STATE OF MAINE Docket No. 2012-230

PUBLIC UTILITIES COMMISSION

October 9, 2012

PUBLIC UTILITIES COMMISSION ORDER ADOPTING

Amendments to Filing Requirements AMENDMENTS AND

for Petitions for Certificates of Public STATEMENT OF FACTUAL

Convenience and Necessity for Electric AND POLICY BASIS

Transmission Facilities (Chapter 330)

WELCH, Chairman; LITTELL and VANNOY, Commissioners

1. **SUMMARY**

Through this Order, we adopt amendments to our rule regarding the requirements for petitions for certificates of public convenience and necessity (CPCNs) for electric transmission facilities (Chapter 330), so that the rule is consistent with current statutes.

1. **BACKGROUND**

Chapter 330 was last amended in 2005 through a rulemaking proceeding in Docket No. 2004-572. In 2007, 2009, and 2011, the Maine Legislature amended 35-A M.R.S.A. §§ 3131 and 3132, which are the statutory sections governing approval by the Commission of transmission line construction. Section 3132 of the statute describes the filing requirements and standards required to petition and receive a CPCN from the Commission when constructing, rebuilding or relocating a transmission line. Section 3131 defines terms used throughout section 3132.

The most substantial amendment necessitated by the recent statutory changes is the voltage level of a transmission line at which the need for a CPCN is triggered. The current statute requires a CPCN for a transmission line capable of operating at 69kV or higher, whereas the prior requirement was for 100 kV or higher. The rule has also been amended in minor ways for the sake of clarity and conformance with the statute. While previously the rule had only referred to a utility petitioning for a CPCN, the statute now requires the replacement of “utility” with the more inclusive “person,” since both utilities and non-utilities may be required to petition for a CPCN.

1. **RULEMAKING PROCESS**

On June 27, 2012, the Commission issued a Notice of Rulemaking

(NOR) and proposed amendments to Chapter 330. The Commission did not schedule a public hearing on this matter, but pursuant to rulemaking procedures, provided an opportunity for interested persons to request such a hearing. The deadline for requesting a public hearing was July 20, 2012. No public hearing requests were received. Additionally, we provided interested persons with an opportunity to provide written comments on the proposed rule. The deadline for submitting such comments was August 10, 2012. Central Maine Power Company (CMP) and the Office of the Public Advocate (OPA) provided comments.

**AMENDED RULE PROVISIONS**

A. Purpose (Section 1)

This section was added for clarification and conformity with the structure of other Commission rules. The purpose of this Chapter is to establish filing requirements and standards for the review and issuance of CPCNs. No one commented on this new provision and it is unchanged from the proposed rule.

B. Definitions (Section 2)

This section was added for clarification and conformity with the structure of other Commission rules. Section 2 contains definitions of terms used throughout the rule based on their statutory definitions. The definition for “generator interconnection transmission facility” is defined in section 3132(1-B). “Minor transmission line construction project” is defined in section 3132(3-A) and “high-impact electric transmission line” is defined in section 3131(4-A). “Person” is defined in 35-A M.R.S.A. § 102(11). These terms were not previously defined in this rule.

The proposed rule mirrored the statute in stating that a minor transmission line construction project “is a transmission line construction project the cost of which does not exceed 25% of the utility’s current annual transmission property depreciation charge.” In the NOR, the Commission requested comments on whether this definition is adequate or whether cost should be more specifically defined (e.g., annual carrying cost or total construction cost). Both CMP and the OPA commented that no further definition was needed because the cost is specifically defined in the statute. Accordingly, the definition is unchanged from the proposed rule.

1. Certificate Requirements and Deadlines (Section 3)

This section has been amended to describe the change in the requirements for certification. It was previously titled “Application of Rule and Deadlines” and has been changed to “Certificate Requirements and Deadlines.” For clarity, this section now includes a “certificate required” subsection and a “certificate not required” subsection. The “certificate required” subsection has been further delineated into four subsections, outlining the different requirements for the construction of a new transmission line, the construction of a minor transmission project and the requirements for rebuilding or relocating an existing transmission line, along with an unchanged “deadlines and extensions” subsection.

The amended section changes the voltage level at which a person must submit a petition for a CPCN. Previously, when constructing a new transmission line a utility was required to petition for a CPCN if the line had a voltage of 100 kV or more. Section 3132(2) of the statute has been amended to require a petition for a CPCN if the line is capable of operating at 69 kilovolts (kV) or more and the rule now reflects this change. This section also now applies the 69 kV threshold to minor transmission line projects, consistent with section 3132(3-A) of the statute, that if a person is constructing a transmission line that qualifies as a minor transmission line construction project (as defined in section 2 of the rule) and is capable of operating at 69 kV or more, the person must first notify the Commission and may then be required to submit a petition, in accordance with section 8 of the rule. This section has also been amended to state that if rebuilding or relocating a transmission line that is capable of operating at 69 kV or more, the person must first notify the Commission and may then be required to submit a petition, in accordance with section 8 of the rule. 35-A M.R.S.A. § 3132(3).

In response to the NOR, CMP commented that the Commission should not read 35-A M.R.S.A. § 3132(2) to include, or specify in the rule, a requirement to obtain a CPCN for every transmission line designed and built to 69 kV standards, but which would operate at a lower voltage. CMP states that under its current design standards, it builds all new 34.5 kV transmission lines to 69 kV design standards, even in the absence of any plans to operate the line at 69 kV. CMP states that doing so is prudent given the modest incremental costs of 69 kV transmission line construction, in comparison with the greater cost of rebuilding the line in the future to increase transmission capacity. CMP states that although it designs 34.5 kV lines to 69 kV standards, such a line is not “capable” of operating at 69.5 kV at the time it is constructed because it is only capable of operating at 69 kV upon significant terminal construction work.

Contrary to CMP’s assertions, we do not believe that the Legislature intended “capable” to mean that a transmission line must be immediately operating at 69 kV to be considered “capable” of operating at 69 kV. The Legislature could have used language such as, “will operate at 69 kV,” but instead used the word “capable.” By its very nature, a transmission line designed to 69 kV standards is capable of operating at 69 kV. Whether or not it needs additional terminal construction work to become energized at 69 kV is not mentioned in the statute, but simply that it must be capable, even if that capability will be in the future and dependent upon additional terminal work. CMP acknowledges that most of the infrastructure needed to actually operate at 69 kV is the transmission line itself, and that it requires only modest incremental investment to then operate at 69 kV. Therefore, in examining the purpose for a CPCN, we find that there is a reason why the statute uses the words “capable of operating at 69 kilovolts or more.” In considering whether to grant a CPCN for a transmission line, the Commission must examine the public need for the line. The Commission shall look at multiple factors, including, economics, reliability, public health and safety, scenic values and the proximity of the proposed transmission line to inhabited dwellings, among other things. 35-A M.R.S.A. § 3132(6). Additionally, in assessing the petition for a CPCN, the Commission must examine a map that indicates the proposed corridor or corridors of the transmission line. § 3132(4). All of these aspects of the application for a CPCN indicate that the nature of the transmission line itself and its route are major factors in determining whether or not to grant a CPCN, as its capacity affects the economics, corridor and proximity to inhabited dwellings, among other things. Therefore, whether or not an applicant for a CPCN intends to operate a transmission line at 69 kV, if the transmission line is capable of operating at 69 kV due to being built to 69 kV design standards, the applicant is required to petition for a CPCN. In order to clarify this section, the amended rule now uses the same language as the statute. Previously, the rule had referred to the “capacity” of the line, while it now refers to whether the line is “capable” of operating at 69 kV.

This section of the amended rule now includes a “certificate not required” subsection, noting that the construction of a generator interconnection transmission facility (as defined in section 2 of the rule) is exempt from the requirements of this rule, as specified section 3132(1-B) of the statute.

In the NOR, the Commission requested comments on whether the rule should clarify under what situations a substation may require a petition for a CPCN. The Commission has previously required a utility constructing a substation as part of a new transmission line to petition for a CPCN. *Central Maine Power Company and Public Service of New Hampshire, Request for Certificate of Public Convenience and Necessity for the Maine Power Reliability Program Consisting of the Construction of Approximately 350 Miles of 345 kV and 115 kV Transmission Lines*, Docket No. 2008-255, Order Denying PSNH Motion to Dismiss (June 3, 2009) (June 3, 2009 Order). The Commission distinguished that situation from one in which a stand-alone substation was being constructed. *Id*. Both CMP and the OPA commented that the Commission should clarify under what situations a substation may require a petition for a CPCN. CMP argues that Chapter 330 should state that a CPCN is not required for any substation. CMP recognizes that the Commission found in its June 3, 2009 Order that a utility constructing a substation as part of a new transmission line is required to petition for a CPCN, but believes that this determination was wrong. CMP argues that on its face, Section 3132(2) of the statute only requires a CPCN when erecting a “transmission line” and that a substation is not a transmission line. CMP then argues that if the Commission disagrees with this conclusion, Chapter 330 should only require a CPCN for substations being constructed as part of new transmission line projects requiring a CPCN, and not for any stand-alone substation project. At this point, we will not include any specific provisions on substations in rule and will seek additional comment in a future proceeding. Current precedent will continue to apply until changed by future order or rule change.

Finally, a subsection regarding the CPCN requirements for transmission lines financed, permitted, constructed, owned in whole or in part or operated by the Northern Maine Transmission Corporation has been removed to conform with its removal from the statute. No one commented on this removal and it remains removed as proposed.

1. Determination of compliance with Rule (formerly Section 2)

This section has been removed. No one commented on this removal and it remains removed as proposed.

1. Requests for Waivers (formerly Section 3)

This section has been moved to the end of the Chapter and is now section 11. No one commented on moving this section and it unchanged from the proposed rule.

1. Amendments, Extensions and Renewals to Contracts (§ 4)

This section has been renamed and now includes not only information on amendments, extensions and renewals to contracts, but also includes information on waivers of approval for amendments. This reorganization of the section was done for the sake of clarity.

The OPA commented in its response to the Commission’s NOR that Section 4(A) includes a parenthetical reference to a 7-day time period for waiver requests and that the statute only provides for a 30-day time period. The language referring to 7 days has now been deleted. The OPA also commented that the reference in section 4(B) to 35-A M.R.S.A. § 3132(11-A) should be changed to 35-A M.R.S.A. § 3132(11-B) to accurately reflect the statute. This change has been made.

1. Filing Fees (Section 5)

In the NOR, we proposed that this section be amended to ensure it matches the statute. 35-A M.R.S.A. § 3132(9) describes the filing fee required when a person or persons petition to erect, rebuild or relocate a transmission line. The rule had previously listed a filing fee of 4/100 of 1% of the estimated cost whether erecting, rebuilding or relocating a transmission line. The statute’s wording is not entirely clear, but we interpret it to mean that the fee is 4/100 of 1% only in the case of a petition to erect a new transmission line and that if relocating or rebuilding a transmission line the fee shall be 2/100 of 1% of the cost to rebuild or relocate. The NOR requested comments on this interpretation. The OPA commented that the language of the statute was unclear and should not be reflected in the rule. The OPA provided some legislative history to clarify the origins of the statute’s language. The OPA’s interpretation of the meaning of the statute is the same as the proposed rule, namely, that the rule should provide for a 4/100 of 1% filing fee to erect transmission lines and 2/100 of 1% for rebuilds and relocations. CMP commented that the proposed interpretation of the applicable filing fees was consistent with the statute.

This section of the rule now includes the requirement of a filing fee to be paid to the Office of the Public Advocate by persons erecting, rebuilding or relocating a transmission line, in accordance with section 3132 (10-A). It also describes how a person may request a waiver of this fee. No one commented on this new provision and it is unchanged from the proposed rule.

This section of the rule previously included an exception for minor projects, specifying that in the case of an application for a project that would cost less than $1,000,000, no fee was required unless the Commission ordered otherwise upon a finding of need for a filing fee. This particular exception has been removed from the rule because the specific cost threshold is not explicitly stated in the statute and the Commission is given the discretion to make such determinations when reviewing an application. 35-A M.R.S.A. § 3132(10). No comments were received on this removal.

CMP commented that the Commission should place in the rule a provision that applications concerning transmission lines, the review of which will not place an unusual burden on the Commission’s budget, are exempt from filing fees, as is allowed under Section 3132(10) of the statute. While Section 3132(10) of the statute does allow the Commission, by rule, to exempt from filing fees applications concerning transmission lines the review of which does not place an unusual burden on the Commission’s budget, the Commission is unaware of a specific category that would warrant a blanket exemption and finds that its ability to examine filing fee waivers for specific projects on a case-by-case basis is an adequate solution.

1. New Transmission Facilities (Section 6)

This section has been amended to include a subsection requiring a petitioner for a CPCN to include a description of the effects of the proposed line in its application, as required by section 3132(2-C) of the statute. This section of the rule now specifically requires that petitioners must include a comparison of the chosen route of the transmission line with alternative routes that are environmentally, technically and economically practical, pursuant to 3132(2-C) of the statute

1. Rebuilding and Relocation of Transmission Lines (Section 8)

This section has been amended to require that when submitting annual reports to the Commission on transmission line rebuilding or relocation projects, the utility must include those projects that will become, or will remain at, voltages of 69 kV or more, as required by section 3132(3). This is a change from the previous 100 kV level. This section also now specifies that minor transmission construction projects are to be included in these reports, as required by section 3132(3-A).

While previously this section referred to the Director of the Division of Technical Analysis, this section now refers to that position’s current title, the Director of Electric and Gas Utility Industries. This section also now explicitly states that the Director of Electric and Gas Utility Industries shall notify a utility within 60 days of its annual filing that an investigation of a minor transmission line construction project is warranted. Previously, this section had only referred to the Director notifying utilities of such an investigation for rebuilding and relocating transmission lines. Section 3132(3-A) of the statute gives the Commission the authority to order an investigation of a minor transmission construction project, and the rule now explicitly states that the Director of the Electric and Gas Utility Industries shall notify the utilities of an investigation of minor transmission construction projects if warranted. The amended rule specifies that any waiver request of the provisions of this section shall be provided to the Office of the Public Advocate.

1. Final Orders and Standards for Granting Certificates (§ 9)

This section now includes the requirements for evaluating a petition for a CPCN for a high-impact transmission line. This is a new requirement, as specified in section 3132 (6-A). This section is also amended to include the additional benefits the Commission must take into account when determining whether a public need exists for the transmission line, as required by section 3132(6).

In the NOR, the Commission requested comments on whether Section 9(A) and 9(B) of the rule, which contain the standards for public need, should contain wording identical to that of the statute (section 3132(6)) and not include other language contained in the current rule. The OPA commented that Section 9(A) and 9(B) should not contain wording identical to the statute because it would not serve any legal purpose and imposes a time burden on readers who are drawn to compare the language in the rule to that of the statute. Additionally, the OPA suggests that adding the statutory language to the rule imposes a requirement to change the rule if any change, whether substantive or not, is made to the statute. While we do not agree that making this section of the rule identical to the statute would impose such a requirement, we also find that the proposed language of the rule is consistent with the statute, even if the wording itself is not identical, and therefore we find that the language of the proposed rule is adequate.

The OPA also commented on the last sentence of 9(B) of the rule, noting that public need for a transmission line proposed by a non-utility shall be determined in the same manner that the Commission determines public need for a transmission line proposed by a utility, should be removed. Because the distinction between a non-utility and a utility is no longer a part of the statute, we see no need to keep this language. Therefore, the final sentence of section 9(B) has been removed as suggested.

This section of the amended rule now includes a new requirement that the Commission may not issue a CPCN that has the effect of eliminating the independent system administrator for northern Maine or eliminating or materially modifying the scope of its responsibilities unless the CPCN is subject to a requirement for compensation for the net adverse effects on ratepayers. This is an addition required by section 3132(14) of the statute and no comments were received on this addition Therefore, this section of the rule is adopted as proposed.

1. Delegation (§ 10)

This section now refers to the Director of Electric and Gas Utility Industries. No one commented on this section and it is unchanged from the proposed rule.

1. Requests for Waivers (§ 11)

This section was previously section 3, but has been moved. No comments were received on moving this section and therefore it is adopted as proposed.

1. Definition of Cost

In the NOR, the Commission requested comments on whether it should consider the total costs of the projects or just the cost to Maine’s ratepayers when considering the economics and costs of a proposed transmission line. The OPA commented that the Commission should primarily consider cost to Maine ratepayers when considering the economics and cost of a proposed line. The OPA noted that under the regional cost allocation methodology, customers of each transmission owner pay only a load-weighted share of certain transmission investments. The OPA states that this creates an incentive to overbuild transmission. While the OPA argues the Commission should primarily consider costs to Maine’s ratepayers, that it still remains important for the Commission to consider the total cost of the project to ensure that non-transmission alternatives, which might be less costly, are considered to meet reliability needs. We believe the rule adequately addresses the OPA’s concern because Section 6(J) of the rule specifically requires that petitioners for a CPCN submit information on what alternatives, including conservation, distributed generation or load management, to the proposed transmission line project were investigated. Additionally, Section 9(B) of the rule requires that in determining public need for a proposed transmission line, the Commission consider non-transmission alternatives.

Additionally, the OPA suggested that some of the factors enumerated in consideration of high-impact transmission line approvals (35-A M.R.S.A. § 3132(6-A), which makes reference to the specific factors listed in 35-A M.R.S.A. §122(1-D)) should serve as a model in providing specific guidance on how the Commission will evaluate projects designed to meet the State’s renewable energy goals. The OPA also states that the factors currently enumerated in Chapter 330 “are limited to local impact types of concerns.” However, we find that Section 9(B) of the rule requires that a wide range of factors be considered in determining the public need of a transmission line and specifically notes that in determining public need, state renewable energy goals shall be considered, pursuant to 35-A M.R.S.A. § 3132(6). Therefore, we find that the language in the rule is adequate in addressing broader state policy goals and adopted the language as proposed.

Accordingly, we

ORDER

1. That the amendments to Chapter 330, Filing Requirements for Petitions for Certificates of Public Convenience and Necessity for Electric Transmission Facilities and Standards for Granting Certificates, are hereby adopted;

2. That the Administrative Director shall file the adopted rule and related materials with the Secretary of State;

3. That the Administrative Direct shall notify the following of this rulemaking proceeding:

* 1. All transmission and distribution utilities in the state;
  2. All persons that have commented in this rulemaking, Docket No. 2012-230.

4. That the Administrative Director shall send copies of this Order and the attached amended rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115.

Dated at Hallowell, Maine, this 25th day of September, 2012

BY ORDER OF THE COMMISSION

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Karen Geraghty

Administrative Director

COMMISSIONERS VOTING FOR: Welch

Littell

Vannoy

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 review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

            1.         Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.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.A. § 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.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.