# 94-457 FINANCE AUTHORITY OF MAINE

Chapter 107 Electric Rate Stabilization Project Taxable Bond Program

SUMMARY: This rule establishes the procedures, standards and fees applicable to borrowers applying for and benefiting from the Authority's program for issuance and sale of Authority bonds secured by loans benefiting from a capital reserve fund contract with respect to an Electric Rate Stabilization Project.

1. DEFINITIONS

 A. Reference to Act Definitions. Certain terms used in this rule, which are defined in the Finance Authority of Maine Act, 10 M.R.S.A. §961 and following (the Act), shall have the meanings set forth in the Act, unless clearly specified otherwise or unless the context clearly indicates otherwise.

 B. Defined Terms.

1. "Bond" means a revenue obligation security (as defined in the Act), and includes a certificate of participation or other evidence of indebtedness representing an interest in one or more loans benefiting from capital reserve fund security under this program

2. "Borrower” includes a prospective borrower where the context requires.

3 "Capital Reserve Contract" means an agreement pursuant to which the Authority establishes a capital reserve fund to back a bond and/or to benefit a loan.

4. "Capital Reserve Fund" means a capital reserve fund established pursuant to 10 M.R.S.A. §1053.

5. “Cash equivalents” means deposits of money, certificates of deposit or other cash equivalents, irrevocable letters of credit issued by financial institutions acceptable to the Authority or loan guarantees from insurance companies or other institutions satisfactory to the Authority.

6. "Certificate of Approval" means a certificate issued by the Maine Public Utilities Commission (MPUC) upon application of an electric utility with respect to an electric rate stabilization agreement pursuant to 35-A MRSA Section 3156.

7. "Chief Executive Officer" means the Authority's chief executive officer or a person acting under the supervisory control of the chief executive officer.

8. "Electric Rate Stabilization Project" means an agreement by an electric utility with a qualifying facility as defined in 35-A MRSA Section 3303, that will result in the reduction in costs to the electric utility and that has been certified by the MPUC to meet the standards established under 35-A MRSA Section 3156.

9. “Eligible enterprise" means an Electric Rate Stabilization Project.

10. "Financing commitment” means, for purposes of this rule, a letter from the chief executive officer agreeing to include a loan in the program to be funded from the proceeds of bonds backed by a capital reserve fund, on the terms and conditions and subject to the requirements stated therein.

11. “Members" means the members of the Authority as provided for in the Act.

12. "Program" means the Electric Rate Stabilization Project Taxable Bond Program of the Authority established pursuant to the Act.

13. "State" means the State of Maine.

14. "Trustee" means a financial institution acting as trustee for holders of bonds issued and sold pursuant to this rule and the Act.

15. "Underwriter" means a qualified entity capable of buying and/or marketing the bonds.

2. APPLICATION PROCEDURES

A. The borrower shall submit an application, which complies with the requirements of this rule on such forms and in such numbers as may be specified with such supporting information as shall be required by this rule and such additional information as may be requested by the chief executive officer.

B. The chief executive officer shall be responsible for making application forms available and assisting borrowers in preparing applications.

C. No application will be considered complete unless all questions are answered, and all supporting information is provided in form and substance satisfactory to the chief executive officer.

3. PRIORITY

 The Authority will review only complete applications. An application will not be complete without a Certificate of Approval from the Maine Public Utilities Commission. Once a complete application is received it will be reviewed in the normal course of the Authority's business and voted upon by the Board. Following approval by the Board, a financing commitment will be issued and must be executed by the applicant within the time provided for therein, which may not exceed sixty days. In the event that aggregate applications are received in excess of the dollar amount of bonding authority available, then applications will be considered on a "first come, first served" basis based on the date and time a complete application is received by the Authority. The Authority will document the date and time of receipt of a complete application. If an incomplete application is received at the Authority, documentation of that incompleteness will be explicit, written notice thereof will be given to the applicant, and subsequent completion of the application will be explicitly documented. No application will be deemed received for purposes of establishing priority until the application is complete as determined by the chief executive officer. If an applicant does not execute a financing commitment and pay all fees required to be paid within the time provided in the financing commitment, the application shall be deemed withdrawn and the next project for which the Authority has received a complete application will be entitled to first priority.

4. APPLICATION CONTENTS

A. Project Information. There shall be submitted with each application such general information identifying and describing the borrower, the proposed project, and the proposed financing of the project as specified in the application form and as otherwise requested by the chief executive officer, and shall include evidence of management and planning capability of the borrower, evidence pertaining to the project's proposed plan of financing, pro forma financial statements, historical financial statements and such other evidence or information as the chief executive officer or the application form may require.

B. Certificate of Approval. No application is complete without an accompanying Certificate of Approval.

5. CRITERIA AND CONSIDERATIONS

A. An application will not be approved unless the Authority determines that there is strong likelihood that the loan will be repaid according to its terms.

B. An application will only be approved to the extent, in terms of the assistance requested and the liability assumed by the Authority, that it is prudent for the Authority to provide such assistance and assume such liability.

6. LOAN, COLLATERAL, INSURANCE AND TERM STANDARDS

A. Collateral. The Authority may require such collateral as it deems necessary to secure a loan.

B. Maximum Capital Reserve. Without limiting the generality of any other provisions of this rule or the Act, in the case of an electric rate stabilization project the Authority may secure up to 100% of the revenue obligation securities by and with a capital reserve fund up to the maximum dollar amount allowed by the Act.

C. Term. The maximum term of loans under the program will be determined by the Authority on a case-by-case basis. The Authority may approve such amortization schedules, including balloon payments, that it deems to be prudent.

7. COMMITMENT OR REJECTION

A. Upon approval of an application by the Authority, a financing commitment shall be issued setting forth the terms and conditions under which a loan will be included in the program. The financing commitment may specify special requirements applicable to the project and requiring the submission in final form within a time specified of all appropriate documents, drawings, plans, specifications, appraisals, environmental site assessments, bonds, guarantees, permits, approvals, surveys, title insurance, opinions, financial statements, cost and other certifications and other instruments evidencing full compliance with Authority requirements and in form and content satisfactory to the Authority.

B. No financing commitment shall become effective until the borrower has signed it and the borrower has paid to the Authority the commitment fee as specified in the financing commitment, and other applicable fees due pursuant to Section 11 herein.

C. If, upon examination of the application and supporting information, the Authority rejects such application, the borrower shall be informed in writing of the rejection and the reasons therefor.

8. LOAN TERMS AND CONDITIONS

 A. Mandatory Covenants. Any loan approved for the provision of capital reserve fund security under the program shall include covenants requiring the borrower to:

1. Make periodic payments of principal and interest;

2. Pay any taxes and governmental charges assessed against the borrower or any collateral;

3. Comply with all applicable federal, state and local laws, regulations and ordinances;

4. Obtain, maintain and pay for any insurance required as a condition of the financing commitment against damage to or loss of any collateral;

5. Maintain and repair any collateral;

6. Permit the Authority to inspect any collateral and to inspect and copy the borrower's books and records at any reasonable time;

7. Provide to the Authority periodic financial reports in form and content, at times and for periods acceptable to the Authority and prepared by persons acceptable to the Authority and also provide to the Authority, when specifically requested, annual income tax returns;

8. Refrain from transferring any interest in the collateral, if any, without the Authority's prior written consent;

9. Repay any advances necessary to protect the collateral, if any, or enforce the rights of the trustee or the Authority;

11. Execute such further assurances as may be reasonably required; and

12. Keep the collateral, if any, free from liens and encumbrances not approved in advance in writing by the Authority.

 B. Optional Covenants. In addition, the Authority may impose such other terms and conditions as it may deem prudent or desirable to assure the sale of bonds at reasonable rates, completion and continuation of the project, preservation of collateral, if any, and repayment of the loan benefiting from a capital reserve fund.

9.· RIGHTS AND RESPONSIBILITIES OF THE AUTHORITY

A. The Authority's obligation to arrange or to replenish a capital reserve fund will be evidenced by a capital reserve contract or other documentation in form satisfactory to the Authority.

B. The Authority may impose such conditions, provisions and obligations in any capital reserve contract, loan documents, bond documents, or other documentation used to evidence a transaction pursuant to this Program as it may deem necessary or prudent for the effective servicing and monitoring of any loan made under this Program.

10. CAPITAL RESERVE FUND OPTIONS

 Pursuant to the capital reserve contract or other documentation, the Authority will require the trustee to notify the Authority of any default by the borrower. After passage of a period of time specified in the capital reserve contract or other documentation and upon performance of such obligations by the trustee as the Authority may by contract require, the Authority may require that it have the following options:

A. Cure one or more defaults up to a stated limit;

B. Purchase the entire loan on the terms specified in the contract and call the applicable bonds;

C. Arrange for payment of the remaining balance of the capital reserve fund liability, either in one lump sum or over the original term of the defaulted loan;

D. Such other options as the contract or documentation may provide.

11. PREMIUMS, FEES AND OTHER CHARGES

 A. The Authority will be paid a commitment fee in accordance with the following schedule:

 LOAN AMOUNT FEE

 Up to $7,000,000 1 % of the loan benefiting from capital reserve fund security

 Greater than $7,000,000 and less 1 % of the first $7,000,000 of the loan

 than $10,000,000 benefiting from the capital reserve fund

 security, plus up to 1 % of the portion of the loan above $7,000,000

 $10,000,000 or more 1 % of the first $7,000,000 of the loan

 benefiting from the capital reserve fund security, plus up to 5 % of the portion of the loan above $7,000,000.

 The Authority may, in its discretion, provide that a portion of the commitment fee is due upon execution of the financing commitment with the remainder due at a later date specified in the financing commitment, any such later date shall not be later than the date of issue of the bonds. Upon funding of the loan benefiting from capital reserve fund security, the commitment fee may in the discretion of the Authority, be applied in whole or in part to the first year's capital reserve fund premium. In the event. that the borrower elects not to participate in the program for mum other than the Authority's breach of the financing commitment, the full amount of the fee may be retained by the Authority as liquidated damages and/or for payment of the Authority's time and expenses unless otherwise provided in the financing commitment.

 B. The Authority shall be paid an annual capital reserve fund premium not to exceed 2 %, as determined by the Authority, of the outstanding balance of the portion of each loan benefitting from a capital reserve fund at the closing of the loan and on each anniversary date of the loan or such other date specified in the contract. The premium shall be paid in advance for such period as is specified in the contract or other documentation. In the case of a loan in excess of $10,000,000, the annual premium shall not exceed 1/2 of 1 %, as determined by the Authority.

C. The Authority may provide that it shall receive in lieu of annual capital reserve fund premium payments a one time payment upon execution of the capital reserve fund contract equal to the estimated present value of premiums scheduled to be due over the anticipated term of the loan.

D. In the event that bonds are issued for the program prior to the execution of the capital reserve contract, the Authority may require borrowers to pay the interest rate differential between the rate paid on the bonds and the rate achieved by investment of bond proceeds prior to the funding of the loan from bond proceeds.

E. A borrower shall reimburse the Authority for its out-of-pocket expenses in connection with processing an application for capital reserve fund security or with the capital reserve fund, including any fee payable in connection with servicing the loan, and all expenses in connection with the bond issue, including without limitation charges of counsel and costs of sale of bonds, copying, mailing, phone calls, advertising and travel.

F. Where application is made after issuance to obtain the Authority's and/or trustee's consent to transfer of collateral, if any, alteration of rights or other matters, the Authority may charge the borrower for the cost of the Authority's staff and trustee's staff utilized to review the application and for the Authority's and trustee's out-of-pocket expenses in connection with the application, including without limitation, charges of counsel.

12. CREDIT ENHANCEMENT

 The Authority may select an insurer or letter of credit issuer to provide credit enhancement for a bond issue, with or without the backing of the Authority's authority under 10 M.R.S.A. §1053. Borrowers shall be required to pay any fees and expenses charged by the provider of credit enhancement.

13. DEBT MANAGEMENT TRANSACTIONS

 In exercising the debt management powers of the Authority, the chief executive officer of the Authority shall be authorized to commit the Authority to enter into transactions or agreements in the form of interest rate swaps, rate exchanges, and such other such transactions or agreements as are necessary or desirable, in the opinion of the chief executive officer of the Authority, to reduce financing costs or to reduce the risk of price changes or interest rate fluctuations, including, but not limited to the purchase of financial futures contracts, options or other transactions which constitute offsetting positions with respect to such interest rate swaps or rate exchanges, all as shall not be inconsistent with the purposes of the Act.

14. WAIVER OF RULE

 The members or the chief executive officer may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act, in cases where deviation from the rule is insubstantial or not materially adverse to the interests of the Authority.

15. MISCELLANEOUS

 Any approvals, reviews, determinations or findings of the Authority related to any plans, specifications, contracts, applications or other documents required or contemplated by this rule or the Act are solely for the benefit of the Authority and shall not in any way constitute any approval of the adequacy of such documents or of the project.

EFFECTIVE DATE OF EMERGENCY RULE: August 23, 1994

EFFECTIVE DATE: October 29, 1994

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

NON-SUBSTANTIVE CORRECTIONS: October 7, 1996 - minor spelling.

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 17, 2025