

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/UTILITIES DIVISION
BILL)

A BILL FOR

1 An Act relating to matters under the purview of the utilities
2 division of the department of commerce, providing fees, and
3 making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 474.1, subsection 2, Code 2018, is
2 amended to read as follows:

3 2. a. ~~The utilities board shall organize by appointing~~
4 ~~an executive secretary, who shall take the same oath as the~~
5 ~~members. The board shall set the salary of the executive~~
6 ~~secretary within the limits of the pay plan for exempt~~
7 ~~positions provided for in section 8A.413, subsection 3, unless~~
8 ~~otherwise provided by the general assembly. The board may~~
9 ~~employ additional personnel as it finds necessary.~~ Subject to
10 confirmation by the senate, the governor shall appoint a member
11 as the chairperson of the board. The chairperson shall be the
12 administrator of the utilities division. The appointment as
13 chairperson shall be for a two-year term which begins and ends
14 as provided in section 69.19.

15 b. The board shall appoint a chief operating officer to
16 manage the operations of the utilities division as directed
17 by the board. The board shall set the salary of the chief
18 operating officer within the limits of the pay plan for exempt
19 positions provided for in section 8A.413, subsection 3, unless
20 otherwise provided by the general assembly. The board may
21 employ additional personnel as it finds necessary.

22 Sec. 2. Section 474.2, Code 2018, is amended to read as
23 follows:

24 **474.2 Certain persons barred from office.**

25 No person in the employ of any common carrier or other public
26 utility, or owning any bonds, stock or property in any railroad
27 ~~company or other~~ public utility shall be eligible to the office
28 of utilities board member or ~~secretary~~ chief operating officer
29 of the utilities board; and the entering into the employ of any
30 common carrier or other public utility or the acquiring of any
31 stock or other interest in any common carrier or other public
32 utility by such member or ~~secretary~~ chief operating officer
33 after appointment shall disqualify the member or ~~secretary~~
34 chief operating officer to hold the office or perform the
35 duties thereof.

1 Sec. 3. Section 474.8, Code 2018, is amended to read as
2 follows:

3 **474.8 Office — time employed — expenses.**

4 The utilities board shall have an office at the seat
5 of government and each member shall devote the member's
6 whole time to the duties of the office, and the members and
7 ~~secretary, chief operating officer,~~ and other employees shall
8 receive their actual necessary traveling expenses while in
9 the discharge of their official duties away from the general
10 offices.

11 Sec. 4. Section 476.1B, subsection 3, Code 2018, is amended
12 to read as follows:

13 3. Unless otherwise specifically provided by statute, a
14 municipally owned utility providing local exchange services
15 is not subject to regulation by the board under this chapter
16 except for regulatory action pertaining to the enforcement of
17 sections 476.11, ~~476.29,~~ 476.95, 476.95A, 476.96, 476.100,
18 476.101, and 476.102.

19 Sec. 5. Section 476.1D, subsection 10, paragraph b, Code
20 2018, is amended to read as follows:

21 **b.** The board shall promptly notify the director of revenue
22 that a long distance telephone company has been classified
23 as a competitive long distance telephone company. Upon such
24 notification by the board, the director of revenue shall assess
25 the property of such competitive long distance telephone
26 company, which property is first assessed for taxation in this
27 state on or after January 1, 1996, in the same manner as all
28 other property assessed as commercial property by the local
29 assessor under chapters 427, 427A, 427B, 428, and 441. As used
30 in this section, "*long distance telephone company*" means an
31 entity that provides telephone service and facilities between
32 local exchanges, but does not include a cellular service
33 provider or a local exchange utility ~~holding a certificate~~
34 ~~issued under section 476.29, subsection 12.~~

35 Sec. 6. Section 476.2, subsection 6, Code 2018, is amended

1 by striking the subsection.

2 Sec. 7. Section 476.6, subsection 21, Code 2018, is amended
3 by striking the subsection.

4 Sec. 8. Section 476.10, subsection 1, paragraph a, Code
5 2018, is amended to read as follows:

6 a. In order to carry out the duties imposed upon it by law,
7 the board may, at its discretion, allocate and charge directly
8 the expenses attributable to its duties to the person bringing
9 a proceeding before the board, ~~or~~ to persons participating in
10 matters before the board, or to persons subject to inspection
11 by the board. The board shall ascertain the certified expenses
12 incurred and directly chargeable by the consumer advocate
13 division of the department of justice in the performance of
14 its duties. The board and the consumer advocate separately
15 may decide not to charge expenses to persons who, without
16 expanding the scope of the proceeding or matter, intervene in
17 good faith in a board proceeding initiated by a person subject
18 to the board's jurisdiction, the consumer advocate, or the
19 board on its own motion. For assessments in any proceedings or
20 matters before the board, the board and the consumer advocate
21 separately may consider the financial resources of the person,
22 the impact of assessment on participation by intervenors, the
23 nature of the proceeding or matter, and the contribution of
24 a person's participation to the public interest. The board
25 may present a bill for expenses under this subsection to the
26 person, either at the conclusion of a proceeding or matter,
27 or from time to time during its progress. Presentation of a
28 bill for expenses under this subsection constitutes notice of
29 direct assessment and request for payment in accordance with
30 this section.

31 Sec. 9. Section 476.11, unnumbered paragraph 2, Code 2018,
32 is amended to read as follows:

33 The board may resolve complaints, upon notice and
34 hearing, that a ~~utility, operating under section 476.29,~~
35 telecommunications provider has failed to provide just,

1 reasonable, and nondiscriminatory arrangements for
2 interconnection of its telecommunications services with another
3 telecommunications provider.

4 Sec. 10. Section 476.51, subsection 5, Code 2018, is amended
5 to read as follows:

6 5. Civil penalties collected pursuant to this section from
7 utilities providing water, electric, or gas service shall be
8 forwarded by the ~~executive secretary~~ chief operating officer
9 of the board to the treasurer of state to be credited to the
10 general fund of the state and to be used only for the low
11 income home energy assistance program and the weatherization
12 assistance program administered by the division of community
13 action agencies of the department of human rights. Civil
14 penalties collected pursuant to this section from utilities
15 providing telecommunications service shall be forwarded to
16 the treasurer of state to be credited to the department of
17 commerce revolving fund created in section 546.12 to be used
18 only for consumer education programs administered by the board.
19 Penalties paid by a rate-regulated public utility pursuant to
20 this section shall be excluded from the utility's costs when
21 determining the utility's revenue requirement, and shall not be
22 included either directly or indirectly in the utility's rates
23 or charges to customers.

24 Sec. 11. Section 476.53, subsection 3, paragraph c,
25 subparagraph (2), Code 2018, is amended to read as follows:

26 (2) The rate-regulated public utility has demonstrated to
27 the board that the public utility has considered other sources
28 for long-term electric supply and that the facility or lease is
29 reasonable when compared to other feasible alternative sources
30 of supply. ~~The rate-regulated public utility may satisfy the~~
31 ~~requirements of this subparagraph through a competitive bidding~~
32 ~~process, under rules adopted by the board, that demonstrate~~
33 ~~the facility or lease is a reasonable alternative to meet its~~
34 ~~electric supply needs.~~

35 Sec. 12. Section 476.72, subsection 4, Code 2018, is amended

1 to read as follows:

2 4. "*Public utility*" means a ~~gas or electric~~ rate-regulated
3 public utility providing electric, gas, water, sanitary sewage,
4 or storm water drainage service, or any combination thereof.

5 Sec. 13. NEW SECTION. 476.95A Annual registration for
6 telecommunications service providers.

7 1. A telecommunications service provider offering
8 communications service telephone numbers to retail customers in
9 this state shall register annually with the board.

10 2. An applicant shall complete an application for
11 registration on a form provided by the board. The form shall
12 include contact information, the approximate number of service
13 lines provided in the state, and any other information deemed
14 necessary by the board.

15 3. The board may charge an annual registration fee at
16 the time the application for registration form is filed with
17 the board, and on or before the anniversary date of the
18 effective date of registration for each subsequent year.
19 The registration fee shall be established at a rate deemed
20 reasonably necessary by the board to support the administration
21 of this section. If an applicant or a registrant fails
22 to pay an annual registration fee, the application for
23 registration or registration lapses and becomes ineffective.
24 Notwithstanding this subsection, the board may continue to
25 assess telecommunications services providers for costs and
26 expenses pursuant to section 476.10.

27 4. Within five business days of the receipt of a completed
28 application for registration, the board shall issue a
29 nonexclusive acknowledgment of compliance with this section.
30 The acknowledgment shall authorize the registrant to obtain
31 telephone numbers, interconnect with other telecommunications
32 services providers, cross railroad rights-of-way pursuant to
33 section 476.27, and provide telecommunications services in this
34 state. An acknowledgment may be transferred by filing a new
35 or updated registration form.

1 5. A registrant shall submit to the board corrections
2 to the information supplied in the registration form
3 within a reasonable time after a change in circumstances,
4 which circumstances would be required to be reported in an
5 application for registration form.

6 6. Failure to file and maintain an annual registration
7 pursuant to this section is a violation of this chapter and
8 shall subject a telecommunications services provider to a civil
9 penalty pursuant to section 476.51.

10 Sec. 14. Section 476.101, subsections 1, 4, and 7, Code
11 2018, are amended to read as follows:

12 1. A certificate of public convenience and necessity to
13 provide local telephone service shall not be interpreted as
14 conveying a monopoly, exclusive privilege, or franchise. A
15 competitive local exchange service provider shall not be
16 subject to the requirements of this chapter, except that a
17 competitive local exchange service provider shall ~~obtain a~~
18 ~~certificate of public convenience and necessity pursuant to~~
19 ~~section 476.29~~ register annually with the board pursuant to
20 section 476.95A, notify affected customers prior to any rate
21 increase, file reports, information, and pay assessments
22 pursuant to section 476.2, subsection 4, and sections 476.9,
23 476.10, 476.16, 476.102, and 477C.7, and shall be subject to
24 the board's authority with respect to adequacy of service,
25 interconnection, discontinuation of service, civil penalties,
26 and complaints. If, after notice and opportunity for hearing,
27 the board determines that a competitive local exchange service
28 provider possesses market power in its local exchange market
29 or markets, the board may apply such other provisions of this
30 chapter to a competitive local exchange service provider as it
31 deems appropriate.

32 4. Except as provided ~~under section 476.29, subsection 2,~~
33 ~~and in~~ in this section, the board shall not impose or allow a
34 local exchange carrier to impose restrictions on the resale
35 of local exchange services, functions, or capabilities. The

1 board may prohibit residential service from being resold as a
2 different class of service.

3 7. In a proceeding associated with ~~the granting of~~
4 ~~a certificate under section 476.29,~~ approving maps for
5 competitive local exchange providers provided for in this
6 section, or in resolving a complaint filed pursuant to
7 subsection 5 and proceedings under 47 U.S.C. §251 - 254,
8 the board shall allocate the costs and expenses of the
9 proceedings to persons identified as parties in the proceeding
10 who are engaged in or who seek to engage in providing
11 telecommunications services or other persons identified as
12 participants in the proceeding. The funds received for the
13 costs and the expenses shall be remitted to the treasurer of
14 state for deposit in the department of commerce revolving fund
15 created in section 546.12 as provided in section 476.10.

16 Sec. 15. Section 476.103, subsection 4, paragraph c, Code
17 2018, is amended to read as follows:

18 c. A civil penalty collected pursuant to this subsection
19 shall be forwarded by the ~~executive secretary~~ chief operating
20 officer of the board to the treasurer of state to be credited
21 to the department of commerce revolving fund created in section
22 546.12 and to be used only for consumer education programs
23 administered by the board.

24 Sec. 16. Section 477A.3, subsection 1, paragraph f, Code
25 2018, is amended to read as follows:

26 f. Documentation that the applicant possesses sufficient
27 managerial, technical, and financial capability to provide
28 the cable service or video service proposed in the service
29 area. ~~An applicant or its subsidiary which has been issued~~
30 ~~a certificate of public convenience and necessity to provide~~
31 ~~telephone service pursuant to section 476.29 shall be exempt~~
32 ~~from the provisions of this paragraph.~~

33 Sec. 17. Section 477C.7, Code 2018, is amended to read as
34 follows:

35 **477C.7 Funding.**

1 1. The board shall impose an annual assessment to fund the
2 programs described in this chapter upon all telecommunications
3 carriers providing service in the state, including but not
4 limited to wireless, wireline, and alternative operator
5 service providers, at a rate of three cents per month for each
6 communications service telephone number provided in this state.

7 ~~2. The total assessment shall be allocated as follows:~~

8 ~~a. Wireless communications service providers shall be~~
9 ~~assessed three cents per month for each wireless communications~~
10 ~~service number provided in this state.~~

11 ~~b. (1) The remainder of the assessment shall be allocated~~
12 ~~one-half to local exchange telephone utilities and one-half to~~
13 ~~the following:~~

14 ~~(a) Interexchange carriers.~~

15 ~~(b) Centralized equal access providers.~~

16 ~~(c) Alternative operator services companies.~~

17 ~~(2) The assessment shall be allocated proportionally based~~
18 ~~upon revenues from all intrastate regulated, deregulated, and~~
19 ~~exempt telephone services under sections 476.1 and 476.1D.~~

20 ~~3. 2.~~ The telecommunications carriers shall remit the
21 assessed amounts quarterly to a special fund, as defined
22 under section 8.2, subsection 9. The moneys in the fund are
23 appropriated solely to plan, establish, administer, and promote
24 the relay service and equipment distribution programs.

25 ~~4. 3.~~ The telecommunications carriers subject to
26 assessment shall provide the information requested by the board
27 necessary for implementation of the assessment.

28 ~~5. The local exchange telephone utilities shall not recover~~
29 ~~from intrastate access charges any portion of such utilities~~
30 ~~assessment imposed under this section.~~

31 Sec. 18. Section 478.29, subsection 1, Code 2018, is amended
32 to read as follows:

33 1. A person who violates a provision of this chapter is
34 subject to a civil penalty, which may be levied by the board,
35 of not more than one hundred dollars per violation or one

1 thousand dollars per day of a continuing violation, whichever
2 is greater. Civil penalties collected pursuant to this
3 section shall be forwarded by the ~~executive secretary~~ chief
4 operating officer of the board to the treasurer of state to be
5 credited to the general fund of the state and appropriated to
6 the division of community action agencies of the department
7 of human rights for purposes of the low income home energy
8 assistance program and the weatherization assistance program.

9 Sec. 19. Section 479.14, Code 2018, is amended to read as
10 follows:

11 **479.14 Inspection fee.**

12 ~~A pipeline company shall pay an annual inspection fee of~~
13 ~~fifty cents per mile of pipeline or fraction thereof for~~
14 ~~each inch of diameter of the pipeline located in the state,~~
15 ~~the inspection fee to be paid to the board for the calendar~~
16 ~~year in advance between January 1 and February 1 of each year~~
17 The board may, in accordance with section 476.10, charge a
18 pipeline company with an annual inspection fee that is directly
19 attributable to the costs of conducting annual inspections
20 pursuant to this chapter.

21 Sec. 20. Section 479.31, subsection 1, Code 2018, is amended
22 to read as follows:

23 1. A person who violates this chapter or any rule or order
24 issued pursuant to this chapter shall be subject to a civil
25 penalty levied by the board not to exceed one hundred thousand
26 dollars for each violation. Each day that the violation
27 continues shall constitute a separate offense. However, the
28 maximum civil penalty shall not exceed one million dollars for
29 any related series of violations. Civil penalties collected
30 pursuant to this section shall be forwarded by the ~~executive~~
31 ~~secretary~~ chief operating officer of the board to the treasurer
32 of state to be credited to the general fund of the state and
33 appropriated to the division of community action agencies
34 of the department of human rights for purposes of the low
35 income home energy assistance program and the weatherization

1 assistance program.

2 Sec. 21. Section 479.46, subsection 6, Code 2018, is amended
3 to read as follows:

4 6. The pipeline company shall pay all costs of the
5 assessment made by the commissioners and reasonable attorney
6 fees and costs incurred by the landowner as determined by the
7 commissioners if the award of the commissioners exceeds one
8 hundred ten percent of the final offer of the pipeline company
9 prior to the determination of damages; ~~if the award does not~~
10 ~~exceed one hundred ten percent, the landowners shall pay the~~
11 ~~fees and costs incurred by the pipeline company.~~ The pipeline
12 company shall file with the sheriff an affidavit setting forth
13 the most recent offer made to the landowner. Commissioners
14 shall receive a per diem of fifty dollars and actual and
15 necessary expenses incurred in the performance of their
16 official duties. The pipeline company shall also pay all costs
17 occasioned by the appeal, including reasonable attorney fees
18 to be taxed by the court, unless on the trial of the appeal the
19 same or a lesser amount of damages is awarded than was allowed
20 by the commission from which the appeal was taken.

21 Sec. 22. Section 479B.4, unnumbered paragraph 5, Code 2018,
22 is amended to read as follows:

23 The notice shall set forth the following: the name of the
24 applicant, the applicant's principal place of business, the
25 general description and purpose of the proposed project, the
26 general nature of the right-of-way desired, a map showing the
27 route or location of the proposed project, that the landowner
28 has a right to be present at the meeting and to file objections
29 with the board, and a designation of the time and place of the
30 meeting. The notice shall be ~~sent by restricted certified~~
31 ~~mail and shall be published once in a newspaper of general~~
32 ~~circulation in the county not less than thirty days before~~
33 ~~the date set for the meeting~~ served by certified mail with
34 return receipt requested not less than thirty days previous
35 to the time set for the meeting, and shall be published once

1 in a newspaper of general circulation in the county. The
2 publication shall be considered notice to landowners whose
3 residence is not known and to each person in possession of or
4 residing on the property provided a good faith effort to notify
5 can be demonstrated by the pipeline company.

6 Sec. 23. Section 479B.21, subsection 1, Code 2018, is
7 amended to read as follows:

8 1. A person who violates this chapter or any rule or
9 order issued pursuant to this chapter shall be subject to a
10 civil penalty levied by the board in an amount not to exceed
11 one thousand dollars for each violation. Each day that the
12 violation continues shall constitute a separate offense.
13 However, the maximum civil penalty shall not exceed two hundred
14 thousand dollars for any related series of violations. Civil
15 penalties collected pursuant to this section shall be forwarded
16 by the ~~executive secretary~~ chief operating officer of the board
17 to the treasurer of state to be credited to the general fund
18 of the state and appropriated to the division of community
19 action agencies of the department of human rights for purposes
20 of the low income home energy assistance program and the
21 weatherization assistance program.

22 Sec. 24. Section 479B.30, subsection 6, Code 2018, is
23 amended to read as follows:

24 6. The pipeline company shall pay all costs of the
25 assessment made by the commissioners and reasonable attorney
26 fees and costs incurred by the landowner as determined by the
27 commissioners if the award of the commissioners exceeds one
28 hundred ten percent of the final offer of the pipeline company
29 prior to the determination of damages; ~~if the award does not~~
30 ~~exceed one hundred ten percent, the landowners shall pay the~~
31 ~~fees and costs incurred by the pipeline company.~~ The pipeline
32 company shall file with the sheriff an affidavit setting forth
33 the most recent offer made to the landowner. Commissioners
34 shall receive a per diem of fifty dollars and actual and
35 necessary expenses incurred in the performance of their

1 official duties. The pipeline company shall also pay all costs
2 occasioned by the appeal, including reasonable attorney fees
3 to be taxed by the court, unless on the trial of the appeal the
4 same or a lesser amount of damages is awarded than was allowed
5 by the commission from which the appeal was taken.

6 Sec. 25. Section 714H.4, subsection 1, paragraph d, Code
7 2018, is amended to read as follows:

8 *d.* The provision of local exchange carrier telephone service
9 ~~pursuant to a certificate issued under section 476.29.~~

10 EXPLANATION

11 The inclusion of this explanation does not constitute agreement with
12 the explanation's substance by the members of the general assembly.

13 This bill modifies various provisions relating to the
14 utilities division of the department of commerce.

15 Current law requires the Iowa utilities board to appoint an
16 executive secretary, whose salary is set by the board and who
17 takes the same oath as board members. The bill requires the
18 board to appoint a chief operating officer (COO) instead of
19 an executive secretary. The bill specifies that the role of
20 the COO is to manage the operations of the utilities division
21 as directed by the board. The bill provides that the board
22 shall set the salary of the COO within the limits of the
23 law and authorizes the board to employ additional personnel
24 as necessary. The bill replaces references to "executive
25 secretary" with "COO" in the Code.

26 Current law disqualifies a person owning any bonds, stock,
27 or property in any railroad company from holding office in the
28 utilities board. The bill removes this disqualification.

29 The bill removes or replaces references in the Code to
30 repealed Code section 476.29, which required telecommunications
31 service providers to obtain certification from the board.

32 The bill removes the requirement for the board to provide
33 the general assembly with a report on certain energy efficiency
34 planning efforts to be completed by January 1, 1998.

35 The bill strikes Code section 476.6(21), which provides

1 cost recovery for certain rate-regulated public utilities for
2 undertaking analyses of and preparations for the possible
3 construction of nuclear generating facilities in the state.

4 Current law allows the board to allocate and charge expenses
5 attributable to its duties to a person bringing a proceeding
6 before the board or participating in matters before the board.
7 The bill allows the board to also allocate and charge expenses
8 attributable to its duties to a person subject to inspection
9 by the board.

10 Current law requires the board to specify certain ratemaking
11 principles that will apply to certain electric generating and
12 transmission facilities. In doing so the board must find
13 that a public utility has demonstrated to the board, through
14 a competitive bidding process under rules adopted by the
15 board, that its facility or lease is reasonable. The bill
16 removes the requirement that a public utility demonstrate the
17 reasonableness of its facility or lease through a competitive
18 bidding process under rules adopted by the board.

19 The bill expands the definition of "public utility" in Code
20 section 476.72, which is applicable to certain provisions
21 relating to public utility affiliates and reorganization, to
22 also include rate-regulated public utilities providing water,
23 sanitary sewage, or storm water drainage services.

24 The bill requires telecommunications services providers
25 offering communications service telephone numbers to retail
26 customers in the state to register annually with the board.
27 An applicant must complete an application for registration
28 on a form provided by the board, which shall include contact
29 information, the approximate number of service lines provided
30 in the state, and any other information deemed necessary
31 by the board. The board may charge an annual registration
32 fee at a rate deemed reasonably necessary by the board.
33 If a person fails to pay an annual registration fee, the
34 application or registration lapses and becomes ineffective.
35 Notwithstanding the annual registration requirements, the

1 board may continue to assess telecommunications services
2 providers pursuant to Code section 476.10. The board must
3 issue a nonexclusive acknowledgment of compliance within
4 five business days of the receipt of a completed application
5 of registration. Such acknowledgment shall authorize the
6 registrant to obtain telephone numbers, interconnect with other
7 telecommunications providers, cross railroad rights-of-way,
8 and provide telecommunications services in the state. An
9 acknowledgment is transferrable by filing a new or updated
10 registration board. A registrant shall submit corrections to
11 the registration form within a reasonable time after a change
12 in circumstances if such information would be required to be
13 reported in an application. Failure to file and maintain an
14 annual registration subjects a telecommunications services
15 provider to a civil penalty under Code section 476.51.

16 Current law requires the board to impose an annual
17 assessment upon all telecommunications carriers in the state
18 to fund dual party relay service programs, with the assessment
19 rate depending on the type of telecommunications carrier. The
20 bill applies the same assessment rate to all telecommunications
21 carriers providing service in the state, including but not
22 limited to wireless, wireline, and alternative operator service
23 providers, at a rate of three cents for each communications
24 service telephone number provided in the state.

25 Current law requires pipeline companies doing business in
26 the state to pay the board an annual inspection fee of 50
27 cents for each mile of pipeline located in the state. The
28 bill removes this set fee and instead allows the board to
29 charge pipeline companies with annual inspection fees that are
30 directly attributable to the costs of conducting inspections.

31 Current law allows a landowner to petition the county
32 board of supervisors to appoint a compensation commission to
33 determine damages arising from the construction of certain
34 pipelines if the landowner and pipeline company are unable to
35 agree on damages. If the compensation commission's assessment

1 of damages exceeds 110 percent of the pipeline company's final
2 offer prior to the assessment, the pipeline company must pay
3 all costs of the assessment, including costs incurred by the
4 landowner; if the assessment does not exceed 110 percent of
5 the pipeline company's final offer prior to the assessment,
6 the landowner must pay the costs incurred by the pipeline
7 company. The bill removes provisions requiring a landowner to
8 pay the costs incurred by a pipeline company if a compensation
9 commission's assessment of damages does not exceed 110 percent
10 of the pipeline company's final offer prior to such assessment.