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OFFICE OF PUBLIC ADVOCATE

**Report: Filing Fees
Collected By Public
Advocate re Transmission
Construction**

Submitted pursuant to Title 35-A, §3132, sub-§10-B

11/29/2011



Paul R. LePage
GOVERNOR

STATE OF MAINE
EXECUTIVE DEPARTMENT
PUBLIC ADVOCATE OFFICE
112 STATE HOUSE STATION
AUGUSTA, MAINE
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Richard Davies
PUBLIC ADVOCATE

Senator Michael Thibodeau, Senate Chair
Representative Stacey Fitts, House Chair
Committee on Energy, Utilities and Technology
100 State House Station
Augusta, ME 04333-04333

Dear Senator Thibodeau and Representative Fitts:

Enclosed is the report of the Office of Public Advocate required by Title 35-A §3132, sub-§10-B, regarding filing fees collected by the Office of Public Advocate re construction of electric transmission in Maine. Sub-§10-B was enacted in 2009 as P.L. of 2009, chapter 26, requiring our office to report to your committee "regarding filing fees collected pursuant to this section, including a detailed accounting of the amount of filing fees collected, the expenditures of the fees and return of unexpended fees."

We are pleased to provide you, and the members of your committee, with copies of our report. We would be happy to brief you and your committee on this report, and our recommendations, at your convenience upon your return to the State House in January. If you have any questions, please feel free to send them to me for our response.

Sincerely yours,

Richard Davies
Public Advocate

cc: Members, Joint Standing Committee on Energy, Utilities and Technology
Jon Clark, Esq., Deputy Director, Legislature's Office of Policy and Legal Analysis
Jean Guzzetti, Legislative Analyst, Legislature's Office of Policy and Legal Analysis



RECYCLED PAPER

REPORT:

**Filing Fees Collected by Public Advocate re Transmission
Construction**

Background

During the First Regular Session of the 124th Maine Legislature, the Office of Public Advocate (OPA) proposed legislation (LD 147) to authorize that agency to assess a filing fee, similar to that which the Public Utilities Commission collects, on any person proposing to erect, rebuild or relocate a transmission line within the State.

The justification offered by the OPA was that transmission projects are infrequent, but substantial proposals that require the expenditure by the OPA of significant amounts of their limited resources in order to represent customer interests in the PUC's "certificate of public convenience and necessity", or "CPCN", process prior to authorization being granted for the transmission project. A large project could require the expenditure of such a large portion of the OPA's budget that the office would be greatly constrained in its ability to represent ratepayer interests in many other PUC proceedings or in matters before Federal agencies.

The OPA argued that an earlier Legislature had recognized this problem as it affected the Public Utilities Commission, and had authorized the PUC to assess a filing fee on the applicant for a transmission project to help defray the sizable cost of handling such an application. That earlier Legislature had authorized the PUC to collect a fee of 4/100 of 1% of the estimated cost of erecting a new transmission line, or a fee of 2/100 of 1% for rebuilding or relocating an existing transmission line. The OPA legislation proposed that the filing fee to that agency be set at 2/100 of 1% for a new transmission line, and 1/100 of 1% for rebuilding or relocating an existing line.

The Legislature approved an amended version of the OPA bill, authorizing a filing fee of 1/100 of 1% for all three types of transmission projects. It also directed the OPA to report, to the Joint Standing Committee on Energy, Utilities and Technology, by Jan. 15, 2012 regarding filing fees collected, the expenditures of the fees, and return of unexpended fees. This report was to be used by the committee to determine whether the OPA filing fee is adequate to cover the extraordinary costs the OPA would incur in order that the ability of the OPA to properly represent the interests of ratepayers in other proceedings not be impaired.

Comparison of Pre- and Post- “OPA filing fee” transmission projects

Since the enactment of the OPA filing fee law, there have been only two small transmission projects which have applied for a CPCN for transmission projects. They are:

- a 2009 proposal (the “Northern Maine Interconnect” or “NMI”) to build a 26 mile transmission line from Houlton, Maine to interconnect with the Maine Electric Power Company (“MEPCO”) 345 kV line in Haynesville, Maine, and
- a 2010 proposal (the “Somerset County Reinforcement Project”, also known as “Section 241”) to build 39 miles of 115 kV transmission line between Wyman Hydro in Moscow, Maine and Benton, Maine

In order to provide the committee with information allowing for a comparison and perspective with these two small projects, we are including information from the last three transmission projects considered by the PUC prior to the enactment of the OPA filing fee law. Doing so will allow the committee to understand the range in transmission project sizes which can and do come before the Maine PUC for CPCN’s. The three pre-OPA filing fee transmission projects were:

- a 2006 project (“Saco Bay Reinforcement Project”) to build a 7.3 mile double-circuit 115 kV line between Saco and Old Orchard Beach,
- a 2008 project (“Maine Power Connection”) to build a 200 mile transmission line between Limestone, Maine and Detroit, Maine to directly connect northern Maine with the ISO-NE grid, and
- a 2008 project (“Maine Power Reliability Project” or “MPRP”) to build 350 miles of 345 kV and 115 kV transmission between Orrington, Maine and Eliot, Maine

Note: The information on the five transmission projects (referenced above) is contained in the attached chart.

While one of these three, the Saco Bay project, had an estimated cost that was in the general range of the two post-OPA filing fee law, the estimated cost of the other two were many times larger and represent the types of transmission projects which, experience shows, require the OPA to expend sizable amounts in order to properly represent ratepayer interests. If all transmission projects were in the same magnitude as the two small projects proposed since the enactment of the OPA filing fee law, the need for the filing fee would be greatly reduced. But the reports provided by various developers of proposed transmission projects in or through Maine suggest that we will see one or more projects with estimated costs in the \$1-\$2 billion range proposed within the next 2-4 years. It is this sized project which justifies the continuation of the OPA filing fee, and the possible increase in the percentage used to determine the fee from 1/100th of 1% to 2/100^h of 1%, in order to provide sufficient funding to allow ratepayer interests to be protected without detracting from OPA’s participation in other important cases.

Regarding the post-OPA filing fee law information contained in the attached chart, you will note that we are able to break out our “personal services” costs and our “contract expenditures” on our expert witness consultants from our total expenditures. We began tracking this level of detail with the enactment of the OPA filing fee law in order to comply fully with the reporting requirement of that new law. Prior to that time we could break out our contract expenditure related to specific transmission projects, but staff time was tracked only to the level of the specific utility responsible for a case in which we were involved. Because the three pre-OPA filing fee law transmission projects cited here all involved utilities (CMP and Maine Public Service Co.) which had multiple cases before the PUC in which the OPA was an intervenor, we were unable to separate the time our staff spent on these specific cases from time they spend on other cases involving these same utilities. We have now modified our TAMS electronic time sheet system so staff members now enter their time spent on any transmission project in a separate category created just for that specific project.

Analysis of data

A. Pre- “OPA filing fee” transmission cases

1. Saco Bay Transmission

This proposed transmission line was a short (7.3 miles) but complicated case in which each of the alternative routes had drawbacks and local opposition. It was protracted process extended over two plus years, involving both litigation and settlement efforts. We worked with other parties trying to find a route that kept costs down while minimizing the adverse impacts on the communities through which it passed (Saco, Scarborough and Old Orchard). We approached the Maine Turnpike Authority to see if a portion of the line could be built within the Turnpike’s right-of-way, thus bypassing two neighborhoods which were concerned with the line’s impact. Ultimately, this option was not pursued. Our consultant had suggested a route that he was prepared to recommend, but we determined that this proposed route would be more disruptive to local abutters than the route CMP offered as its proposed solution. The protracted nature of the case, and the high level of opposition from several neighborhoods, led to our greater use of our transmission consultant to analyze a number of suggested routes. Ultimately, we were persuaded by our evaluation of the several routes to support the route proposed by CMP. Our expenditure on our transmission consultant was \$111,465, a reflection more on the complexity and local opposition, than on the relatively small (\$21,000,000) estimated cost of the project.

Had the “OPA filing fee” law been in place when this case was filed, the filing fee it would have produced would have been \$2,100, and would have covered 1.88% of our agency’s expenditures in this case.

2. Maine Power Connection (MPC)

The Maine Power Connection, a \$624,900,000 joint proposal from CMP and Maine Public Service Co., proposed building a 345kV transmission line between Limestone and Detroit, ME to enable the development of the Aroostook Wind Energy (AWE)

Project, a proposed 800 MW wind energy project. The project, if built, would have provided the first direct electrical connection between northern Maine and the ISO-NE grid. The proposed connection raised serious concerns both within our office and with northern Maine ratepayers over the significant increases those ratepayers would experience once they were connected with the ISO-NE grid, due to the addition of the regional transmission rate to their electric bills. A motion to dismiss the case, filed by three of the small electric utilities in northern Maine and the Industrial Energy Consumer Group, was granted by the PUC, and based in part on information from the project sponsors indicating that the System Impact Studies being performed by ISO-NE had indicated unanticipated “significant impact” on the New England grid resulting from the project as proposed. The project developer reported that, given the cost estimates, they would not proceed with the system impact studies. The case was dismissed “without prejudice”, and could be reintroduced, but no renewed filing has occurred. Our expenditure on our transmission consultant was \$105,406.29, attributable to the substantial number of system impact studies he needed to analyze in developing his advice to OPA and his recommendations for possible changes to the project needed to overcome the problems identified in the original proposal from CMP and MPS. Had the PUC not granted the motion to dismiss this case in February, 2009, we would have needed even more of our consultant’s time to evaluate the data ISO-NE was to provide from their system impact studies.

Had the “OPA filing fee” law been in place when this case was filed, the filing fee it would have produced would have been \$62,490, and would have covered 59.28% of our agency’s expenditures in this case.

3. Maine Power Reliability Project (MPRP)

The MPRP was, and is, primarily a “reliability” project – to keep the lights on, meet the mandatory and enforceable standards, and reduce line losses, congestion, and “out of merit” operation. It proposed building a new 345 kV transmission line from Orrington, ME to Newington, NH, investing in several new substations, upgrading other substations, and make improvements to the 115kV electric system in central Maine. It’s estimated cost was \$1.5 billion. As socialized by ISO-NE, Maine ratepayers would pay a little over 8% of the total cost, with ratepayers elsewhere in New England picking up the balance of the cost. Because of the many elements included in this proposal, the large number of intervenors (including nearly 100 abutting landowners along the proposed route), the complexity of the technical data produced by CMP (including several additional analyses required by the PUC to evaluate CMP’s claims of weakness in the existing system and their assertion that more rigorous assumptions must be used to meet transmission planning standards set by the regional transmission standards organization (NERC), the case ran more than 23 months. Our transmission consultant had to review and evaluate an enormous number of supplemental filings containing scope changes, testimony on transmission planning standards, Load Sensitivity

Analysis studies, transmission design plans, and other technical information. He participated in 33 days of technical conferences over the course of 23 months, and prepared analysis and testimony on our behalf which was presented at the several hearings held on this case. It was by far the largest, most complicated, and costliest PUC proceeding in which the OPA has been a party. We were able to play a leading role in the negotiation of the settlement agreement which brought the case to its conclusion because of the value of staff resources and consultants we were able to commit to the case. But this commitment of resources came at a cost. It consumed resources we otherwise would have devoted either to interventions into other cases, or greater efforts in cases in which we were intervenors. The more than \$250,000 expended on consultant time represented a significant portion of our “All Other” budget.

Had the “OPA filing fee” law been in place when this case was filed, the filing fee it would have produced would have been \$150,000, and would have covered 59.48% of our agency’s expenditures in this case.

B. Post-“OPA filing fee” transmission cases

1. Section 241 (Wyman) 115 kV line

The Section 241 transmission line was proposed in 2010 to run from the Wyman Dam in Moscow, ME to Benton, ME. It had originally been included in the MPRP proposal, but was separated from that larger project early in the MPRP review, primarily because the PUC wants to have CMP conduct a study of its western area transmission system needs, and didn’t want to approve a project within that territory before the study was completed. CMP did the study while the Section 241 line CPCN was under consideration. Because the project was relatively small (\$32,844,200) and the PUC staff had done some technical analysis, we did not hire an expert in the case (instead using \$2,362.50 remaining on a consulting contract to have that consultant give us a quick review of the two alternatives considered by CMP – a rebuild of an existing line in the area, or the new Section 241 115 kV line. In the PUC staff’s analysis they identified a reliability need in the area that could be addresses by either of the two options. The cost of the rebuild was between \$6 and \$12 million less expensive than building Section 241, but the 241 line would be more robust and long lasting than the rebuild, and had already been approved by ISO-NE to have its costs socialized. The rebuild had not been reviewed by ISO-NE, and there was a question as to whether it, to, would be socialized. Based on these several factors, we agreed to support its construction. One intervenor, Friends of Maine Mountains, indicated it would oppose the stipulation negotiated by OPA, CMP and the PUC staff. Their opposition was considered by the PUC, but the Commission found that the settlement agreement was in the public interest and approved the project. Our expenditures in this case were \$2,262.50 in consultant time, and \$1,724.92 of OPA staff time, for a total of \$3,987.42. The filing fee paid to OPA by CMP totaled \$3,284.42, and covered 82.37% of our costs in the case. There was no refund of unexpended fees.

2. Algonquin 345 kV line (“Northern Maine Interconnect”)

In 2009, Algonquin Power Fund, Inc. petitioned for a CPCN to construct a 345 kV merchant transmission line, the “Northern Maine Interconnect”, approximately 26 miles between Houlton and the Maine Electric Power Company (“MEPCO”) 345 kV line in Haynesville, ME at an estimated cost of \$54,300,000. The line would have interconnected northern Maine with the ISO-NE system at Haynesville, making use of the so-called “bridal path” right-of-way owned by Maine Public Service (without MPS’ approval). Algonquin asserted a right to use the “bridal path”, claiming that if the PUC approved the proposed line that Algonquin would become a regulated utility in Maine and, as a result, entitled to the right of eminent domain. They would then use their eminent domain right to “take” the “bridal path” from MPS. The OPA was an intervenor because one of the consequences that would occur if this line were built was a steep increase in electricity costs in northern Maine attributable to the addition of ISO-NE’s regional transmission tariff to the existing rates. We appreciate the benefits of having northern Maine directly connected to the ISO-NE grid, but believe that the regional transmission tariff rates ought to be phased in over a 12-15 year period to minimize the impact on rates in northern Maine. Such an approach was taken to achieve a similar “phasing in” period for Bangor Hydro ratepayers when ISO-NE was created in the 1990s.

After initial discovery and briefing of the threshold legal issues, and just one day prior to a scheduled technical conference, Algonquin requested that further proceedings on its application be suspended for 120 days to permit its corporate management to conduct a review of the project. This request for the delay was approved, as was a second delay. In May, 2011 the Commission denied Algonquin’s request for another extension and dismissed the case “without prejudice”.

In this case we expended \$5,870 for our consultant, an electrical engineer, who did an analysis of the system impacts of connecting this 345 kV line to the MEPCO line. The case was terminated before our consultant needed to do additional work. The “all-in” cost of OPA staff involvement totaled \$13,255.10. Our total expenditures were \$19,125.10. We received a filing fee from Algonquin totaling \$5,430, which covered 28.39% of the OPA’s expenditures in this case. There were no unexpended fees to refund.

Conclusions

1. The filing fees in the two small transmission proposals which have been considered by the PUC since the enactment of Public Law (2009) ch. 26 (“An Act to Facilitate the Protection of Electric Utility Consumer Interests in Public Utility Commission Cases Involving the Construction, Rebuilding or Relocating of Transmission Lines”) have covered a portion of the OPA’s expenditures in those two dockets, but in neither case was the filing fee sufficient to offset all the OPA’s costs. This means that funds collected to fund the OPA’s annual budget had to be used to make up the difference, though the difference in dollars in each case was relatively small. The filing fees in the two cases covered an average of 37.7% of the OPA’s expenditures for consultants and staff time in the two cases.
2. Had the “OPA filing fee” law been in place during the period when the last three pre-“OPA filing fee” transmission cases were considered by the PUC, they would have generated a total of \$214,590 in filing fees. In those three PUC cases, the OPA expended \$469,383.29 to represent and advance the interests of the residential, commercial and industrial ratepayers of the utilities which proposed those transmission projects. The filing fees covered less than half (45.7%) of the OPA’s costs in those three cases.
3. The language of OPA filing fee law (Title 35-A §3132, sub-§10-A) contemplates the fees covering all of the OPA’s case-related costs, as reflected by the provision that reads: “The Office of the Public Advocate **shall** return any portion of the filing fee that is not expended for these purposes to the person who paid the fee.” Even in the case in which the filing fee covered the greatest percentage of the OPA’s expenditures (the Saco Bay Transmission case), it covered only 82.37% of the expenditures. When considering the fees that would have been produced had they been available for the last three transmission cases considered by the PUC just prior to the enactment of the “OPA filing fee” law, the highest percentage covered would have been 59.48% (MPRP) and the lowest percentage covered would have been 1.88% (Saco Bay), and the weighted average for the three cases would have been 45.69% of the OPA’s expenditures.
4. The larger the transmission construction proposal, the larger the \$\$ gap between what the filing fees would produce and the expenditures needed to represent the interests of ratepayers, and the greater the amount the OPA needs to draw out of its annual assessment to make up the difference.

Recommendations

1. The OPA filing fee be eliminated for projects with estimated project costs of \$50 million or less

2. The OPA filing fee percentages for transmission projects with estimated costs of over \$50 million should be tiered as follows:

| <u>Project cost estimated at:</u> | <u>Filing fee percentage set at:</u> |
|-----------------------------------|--------------------------------------|
| \$ 50,000,001- \$ 99,999,999 | 1/100 th of 1% |
| \$100,000,000- \$499,999,999 | 1.5/100 of 1% |
| \$500,000,000- up | 2/100 of 1% |

3. The Office of Public Advocate shall report to the Joint Standing Committee with jurisdiction over utilities and energy matters regarding filing fees collected pursuant to this law, including a detailed accounting of the amount of fees collected, the expenditures of the fees and the return of unexpended fees on January 15, 2014, and every two years thereafter.