

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2022-00237

November 22, 2022

PUBLIC UTILITIES COMMISSION  
Amendments to Chapter 615 of the  
Commission's Rules

ORDER AMENDING RULE  
AND STATEMENT OF  
FACTUAL AND POLICY BASIS

BARTLETT, Chair; DAVIS and SCULLY, Commissioners

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## **I. SUMMARY**

By this Order, the Commission amends Chapter 615 – Exemptions from Regulatory Requirements for Consumer Owned Water Utilities. With these amendments, the Commission expands the methods by which consumer-owned water utilities may provide notice to customers of a pending request for a specific exemption. The Commission also adopts non-substantive editorial amendments to the Rule.

## **II. BACKGROUND**

On October 18, 2021, the Commission opened an Inquiry in Docket No. 2021-00327 to examine exemptions for consumer-owned water utilities (COWUs) for certain securities issuances as well as an exemption from the newspaper reporting requirements in 35-A M.R.S. §§ 6104 & 6104-A. The Commission received comments in the Inquiry from the Office of the Public Advocate (OPA), the Portland Water District (PWD), the Maine Water Utilities Association (MWUA), and the Maine Rural Water Association (MRWA). On August 16, 2022, the Commission closed the Inquiry.

In closing the Inquiry, the Commission found that the securities issuance issue required further examination, and stated that it may, in the future, open adjudicatory proceedings into the relevant statutes to obtain record evidence upon which the Commission may base a decision. With regard to the newspaper notification issue, however, the Commission stated that it agreed with the consensus among the commenters that newspaper notifications are unnecessarily costly and increasingly ineffective given today's virtual world. Accordingly, the Commission stated its intent to open rulemakings to propose alternate methods of customer notification, including amending Chapter 615.

On August 16, 2022, the Commission opened the rulemaking proceeding in the above-captioned Docket. In its Notice of Rulemaking, the Commission proposed changes to the customer notification provisions in Chapter 615. The Commission also proposed non-substantive editorial and grammatical amendments to the Rule. Among the editorial, clarifying, and non-substantive amendments, the Commission is amending the Rule to replace the word "shall" in most instances with the word "must." The Commission 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 is now using "must" in Chapter 615 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 July 25,

2022)). Likewise, the Commission proposed amending the Rule where appropriate to incorporate the active voice. See, *id.* at 20-21.

The Commission did not receive any requests for a public hearing regarding the proposed amendments to the Rule. Accordingly, the Commission did not hold a public hearing. 5 M.R.S. § 8052(1).

The only comments the Commission received were from the OPA. In its comments, the OPA suggested that the Commission add language to the Rule that would require COWUs to provide a description of the requested exemption in the COWUs' notice to their customers, and that the COWU file copies of its notice of intent and customer notice in the Commission's Case Management System (CMS) at least 14 days prior to the public hearing. The OPA also requested that the Rule require customer mailings to use first class mail. The OPA also made additional suggestions regarding the content of customer notices.

### **III. PROPOSED AMENDMENTS**

In addition to adopting the amendments regarding plain language, active voice, and editorial and grammatical changes proposed in the Notice of Rulemakings, the Commission adopts the following substantive amendments to the Rule.

A. Section 3: Petition for Exemption from Regulatory Requirements

The Commission amends Section 3(A) to expand the public notification options for consumer-owned water utilities and to clarify that utilities may include notice of the pending petition for exemption and notice of the public meeting in the same notice. In addition, the Commission generally agrees with the suggestion from the OPA to require COWUs to include a description of the proposed exemption in the notice. The Commission disagrees with the OPA that the COWU should file copies of the notice or notices in the Commission's CMS at least 14 days prior to the public hearing. The Rule, as amended, requires a public hearing 30 days in advance of the COWU's filing its petition with the Commission. Consequently, there will not be any Commission docket in which the COWU can file copies of the notices.

The Commission also declines to adopt the OPA's suggestion that the rule mandate first-class mailing of customer notices. Under the amended Rule, COWUs are required, in addition to regular mail, to provide notice to customers using two additional methods, including email, publication, conspicuous posting, website posting, social media, or any other method "reasonably calculated to provide broad notice to the [COWU's] customers." Given the multiple redundant notices, it is the Commission's view that first-class mailing is not necessary, and COWU's should retain the ability to seek more cost-effective methods of mailing should they so choose.

D. Section 4: Proceedings Subsequent to Exemptions

The Commission is making non-substantive editorial and grammatical amendments to Section 4.

E. Section 5: Waiver

The Commission is simplifying the title of this Section to “Waiver.” The Commission is also amending this Section to bring it into accordance with other Commission Rules that delegate certain waivers to presiding officers and other Commission designees. The Commission is also making non-substantive editorial and grammatical amendments to this Section.

**IV. ORDERING PARAGRAPHS**

In light of the foregoing, the Commission

**O R D E R S**

1. That Chapter 615 – Exemptions from Regulatory Requirements for Consumer Owned Water Utilities is hereby amended as described in the body of this Order and as set forth in the amended Rule attached to this Order;
2. That the Administrative Director file the amended Rule with the Secretary of State;
3. That the Administrative Director notify the following of this Order Amending Rule:
  - a. All water utilities in Maine;
  - b. The Maine Rural Water Association;
  - c. The Maine Water Utilities Association;
  - d. All persons who have filed with the Commission a written request for notifications regarding Notices of Rulemaking within the past year; and



## 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.