) determine the amount of compensation to be paid, subject to specified limits, in consideration of the market rates paid to persons of comparable training and experience who offer similar services; and (3) if the proceeding involves more than one public service company, determine the amount of compensation to be awarded by each public service company. The amount of compensation awarded may not exceed \$50,000 for a single customer in any proceeding.

Each public service company that is the subject of the hearing or proceeding must pay the amount determined by PSC to the customer within 30 days after a compensation award is made under the bill.

PSC may not award compensation to a customer that attempts to delay or obstruct the orderly and timely fulfillment of PSC's responsibilities. In addition, a representative of a group that represents small and medium-sized nonresidential customers from an electricity supplier may not be eligible for a compensation award under the bill if the representative has a conflict arising from prior representation before PSC.

Current Law: Generally, the costs of participating in a hearing or proceeding before PSC are paid by the participating parties.

The costs and expenses of PSC and OPC are paid by the public service companies (electric companies, gas companies, and others) that are subject to PSC jurisdiction through an annual assessment. Each public service company is charged an assessment based on the ratio of the annual gross operating revenues for the public service company derived from intrastate utility and electricity supplier services and the annual gross operating revenues of all public service companies for those services. Expenses of PSC must be approved through the annual budget process. Any unspent funds must be deducted from the appropriation for the next fiscal year before PSC determines the amount to be paid by each public service company for the next fiscal year. The total assessment charged to a public service company in a fiscal year may not exceed 0.17% of the company's gross operating revenues derived from intrastate utility and electricity supplier operations for expenses incurred by PSC and 0.05% for expenses incurred by OPC.

Background: In addition to the annual assessment process, PSC has been granted authority in the past to issue special assessments on specific public service companies or other entities to recover certain costs. For example, Chapter 549 of 2007 authorized PSC to impose a special assessment of up to \$3.0 million on electric companies and electricity suppliers otherwise subject to the annual PSC assessment for studies related to the availability of transmission and generation facilities serving the State and options for re-regulation of the State's electricity market.

State Fiscal Effect: Special fund expenditures from the Public Utilities Regulation Fund increase in total by \$236,671 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate reflects the cost of hiring one staff attorney and one public utility auditor within PSC to conduct an ongoing rulemaking on the payment of compensation to parties engaged in any proceedings that are paid for by public service companies. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. This estimate also includes \$112,500 in consulting expenses for OPC for expert witnesses brought before PSC to review and possibly respond to the testimony submitted by additional participants in PSC hearings or proceedings under the bill.

Positions	2
Salaries and Fringe Benefits	\$111,261
Consulting Expenses	112,500
Other Operating Expenses	<u>12,910</u>
Total FY 2015 Administrative Expenditures	\$236,671

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, including ongoing costs for OPC to contract with expert witnesses.

Special fund revenues increase correspondingly from assessments imposed on public service companies to recoup costs incurred by PSC and OPC as authorized under current law.

Additional Comments: The bill does not specifically address the method through which public service companies may recover costs associated with compensation awarded to individuals under the bill. However, PSC advises that the companies could be authorized to recover the costs in base rates (determined in a subsequent rate case) if the costs are in the test year used to determine those rates. A customer surcharge could also be authorized by PSC.

Additional Information

Prior Introductions: HB 1129 of 2013 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Public Service Commission, Office of People's Counsel, Department of Legislative Services

Fiscal Note History: First Reader - January 16, 2014
mlm/lgc

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