**65-407 PUBLIC UTILITIES COMMISSION**

**Chapter 615: EXEMPTIONS FROM REGULATORY REQUIREMENTS FOR CONSUMER-OWNED WATER UTILITIES**

**SUMMARY:** This Rule establishes rules for the form, content, and procedure for granting, modifying, and rescinding exemptions from regulatory requirements before the Maine Public Utilities Commission.

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**§ 1 APPLICABILITY**

 This Chapter governs the form, content, and procedure for reviewing petitions for exemption from regulatory requirements submitted to the Commission by consumer-owned water utilities pursuant to 35-A M.R.S. §6114. Additionally, this Chapter governs the form and procedure for review of petitions seeking rescission or modification of exemptions previously granted by the Commission.

 The Commission may not grant an exemption to the following statutes: 35-A M.R.S. §§ 116, 301, 309, 501, 502, 702, 709, 712, 1101, 1302, 6105, 6109, 6109-B, 6111-C, or 6112 or any other statute where exemption is prohibited.

 Furthermore, nothing in this Chapter shall be deemed to authorize an exemption from the statutory right of any 10 persons to bring complaints regarding utility service to the Commission pursuant to 35-A M.R.S. §1302.

**§ 2 Definitions**

A. "Adjudicatory Proceeding" has the same meaning as in Chapter 110 of the Commission’s Rules.

B. "Consumer Owned Water Utility” or “utility” has the same meaning as “consumer-owned water utility” in 35-A M.R.S. §6101(1-A).

C. "Lead Petitioner" means, with respect to petitions for review of exemptions under Section 4(A)(1) of this Chapter, the petitioner designated as the agent for all other petitioners. In absence of such a designation by the petitioners, the person who submitted the petition or the first petitioner’s name appearing on the petition will be considered the lead petitioner. The Administrative Director shall identify the lead petitioner upon receipt of the petition.

D. "Petitioner" means any customer who receives water service from a consumer-owned water utility and who seeks review of an exemption granted to that consumer-owned water utility by the Commission pursuant to Section 4(A)(1) of this Chapter.

**§ 3 PETITION FOR EXEMPTION FROM REGULATORY REQUIREMENTS**

A. **Notice to Customers and Public Meeting**

 Prior to submitting to the Commission a petition for exemption from regulatory requirements pursuant to this Chapter, a consumer owned water utility must provide notice to all of its customers of the utility’s intent to file such a petition and must hold a public meeting, the purpose of which is to inform the utility’s customers of the proposed exemption, the date upon which the utility will file its request with the Commission, and how customers of the utility may submit comments regarding the request to the Commission’s case management system after the petition is submitted. The meeting must occur at least 30 days prior to the filing of the request with the Commission. The notice of intent to file a petition and the notice of the public meeting may be contained in the same notice. The notice (or notices, if provided separately) must include a plain-language description of the proposed exemption including the justification and the potential consequences of the exemption.

 1. **Notice Requirements**

The consumer-owned utility must provide notice of its intent to file a petition for exemption and notice of the public meeting by regular mail postmarked at least 14 days prior to the meeting in addition to using any two of the following methods:

* + - 1. **By email**. If the utility provides notice by email, the notice must be made individually to each customer at least 14 days before the meeting. Email notice may be included in electronic customer bills;
			2. **By publication**. The utility may provide newspaper notice of the meeting in a newspaper of general circulation in the area served by the utility;
			3. **Conspicuous posting**. The utility may post notice in a town office or other conspicuous place within the utility’s service area;
			4. **Website.** If the utility has a website, the utility may post notice on its website;
			5. **Social media**. If the utility has social media accounts, it may post notice on those social media accounts; or
			6. **Other**. Other methods of notification that are reasonably calculated to provide broad notice to the utility’s customers.

Utilities may include notice in mailed customer bills. Utilities must file copies of the notice in the Commission’s Case Management System at least 14 days before the date of the public meeting. All notices, whether by mail or other method, must contain the same information.

In addition, utilities must file verification of the email, publication, conspicuous posting, website, social media, or other notifications in the Commission’s Case Management System at least 14 days before the date of the public meeting. Verification may be affidavits, screenshots, photographs, or other media sufficient to show compliance with this Section.

 B. **Contents of the Petition**

1. The Petition must specifically identify the statutory requirement or requirements for which an exemption is sought.

2. The Petition must contain information sufficient to support a finding by the Commission that an exemption from the regulatory requirement is

1. in the public interest;
2. will not result in unjust or unreasonable rates;
3. will not have a negative impact on the provision of safe, adequate and reliable service; and

d. that the water utility seeking the waiver has the adequate technical, financial and administrative capacity to perform the waived function or requirement.

3. **Contents of the filing**

a. Systems, policies, and other mechanisms by which the water utility will ensure its compliance with statutory requirements of 35-A M.R.S. §301 in the absence of Commission oversight;

b. The names and relevant credentials, licenses, and certifications of persons employed or retained by the utility who will be responsible for maintaining safe, adequate, and reliable service in the absence of regulatory oversight; and

1. A description of system and process by which the utility is governed and the methods by which customers may participate in the governance of the utility.

4. **Required Documents**

1. Records of any Significant Deficiency found to be present by the Maine Drinking Water Program within the water utility’s system during the past five years;
2. A statement that utility has filed its annual report with the Commission for the most recent reporting period, if the utility is required to file an annual report;
3. Copies of audited financial statements for the most recent financial reporting period, if the utility is required to prepare audited financial statements;
4. Copies of unaudited financial statements for the most recent financial reporting period, if the utility is required to prepare financial statements but is not required to prepare audited financial statements;
5. Copies of the utility’s current trial balances if the utility is not required to prepare financial statements;
6. Copies of the notices sent to customers and published prior to the public meeting;

g. Copies of any minutes or other documents recording the decision of the water utility’s decision to seek an exemption; and

h. Benchmarks, ratios, and other documents listed in Appendix A for the previous three calendar years prior to the exemption request.

 C. **Process upon Filing Petition for Exemption**

1. The Commission will review the petition and seek comment from the Office of the Public Advocate and any interested parties. Interested persons will have 30 days to file comments and within 120 days the Commission shall either issue an order resolving the petition or initiate an investigation of the requested exemption.
2. An investigation initiated under to this Section is an adjudicatory proceeding conducted pursuant to Chapter 110 of the Commission’s rules.

 D. **Exemption Proceedings Initiated by the Commission**

The Commission may initiate a proceeding to propose an exemption from a regulatory requirement for a class of consumer-owned water utilities pursuant to 35-A M.R.S. §6114. Such a proceeding will be initiated by Notice to all consumer-owned water utilities and interested persons. A proceeding initiated under this section will provide an opportunity for comment and participation by interested persons and the public.

**§ 4 PROCEEDINGS SUBSEQUENT TO EXEMPTIONS**

 A. **Review of Exemption**

 The Commission may modify or rescind any exemption granted under this rule to any consumer owned water utility upon its own motion or upon presentation of a petition seeking review of the exemption signed by 15% of the customers of a consumer-owned water utility or 1000 customers, whichever is less.

 1. **Petitions for Review of Exemptions**

a. A petition presented to the Commission pursuant to this subsection must indicate

i. the name and address of each petitioner; and

ii. a summary of the basis upon which the petitioners seek to have the water utility’s exemption reviewed.

b. Upon presentation of a petition for review, the Commission will inform the utility of the petition. The utility shall file a response to the petition within 10 business days.

B. **Review Procedure**

1. **Summary Review**. Upon receipt of a valid petition seeking review, the Commission shall conduct a summary review of the petition and its alleged basis. Upon completion of the summary review, if the Commission determines the petition for review has merit, it shall open an investigation to determine whether the exemption should be rescinded or modified.

2. **Investigation**. Any investigation initiated under this section will be an adjudicatory proceeding pursuant to Chapter 110 of the Commission’s rules.

3. **Lead Petitioner**. In any investigation initiated pursuant to Section 4(A)(1), the Commission will designate the Lead Petitioner as defined in Section 2(F) of this rule.

 C. **Rescission or Modification of Exemption**

1. Upon a Commission finding that a previously granted exemption no longer satisfies the criteria of Section 3(B)(2), the Commission may rescind or modify the exemption, in in part or in whole.

2. An exemption granted pursuant to this rule will be rescinded or modified only after the consumer-owned water utility subject to the decision has been provided an opportunity for a hearing.

**§ 5 WAIVER**

 To the extent permitted by law, where good cause appears, the Commission the Commission’s Administrative Director, the Director of Telephone and Water Utility Industries, or a Presiding Officer assigned to a proceeding related to this Chapter may permit deviation or waiver from this Chapter. Any request for a procedural deviation or waiver must be made in writing. The Commission, the Commission’s Administrative Director, the Director of Telephone and Water Utility Industries, or a Presiding Officer assigned to a proceeding related to this Chapter may grant a request for a substantive deviation or waiver upon a finding of good cause or that compliance would be unduly burdensome and that the deviation or waiver is not inconsistent with the purposes of this chapter or 35-A M.R.S §6114.

STATUTORY AUTHORITY:

 35‑A M.R.S. §6114

EFFECTIVE DATE:

 This rule was approved as to form and legality by the Attorney General on February 12, 2015. It was filed with Secretary of State on February 17, 2015 and became effective on February 22, 2015 (filing 2015-018).

EFFECTIVE DATE:

 This chapter was approved as to form and legality by the Attorney General on December 20, 2022. It was filed with the Secretary of State on December 21, 2022 and became effective on December 26, 2022 (filing 2022-252).

**Appendix A: SUPPORTING DATA FOR PETITIONS FOR EXEMPTIONS FROM REGULATORY REQUIREMENTS FOR CONSUMER-OWNED WATER UTILITIES**

**SUMMARY:** This Appendix describes ratios, data, and documents that a consumer-owned water utility shall submit in conjunction with a petition for an exemptions from regulatory oversight or statutory requirements in accordance with Chapter 615, Section 3(B)(4).

1. **INFORMATION TO BE FILED WITH PETITION**

The petitioning utility shall provide each ratio, data, or document described below. If the results deviate from the expected benchmark measure indicated for a particular item, the utility may provide a written statement describing the reason for any such deviation. The references indicated in parenthesis are to the forms filed as part of a utility’s annual report to the Commission.

* 1. **Financial Ratios and Data**
		+ 1. Current Ratio

The current ratio measures an entity’s liquidity or ability to pay its short-term obligations. A ratio of less than one indicates that the entity cannot cover those obligations and maybe financially at risk. It is calculated:

Current and Accrued Assets (*F-1, Ln. 42)*

Current and Accrued Liabilities *(F-2, Ln. 29)*

* + - 1. Quick Ratio

The quick ratio measures an entity’s ability to meets its short-term obligations with its most liquid assets. The higher the quick ratio, the better the entity’s liquidity position. The quick ratio should be no less than 1. It is calculated:

Current & Accrued Assets less M&S (*F-1, Ln. 42 – Ln 37)*

 Current and Accrued Liabilities *(F-2, Ln. 29)*

* + - 1. Operating Ratio

The operating ratio demonstrates the relationship between operating revenues and operating expenses. A high ratio may indicate that the organization has achieved operating efficiency by keeping expenses low relative to revenues. It is calculated:

Operating Revenues *(F-4, Ln. 2)*

Operating Expenses *(F-4, Ln. 3)*

* + - 1. Unrestricted Days Cash

Unrestricted days cash measures liquidity relative to daily operations and maintenance expense. It is calculated:

Cash/Temp Cash Investments *(F-1, Ln, 29 +Ln. 32)*  ÷ 365

 Operating Expense *(F-4, Ln. 3)*

* + - 1. Cash Flow after Debt Payment or Debt Service Coverage

Cash flow after debt payment reflects actual cash funds available to fund operations such as repairs, capital replacements, and debt service. This figure should be positive. It is calculated:

Net Income *(F4, Ln. 46 + Depreciation & Amortization Expense (Lns. 4 – 7)* – Debt Principal Payments *(F5, Ln. 17) +* Required Sinking Fund Payments *(F5, Ln.16)*

* + - 1. Total Debt/Net Plant

This measures outstanding debt to net plant and indicates how the entity has financed its plant. It is calculated:

Long Term Debt *(F-2, Ln. 16)*

Net Plant *(F-1, Ln. 6)*

* + - 1. Outstanding Debt to Maximum Debt

This measure identifies whether limitations exist that could prevent an entity from borrowing to fund future infrastructure projects. As some water utilities do not have borrowing limitations, this will not be applicable to all consumer-owned water utilities.

Long Term Debt *(F-2, Ln. 16)*

Charter Borrowing Limitation

* + - 1. Level of Undepreciated Assets

This measure indicates the age of the assets and, in turn, provides a measure of whether the utility has been replacing its infrastructure on a regular basis. The depreciation base removes assets funded by contributions in aid of construction and assets, such as land, that are not depreciable. It is calculated:

Accumulated Depreciation *(W-5a, Ln. 33)*

Depreciation Base *(W-5, Ln. 26, Col. d)*

* + - 1. Accounts Receivable Turnover

This measure indicates whether the utility may be experiencing cash flow problems due to slow payments or the failure to write off accounts receivables that are unlikely to be paid due to age. It is calculated:

Operating Revenues *(F-4, Ln. 2)*

Accounts Receivable *(F-1, Ln. 33)*

* + - 1. Average Customer Revenue

This measure shows the average revenue from each customer. For an entity with customer classes that have varying usage levels, it is appropriate to calculate this for each customer class. It is calculated:

Operating Revenues *(W-1, Lns. 10 – 13, col. c)*

Number of Customers *(W-7, Lns. 1 -6, col. d )*

* + - 1. Percentage of Revenue from Each of the Utility’s 10 Largest Customers

This measure identifies the extent to which a utility’s revenues depend to a significant degree on one, or several, large customers, and thus the risks to revenues that a utility faces should such customers cease to take service. This measure is to be calculated from the utility’s billing records separately for each of its 10 largest customers. It is calculated by:

Individual Revenue of Customer from Billing Records

Operating Revenues *(W-1, Lns. 10 – 13, col. c)*

* + - 1. Average Customer Consumption

This measure, when compared with previous years, reflects the trend in customer consumption and is useful in predicting potential trends in total revenues. For an entity with customer classes that have varying usage levels, it is appropriate to calculate this ratio for each customer class. It is calculated:

Operating Revenues *(W-1, Lns. 10 – 13, col. e)*

Number of Customers *(W-7, Lns. 1 -6, col. d)*

* + - 1. Pension Plan Funding Ratio

This measure reflects the percentage of unfunded pension liability and may indicate the need for future rate increases to fund the balance. Until GASB 68 is adopted, the utility may need to obtain this information from its pension fund manager. If the water utility does not provide pension benefits, this measure will not be applicable. It is calculated:

 Actuarial Fair Value of Pension Fund .

Actuarial Accrued Liability for Pension Benefits

* + - 1. OPEB Plan Funding Ratio

This measure reflects the percentage of unfunded OPEB liability and may indicate the need for future rate increases to fund the balance. The utility may have to gather this information from its fund manager. To the extent that the water utility pays OPEB on a “pay-as-you-go basis.” and has therefore not accumulated any funds, it should indicate the procedures used to budget for these costs. If the water utility does not provide OPEB benefits, this measure will not be applicable. If the utility maintains a fund, it is calculated:

 Actuarial Fair Value of OPEB Fund .

Actuarial Accrued Liability for OPEB Benefits

* 1. **Operations and Maintenance Data**
		+ 1. Percentage of Mains Replaced per Year

This is a measure of the existing distribution/transmission infrastructure that has been replaced each year. The measure is calculated on a per foot basis due to the difference between the cost of the replacement infrastructure and the cost of the replaced infrastructure when it was first put into place. This calculation will be need to be developed using the utility’s in house records for the number of feet replaced because the annual PUC report does not include information regarding replacements. It is calculated:

Number of Feet of Distribution/Transmission Main Replaced

Total Feet of Distribution/Transmission Main *(W-9, Col. c)*

* + - 1. Percentage of Non-revenue Water

This measure reflects the percent of water either purchased or produced that does not yield revenues to the utility. This measure is shown on page W-12 of the PUC report on Line 19. It is calculated:

 Total Production Water (W-12, Ln. 15)

Total Revenue Water (W-3, Ln. 20, Col. e)

* + - 1. Percentage of Unaccounted for Water

This measure reflects the percent of water either purchased or produced that does not result in revenues for the utility and has not otherwise been accounted for by the utility. This percentage is lower than the percentage of total non-revenue water because a utility is able to account for certain usages that do not produce revenue, such as flushing and breaks. It is calculated by:

Total Non-Revenue (NR) Water (W-12, Ln. 19) - Accounted for NR Water *(W-12, Ln. 96)*

 Total Production Water *(W-12, Ln. 35)*

* + - 1. Percentage of Hydrants Flushed per Year

This measure reflects how frequently the water utility flushes its hydrants, based upon the number of hydrants flushed as reflected in the utility’s operating records. It is calculated by:

 Number of Hydrants Flushed

Total No. of Hydrants *(W-10, totaled)*

* + - 1. Percentage of Hydrants Replaced per Year

This measure reflects how frequently the water utility replaces its hydrants. It is calculated by:

 Number of Hydrants Replaced

 Total No. of Hydrants *(W-10, totaled)*

* + - 1. Percentage of Hydrants Currently Functional

This measurement reflects how many hydrants are functional in the system. The number of working hydrants is from the utilities operating records. It is calculated by:

 Number of Working Hydrants

Total No. of Hydrants *(W-10, totaled)*

* + - 1. Hydrant Replacement Percentage

This measurement reflects the rate at which the utility replaces its hydrants, based upon the utility’s operating records. It is calculated by:

 Number Hydrants Replaced per Year

Total Number of Hydrants at Beginning of Year

* + - 1. Meter Replacement Percentage

This measurement reflects the rate at which the utility replaces its meters, based upon the utility’s operating records. It is calculated:

 Number of Meters Replaced per Year

Total Number of Meters at Beginning of Year

* + - 1. Percentage of Meters Tested per Year

This measure reflects how frequently the utility tests its meters. The number of meters tested comes from the utilities operating records. It is calculated by:

Number of meters tested

Total Number of Meters at Beginning of Year *(col. b)*

* + - 1. Number of Water Main Breaks per Year
	1. **Personnel Information**
		+ 1. Number of Employees
			2. Average Years of Employment with Utility Among Current Employees
			3. Number of Employees holding Water Operator’s License
			4. Average Years of Water Utility Experience Among Current Employees
	2. **Plans and Other Documentation**

The petitioning water utility shall include a copy of the most recent version of all models, policies, and reports listed below.

* + - 1. Hydraulic Model
			2. Valve Exercise Program
			3. Sanitary Surveys, most recent 3 years
			4. Source Protection Plan
			5. Leak Detection Program
			6. Hydrant Flushing Program
			7. Written Standard Operating Procedures
			8. Emergency Response Plan
			9. Customer Complaint Procedure
			10. Description of each SDWA Violation during the prior 10 years
			11. Consumer Confidence Reports, most recent 3 years
			12. Comprehensive Facilities Plan / Master Plan
			13. Safety Program (work safety)
			14. Water System Maps