

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: January 23, 2013

To: The Commission
(Meeting of January 24, 2013)

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

Subject: **Proposed Legislation on Certificates of Public Convenience and Necessity**

RECOMMENDED POSITION: SUPPORT AS SPONSOR

SUMMARY OF BILL:

This bill would amend Public Utilities (PU) Code Section 1904 (a) to permit the Public Utilities Commission flexibility to set filing fees for applications for certificates of public convenience and necessity (CPCNs), and for the mortgage, lease, transfer, or assignment of a CPCN.

CURRENT LAW:

PU Code Section 1904 (a) sets the CPCN 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 to mortgage, lease, transfer, or assign a CPCN.

AUTHOR'S PURPOSE:

Because the \$75.00 is set in statute, the California Public Utilities Commission (CPUC) does not have authority to raise the fee, unless there is a change in statute through legislative action. This fee level has been in place since 1969 and does not reflect the current administrative costs to review CPCN requests. The specific fee level has also become disproportionately low as compared with other fee levels charged for other types of operating authority.

PU Code Section 1904(a) should be amended to delete the specific \$75.00 fee and instead grant the CPUC the discretion to set CPCN filing fees as appropriate, subject to adjustments based on changes for inflation.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This bill should be sponsored for the following reasons:

- 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.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Communications Division):

The amendment proposed will ensure that the filing fees pay for the actual costs of CPCN-related application reviews and will permit more effective review and enforcement of certificate licensing activities in a changing regulatory environment.

Giving the CPUC the discretion to change the filing fee will allow the CPUC to adjust the fee, going forward

PROGRAM BACKGROUND:

The cost of the CPCN application has not kept up with inflation. The Consumer Price Index has increased 530.5% since 1969. Had the application fee been adjusted for inflation, using the Consumer Price Index Inflation calculator, the fee would currently be approximately \$473.

Higher application fees have been established for other CPCN-related applications. PU Code Sec. 1036 (a), noted above, sets the CPCN application fee for passenger stage corporations at \$500.00. Last year the CPUC adopted a registration fee of \$250.00 for non-dominant inter- exchange carriers (NDIECs). (See Decision 10-09-017 September 2, 2010). None of these fees are constrained by statute.

Although federal telecommunications deregulation efforts set up a simplified process for NDIECs, telephone corporations who otherwise are qualified to file for operating authority as NDIECs have instead filed for CPCNs under Sec. 1904 in order to avail of the lower application fee. The table below shows a comparison of the telephone corporation applications filed during the period 2009-2012. The increase in the NDIEC application fee in September 2010 through Decision 10-09-017 showed a shift in the relative number of CPCN and NDIEC applications as reflected in the table below. Whereas the CPUC was formerly receiving a similar level of applications, it is now receiving significantly more telephone corporation CPCN applications than NDIEC applications.

Year	Telco CPCN	NDIEC
2009	28	26
2010	15	12
2011	30	8
2012	15	7

Energy Division receives and reviews approximately 5-10 CPC&N applications annually for new or upgraded transmission line and substation projects over 200kV. The Water Division and the Transportation Branch also receive a few applications a year.

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 template set of questions which the registration applicant completes. It 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 decision takes no more than 30 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 Consumer Protection and Safety Division (CPSD) 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.

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:

There are no direct safety implications as this bill would merely allow the CPCN application fee to be increased.

RELIABILITY IMPACT:

No impact on reliability is expected.

RATEPAYER IMPACT:

Since applicants for licenses to operate as telephone corporations and existing telephone corporation in California would pay the fee, the bill impact would likely have a positive effect on ratepayers because it would reduce the amount to be recovered from customers through the CPUC User Fee.

FISCAL IMPACT:

There is no anticipated impact on CPUC staffing resources.

The fiscal impact to the CPUC and the state would be positive. The increased fee will better reflect the actual cost of the initial license review and will cover the costs associated with the review of lease, transfer or assignment of CPCN transactions.

ECONOMIC IMPACT:

The bill would not be expected to have a significant economic effect on businesses in the state. While it would allow application fees to increase for some prospective communication businesses seeking a CPCN, the user fees paid by other businesses for telecommunication services would be expected to correspondingly decrease.

LEGAL IMPACT:

None.

OTHER STATES' INFORMATION:

A survey of other public utilities commissions disclosed that most states apply a charge for processing CPCN application except for New York, which does not charge any fee for CPCN applications. The CPCN application fees range from \$100 - \$3,000.

LEGISLATIVE HISTORY:

PU Code Section 1904 (a) currently states:

“(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).”

STATUS:

None.

SUPPORT/OPPOSITION:

None on file.

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Public Utilities Coded Section 1904 (a) should be amended to read:

“(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, a fee to be determined by CPUC rule or order and adjusted as appropriate based on the Consumer Price Index.”