

# TITLE 35-A PUBLIC UTILITIES

## CHAPTER 1 ORGANIZATION, GENERAL POWERS AND DUTIES

### §102. DEFINITIONS

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

**1. Commission.** "Commission" means the Public Utilities Commission.

**2. Commissioner.** "Commissioner" means one of the members of the Public Utilities Commission.

**2-A. Competitive service provider.** "Competitive service provider" means a competitive electricity provider as defined in section 3201, subsection 5.

**3. Corporation.** "Corporation" includes municipal and quasi-municipal corporations.

**4. Customer.** "Customer" includes any person, government or governmental division which has applied for, been accepted and is currently receiving service from a public utility.

**4-A. Dark fiber provider.** "Dark fiber provider" means a person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing federally supported dark fiber that:

A. Offers its federally supported dark fiber on an open-access basis without unreasonable discrimination as confirmed in a schedule of rates, terms and conditions filed for informational purposes with the commission;

B. Is required to conduct its business subject to restrictions established and enforced by the Federal Government pursuant to Title VI of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009) and to grant security interests to the Federal Government under that Act; and

C. Does not transmit communications for compensation inside this State.

**4-B. Federally supported dark fiber.** "Federally supported dark fiber" means one or more strands within a bundle of fiber-optic cable through which an associated light signal or light communication transmission must be provided to provide communications service, but excluding the electronic equipment required in order to render the fiber capable of transmitting communications, the construction of which is financed in whole or in part with funds provided by a grant awarded before January 1, 2010 by the United States Department of Commerce, National Telecommunications and Information Administration

pursuant to the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009).

**5. Electric utility.** (REPEALED)

**6. Electric plant.** (REPEALED)

**6-A. Excluded electric plant.** (REPEALED)

**6-B. Federal interconnection rights and obligations.** "Federal interconnection rights and obligations" means the rights and obligations of a telecommunications entity under 47 United States Code, Sections 251 and 252 or any other provision of federal law or regulation governing telecommunications network facility interconnection or wholesale access rights and obligations to the extent the rights and obligations under the federal law or regulation may be regulated or overseen by the commission.

**7. Ferry.** "Ferry" includes every person, its lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any vessel and which is subject to commission's jurisdiction under chapter 51.

**7-A. Gas marketer.** "Gas marketer" means an entity that sells natural gas to retail consumers in the State.

**8. Gas utility.** "Gas utility" includes every person, that person's lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any gas plant for compensation within this State, except when gas is made or produced on and distributed by the maker or producer through private property alone solely for its own tenants and not for sale to others, or when the gas is sold solely for use in vehicles fueled by natural gas or to a liquid gas system that serves fewer than 10 customers as long as no portion of the liquid gas system is located in a public place or that serves a single customer if the liquid gas system is located entirely on the customer's premises. "Gas utility" does not include a gas marketer whose business in the State is restricted to selling natural gas to retail consumers and who does not provide natural gas transmission or distribution service.

**9. Gas plant.** "Gas plant" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas for light, heat or power.

**9-A. Mobile telecommunications services.** "Mobile telecommunications services" means telecommunications services licensed by the Federal Communications Commission for mobile use.

**9-B. Incumbent local exchange carrier.** "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that on February 8, 1996 provided telephone exchange service in the area and:

A. On February 8, 1996 was deemed to be a member of the exchange carrier association pursuant to 47 Code of Federal Regulations, Section 69.601(b); or

B. Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph A.

**9-C. Interconnected voice over Internet protocol service.** "Interconnected voice over Internet protocol service" means a service that enables real-time, 2-way voice communications; requires a broadband connection from the user's location; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

**9-D. Interexchange carrier.** "Interexchange carrier" means any person, association, corporation or other entity that provides intrastate interexchange telecommunications services, including a local exchange carrier that provides interexchange service.

**9-E. Local exchange carrier.** "Local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access. "Local exchange carrier" does not include a person insofar as that person is engaged in the provision of a commercial mobile service under 47 United States Code, Section 332(c), unless the commission by rule determines that the Federal Communications Commission includes such service in the definition of the term. "Local exchange carrier" does not include a person insofar as that person is engaged in the provision of interconnected voice over Internet protocol service unless the person is providing provider of last resort service. "Local exchange carrier" does not include a person insofar as the person is a dark fiber provider.

**10. Natural gas pipeline utility.** "Natural gas pipeline utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court owning or operating for compensation within this State any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of natural gas, or any person or corporation which has applied to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity or to the Public Utilities Commission for a certificate of authorization to operate a natural gas pipeline within the State.

**11. Person.** "Person" includes a corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, trust, estate, any other legal entity or natural person.

**11-A. Provider of last resort service.** "Provider of last resort service" has the same meaning as in section 7201.

**12. Public heating utility.** (REPEALED)

**12-A. Public switched telephone network.** "Public switched telephone network" means the network of equipment, lines and controls assembled to establish communication paths between calling and called parties in North America.

**13. Public utility.** "Public utility" includes every gas utility, natural gas pipeline utility, transmission and distribution utility, telephone utility, water utility and ferry, as

those terms are defined in this section, and each of those utilities is declared to be a public utility. "Public utility" does not include the operation of a radio paging service, as that term is defined in this section, or mobile telecommunications services unless only one entity or an affiliated interest of that entity, as defined in section 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency spectrum assigned by the Federal Communications Commission to provide mobile service to the service area. "Public utility" includes a smart grid coordinator as defined in section 3143, subsection 1, paragraph B.

Nothing in this subsection precludes:

A. The jurisdiction, control and regulation by the commission pursuant to private and special act of the Legislature;

B. The commission's jurisdiction and control over and regulation of a public utility that provides, in addition to other services, radio paging service or mobile telecommunications services;

C. The commission's jurisdiction and control over and regulation of basic exchange telephone service offered by a provider of mobile telecommunications services if, after investigation and hearing, the commission determines that the provider is engaged in the provision of basic exchange telephone service; and

D. Negotiations for, or negates agreements or arrangements existing on the effective date of this paragraph relating to, rates, terms and conditions for interconnection provided by a telephone utility to a company providing radio paging or mobile telecommunications services.

**14. Radio common carrier.** "Radio common carrier" means an entity that provides communications services primarily by use of radio or other wireless means.

**15. Radio paging service.** "Radio paging service" is a service provided by a communication common carrier engaged in rendering signaling communication. Signaling communication is one-way communication from a base station to a mobile or fixed receiver, or to multipoint mobile or fixed receivers by audible or subaudible means, for the purpose of activating a signaling device in the receiver or communicating information to the receiver, whether or not the information is to be retained in record form. It is limited to the following types of communications.

A. An optical readout paging service is one which communicates a message to a receiver which displays the message on an optical or tactile readout, either in a permanent form or a temporary form.

B. A tone only paging service is one which activates an aural, visual or tactile signaling device when received.

C. A tone-voice paging service is one which transmits tone to activate a signaling device and audio circuit in the addressed receiver, following which a voice-grade signal is transmitted, to be amplified by the audio circuit.

**16. Rate design stability.** "Rate design stability" means the implementation of interclass cost allocation or intraclass rate design changes to any existing customer class, of the magnitude or on such a schedule as to not be seriously adverse to the existing class of customers.

**16-A. Self generation.** "Self generation" means the generation of electricity for the use of an entity that owns, leases, operates, controls or manages, in whole or in part, generation assets, as defined in section 3201, subsection 10, provided that the electricity is not transmitted over transmission and distribution plant, as defined in subsection 20-A.

**17. Telegraph utility.** (REPEALED)

**18. Telegraph line.** (REPEALED)

**18-A. Telephone service.** "Telephone service" is the offering of a service that transmits communications by telephone, whether the communications are accomplished with or without the use of transmission wires.

**18-B. Telephone exchange service.** "Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and that is covered by an exchange service charge, or comparable service provided through a system of switches, transmission equipment or other facilities, or combination thereof, by which a subscriber can originate and terminate a telecommunications service.

**19. Telephone utility.** "Telephone utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, that provides telephone service for compensation inside this State. "Telephone utility" also includes a dark fiber provider. "Telephone utility" does not include any person or entity that is excluded from the definition of "public utility" as defined in subsection 13, subject to the provisions of subsection 13, paragraphs A to C.

**20. Telephone line.** (REPEALED)

**20-A. Transmission and distribution plant.** "Transmission and distribution plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the transmission, distribution or delivery of electricity for light, heat or power for public use and includes all conduits, ducts and other devices, materials, apparatus and property for containing, holding or carrying conductors used, or to be used, for the transmission or distribution of electricity for light, heat or power for public use.

**20-B. Transmission and distribution utility.** "Transmission and distribution utility" means a person, its lessees, trustees or receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State, except where the electricity is distributed by the entity that

generates the electricity through private property alone solely for that entity's own use or the use of the entity's tenants and not for sale to others.

**21. Vessel.** "Vessel" includes every boat which is owned, controlled, operated or managed for public use in the transportation of persons or property for compensation within this State.

**21-A. Voice service provider.** "Voice service provider" means any person providing, directly or indirectly, 2-way voice communications service for compensation in this State. "Voice service provider" does not include a dark fiber provider.

**22. Water utility.** "Water utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing any water works for compensation within this State, including any aqueduct organized under former Title 35, chapter 261 and any of its predecessors.

**23. Water works.** "Water works" includes all reservoirs, tunnels, shafts, dams, dikes, head gates, pipes, flumes, canals, structures and appliances, and all real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for municipal and domestic use.

**24. Wholesale competitive local exchange carrier.** "Wholesale competitive local exchange carrier" means a local exchange carrier, other than an incumbent local exchange carrier, that provides a wholesale telecommunications service but does not provide telephone exchange service to a retail subscriber.

***Subsection 24 as enacted by PL 2011, c. 590, §1 is REALLOCATED TO TITLE 35-A, SECTION 102, SUBSECTION 25)***

**25. (REALLOCATED FROM T. 35-A, §102, sub-§24) Zero-based budgeting.** "Zero-based budgeting" means a method of budgeting in which programs and activities are justified for a budgetary period using cost-benefit analysis without regard to the amount that was budgeted for those programs and activities in a prior budgetary period.

## **CHAPTER 21 ORGANIZATION, POWERS, SERVICE TERRITORY**

### **§2101. ORGANIZATION OF CERTAIN PUBLIC UTILITIES**

A provider of provider of last resort service, a local exchange carrier and a public utility for the purpose of making, selling, distributing and supplying gas or electric transmission and distribution service or for the operation of water utilities, ferries or public heating utilities in any municipality, or 2 or more adjoining municipalities, within the State, may be organized as a legal entity authorized under the laws of the State, including Title 13-C.

### **§2102. APPROVAL TO FURNISH SERVICE**

The following provisions apply to furnishing service.

**1. Approval required.** Except as provided in subsection 2 and in section 4507, a public utility may not furnish any of the services set out in section 2101 in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service without the approval of the commission. The commission may condition approval upon the submission of a bond or other financial security if the commission determines that such a requirement is necessary to ensure that a public utility has the financial ability to meet its obligations under this Title.

**2. Approval not required.** Except as provided in section 2104, the commission's approval is not required for a public utility to furnish service in any municipality in which that public utility is furnishing service on October 8, 1967. Approval is not required for a transmission and distribution utility to distribute electricity to any other transmission and distribution utility.

**2-A. Northern Maine Transmission Corporation. (REPEALED)**

**3. Exemption for certain telephone utilities.** The provisions of this section do not apply to any telephone utility except a provider of provider of last resort service with respect to the provision of provider of last resort service and a local exchange carrier.

**4. Dark fiber provider. (REPEALED)**

## **§2103. TRANSMISSION AND DISTRIBUTION UTILITY AND COOPERATIVE AUTHORIZED TO SERVE SAME AREA**

After September 1, 1967, where a cooperative organized under chapter 37 and any other transmission and distribution utility are serving or authorized to serve the same municipality, neither the cooperative nor the other utility may bring electrical service to a new location except as provided in this section.

**1. Notice.** The cooperative or utility must notify the other cooperative or utility and the commission, in writing, of the request by the party for electrical service, where bringing the service requires the extension of existing distribution facilities.

**2. Filing objections.** If, after notice, the other cooperative or utility opposes the bringing of electrical service to the new service location, within 7 days of receipt of the notice of proposed service, it shall:

- A. File objections to the bringing of the electrical service with the commission; and
- B. Send a copy of its objections to the utility or cooperative and to the party requesting electrical service.

**3. Decision.** If objections are filed, the commission shall immediately set a hearing date, and shall determine whether the cooperative or the other utility shall serve. If, after

notice, either the cooperative or the utility fails to file its objections pursuant to subsection 2, it will be conclusively presumed that the cooperative or the utility, as the case may be, has consented to the furnishing of the service.

**4. Temporary service pending a decision.** Pending the final determination of the right to serve, the commission may order temporary service brought to the prospective new service location without prejudice to the rights of any party.

#### **§2104. COMMISSION APPROVAL FOR GAS COMPANIES TO FURNISH SERVICE**

**1. Approval of commission required; generally.** Except as provided in subsection 2, a gas utility may not furnish its service in or to any municipality within the State without the approval of the commission.

**2. Approval not required; no other utility serving.** Notwithstanding section 2102 or 2105, a gas utility authorized to furnish service and serving customers within the State is not required to obtain the approval of the commission to serve in any municipality in which no other gas utility is furnishing similar service unless the commission, in an order issued pursuant to subsection 3, specifically provides otherwise.

**3. Limited grant of authority.** The commission, in an order granting authorization to a person to operate, manage or control a gas utility in any municipality in this State, may expressly limit the area in which the gas utility may provide service without further approval of the commission only if:

A. The commission finds that the financial and technical capacity of the gas utility is limited in a manner that public convenience and necessity require such limited authorization; or

B. The person seeking authorization requests that the authorization be limited to a particular area.

#### **§2105. APPROVAL ONLY AFTER HEARING**

**1. Approval only after hearing.** Except as provided in subsection 2, no approval required by section 2102, 2103 or 2104 and no license, permit or franchise may be granted to any person to operate, manage or control a public utility named in section 2101 in a municipality where there is in operation a public utility engaged in similar service or authorized to provide similar service, until the commission has made a declaration, after public hearing of all parties interested, that public convenience and necessity require a 2nd public utility.

**2. Declaration without hearing.** The commission may make a declaration without public hearing, if it appears that the utility serving or authorized to serve, the utility seeking approval from the commission to provide service and any customer or customers to receive service agree that the utility seeking approval to serve should provide service.

#### **§2106. TRANSFER OF APPROVAL FOR A RADIO COMMON CARRIER**



Consent granted by the commission under section 2102, or under section 2105, held by a radio common carrier may be assigned and transferred with the approval of the commission by holder of the approval. The commission may impose reasonable conditions upon granting its approval.

#### **§2107. APPROVAL ONLY TO MAINE CORPORATIONS**

No approval required in section 2102, 2103 or 2104 to operate, manage or control a public utility may be granted after October 1, 1975, to a corporation unless it is duly organized under the laws of this State or authorized by those laws to do business in this State.

#### **§2108. CORPORATIONS MAY HOLD REAL ESTATE**

Corporations organized under section 2101 and former section 2109 may purchase, hold and convey real estate and personal property that are necessary for the purposes for which they are created.

#### **§2109. ORGANIZATION OF ELECTRIC CORPORATIONS IN AREAS NOT ADEQUATELY SERVED**

*(REPEALED)*

#### **§2110. EXTENSION OF SERVICE**

A public utility organized by Private and Special Act of the Legislature may extend its service as follows.

**1. Commission authorization.** The commission may authorize a public utility organized by private and special act of Legislature to furnish or extend its service in, to or through a city or town notwithstanding any territorial limitations, express or implied, in the private and special act of the Legislature by which it was organized or under which it is enfranchised. Within 20 days after the commission's final authorization, the public utility shall file a certificate that shows the authorization with and pay \$20 to the Secretary of State. When the certificate is filed, the public utility's power to extend its service becomes effective.

**2. The commission's powers and limitations.** The commission's powers and limitations, made applicable under this section, are those applicable by law in like cases concerning public utilities organized under Title 13-C or any prior general corporation law.

### **CHAPTER 41 MAINE MUNICIPAL AND RURAL ELECTRIFICATION COOPERATIVE AGENCY ACT**

#### **§4135. TAX EXEMPTION**

**1. Bonds or notes.** All bonds, notes or other evidences of indebtedness issued under this chapter are issued by a political subdivision or a body corporate and politic of the State, and for an essential public and governmental purpose. Those bonds, notes or other evidences of indebtedness and the interest on them and the income from them, including any profit on their sale, and all activities of the agency and fees, charges, funds, revenues, incomes and other money of the agency, whether or not pledged or available to pay or secure the payment of those bonds, notes or other evidences of indebtedness or interest on them, are exempt from all taxation, franchise fees or special assessments of whatever kind, except for transfer, inheritance and estate taxes.

**2. Property taxes.** All real and personal property acquired by the agency is subject to taxes to the same extent as real and personal property owned by other transmission and distribution utilities.