

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2021-00334

December 20, 2022

MAINE PUBLIC UTILITIES COMMISSION
Amendments to Chapter 62 of the
Commission's Rules

ORDER AMENDING RULE AND
STATEMENT OF FACTUAL AND
POLICY BASIS (**CORRECTED**)¹

BARTLETT, Chair; DAVIS and SCULLY, Commissioners

I. SUMMARY

By this Order, the Commission amends Chapter 62 of the Commission's Rules – Service Standards for Water Utilities. The amendments add provisions for Maine's water utilities to more effectively respond to water supply emergencies, better reflect modern metering technology, and make changes to sections which cover service lines, seasonal service, service interruptions, low pressure areas, and conditions of service. In addition, the Commission is updating and modernizing the Rule, including changing the designation of the Rule from Chapter 62 to Chapter 620 to conform with the Commission's current rule organization conventions, and making other non-substantive editorial amendments.

II. BACKGROUND

The Commission first promulgated Chapter 62 in 1983 and last amended the Rule in 1987. Over the intervening 35 years, the Commission has amended many of its rules related to water utilities and changed much of the terminology in its rules and updated the style, format, and conventions for its rules. Even without the substantive additions to Chapter 62 described below, it is past time for the Commission to modernize Chapter 62 and bring it in line with other Commission rules organizationally and stylistically.

A. 2016-2018 Water Supply Inquiry (Docket No. 2016-00233)

In 2016, large sections of Maine were experiencing the impacts of drought, which caused concern about water utilities' sources of supply. As a result, on October 5, 2016, the Commission initiated an inquiry to obtain comments and information from interested persons regarding water supply issues. This input was intended to assist the Commission in identifying current and potential water supply problems, possible solutions to those problems, and to consider alternative procedural steps for addressing water supply issues.

¹ The Commission issues this Corrected Order to add information regarding its response to the comments that were received during the rulemaking process. The Corrected Order does not change the amendments to Chapter 62 (now Chapter 620) as set forth in the original Order Amending Rule issued on November 16, 2022.

On March 5, 2018, Commission Staff issued a preliminary recommendation based on comments filed by water utilities in the inquiry, preliminary input from several other State agencies and Staff's independent research. The preliminary recommendation had six multi-part findings and requested input on its initial findings and recommendations as well as comments on other aspects of the recommendation. The preliminary findings included how Maine's water utilities responded to the 2016 drought, discussions on emergency preparedness documents, the authority necessary for water utilities to respond to water supply emergencies, whether water utilities' terms and conditions should detail what constitutes a water supply emergency, any necessary cooperative actions among state agencies, effective communication related to water supply emergencies, and the vulnerability of certain water utilities as compared to others. The Commission received comments from the water utility associations, the Office of the Public Advocate (OPA), and Kennebec Water District.

B. 2021 Water Supply Emergency Inquiry (Docket No. 2021-00201)

On July 27, 2021, the Commission opened an Inquiry to examine possible emergency rulemaking for Chapter 62 to provide guidance and procedures for water utilities that need to curtail water usage in a water supply emergency.² As the Commission explained in the Notice of Inquiry, over the past several years Maine has been experiencing drought conditions throughout the state. These drought conditions have been affecting the ability of Maine's water utilities to provide water. The Commission also recognized that the Commission had no guidance or provisions in its rules addressing water supply emergencies and the actions water utilities may take to curtail meter usage during such emergencies when necessary to protect water supplies.

Accordingly, the Commission requested comment and input regarding an emergency amendment to Chapter 62 that would expressly allow water utilities without specific provisions in their terms and conditions of service to declare a "water supply emergency" to curtail water supply under certain circumstances, including insufficient supply to meet water demand, compliance with orders of the Maine or federal centers for disease control, maintenance and repair, and other conditions which substantially limit the utility's ability to supply sufficient water to its customers.

C. Emergency Chapter 62 Rulemaking (Docket No. 2021-00271)

On September 10, 2021, the Commission ended its Inquiry in Docket No. 2021-00201 and adopted emergency amendments to Chapter 62. In so doing, the Commission found that "low water level conditions prevalent in several parts of the state constitutes a water supply emergency that threatens Maine's water utilities' ability to provide water." *Public Utilities Commission, Emergency Rulemaking to Amend Chapter 62*, Docket No. 2021-00271, Order Adopting Emergency Rule at 1 (Me. P.U.C. Sept. 10, 2021) (O.A.E.R.). Further, the Commission noted that there was currently "no guidance in

² Pursuant to 5 M.R.S. § 8054, emergency rules are only in effect for a maximum of 90 days.

the Commission's Rules for water utilities who need to implement water curtailment or water conservation measures in response to such conditions." *Id.*

Consequently, the Commission added a new subsection to Section 2 of Chapter 62—Subsection L—which expressly allowed

water utilities without specific provisions in their terms and conditions of service to declare a "water supply emergency" to curtail water supply under certain circumstances, including insufficient supply to meet water demand, compliance with orders of the Maine or federal centers for disease control, maintenance and repair, and other conditions which substantially limit the utility's ability to supply sufficient water to its customers.

Id. at 3. In addition, Subsection L provided

detailed notice requirements in advance of the implementation of water curtailment or conservation measures, allows water utilities to temporarily disconnect customers who do not comply with the utilities water curtailment or conservation measures, and provides for Commission notification of any declared water supply emergency.

Id.

D. Current Rulemaking (Docket No. 2021-00334)

On June 1, 2022, the Commission initiated a rulemaking to amend Chapter 62. In its Notice of Rulemaking, the Commission noted that the intent of the rulemaking is to add provisions to Chapter 62 that will allow Maine's water utilities to more effectively respond to water supply emergencies, better reflect modern metering technology, and make changes to sections which cover service lines, seasonal service, service interruptions, low pressure areas and conditions of service.

In addition, the Commission proposed to redesignate Chapter 62 as Chapter 620 to better align the Rule with the Commission's current numbering convention. Further, the Commission proposed editorial, clarifying, grammatical, and other non-substantive amendments throughout the Rule. Among the editorial, clarifying, and non-substantive amendments, the Commission proposed amending the Rule to replace the word "shall" in almost all instances with the word "must." The Commission stated that it has consistently interpreted the word "shall" in the Rule to have the same meaning as "must"; however, to remove any ambiguity, and in keeping with the Federal Plain Language Guidelines, the Commission proposed to use "must" in the Rule to indicate a mandatory obligation. See Federal Plain Language Guidelines at 25-26 (rev. 1, May

2011) (available at: <https://www.plainlanguage.gov/media/FederalPLGuidelines.pdf> (last viewed Dec. 21, 2021)). Likewise, the Commission proposed amending the Rule where appropriate to incorporate the active voice. See, *id.* at 20-21.

The Commission held a public hearing on the proposed amendments to Chapter 62 on July 14, 2022. Participating in the public hearing were: the Office of the Public Advocate (OPA), the Maine Water Utilities Association (MWUA), the Kennebec Water District, and Jeffrey McNelly.

During the rulemaking proceeding, the Commission received written comments from the OPA, Jeffrey McNelly, MWUA, and the Maine Rural Water Association (MRWA).

1. OPA

In its comments, the OPA made several substantive suggestions regarding additions to the Rule and suggested changes to amendments proposed by the Commission. The OPA's comments and suggestions were primarily targeted at maintaining existing customer protections in the Rule, establishing consistency, predictability, and clarity in utility practices. The OPA's specific comments are discussed below.

a. Initial Comments

The OPA commented that any suspension of service should be temporary, and that full service should be restored as soon as possible. The OPA also expressed concern that conservation, including during declared water supply emergencies, may be used to excuse a water utility from providing adequate service.

The OPA proposed several changes to Section 3(G), including minor wording changes and changing the title from the proposed "Seasonal Customer" back to "Abatements." The OPA also suggested that pro-rata reductions of customer charges should remain in the Rule because interruptions to water service cause inconvenience to customers along with potential loss of income for other customers. The OPA further requested that language be added to clarify the remedy available to customers and the obligation the utilities have under Section 3(G) to avoid the arbitrary resolution of similarly situated customers.

The OPA asserts that customers have the right to safe, reasonable, and adequate service, and to be charged reasonable rates for that service and states that the Commission should retain the language that allows the Commission to investigate a utility when the utility's total number of limited service contracts exceeds 1% of the customers served by the utility, in order to provide relief to those customers who have a limited service contract, if the Commission determines that the rights of those customers is unfairly compromised.

The OPA commented on Section 3(K) stating that they are unsure whether the Section refers to waste by the utility or by the ratepayer or both. The OPA suggested that the first sentence in the section be replaced with: “water utilities may take cost effective steps to promote the efficient use of water by ratepayers.” The OPA stated its view that utilities should not be allowed to mandate conservation simply to provide less service to ratepayers at higher rates. They requested that customers be notified when a utility acts pursuant to Section 3(K), and that they be able to seek review by the PUC similar to other customer disputes if they disagree with the reasonableness and/or the necessity of the steps. The OPA also suggested that Section 3(K) could be blended into Section 3(L) to eliminate redundancy (both sections describe water conservation and utilization), and so that the notice requirements already spelled out in Section 3(L) would be similarly applied. The OPA further suggested the insertion of “may” in front of “implement” and “limit”.

The OPA supports Section 3(L) but feels that additional language should be added to this section to include two reports – one at 30 days after the water supply emergency has been declared, which requires a plan to remedy the situation, and another at 60 days to describe what worked and what did not work during the emergency, including suggestions on what could be included in the report.

The OPA suggested that language be added to Section 5(B) that clarifies how existing customers will be treated with the proposed changes, such as a grandfathered clause.

The OPA also suggested that this rulemaking proceeding presents an opportunity to standardize the responsibilities of various parties (utility or customer) when leaks are discovered on a customer’s property. Specifically, the OPA believes that leaks should be quantified and those that do not represent a short-term threat to the water utility’s ability to serve should be handled using Chapter 660 requirements for disconnections.

Finally, the OPA suggested adding language to Section 3(I) to include high pressure situations, with a possible limit on both low and high pressure.

b. Final Comments

The OPA clarified that:

[The OPA’s] comments [in this proceeding] should not be construed as criticism of water utilities in general or any particular water utility. The OPA recognizes that most water utilities act in the best interests of ratepayers most of the time, and our comments are about minimum standards to assure that all utilities are constantly providing adequate service.

The OPA provided an example of example T&C language about how leaks should be handled between the utility from South Berwick Water District.

The OPA clarified its earlier comments about reporting during and after a water supply emergency. Specifically, it stated that, in its view, reporting should not interfere with a utility's response to a water supply emergency and that reporting should occur when the situation is under control. Reporting after the emergency should be a "lessons learned" type reporting and the OPA would support a debriefing with Commission staff after the emergency is over, instead of a written report. The OPA feels that summarizing and sharing experiences allow all utilities to learn from one another and better protect customers across Maine.

The OPA recommends that the Commission include language in Chapter 62 for high pressure service areas, noting that it may not always be possible to control high pressure, but that it is important for customers to be notified of such instances.

The OPA clarified its position on pro-rata reductions in customers' bills in the event of water service interruption. The OPA feels that this section is necessary, but that clarification language should be added to the section to exclude water supply emergencies.

The OPA also clarified earlier comments to state that mandatory conservation in non-emergency conditions is an appropriate utility practice, if it is cost effective. In the OPA's view, water utilities should be required to demonstrate that mandatory conservation is either a short-term response to an emergency or, if adopted on long term or permanent basis, that mandatory conservation will result in lower rates for all ratepayers. The OPA also clarified that in stating that customers should be able to seek review of conservation measures with which they disagree, the OPA was not suggesting that the Commission create a new right of review. Instead, the OPA suggested the inclusion of language permitting customers to challenge proposed conservation measures consistent with existing statutory procedures for reviewing customer complaints, by calling the Consumer Assistance and Safety Division, or by filing a 10-person complaint.

With regard to Limited Service Agreements and reporting requirements to the Commission, the OPA suggested that changes to Chapter 62 should not diminish customer protections and that the reporting requirement for the number of limited service agreements should be left in the Rule.

The Commission appreciates the OPA's preliminary and final comments and responds to some of the language suggested with respect to specific rule sections below.

2. MWUA

a. Initial Comments

MWUA expressed appreciation for the efforts of Commission staff to gather input from water utilities through workshops that provided them an opportunity to openly share ideas and concerns regarding Chapter 62. In MWUA's view, this process was a model for cooperative regulatory development, and one which water utilities support.

MWUA suggested several edits to the Definitions section, including the definitions for curb stop, customer, electronic water meter, and mechanical water meter.

Regarding Section 3, MWUA commented that definitions were needed for legal occupant and owner's agent. MWUA also noted that service lines should only be required to be approved by the utility, and that the utility may allow the customer to install the utility portion of the service line. Additionally, MWUA pointed out that service lines crossing the public way are permitted by the relevant licensing authority (municipal, federal, or state), not the utility.

MWUA requested that the Commission delete Section 3(D)(2) because this paragraph is no longer relevant as utilities no longer invest in expansion. Additionally, MWUA requested that utilities be allowed to establish a reasonable charge for the resumption of seasonal service. MWUA also requested that the Service Interruptions section be amended to allow utilities time to provide notice during interruptions. MWUA also recommended changes to the reporting requirements for Limited Service Agreements and that a utility be authorized to issue fines or fees to customers that violate the conditions imposed during a Water Supply Emergency.

Additionally, MWUA offered a number of comments on the sections that cover metering, including the application, meter setting, new and existing meter costs and apportionment, meter repairs, testing requirements, rate adjustments, and conditions of service.

b. Final Comments

MWUA provided comments regarding the pro-rata reduction to customers when service is interrupted. MWUA supports the Commission's proposed changes to this section.

MWUA disagreed with the OPA's suggestion to include a high pressure limit in the proposed Rule, noting that the State of Maine Plumbing Code already includes language regarding pressure and that lowering the pressure could negatively impact flows during firefighting events.

MWUA requested that the Commission retain the ability of a water utility to use limited service agreements for customers. Limited service agreements allow customers

in low pressure areas to obtain service without the added expense of booster stations to all the rate payers of a water utility.

MWUA noted that mandatory water conservation is only used during an emergency or other long-term supply issue concerns, disagreeing with comments from the OPA that water conservation efforts could lead to water utilities exploiting water supply emergencies to increase costs to rate payers. MWUA clarified that, during a water supply emergency, extra reporting, particularly during an emergency, would be burdensome. Utilities are already actively engaging local and state resources including the Commission, the Department of Health and Human Services Drinking Water Program (DWP), the local emergency management agency, etc.

MWUA recommended utilities be left to develop meter location requirements without regulatory oversight. In MWUA's view, many utilities have the requirement for upstream and downstream valves in their Terms and Conditions and most utilities address compliance by existing customers at the time of property transfer or when other plumbing improvements are needed (e.g., installation of a backflow prevention device). Further, utilities should determine how to handle leaks on customer infrastructure, noting that these issues have been managed for years without the need for direct Commission oversight.

Finally, as a general comment, MWUA urged the Commission to work with the DWP to develop clearer lines of regulatory authority and make better use of limited resources.

The Commission appreciates MWUA's preliminary and final comments and responds to some of the language suggested with respect to specific rule sections below.

3. MRWA

MRWA commended the Commission for its commitment to updating Chapter 62 and is generally supportive of including the language regarding water supply emergencies and meter testing requirements. MRWA noted that the lack of responses by individual utilities in the rulemaking indicates how busy utilities are, particularly during construction season and urged the Commission to extend the comment period and allow more participation from individual water utilities.

MRWA expressed concerns that definitions for "legal occupant" and "service drop" do not appear in the proposed rule changes and that the meaning of the words "suitable" and "practicable" could change depending on whether the customer, the utility or the Commission was defining it. Specifically, MRWA expressed concern that utilities should not have to compromise on where the utility believes a meter should be placed.

MRWA also requested that the requirement for customers to notify the utility in writing for seasonal disconnection of service be removed from Section 3G and agreed

with other commentors that a requirement for reporting during and after a water supply emergency would be burdensome to water utilities.

The Commission appreciates MRWA's comments and responds to some of the language suggested with respect to specific rule sections below.

4. Jeffrey McNelly

Mr. McNelly disagreed with the OPA's comments and suggestions regarding water conservation and water supply emergencies. Mr. McNelly noted that while sales decrease during periods of required water conservation, water utility expenses do not. He expressed concern about the OPA's limited understanding of water utilities and how they operate.

Mr. McNelly further commented that the proposed Water Supply Emergency section does not excuse water utilities from regulatory requirements. It instead provides a process that enables water utilities to effectively interact with their customers when managing a water supply emergency. Mr. McNelly also stated that an after-action report following a water supply emergency is not necessary and that the rule as proposed is adequate because the time spent preparing reports during and after a water supply emergency would serve no useful purpose as each water utility and every scenario is unique.

In Mr. McNelly's view, water meters should be tested or replaced according to manufacturer's recommendations. Mr. McNelly also clarified that this should apply to routine testing and/or replacement, not to testing done at the request of a customer. Mr. McNelly also commented that the response to a water supply emergency needs to be a collaborative effort between the water utility and state agencies, with the state agencies facilitating discussions and helping the water utility with rules.

The Commission appreciates the Mr. McNelly's comments. Because he did not propose specific modifications to the proposed language, the Commission does not accept or reject his comments with respect to the amended rule.

III. AMENDED RULE

The amendments described below are based on the amendments proposed by the Commission in its June 1, 2022 Notice of Rulemaking (NOR) in this Docket. Changes to the Commission's proposals in the NOR are a result of comments, suggestions, and input from the parties to this rulemaking, whether in written comments or at the July 14, 2022 hearing.

In addition to the specific amendments discussed below, the Commission is amending the rule to incorporate its proposals regarding "must" vs. "shall" and the use of active voice. The Commission is also changing the Rule from Chapter 62 to Chapter 620.

A. Section 1: Purpose and Applicability

Section 1 is a new Section in Chapter 620. In Section 1, the Commission is amending the Rule to expressly state the purpose of the Rule and clearly define to whom the Rule applies.

B. Section 2: Definitions

The definitions section of Chapter 62 was Section 1 of that rule, but the Commission is relocating the definitions section to Section 2 of Chapter 620. The Commission is adding definitions to Chapter 620 for the following terms: ANSI/AWWA, Commission, Electromagnetic or Ultrasonic Water Meter, Jobbing, Main, and Mechanical Water Meter. The Commission is removing the definition of Corporation from Chapter 620 as superfluous and removing the definition of Water Main as that concept is now defined by the term Main. In addition, the Commission is changing the definitions of Customer, Person, and Water Utility to be more expansive and is renaming the definitions for Service Pipe and Water Company to Service Line and Water Utility, respectively. The Commission is also making other non-substantive editorial amendments to Section 2 of the Rule.

With respect to section 2(C) defining “curb stop,” MWUA suggested the Commission use “service line shutoff valve” as the term to define rather than “curb stop” and also recommended the deletion of the following sentence: “This valve is also the demarcation between the water utility portion and the customer portion of the service line.” MWUA also recommended that the last sentence in this section include the phrase “also known as the curb stop.” The Commission declines to adopt this suggestion but notes that the term “curb stop” and “service line shut off valve” are defined in section 2(L) of Chapter 65 of the Commission’s Rules.

With respect to section 2(D), MWUA requested that the current definition of “customer” be retained because in its current form it designates someone as a customer after applying and being granted service and indicates that the customer is responsible for payment for service. MWUA believed the proposed definition removed these important distinctions.

The Commission declines to accept this recommendation. The definition as adopted in this amendment conforms to the definition of customer contained in other Commission rules, Chapter 660 and Chapter 815.

With respect to section 2(E), MWUA suggested using the term “electromagnetic or ultrasonic water meter.” The Commission agrees that the term proposed is more inclusive and has replaced instances in which the term “electronic” is used with the term “electromagnetic and ultrasonic.”

With respect to the definition of “mechanical water meter” formerly contained in section 2(J), MWUA had suggested replacing this definition with an alternative

definition. The Commission instead has adopted a definition that relies on ANSI/AWWA standards.

MWUA had also questioned whether the word “corporation” should be deleted from the definition of “water utility.” The Commission amended the definition of “person” to include a corporation, which is consistent with Maine statute.

C. Section 3: General Provisions

The Commission is relocating the General Provisions section of Chapter 620 from Section 2 to Section 3. In addition, the Commission is making extensive clarifying, editorial, and grammatical non-substantive edits throughout Section 3.

1. Section 3(A)

With respect to section 3(A) “Applications for Service,” MWUA and MRWA questioned whether the rule needed to define “legal occupant” and “owner’s agent.” The Commission disagrees with this suggestion and instead the rule made this section conform with Chapter 660 of the Commission’s Rules.

2. Section 3(C)

MWUA had four suggested changes to this section:

- In the first sentence, replace the word “determine” with “approve” because requiring utilities to determine parameters such as line size may open the utility to liability if the service line does not meet the needs of the customer. The Commission partially agrees with this and changes the language to “determine or approve” to address MWUA’s concern.
- In the second sentence, revise the language to: “maintain the service utility portion of the service line (historically known as service drop).” The Commission agrees to this change.
- Add the following sentence to be the third sentence in the paragraph: “The utility may allow the customer to install the utility portion of the service line per the utility’s requirements.” The Commission declines to make this change.
- Delete the final sentence in the paragraph related to the utility approving the customer’s portion of the service line crossing the public way because approval of a water line in the public way can only be granted by the licensing authority, such as the municipality, the state or a federal agency. The Commission agrees to this change.

3.. Section 3(D)(2)

MWUA suggested this paragraph be deleted from the rule because it was only relevant when utilities invested in expansion and thus is no longer relevant. The Commission disagrees because there are utilities that still invest in expansion. In addition, the Commission is removing the stated interest rate of 9.5% from the Rule and instead reference provisions in Chapter 870 of the Commission's Rules.

4. Section 3(G)

The OPA suggested that to minimize confusion, the title remain "Abatement." The Commission declines this suggestion but to minimize and potential confusion, the Commission is changing the heading of this subsection from "Abatement" to "Seasonal Customers and Vacancies."

The Commission is removing the requirement for a water utility to place a seal upon the stop and waste valve or fixtures of a vacant establishment in instances where two or more customers are supplied by a single service. This requirement is superfluous. Chapter 65 of the Commission's Rules defines a service line as "a water line installed at the customer's expense extending from a main to serve a single customer, a single multi-unit dwelling building or complex of a single commercial or industrial development" and, by rule, no service may serve more than one of these entities at a time.

There was a suggestion that the Commission limit this section such that a utility may file a tariff establishing a reasonable charge based on its costs for each resumption of service to customers subject to seasonal rates. The Commission declines this suggestion to limit the section because it is important for utilities to abate and pro-rate when customers leave and no longer require service.

MRWA requested the removal of the requirement that customers notify the utility in writing to request a seasonal shut off as currently outlined in this section because MRWA believes it is better policy and practice for a work order to document the request. The Commission agrees and removes this requirement.

5. Section 3(H)

The Commission is removing the requirement that water utilities provide a pro-rata rate reduction in the minimum charge for customer-requested service interruptions longer than 48 hours. In the Commission's view, a pro-rata reduction is not warranted because the cost to the utility does not change and any pro-rata reduction is ultimately borne by all of the utility's ratepayers. The Commission is also of the view that the costs of administering this program exceed any refunds.

The OPA had commented that changes to this section could limit customers' right to seek compensation for losses associated with a service interruption. MWUA

commented that this section was not intended to provide a compensation for customers, such as for the costs associated with purchasing bottled water. The Commission declines to adopt language that would create a right to compensation for service interruptions. No other utility sector provides for pro rata reduction and with the majority of water utilities being consumer-owned, provision for such reductions could harm ratepayers.

6. Section 3(I)

Based on input from the parties to this rulemaking, the Commission is removing the requirement in the second paragraph in this section for utilities to file a report when the number of customers taking service under a limited-service contract exceeds one-percent of the utility's total customers. In response to the OPA's comment that this information is important, the Commission notes that it plans to add this requirement to water utilities' annual report.

7. Section 3(J)

The Commission is adding language specifically authorizing water utilities to implement water use provisions in their terms and conditions and to limit water use as required by the Maine Center for Disease Control & Prevention or Maine Department of Environmental Protection.

8. Section 3(K)

There were extensive comments regarding how the rule addresses water supply emergencies. While the Commission appreciates the comments of the parties, it declines to make further adjustments to the proposed language. As discussed in Section II(A) and (B) above, the Commission is making permanent the emergency language the Commission promulgated in Docket No. 2021-00271.

D. Section 4: Meters

The Commission is removing or relocating outdated or superfluous language for "Conversion from Metered Rates," "Remote Reading Registers," and "Meter Vaults." The Commission is also making extensive clarifying, editorial, and grammatical non-substantive edits throughout Section 4.

1. Section 4(A) Meters – Application

MWUA suggested modifying the second proposed sentence to read: "The person or business applying for service is required to submit necessary information (as specified by the utility), to enable the utility to determine and/or approve the size of the meter, which must be reasonable in view of the nature of the service provides." The Commission agrees that this language will enable the utility to make a proper determination of the meter size and adopts the change in relevant part.

2. Section 4(B) Meter Setting

With respect to subsection 4(B)(1), MWUA suggested modifying the first sentence to read: “All meters must be set as close as practicable to the point of entrance of the service line to the establishment,” as well as other minor language changes. The Commission accepts the proposed changes.

MWUA suggested rewording subsection 4(B)(2) to read: “In accordance with Chapter 65 of the Commission’s Rules, the cost of the meter, and related meter reading equipment, and installation may be borne by the customer or the water utility.” The Commission agrees with this change in relevant part.

MWUA suggested deleting subsection 4(B)(3) because subsections (2) and (3) provide an appropriate framework to ensure utilities may require a meter to be in a warm, dry and accessible location and that the customer cover the cost of installation. The Commission disagrees because this paragraph is not duplicative. It alerts customers to the fact that other infrastructure may be needed to keep meters in a warm, dry and accessible location.

3. Section 4(C) Meter Repairs

MWUA suggested this section be modified to read: “Repair and replacement of meters and related meter reading equipment, owned by the utility, necessitated by ordinary wear must be paid for by the utility. Repair and replacement due to damage other than ordinary wear may be charged to the customer, including the associated labor cost.” The Commission accepts this change.

4. Section 4(D): Testing

MWUA provided comments to the proposed rule, some of which the Commission has accepted and others that it rejects. The Commission is removing the requirement that water utilities have on-site testing capability. This is in recognition of the now standard practice of sending meters out for off-site testing. Concomitantly, the Commission is removing the requirement that customers be permitted to observe meter testing. Instead, the Commission will require that customers be provided with a written report of the meter test.³ In addition, the Commission is updating the testing standards in the Rule, and clarifying the options utilities have for conducting testing and replacement.

³ By way of example, it is the Commission’s understanding that many or most water utilities do not have the equipment or personnel to perform on-site meter testing, many or most water utilities only test meters upon customer request so the test volume does not justify the investment in on-site testing capability, many new meters are not amenable to on-site testing and must be tested by the meter manufacturer, and customers rarely, if ever, attended on-site testing sessions.

5. Section 4(H): Rate Adjustment

The Commission is proposing to update the calculations for adjustments to customer rates in cases where meters are found to be inaccurate.

MWUA suggested that in subsection 4(H)(2), the second to last sentence should clarify which customer bill(s) must be corrected and suggested it be for the “applicable portion of the current billing period and the most recent full billing period.” The Commission accepts this change.

E. Section 5: Conditions of Service

The Commission is making extensive clarifying, editorial, and grammatical non-substantive edits throughout Section 5.

1. Section 5(B) Stop and Waste Valve

MWUA and the OPA submitted opposing comments regarding the requirement of location for upstream and downstream valves. The Commission accepts MWUA’s clarification of valve location, which is reflected in the amended rule.

2. Section 5(D) Conditions of Service

MWUA suggested replacing Center for Disease Control and Prevention with the Maine State Plumbing Code at 02-395 CMR 4. The Commission accepts this change.

F. Section 6: Waiver

The Commission is adding standard waiver provisions to the Rule that conform to the Commission’s current practices with regard to waivers. As a result, the Commission is removing outdated “Appeal to the Commission” language from the Rule.

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).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

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.