

July 9, 2020

MAINE PUBLIC UTILITIES COMMISSION
Criteria to Exclude Small Transmission
Projects and Distribution Projects From
Investigation by the Nonwires Alternative
Coordinator (Chapter 319)

ORDER ADOPTING RULE AND
STATEMENT OF FACTUAL AND
POLICY BASIS

BARTLETT, Chairman; WILLIAMSON and DAVIS, Commissioners

I. SUMMARY

By this Order, the Commission adopts amendments to Chapter 319, Criteria to Exclude Small Transmission Projects and Distribution Projects From Investigation by the Nonwires Alternative Coordinator.

II. BACKGROUND

A. Statutory Authority

During its 2019 session, the Legislature enacted An Act To Reduce Electricity Costs through Nonwires Alternatives, P.L. 2019, c. 298 (Act). The Act established the position of a Nonwires Alternatives (NWA) Coordinator in the Office of the Public Advocate (OPA). Generally, the duties of the NWA Coordinator are to investigate and identify NWAs to transmission and distribution line projects and to evaluate the costs and benefits of such NWAs compared to utility capital investments in the transmission and distribution system.

Section 13 of the Act, now codified at 35-A M.R.S. § 3132-B, states in part:

3. Excluded projects; criteria. The commission, by rule, shall develop criteria to exclude from investigation by the nonwires alternative coordinator small transmission projects and distribution projects best suited to transmission and distribution investments, including but not limited to projects that are:

- A. Necessary for redundant supply to a radial load;
- B. Necessary to address maintenance, asset condition or safety needs;
- C. Necessary to address stability or short circuit problems; or
- D. Required to be in service within one year based on the controlling load forecast.

Section 13 further provides that each investor-owned transmission and distribution (T&D) utility in this State shall annually complete and submit to the OPA, for review by the NWA Coordinator, a planning study for small transmission and distribution

projects and that, except as provided in the excluded projects language cited above, for a proposed project presented in a planning study, the NWA Coordinator:

- A. Shall investigate nonwires alternatives if the project is a small transmission project or is a distribution project estimated to cost \$500,000 or more; and
- B. May investigate nonwires alternatives if the project is a distribution project estimated to cost less than \$500,000 and, in the judgment of the nonwires alternatives coordinator, there is a reasonable likelihood that a nonwires alternative would be more cost-effective than the proposed distribution project.
- B. Notice of Inquiry

On January 14, 2020, the Commission opened a Notice of Inquiry (NOI)¹ to seek comments from interested stakeholders to assist the Commission in advance of the rulemaking proceeding. The Commission requested comments on the specific criteria that should be included in the rule to determine which transmission and distribution projects are excluded from the requirement for an investigation by the NWA Coordinator. The Commission also requested comment on whether the rule should contain other provisions to facilitate the NWA investigation process. For example, the Commission requested comment on whether the rule should contain provisions on the criteria for the cost/benefit analyses of NWAs. Comments were due January 27, 2020. Comments were filed by the OPA, Natural Resources Council of Maine (NRCM), Conservation Law Foundation (CLF), Efficiency Maine Trust (Trust) and Central Maine Power (CMP).

C. Emergency Rule

The Commission may adopt an emergency rule if it determines that the timelines set forth in 5 M.R.S. §§ 8052 and 8053 would present an immediate threat to public health, safety or general welfare. The Commission may only modify those rulemaking procedures to the minimum extent required to enable adoption of rules designed to mitigate or alleviate the threat found.

On March 18, 2020, the Commission initiated an emergency rulemaking proceeding, issued a proposed emergency rule and sought written comment from interested persons by March 23, 2020. The Commission received written comments from the OPA, NRCM, CLF and CMP. The Commission found that there were projects that T&D utilities needed to complete prior to the summer and during this construction season that had an immediate and urgent need and found that not having a rule in place quickly would create a threat to the general welfare allowing the Commission to proceed pursuant to the emergency rulemaking provisions of the Administrative

¹ *MPUC Inquiry into Rules Regarding Nonwires Alternative Coordinator Investigations*, Docket No. 2020-00010, Notice of Inquiry (Jan. 14, 2020).

Procedures Act, 5 M.R.S. § 8054. On April 8, 2020, the Commission issued its Order Adopting Emergency Rule and emergency rule, Chapter 319.² The emergency rule became effective on April 15, 2020. As required by 5 M.R.S. § 8054, the emergency rule shall be in effect only until the Commission amends Chapter 319 in accordance with 5 M.R.S. §§ 8052 and 8053 but in no event shall the emergency rule remain in effect for longer than 90 days from the date the emergency rule is adopted.

III. RULEMAKING PROCESS

On May 22, 2020, the Commission issued a Notice of Rulemaking (NOR) and Chapter 319, the emergency rule currently in effect. Consistent with rulemaking procedures, the Commission provided interested persons with the opportunity to provide oral comments on the proposed rule during a public hearing held on June 23. The OPA, CLF, the Industrial Energy Consumers Group (IECG), Dimension Renewable Energy (Dimension), CMP and Versant Power provided comments at the hearing. There were also two opportunities to file written comments on June 18, and July 3, 2020. The following interested persons provided written comments on the rule: the OPA, CMP, CLF, IECG, Versant Power and the Trust.

IV. AMENDED RULE PROVISIONS

The provisions of the rule are discussed below.

A. Purpose (Section 1):

Section 1 contains the general purpose of the rule which is to establish criteria to exclude from investigation by the NWA Coordinator small transmission and distribution projects best suited for transmission and distribution investments. This section remains unchanged from what was in the proposed rule.

B. Definitions (Section 2):

Section 2 of the rule contains definitions of terms used throughout the rule. This section of the rule and it remains unchanged from what was in the proposed rule.

C. Exclusions from NWA Coordinator Investigations (Section 3):

As noted above, the Act states that the Commission, by rule, shall develop criteria to exclude from investigation by the NWA Coordinator small transmission projects and distribution projects best suited to transmission and distribution investments. The Act further provides four categories of projects that are to be excluded at a minimum. The Commission has interpreted this language as directing it to adopt a rule excluding, at a minimum, the four categories identified in the statute and, to the

² *MPUC Criteria to Exclude Small Transmission Projects and Distribution Projects From Investigation by the Nonwires Alternatives Coordinator (Chapter 319)*, Docket No. 2020-00085, Order Adopting Emergency Rule and Statement of Factual and Policy Basis (Apr. 8, 2020).

extent necessary, provide guidance of how the Commission interprets those exclusion categories. The rule does this by listing specific types of projects that would fall under the exclusion categories, but the list is not exhaustive. Numerous stakeholders in the process developing the emergency rule, and in this rulemaking proceeding, recommended that the Commission interpret the exclusions narrowly so as to allow as many NWA as possible. The Commission intends to interpret the statute consistent with legislative intent; however, the rule recognizes that the Commission cannot initially detail every project that could be subject to the NWA exemption. The specific exclusion categories and examples of qualifying projects within those exclusion categories are laid out in Sections 3(A) through 3(F) of the rule and are discussed below.

1. Projects Necessary for Redundant Supply to a Radial Load (Section 3(A)):

Section 3(A) of the proposed rule provides that this exclusion category includes, but is not limited to: 1) transmission and/or distribution facility required to establish redundant supply or additional circuit backup capabilities; 2) upgrades to facilities inside an existing substation; and 3) new or upgraded transmission lines or distribution circuits.

In its initial comments, the OPA stated that upgrades to a radial line should not be included in this exclusion category asserting that in many cases these projects are best suited to a NWA noting that it may be possible to address a radial load issue through a hybrid NWA, such as by utilizing ties and other wire components in the broader area.³ The OPA argued that excluding upgrades to these existing lines from the requirement of the investigation by the NWA Coordinator has the potential to eliminate such review from virtually any upgrade related project. An investigation of the NWA of a radial line would consider integrated hybrid NWA that utilize existing infrastructure, or modifications to existing infrastructure, in the area of the project under review to more cost-effectively replace or defer improvements to a radial line, states the OPA. In the OPA's supplemental comments it suggested some significant changes to this section of the rule. For example, the OPA suggested that the exclusion apply to new transmission or distribution lines and upgrades required to establish redundant supply where:

- a. The NWA Coordinator determines that a radial load cannot be supplied by NWAs that are cost-effective in comparison to the wire solution after a preliminary screening and cost-benefit analysis conducted by the NWA Coordinator or validated by the NWA Coordinator if conducted by the PUC, utility or another third-party.

³ The OPA stated that this potential has been identified with respect to the Section 31 project in *Central Maine Power Company Request for Approval For a Rebuild of Line 31*, Docket No. 2019-00309, Notice of Proceeding (Nov. 26, 2019). The Commission notes that Section 3132-B defines small transmission projects as any proposed transmission line and associated infrastructure capable of operating at less than 69 kilovolts and projected to cost \$5 million or less. The Section 31 transmission project is a 34.5 kilovolt transmission line with a projected cost of \$9.3 million. As a result, it does not qualify as a small transmission project pursuant to 35-A M.R.S. §3132-B and therefore is not subject to this exclusion category in the rule.

- b. The NWA Coordinator determines that an alternate, cost-effective, hybrid NWA solution cannot feasibly maintain system reliability and supply the radial load under the loss of a primary source. Electric system reconfiguration and/or the addition of a tie-line along with the utilization of NWAs are an example of such a solution. This feasibility of utilizing a hybrid NWA solution should be determined by the NWA Coordinator or validated by the NWA Coordinator if assessed by the PUC, utility or another third-party.

CMP in its supplemental comments stated that it supports the exclusion criterion as drafted in the proposed rule and believes that, based on the comments of the OPA and others, there has been some misunderstanding of this issue and the Company's position. CMP stated that it agrees with the OPA that some upgrades to existing radial lines may be suitable for NWA solutions depending on the driving need (e.g., a project that is proposed to upgrade a radial line with a larger conductor due to capacity constraints potentially could be a good candidate for NWA). CMP believes it's clear that these types of projects do not meet the exclusion criteria and should be considered for NWA review. CMP added that projects proposed to add a redundant supply to a load that is currently served by a single radial source for reliability and/or resiliency improvements, however, are not good candidates for NWA and should be excluded, as the statute states and as proposed in the rulemaking.

The Commission agrees that there may be some misunderstanding on this issue. The intent of the language in the proposed rule was always to exclude from NWA Coordinator review just those projects necessary for establishing redundant supply to a radial load as the statute requires. It was never the Commission's intent to broaden this exclusion category to all upgrades to existing radial lines. The Commission has added some language to this section of the rule to further clarify this.

With respect to the OPA's suggested revisions to this section of the rule, the OPA's language would have the effect of saying projects necessary for redundant supply to a radial load are only excluded from the NWA Coordinator review if the need can't be met some other way (e.g., by an alternate, cost-effective, hybrid NWA solution). The Commission does not find this language consistent with the statutory language of this exclusion category. The Legislature carved out certain types of projects from NWA Coordinator review. To add the OPA's suggested language here would, in the Commission's view, negate the purpose of having the exclusion as it would only allow the exclusion if the NWA Coordinator finds the need cannot be met some other way. The Commission also finds that this would create significant delays in the utilities' ability to move forward with these time-sensitive types of projects needed to maintain reliability. As a result, the amended rule does not contain the OPA's suggested language.

2. Projects Necessary to Address Maintenance, Asset Condition or Safety Needs (Section 3(B)):

The only aspect of this section of the rule that generated any comment was with respect to asset condition projects. Section 3(B)(3) of the proposed rule states: maintenance projects that involve equipment replacement as a result of maintenance inspections, asset condition or to avoid outage and/or catastrophic failure. There has been a recommendation by the OPA to qualify asset condition projects as “extreme asset condition projects.” In the NOI and emergency rulemaking proceedings, the OPA cited operation failure as an example and suggested that an “extreme asset condition” need is identified through preventive or ongoing maintenance programs that find equipment replacement essential to maintain grid reliability. The OPA stated that it believed that NWA have a significant potential to address such a need and that modifying the term this way was essential to preventing possible abuse of this exclusion to justify the construction of many projects that may benefit from a NWA analysis. The OPA noted that it was likely that there was insufficient time to fully explore this in the emergency rulemaking and suggested that the Commission, in this proceeding, consider quantifiable indices for the asset conditions and/or remaining asset life to classify assets’ eligibility for the asset condition exclusion criteria.

The NOR in this proceeding stated that the extent to which asset condition projects can be further clarified or defined would be examined here. The OPA stated in its initial comments that the asset condition exclusion criteria should include review of the following indices of asset condition:

- a. Utility Asset Condition Assessment Reports;
- b. Estimated length of time before the asset condition is expected to degrade to the lowest rated condition;
- c. Outage Reports that specify the underlying cause of an outage, including any outages which occurred directly as a result of asset condition and the length of such outages;
- d. Prioritization of the line in earlier utility plans for line repair and replacement;
- e. Age of individual line components with a comparison to manufacturer recommendation for component useful lives;
- f. Inspection Reports; and
- g. Maintenance reports and maintenance cost estimates.

The OPA stated that the NWA Coordinator will use this information in conjunction with other project information to determine if a NWA can feasibly address the asset condition concerns driving the project or whether a NWA can feasibly replace a degraded asset.

At the public hearing and in its supplemental comments, CMP stated that the indices the OPA listed are all considerations that the Company uses in determining whether an asset condition related upgrade is required or not and to then have that project be reviewed again, using those same indices, by a third party to essentially

confirm the Company's need for this investment would produce significant delays, jeopardize reliability and be contrary to the statutory language excluding asset condition projects from NWA Coordinator review.⁴

In its supplemental comments, the OPA provided some more detail on the indices it described in its initial comments: stating that the exclusion would apply to transmission and distribution projects including major substation assets, underground cable, and overhead transmission lines where the NWA Coordinator determines the following data support the asset condition need:

- a. The asset condition needs are identified at least one year in advance based on system planning, asset condition assessment, maintenance activities, and inspection reports.
- b. Periodic asset condition assessments and inspection reports show a deterioration in condition and recommend a complete replacement of the asset rather than a partial repair due to rapidly deteriorating conditions, repair costs, and a manufacturer's recommended useful life of an asset to maintain system reliability.
- c. Outage reports that specify the underlying cause of an outage, including any outages which occurred directly as a result of asset condition and the length of such outages.

CMP did not support use of the word "extreme" to characterize these projects arguing that would be subjective, very difficult to define, go beyond the language in the statute and add confusion and delay to necessary projects to ensure reliability. In addition, CMP stated that these projects provide very limited opportunities for NWA. Versant Power agreed with CMP's comments on this issue.

The Commission notes that the utilities, the OPA and the NWA Coordinator are working collaboratively on issues regarding the NWA investigation process outside this proceeding and stakeholders will be filing a recommended, mutually agreed upon process with the Commission in Docket 2020-00125.⁵ To the extent the NWA Coordinator, OPA, or any other party, believes that a utility is systematically gaming the rules to artificially create exclusions, the matter may be brought to the Commission. In addition, the Commission has some of the same concerns here that it expressed in the previous section in that the Legislature excluded asset condition projects from NWA Coordinator review and adopting the OPA's suggested language here would again tend to negate the purpose of having an exclusion and subject asset condition projects to NWA Coordinator review in certain circumstances. In addition, the Commission is concerned that important reliability related projects would be significantly delayed. As a result, the amended rule is unchanged from the proposed rule.

⁴ Tr. at 25-26.

⁵ *Public Utilities Commission Nonwires Alternatives Investigation Process*, Docket No. 2020-00125, Notice of Inquiry (Apr. 14, 2020).

3. Projects Necessary to Address Stability or Short Circuit Problems (Section 3(C)):

With respect to Section 3(C), the NOR noted that during the emergency rulemaking process the OPA suggested excluding dynamic reactive device installations (e.g., static synchronous compensators (STATCOM) and static var compensators (SVC)) from this exclusion category and that CMP in its comments in the NOI suggested that this exclusion category include STATCOM and SVC. The Commission's view was that when these are used other alternatives are not likely to be feasible and, as a result, the emergency rule included language that encompasses STATCOM and SVC in this exclusion category but the Commission stated that this issue could be explored further in this rulemaking proceeding.

In its comments in this proceeding, the OPA stated that with respect to the resolution of stability or short circuit problems, as with all NWA, the transmission and distribution solutions must be analyzed holistically. The OPA stated that there are NWA-based solutions available in distribution grids that not only can improve system energy efficiency but also can provide reactive power in the system cost effectively citing Volt-Var Optimization (VVO) programs and microgrids as examples. The OPA states that VVO programs enable electric utilities to reduce energy and peak demand by lowering the voltage at the distribution network and that this is a cost-effective way to improve system energy efficiency by utilizing distribution-based reactive devices in an optimized manner. Deploying a VVO program in distribution grids, the OPA states, has advantages such as lowering peak demand and dynamic reactive power provisions.

The OPA asserts that microgrids can also avoid dynamic reactive device installations. A microgrid, on one hand, is a reliable, efficient, and cost-effective solution that can be utilized as an NWA option, and on the other hand, can provide reactive power as ancillary services to the grid states the OPA. Microgrid deployments not only mitigate building transmission lines and can be an NWA option, but also give reactive power support to the grid and mitigate the need for dynamic reactive device installations, states the OPA.

The OPA concludes that given that the growing integration of distributed energy resources (DERs) in distribution grids poses new challenges for maintaining the voltage profile, and by taking the cost-effectiveness of the above-mentioned NWA-based solutions into account, dynamic reactive device installations should not be excluded if a viable NWA or hybrid NWA solution exists. The OPA proposes some additional language to this section of the rule.

CMP in its comments continues to recommend the exclusion of STATCOM and SVC projects stating that these projects typically address dynamic system response concerns to which NWA resources would provide minimal or no benefit. CMP also stated at the public hearing that there are currently no microgrids in Maine and that VVO

programs are relatively new, noting that there are some pilot programs currently underway on this.⁶

At this time, the Commission continues to believe that when dynamic reactive device installations are used other alternatives are not likely to be feasible and, as CMP noted, there are pilot programs currently underway looking at voltage optimization issues. In Docket No. 2016-00162, the Commission approved a stipulation authorizing two voltage reduction pilot programs, one in each of the service territories of CMP and Versant Power.⁷ Versant Power has completed its pilot program and CMP is anticipated to complete its pilot by the first quarter of 2021. Once CMP completes its pilot, the Commission and stakeholders will have a better understanding of these programs and will be determining next steps as to how best to utilize the data collected by the utilities in the pilot programs. As a result, the amended rule is unchanged from the proposed rule on this issue.

CMP also suggests, as it did in the NOI, excluding projects to mitigate power quality issues (e.g. motor starting induced voltage flicker), circuit breaker upgrades (e.g. over-dutied breakers), high speed relays (e.g. upgraded relays due to NPCC requirements) and automation projects to improve system resiliency (installation of smart switches, reclosers, etc.). CMP states that NWA resources would not resolve these types of system deficiencies and therefore these types of projects, and system needs, should be excluded from NWA Coordinator review. In its supplemental comments, CMP provided more information on why it believes resiliency projects should be excluded from NWA investigation. The goal of a resiliency project is to reduce the number and impact of outages due to extreme weather events or normal day-to-day outages as well as to enable CMP to respond efficiently and effectively when outages occur. The key elements of resiliency projects include targeted changes to the topology of the distribution system (creating circuit ties), hardening of the infrastructure (e.g. use of covered conductor or stronger poles) and automation of the system (communications enabled equipment).

CMP stated that resiliency projects introduce three incremental preventative measures: (1) topology changes to shorten and improve the interconnectivity of distribution circuits, (2) hardening which increases the strength of the system by introducing stronger materials and addresses asset condition, and (3) acceleration of automation capabilities through an increase of installed sectionalizing devices, including reclosers and SCADA switches. From a holistic perspective, some resiliency projects also include enhanced vegetation management activities (O&M expenditures) along with these capital expenditures. CMP asserts that NWA resources would not resolve these types of system deficiencies and therefore these types of projects, and system needs, should be excluded from NWA Coordinator review.

⁶ Tr. at 22-23.

⁷ *Efficiency Maine Trust Request for Examination Voltage Optimization Pilot Program*, Docket No. 2016-00162, Order (June 12, 2017).

CMP also corrected a comment it made at the public hearing regarding high speed relay projects being excluded from NWA investigation. In general, CMP believes that an NWA solution is not suitable to address the need for relay-based projects, including the installation of high speed relays. However, the requirement for high speed relays are typically applicable to facilities that are 115 kV and above. Therefore, these upgrades are not subject to the exclusion criteria.

In its Order Adopting Emergency Rule, the Commission stated that, in its view, these types of projects, with the exception of automation projects, were covered by the language describing qualifying projects in this exclusion category, however, the Commission provides additional language to this section of the rule explicitly listing these types of projects (projects to mitigate power quality issues and circuit breaker upgrade projects). With respect to automation projects, the Commission also agrees that these projects should be excluded from the NWA Coordinator investigation but finds that it would be more appropriate to have a separate exclusion category for these projects versus including them in this section of the rule. As such, the Commission has added a new section, Section 3(F), to the rule to address these types of projects.

4. Projects Required to be in Service within One Year Based on the Controlling Load Forecast (Section 3(D)):

Section 3(D) of the proposed rule provided that projects are required to be in service within one year of the time the NWA Coordinator conducts its investigation of the portion of the T&D utility's service territory in which these projects will be located.

CMP, in its initial comments, stated that the statutory language is clear in that projects required to be in-service within one year based on the controlling load forecast are excluded from NWA investigation and that the proposed rule, in its view, is inconsistent with the statute as it still references a NWA investigation. At the hearing, the Commission explained that it was trying to clarify from what point the one-year period would be measured and provided an illustrative example: if the NWA Coordinator is conducting its investigation in September of 2020, the investigation would not include any projects that were required to be in service within the next 12 months.⁸

In its supplemental comments, CMP again stated that it interprets the language in the proposed rule to mean that a NWA investigation will be conducted on these types of projects. CMP maintains that the exclusion criteria within the statutory language is clear in stating that projects that are required to be in service within one year based on the controlling load forecast are excluded, and as such, no NWA investigation is required. Accordingly, CMP recommends that the language within the rule be changed so the one year begins with the publication date of the utilities' annual transmission and distribution plan based on the controlling load forecast. The Commission adopts CMP's suggestion in the amended rule.

⁸ Tr. at 23-24.

5. Customer or Generator Funded Interconnection Related Projects (Section 3(E)):

This section of the rule provides that this exclusion category includes, but is not limited to, transmission and/or distribution facility upgrades driven by a request for new or upgraded service, or a generator interconnection, and which would be funded by the interconnecting customer or generator. CMP supports this section of the rule as drafted. Dimension also supports the exclusion of upgrades for interconnecting generators and, while Dimension commented that this may be something that the OPA, the NWA Coordinator and the Commission may want to revise in the future, it did not suggest any change to the rule at this time.⁹ No other comments were received on this section of the rule and it is unchanged from the proposed rule.

6. Automation Projects (Section 3(F)):

As discussed in Section 3(C) above, the Commission has added Section 3(F) to the rule which creates a separate exclusion category for automation projects necessary to improve system resiliency.

Addressing two other comments, first, CLF, at the public hearing, again raised, as it had in the proceedings leading up to this rulemaking proceeding, that the proposed rule in Sections 3(A)-(D) uses the phrases “necessary for”, “necessary to”, and “required to” in describing the category of projects excluded from NWA investigation. CLF suggested that language be added to describe how these determinations of what is “necessary” and what is “required” are to be made, including who should be involved in making the determinations and how the determinations should be assessed by the Commission. CLF commented that a carefully defined set of criteria will prevent utilities from gaming the system to avoid NWA investigations.¹⁰ The Trust had a similar comment.

As the Commission stated in its Order Adopting Emergency Rule, this language comes from the statute and the Commission does not see a need at this time to further explain the language in the rule. In addition, as stated above, to the extent the NWA Coordinator, OPA, or any other party, believes that a utility is systematically gaming the rules to artificially create exclusions, the matter may be brought to the Commission.

Second, the Trust stated that at the public hearing there appeared to be differing interpretations on what party would be responsible for making a determination regarding the exclusion criteria under Section 3132- B(3) and at what point in the process the criteria would be applied. The Trust offered for consideration that the rule could direct the utilities to identify projects that it believes meet the exclusion criteria in the planning study required under Section 3132-B(1), which would allow the NWA Coordinator and stakeholders to review the projects and come to a “good faith agreement” as

⁹ Tr. at 15-16.

¹⁰ Tr. at 13-14.

contemplated in Section 3132-B(4) and, if the parties could not reach an agreement, the Commission could resolve the dispute as provided under Section 3132-B(5).

The Commission notes that that the good faith agreement regarding the adoption of NWA that are most cost-effective referenced in Section 3132-B(4) are based on the investigation done pursuant to Section 3132-B(2); however, the projects that are the subject of this rulemaking pursuant to Section 3132-B(3) are excluded from the NWA Coordinator investigation. As a result, the Commission does not incorporate the Trust's suggestion in the rule but would note that the Commission expects that the planning studies will identify all projects the utilities are planning to construct within the planning period, including those they believe to be excluded from the NWA Coordinator investigation. In addition, as stated above, to the extent the NWA Coordinator, OPA, or any other party, believes that a utility is systematically gaming the rules to artificially create exclusions, the matter may be brought to the Commission.

D. Process For Determining Additional Projects or Exclusion Categories (Section 4):

As the language in Section 3 of the rule makes clear, the exclusion categories or qualifying projects within those exclusion categories are not exhaustive. Section 4 of the proposed rule described the process for determining additional projects or exclusion categories. It provided that upon request, and following appropriate process, the Commission, by Order, may determine other projects, or categories of projects, that qualify for exclusion from investigation by the NWA Coordinator. The OPA and CLF both commented that the Commission should do this through the rulemaking process. CMP agreed at the public hearing.¹¹

The Commission believes that a question as to whether a particular project falls within one of the existing exclusion categories may be addressed more efficiently for both the Commission and stakeholders by Commission order, following appropriate process, versus addressing these each time they come up in a lengthy rulemaking proceeding. If a stakeholder, or the Commission, thought that a whole new exclusion category should be added to the rule, that, presumably, might be more appropriate to do through the rulemaking process. As a result, the amended rule provides that the process for determining additional projects or exclusion categories may be done either by rule or Order.

E. Waiver or Exemption (Section 5):

Section 5 of the proposed rule contains the Commission's standard waiver provision. It is unchanged from the proposed rule.

¹¹ Tr. at 19.

V. OTHER ISSUES

In its Order Adopting Emergency Rule, the Commission stated that the Commission did not include other provisions in the emergency rule to facilitate the NWA investigation process. The Commission noted that stakeholders were discussing these issues and that the Commission, as the OPA suggested, directed stakeholders to present a recommended, mutually agreed upon NWA investigation process, including the cost/benefit analysis methodology, to the Commission. As referenced above, the Commission opened Docket 2020-00125 and requested an update from stakeholders by April 21, 2020, on the status of their discussions on this issue. The OPA's comments stated that it anticipated that the stakeholders would be able to file a recommended, mutually agreed upon NWA investigation process on or about June 1, 2020. On June 12, 2020, the OPA filed an update in that docket stating that the stakeholders were still discussing these issues.

The Commission stated in the NOR for this proceeding that it intends to consider these issues in Docket 2020-00125 or a follow-on proceeding but invited parties to comment if they thought those issues should be incorporated into this rulemaking proceeding. No comments were received on this issue. As a result, the Commission intends to consider these issues in Docket 2020-000125 or a follow-on proceeding.

VI. ORDERING PARAGRAPHS

Accordingly, the Commission

O R D E R S

1. That the amendments to Chapter 319 – Criteria to Exclude From Investigation by the Nonwires Alternative Coordinator Small Transmission Projects and Distribution Projects Best Suited to Transmission and Distribution Investments - as described in the body of this Order and as set forth in the attached amended rule are hereby adopted;
2. That the Administrative Director shall file the amended rule with the Secretary of State;
3. That the Administrative Director shall notify the following of the adoption of the amended rule:
 - a. All electric utilities in the State;
 - b. The Office of the Public Advocate;
 - c. All persons that filed comments or are on the notification list for this proceeding; and

- d. All persons who have filed with the Commission within the past year a written request for notice of rulemakings.
4. That the Administrative Director shall send a copy of the amended rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine, 04333-0015.

Dated at Hallowell, Maine, this 9th day of July, 2020

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
 Williamson
 Davis

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.