

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-247

ORDER BOOK

July 29, 1997

PUBLIC UTILITIES COMMISSION
Amendment to Chapter 332

ORDER ADOPTING AMENDED
RULE AND STATEMENT OF
FACTUAL AND POLICY BASIS

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. SUMMARY

In this Order, we adopt without modification the revision to Chapter 332, Filing Requirements for Petitions of Public Convenience and Necessary for Purchases of Energy or Fuel Conversion of Generating Facilities, proposed in our Order Commencing Rulemaking issued April 29, 1997. The revision updates the rule to reflect an amendment to 35-A M.R.S.A. § 3133 that allows for waiver of approval requirements under certain circumstances.

II. DISCUSSION

On April 29, 1997, the Commission issued an Order Commencing Rulemaking proposing to amend Chapter 332 of its rules. A copy of the proposed revised rule was attached to the Order. The Order was mailed to all electric utilities in the State, all persons who have requested to receive the Commission's notices of rulemakings, and the Executive Director of the Legislative Council. The Notice of Rulemaking was published by the Secretary of State in accordance with 5 M.R.S.A. § 8053(5). The Order provided persons with an opportunity to comment by June 9, 1997. The Commission did not receive any comments on the proposed revision to the rule.

In 1995, the Legislature amended 35-A M.R.S.A. § 3133 to allow the Commission to waive approval requirements for certain purchases of generating capacity, energy, and transmission capacity, and for fuel conversions of generating facilities. The revision to Chapter 332 adds a new section 4(B) that specifies that the Commission may waive the approval requirements consistent with the statutory amendment. We adopt the amendment as proposed.

Accordingly, we

O R D E R

1. That the attached Chapter 332, Filing Requirements for Petitions of Public Convenience and Necessary for Purchases of Energy or Fuel Conversion of Generating Facilities, is hereby approved and effective five days after acceptance of filing by the Secretary of State;

2. That the Administrative Director of the Commission shall mail a copy of this Order Adopting Amended Rule and Statement of Factual and Policy Basis and the attached rule to:

- A. All electric utilities in the State;
- B. All persons on the Commission's list of those requesting notice of rulemakings;
- C. The Bureau of Corporations, Elections and Commissions in the Office of the Secretary of State; and
- D. The Executive Director of the Legislative Council (20 copies).

3. That the Administrative Director shall send a copy of this Order and attached rule to the Attorney General for approval as to form and legality, pursuant to 5 M.R.S.A. § 8056(1)(A); and

4. That the Administrative Director shall send a written notice of the adoption of this rule to the Secretary of State on the form provided by the Department of State for that purpose, for publication in accordance with 5 M.R.S.A. § 8053(5).

Dated at Augusta, Maine this 29th day of July, 1997.

BY ORDER OF THE COMMISSION


Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 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.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
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.A. § 1320 (5).

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.

65 - INDEPENDENT AGENCIES - REGULATORY

407 - PUBLIC UTILITIES COMMISSION

CHAPTER 332 - FILING REQUIREMENTS FOR PETITIONS OF PUBLIC
CONVENIENCE AND NECESSITY FOR PURCHASES OF ENERGY
OR FUEL CONVERSION OF GENERATING FACILITIES

SUMMARY: This rule establishes filing requirements for petitions of public convenience and necessity for purchases of generating capacity, energy or transmission capacity or fuel conversion of generating facilities of more than 1,000 kilowatts.

1. APPLICATION OF RULE AND DEADLINES

A. Certificate required. No electric utility may either purchase any right, title or interest in generating capacity, transmission capacity or energy, as defined in Title 35-A M.R.S.A. § 3131, or convert a permanently installed generating facility of more than 1,000 kilowatts to use a type of fuel different from that which the facility currently is equipped to use unless the Commission has issued a certificate of public convenience and necessity. This Rule also applies to any amendment, extension or renewal of any contract between the utility and other parties governing the terms of their participation in a purchase or conversion subject to this section, for which the original contract was subject to approval by the Commission.

B. Deadline and extensions.

1. 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.

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

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 chapter, 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 sections 6, 7 and 9 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 section 6, 7 and 9 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 shown. The Commission shall rule on the request for waiver 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 contract, 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 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; and

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.

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 requirements. The Commission may waive the approval requirement of 35-A M.R.S.A. § 3133 on its own motion or upon request of any party except that the Commission may not waive the approval requirement if the purchase or fuel conversion involves generating capacity that exceeds either 5% of the installed capacity of the utility or 30 megawatts of capacity. The Commission shall rule on a request for a waiver within 60 days. Prior to Commission consideration of a waiver, notice by mail must be sent, and an opportunity to be heard permitted, to persons who commonly participate in Commission proceedings and persons whose contracts may be affected by the agreement.

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

1. A utility may request a waiver from the application of 35 M.R.S.A. § 3133 for amendments, extensions or renewals of agreements which were previously approved by the Commission under section 3133. 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 is unnecessary, burdensome or impractical, and that the underlying purposes of section 3133 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 for amendment to contracts not previously approved by the Commission under 35-A M.R.S.A. § 3133 (9)(b) and section 3(c) of this rule.

D. Waiver of 2-month notice for amendments. For good cause shown, the Commission may waive the 2-month notice requirement in section 2 for amendments which otherwise require approval under section 3133(10) and for which approval has not been waived under section 4(B) of this rule.

5. FILING FEES

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 the 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.

C. Exception for minor projects. A filing fee shall not be required with respect to a petition under this chapter if the cost of the purchase or conversion is less than \$1,000,000, unless the Commission orders otherwise upon a finding of need for a filing fee.

6. INFORMATION REQUIREMENTS TO SHOW NEED FOR POWER

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 next thirty years, which includes the capacity and energy which the proposed purchase or conversion 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, including all reasonably anticipated qualifying facility power, and for capacity retirements for each year;
2. a complete description of planned conservation and load management programs which will be used to limit customer demand and the expected associated energy and capacity savings, by month, 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 capacity 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. Requests for waiver. Any utility without the capability of performing the calculations required in sections 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, at its discretion, grant a waiver. Waivers shall set forth revised data reporting requirements which will be sufficient to allow the Commission to properly consider any petition filed under this chapter.

9. FUEL CONVERSION

Any petition to convert a generating facility to use a different type of fuel shall provide the following additional information regarding cost:

- 1) The Petitioner shall supply total annual estimated cost of converting the generating facility over each year of construction.
- 2) The Petitioner shall break down total estimated cost of converting the generating facility which will be incurred by Petitioner by account number in accordance with Uniform System of Accounts over each year of construction.
- 3) The Petitioner shall describe the complete financing plans for converting the generating facility. The Petitioner shall describe in detail the financing plans to meet its share of the total capital requirements.
- 4) The Petitioner shall provide estimated operating and maintenance costs, including fuel costs (dollars per kilowatt or cents per kilowatt-hour).
- 5) The Petitioner shall provide a construction schedule, including dates of major milestones.

10. DELEGATION

The Commission's authority to grant waivers or 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.

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

BASIC STATEMENT: The factual and policy basis for this rule is set forth in the Commission's Statement of Factual and Policy Basis and Order Approving Rule, Commission Docket No. 97-247, issued on July 29, 1997. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04330-0018.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on _____. It was filed with the Secretary of State on _____ and will be effective on _____.