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FISCAL IMPACT REPORT

SPONSOR SCORC DATE TYPED 3/12/05 HB _____

SHORT TITLE PRC Clean-up SB CS855/aSFI#1

ANALYST Wilson

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$0.1		Recurring	GF

Relates to SB 847

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of SFI Amendment #1

The Senate Floor amendment #1 to the Senate Corporations and Transportation Committee Substitute for Senate Bill 855 clarifies and expands the definition of affiliated interest to mean a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances where a person:

1. is an officer, director, partner, trustee or person of similar status or function;
2. owns directly or indirectly or has a beneficial interest in 10% or more of voting class securities of a person;
3. has a level of ownership of securities other than voting securities that the commission establishes as creating a presumption of control; and
4. possesses the power to direct or cause the direction of the management and policies over a person notwithstanding the lack of ownership of 10% or more of the person's voting securities;

The amendment also defines voting securities to mean securities that carry the present right to vote for the election of directors or other members of the governing body ultimately responsible for the management of the organization.

Synopsis of Original Bill

The Senate Corporations and Transportation Committee Substitute for Senate Bill 855 amends the Public Utility Act (PUA) in several ways. It adds a new section authorizing the PRC to commence an action in district court for the appointment of a receiver to assume possession of property and operate facilities of a public utility that is unable or unwilling to service its customers or consistently violates the rules or orders of the PRC. The new language allows the receiver, upon order of the court, to issue certificates to provide funds to operate, repair, improve or enlarge the utility. Payment of the certificates is a first lien on the real and personal property of the affected public utility.

The bill changes the time frame over which average annual operating revenues of small water and sewer utilities are calculated for purposes of determining whether a proposed change in rates warrants a hearing. Whenever there is filed with the PRC any schedule proposing any new rates by any public utility with equal to or fewer than an aggregate of 1500 service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, the rates shall become effective as proposed by the utility without a hearing; provided that the utility shall be required to give written notice of the proposed rates to the ratepayers receiving service from the utility at least 60 days prior to filing the proposed rate change with the PRC.

The bill sets out further hearing procedures and change of rate requirements for small water and sewer utilities. The PRC shall enter upon a hearing concerning the reasonableness of any proposed rates filed by such a utility when a rate increase will have the effect of increasing the rates 50% or more in a 12 month period or upon the filing with the PRC of a protest seeking review of the proposed rates signed by 10% or more of the ratepayers or 25 ratepayers, whichever is more, receiving service from such a utility if the PRC determines there is just cause for reviewing the proposed rates.

Whenever there is filed with the PRC a schedule proposing new rates with more than an aggregate of 1500 service connections and fewer than an aggregate of 5,000 service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, the rates shall become effective as proposed by the public utility without a hearing; provided that the public utility shall be required to give written notice of the proposed rates to the ratepayers receiving service from the public utility at least 60 days prior to filing the proposed rate change with the PRC; and provided further that the PRC shall enter upon a hearing concerning the reasonableness of proposed rates filed by such a public utility when a rate increase would have the effect of increasing rates more than 8% in a 12 month period, or upon the PRC staff's motion or upon the filing with the PRC of a protest seeking review of the proposed rates signed by 10% or more of the ratepayers receiving service from the public utility, if the PRC determines there is just cause for reviewing the proposed rates. The petition shall be signed by the person in whose name service is carried. The petition shall be filed no later than 20 days after the filing with the PRC of the schedule proposing the new rates. If a public utility provides both water and sewer service, the service connection revenues attributable to the provision of water service only shall determine whether the procedure specified in this subsection shall apply to a schedule proposing new rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to a schedule proposing new rates for sewer service. Nothing in this subsection shall prevent a public utility from filing for a rate change pursuant to any other rule or procedure

of the PRC.

A public utility with fewer than an aggregate of 5000 service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, that is currently in good standing with all applicable requirements of the PRC, may adjust its charges for commodity and service by up to 2% in any calendar year without a hearing; provided that the public utility shall not have changed its rates in the prior 12 month period; and provided further that the public utility shall be required to give written notice of the proposed rate adjustments to the ratepayers receiving service from the public utility prior to its effective date. The increased rates shall not become effective until at least 30 days after notice and filing with the PRC. If a public utility provides both water and sewer service, the service connection revenues attributable to the provision of water service only shall determine whether the procedure specified in this subsection shall apply to any schedule proposing any new rate or rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to any schedule proposing any new rate or rates for sewer service.

In this bill, a service connection means a metered hookup to the utility's water system or a sewer tap to the utility's wastewater system, and each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer. The petition shall be signed by the person in whose name the service is carried.

The bill clarifies the definition of affiliated interest to mean a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances where a person is an officer, director, partner, trustee or person of similar status or function or owns directly or indirectly or has a beneficial interest in 10% or more of any class of securities of a person and instances where the possession of the power to direct or cause the direction of the management and policies of a person exists in fact, notwithstanding the lack of ownership of 10% or more of the person's voting securities.

This bill moves the deadline by which a public utility must pay the inspection and supervision fee from the last day of February to the first day of April each year. It also prohibits quarterly payments of the utility and carrier inspection fee, stipulating that the fee must be paid annually on or before April 1 each year. When a fee is not paid on time, the bill requires that interest be charged on the amount due; the rate of interest is set at 15% per year, computed at a rate of 1.25% per month. A penalty in the amount of 2% of the amount of the fee due is also imposed. The attorney general is designated as the entity charged with bringing suit to collect all fees, interest and penalties. The timing of the fees and the late payment penalty and interest requirements will be synchronized for the inspection and supervision and the utility and carrier fees.

Each utility and carrier doing business in this state subject to the control and jurisdiction of the PRC shall pay annually to the PRC a fee in performance of its duties as now provided by law. This sum shall be payable annually on or before April 1 in each year. No similar fee shall be imposed upon the utility or carrier. In the case of utilities or carriers engaged in interstate business, the fees shall be measured by the gross receipts of the utilities or carriers from intrastate business only for the preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. As used in this section, "utility" includes telephone companies and transmission companies but does not include public utilities subject to the PUA.

Finally, the bill authorizes the PRC to reject an application for location approval of an electric generating plant or transmission line if such facilities are determined to unduly impair power system reliability.

Significant Issues

SB 855 provides the authority and additional mechanisms for the PRC to ensure the needs of public utility customers are met.

This bill also clarifies that new electric generation and transmission facilities should not be built if they impact negatively on overall system reliability—a big concern throughout the nation in recent years.

ED provided the following on the original bill:

The development of a mechanism to allow the appointment of a receiver is a significant benefit for the assurance of appropriate operation of drinking water systems that are under the jurisdiction of the rules of the PUA and the orders of the PRC. At this time in New Mexico, PUA regulated entities are estimated to include 45 public water systems. There are at least another estimated 375 water cooperatives, private, non-profit and mutual domestic water consumer associations for which there is no current mechanism to appoint a receiver, and such a mechanism is needed in New Mexico.

This bill states that the receiver may issue receiver's certificates to provide funds to operate, repair, improve or enlarge the public utility. This "improving or enlarging" may not be possible to achieve through appropriate rate increases and this section of the act may need to define the authority of the receiver to authorize indebtedness through loan or to apply for grant funding through eligible state or federal programs.

FISCAL IMPLICATIONS

The bill also stipulates that interest and penalties are imposed on late payment of fees by utilities; this will provide an incentive for utilities to make timely payment of all applicable fees. This may result in a very slight increase in revenues to the general fund.

ADMINISTRATIVE IMPLICATIONS

The PRC can handle the provisions of this bill with existing staff.

RELATIONSHIP

Relates to SB 847, Utility Construction & Location

DW/lg:rs