# 65-407 PUBLIC UTILITIES COMMISSION

Chapter 334: FILING REQUIREMENTS FOR PETITIONS OF PUBLIC CONVENIENCE AND NECESSITY FOR SIGNIFICANT AGREEMENTS RELATING TO GENERATING, ENERGY OR TRANSMISSION CAPACITY

SUMMARY: This rule establishes filing requirements for petitions of public convenience and necessity for significant agreements and contracts relating to generating capacity, energy or transmission capacity as defined in 35-A M.R.S.A. § 3133-A.

1. APPLICATION OF RULE

No electric utility may enter into any significant agreement or contract, as defined in 35-A M.R.S.A. § 3133-A, relating to generating capacity, energy or transmission capacity, unless the Commission has issued a certificate of public convenience and necessity. This Rule also applies to any amendment, extension or renewal of any significant agreement or contract subject to this section for which the original contract was subject to approval by the Commission.

2. NOTICE OF INTENT AND DETERMINATION OF COMPLIANCE WITH THE RULE

A. Notice of intent. At least two months in advance of the filing of any petition required by section 1 of this rule, the Petitioner shall notify the Commission in writing of its intent to file such a petition. The Notice of Intent shall contain a brief description of the authority sought by the Petitioner. Together with its Notice of Intent, the Petitioner may request that the Commission exercise its power under section 4 of this rule to waive all or part of the requirements of this rule. Any Petitioner seeking to secure a waiver of an informational filing requirement on the ground that the required information is already on file with the Commission shall give a reasonably definite reference to the filed information including, where appropriate, the docket number, exhibit number and page reference of the information.

B. Review of sufficiency of filing. Within 15 days of receipt of any petition submitted pursuant to this rule the Administrative Director will inform the Petitioner in writing of the specific deficiencies of the petition or that the petition complies with this rule. No petition shall be considered filed unless the requirements of this rule have been fulfilled. The filing date shall be the date the Administrative Director determines that a petition complies with the requirements of this rule.

C. Further review of sufficiency. Notwithstanding a finding by the Administrative Director that a petition is sufficient, any party to the proceedings commenced by the filing of the petition may contend that the information submitted pursuant to section 6 of this chapter is insufficient or defective. A party making such contentions may make such motions as would be proper had the information specified in sections 6 and 7 been timely requested by that party under the rules governing discovery and been due to be served upon that party on the date of the petition filing. Any such motion must be made within 7 days after the party is allowed to participate in the proceeding or within 60 days after the initial receipt of the petition by the Commission, whichever is earlier.

D. Waiver of notice. The Commission may waive the advance notice requirement upon a written request and good cause within 60 days. An electric utility with an approved long-range energy plan pursuant to 35-A M.R.S.A. § 3134, which includes the agreement or contact, need not file an advance notice of its intent to file a petition under this chapter.

3. EXEMPTIONS

The following are exempt from section 3133-A and the requirements of this chapter:

A. Purchases from qualifying facilities. Purchases made by an electric utility from any cogenerator or small power producer, as defined in 35-A M.R.S.A. § 3303;

B. Wholesale purchase extensions. Extensions of existing wholesale power purchase arrangements by consumer-owned electric utilities, as defined in 35-A M.R.S.A. § 3501, that are subject to Federal Energy Regulatory Commission review with respect to rates;

C. Amendments of contracts not originally approved. Any amendment, extension or renewal of any contract otherwise subject to this chapter for which the original contract was not subject to approval by the Commission. The utility shall, however, file a copy of such amendments, extensions or renewals to the Commission within 7 days of the day when the utility receives notice of the proposal; and

D. Agreements subject to approval elsewhere. Any contract or agreement for which Commission approval is required under sections 3132 or 3133.

4. WAIVERS

A. General waiver provision. Upon written request and for good cause shown the Commission may waive any of the requirements of this rule, which are not mandated by statute.

B. Waiver of approval for amendments to previously approved agreements.

1. A utility may request a waiver from the application of 35-A M.R.S.A. § 3133-A for amendments to agreements which were previously approved by the Commission under section 3133-A. The request for waiver may pertain to a particular amendment or to a certain category or type of amendments. The cover letter accompanying any request for a waiver must specifically state in the first sentence of the text of the letter, that the request is being filed pursuant to this section and that if the Commission does not act within 30 days (or 7 days if applicable) the waiver will be considered granted. Requests for waivers must describe the amendment and state the basis for the request. If the utility desires expeditious processing of the request, it shall state the date by which a response is requested and the reasons for the request for expedition. The Commission may grant the waiver if it finds that good cause has been shown that application of section 3133-A is unnecessary, burdensome or impractical, and that the underlying purposes of section 3133-A are not significantly impaired.

2. If the Commission does not respond to a request for a waiver within 30 days, the request shall be considered granted. In the case of a request for expedited processing of the request for waiver, the request shall be considered granted if the Commission has not responded by the date requested or within 7 days after filing of the request, whichever is greater. In the event of a denial of a waiver, the utility must file a petition as required in section 1. If the Commission grants a waiver for a category or type of amendment, as distinguished from a particular amendment, the utility shall notify the Commission of any amendments which fall within the category in the same manner prescribed in section 3(C) of this rule for amendments to contracts not previously approved by the Commission under section 3133(9).

C. Waiver of 2-month notice for amendments. For good cause shown, the Commission may waive the 2-month notice requirement in section 2 of this rule for amendments which otherwise require approval under section 3133-A(5) and for which approval has not been waived under section 4(B) of this rule.

5. FILING FEE

A. Fee required. An electric utility shall pay a filing fee to the Commission when it files a petition under this rule. The filing fee shall be an amount equal to 2/100 of 1% (0.02%) of the estimated cost of the purchase or conversion. Any portion of the filing fee not expended by the Commission in relation to the review of the petition shall be returned to the petitioner.

B. Waiver. The utility may request a waiver of all or a portion of the filing fee at the time it files a notice of intent to file the petition. The Commission shall rule on the request for waiver within 30 days.

6. INFORMATION REQUIREMENTS TO SHOW NEED TO ENTER INTO AGREEMENT

A utility shall submit the following data to the Commission with any petition filed under this chapter.

A. Load forecast. The projected kilowatt and kilowatt-hour demands by month, day and hour of use for each year during the succeeding thirty (30) years. the projection shall include:

1. The utility's load forecast assumptions by class and the bases therefor;

2. if the projection involves the use of a computer program, a description of the computer logic;

3. if the projection is based in part on reports generated by external sources, the title and date of the reports; and

4. if the projection is in the form of an internally or externally prepared report adopted by the utility, a copy of the report.

B. Preferred energy resource plan. The utility shall describe its energy resource plan for the succeeding thirty years, which includes the capacity and energy which the proposed agreement or contract is designed to provide. The energy resource plan also shall include:

1. The utility's plan for the addition of all capacity by amount and type, for purchases and reasonably anticipated sales of energy and energy and capacity, and for capacity retirements for each year; including all reasonably anticipated qualifying facility power;

2. a complete description of planned conservation and load management programs which will be used to limit customer demand showing the expected energy and capacity savings, by moth, day and hour for each year of the forecast period;

3. if the energy resource plan is generated through the use of a computer program, a description of the computer logic;

4. if the energy resource plan is not generated through the use of a computer program, a description of alternative plans considered, the assumptions used with respect to each alternative plan considered, and the basis for choosing the plans adopted by the utility;

5. if the plan is based in part on reports generated by external sources, the title and date of the reports;

6. if the plan includes anticipated energy resources for which a firm contractual commitment has not yet been made, a description of all assumptions concerning the anticipated terms of the contract or nature of the resource; and

7. if the plan is in the form of an internally or externally prepared report adopted by the utility, a copy of the report.

C. Alternative energy resource plan. The utility shall describe reasonable alternative resource plans to that provided in subsection B. Each alternative energy resource plan shall include the items in subsection B above.

D. Costs. The utility's projected costs and revenue requirements associated with the preferred energy resource plan and alternative energy resource plans. The projections shall include:

1. The estimated capacity costs at completion of any planned capacity additions and planned firm capacity purchases, expressed in dollars per kilowatt per individual unit or purchase;

2. the estimated energy production and associated energy costs of each unit or purchase expressed in cents per kilowatt-hour per individual unit or purchase;

3. the total estimated capacity and energy costs of each planned capacity addition and each planned firm capacity purchase expressed in cents per kilowatt-hour for each year of the useful life of the planned capacity addition or firm purchase. The time period for which these costs shall be expressed shall be the same as the preferred energy resource plans filed under subsection B, and alternative energy resource plans filed under subsection C;

4. the total estimated capacity and energy costs of each purchase of energy or capacity on a non-firm basis for each year of the energy resource plans;

5. the total estimated cost to the utility of each conservation or load management program expressed as cost per unit of energy or capacity or both saved over the useful life of the measure;

6. if the projections involve the use of a computer program, a description of the computer logic;

7. if the projections are based in part on reports generated by external sources, the title and date of the reports; and

8. if the projections are in the form of reports adopted by the utility, a copy of the reports.

7. SENSITIVITY ANALYSES

Within sixty (60) days from the initial filing, sensitivity analyses of the original filing using reasonable alternative assumptions may be proposed by parties and intervenors to any docket instituted to examine the utility's filing. The utility shall undertake to perform these analyses following a reasonable opportunity to object or to suggest changes to the parties' proposals. This time limit may be extended on a showing of undue hardship.

8. WAIVER OF INFORMATION REQUIREMENTS

A. Request for waiver. Any utility without the capability of performing the calculations required in section 6 (B)(C) and (D) may file a request for a waiver. Requests for waivers shall include a statement of the utility's current and future capabilities regarding the calculational requirements and the estimated cost of acquiring the necessary capability.

B. Grant of waiver. The Commission may in its discretion grant a waiver in which case such waiver shall set forth revised data reporting requirements which shall be sufficient to allow the Commission to properly consider any petition filed under this chapter.

9. DEADLINE FOR COMMISSION ORDER

A. Deadline. The Commission shall issue its order within 12 months after the petition is filed. If there exists an approved long-range plan pursuant to 35-A M.R.S.A. § 3134, the Commission shall issue its order within 9 months of filing.

B. Extension. Upon written request and for good cause shown, the Commission may extend the deadline for a reasonable period of time.

10. DELEGATION

The Commission's authority to grant waivers and exceptions under this chapter is hereby delegated to the Administrative Director and to the Hearing Examiner in any proceeding, both of whom shall consult with the Directors of Technical Analysis and Finance before acting on any request. This delegation does not limit the Commission's ability to consider requests directly or to review the actions of the Administrative Director or Hearing Examiner thereunder.

STATUTORY AUTHORITY: 35-A M.R.S.A. §§ 101, 103, 104, 107, 111, 112, 3131, 3133-A and 3134.

EFFECTIVE DATE:

This rule was approved by the Secretary of State On January 11, 1989, and will be effective on January 16, 1989.

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996

NON-SUBSTANTIVE CHANGES:

March 26, 1999 - converted to MS Word.

November 9, 1999 - missing line in § 7 reinserted.

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 19, 2025