

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2022-00243

November 22, 2022

PUBLIC UTILITIES COMMISSION
Promulgation of Chapter 616 of the
Commission's Rules

ORDER ADOPTING RULE AND
STATEMENT OF FACTUAL
AND POLICY BASIS

BARTLETT, Chair; DAVIS and SCULLY, Commissioners

I. SUMMARY

Through this Notice, the Commission promulgates Chapter 616 – Specific Exemptions from Regulatory Requirements for Consumer Owned Water Utilities. In this Rule, the Commission exempts consumer-owned water utilities from the newspaper publication requirements in 35-A M.R.S. §§ 6104 & 6104-A. The Commission also directs that future generally applicable exemptions granted by Commission order be contained in this 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 specifically the promulgation of Chapter 616.

On August 16, 2022, the Commission issued its Notice of Rulemaking (NOR) in this Docket. In the NOR, the Commission proposed to create a rule for exemptions granted by Commission order, and to provide a specific exemption from the newspaper notification requirements in 35-A M.R.S. §§ 6104 & 6104-A for consumer-owned water utilities.

The Commission did not schedule a public hearing on the proposed rule and no interested person requested a public hearing. 5 M.R.S. § 8051(1).

The only comment the Commission received regarding the proposed rule was from the OPA. In its comment, the OPA suggested that the Commission clarify that the individual notice mailed to customers and any other notice (by whatever method) contain the same information. Additionally, the OPA suggested that the Commission require utilities to send mailed notices by first class mail.

III. RULE PROVISIONS

In this Rulemaking, the Commission is creating a rule for exemptions granted by Commission order, and to provide a specific exemption from the newspaper notification requirements in 35-A M.R.S. §§ 6104 & 6104-A for consumer-owned water utilities.

The Commission agrees with the suggestion by the OPA that the rule make clear that all notices, whether by mail or some other method, contain the same information, and the Commission also agrees that the term "direct mail" could be confusing, and has changed the term to "regular mail" to comport with Chapter 110 of the Commission's Rules. The Commission, however, declines to adopt the OPA's suggestion that the rule mandate first-class mailing of customer notices. Under the Rule, COWUs are required, in addition to mail, to provide notice to customers using two additional methods, including email, 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.

A. Section 1: Applicability

The Rule applies to COWUs and sets forth specific exemptions applicable to those utilities.

B. Section 2: Definitions

The Commission is defining the term "consumer-owned water utility."

C. Section 3: Specific Exemptions

The Commission is providing a specific exemption for COWUs from the newspaper publication requirements of 35-A M.R.S. §§ 6104 & 6104-A, provided that the utility provides notice to customers through regular mail and utilizes at least two other specific alternative notification methods.

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.