

§1043. Certificates of approval

1. Issue. The authority is authorized and empowered to approve or disapprove projects following submission to it of applications for approval thereof, in such form and with such supporting data as it may require and, upon approval of a project, to issue a certificate of approval. The authority shall publish once in the state newspaper and in a newspaper of general circulation in the area of the State in which the project is to be located, notice of the date on which the authority will consider issuance of a certificate of approval for the project. The notice shall be published at least 7 days prior to the date scheduled for such consideration, shall set forth the name of the applicant, describe generally the project and set forth the time and place at which the application will be considered. In addition to the notice required to be published by the authority, the applicant shall make all reasonable efforts to give timely notice to any and all known competitors of the time and place at which the application will be considered. Where individual written notice is not practical, as determined by the authority, the authority may specify other or additional forms of notice, including display newspaper advertisements and written notice to any trade, industry, professional or interest group. The certificate of approval shall identify and describe each project as to location, purpose and the amount of revenue obligation securities to be issued. If a single issue of revenue obligation securities is to provide for the costs of more than one project, the certificate of approval shall identify the aggregate amount of revenue obligation securities to be issued.

[PL 1985, c. 344, §63 (AMD).]

2. Criteria. Before issuing a certificate of approval for any project, the authority shall determine that:

A. The project will make a contribution to the economic growth of, the control of pollution in or the betterment of the health, welfare or safety of the inhabitants of the State; [PL 1985, c. 344, §63 (AMD).]

B. The project will not result in a substantial detriment to existing business in the State. In order to make this determination, the authority shall consider, pursuant to rules adopted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, such factors as it deems necessary to measure and evaluate the effect of the project on existing business, including considering:

- (1) Whether a project should be approved if, as a result of the project, there will not be sufficient demand within the market area of the State to be served by the project to employ the efficient capacity of existing business; and
- (2) Whether any adverse economic effect of the project on existing business is outweighed by the contribution which the project will make to the economic growth of, the control of pollution in or the betterment of the health, welfare or safety of the inhabitants of the State.

The applicant shall have the burden of demonstrating that the project will not result in a substantial detriment to existing business in accordance with the requirements of this paragraph, including rules adopted in accordance therewith, except in cases where no interested parties object to the project, in which event the requirements of this paragraph shall be deemed satisfied. Interested parties shall be given an opportunity, with or without a hearing at the discretion of the authority, to present their objections to the project on grounds that the project will result in a substantial detriment to existing business. If any such party presents such objections with reasonable specificity and persuasiveness, the authority may divulge whatever information concerning the project which it deems necessary for a fair presentation by the objecting party and evaluation of such objections. If the authority finds that the applicant has failed to meet its burden as specified in this paragraph, the application shall be denied. [PL 1985, c. 714, §29 (AMD).]

C. Adequate provision is being made to meet any increased demand upon public facilities that might result from the project; [PL 1981, c. 476, §2 (NEW).]

D. In cases where it is proposed to relocate an industrial-commercial or recreational facility existing in the State, there is a clear economic justification for such relocation; [PL 1981, c. 476, §2 (NEW).]

E. [PL 1985, c. 344, §63 (RP).]

E-1. In the case of recycling and waste reduction projects, the proposed facility must be consistent with the state waste management and recycling plan under Title 38, chapter 24, and will reduce the amount of solid or hazardous waste requiring disposal. [PL 1989, c. 585, Pt. C, §12 (NEW).]

F. In the case of projects that are primarily pollution-control facilities:

- (1) The proposed users of the facilities make a contribution to the economy of the State;
- (2) A public benefit will result from including the facilities in the project; and
- (3) It is unlikely that public facilities meeting the needs of the users and securing comparable public benefit will become available in the reasonably foreseeable future; [PL 1995, c. 4, §5 (AMD).]

G. [PL 1985, c. 344, §63 (RP).]

H. [PL 1985, c. 344, §63 (RP).]

I. The project will, to the extent possible, cooperate with representatives of the Department of Labor and the Department of Health and Human Services regarding employment opportunities for recipients of the services of those departments; [PL 1999, c. 484, §5 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

J. [PL 2019, c. 160, §6 (RP).]

K. In the case of a paper industry job retention project, the applicant is creditworthy and there is a strong likelihood that the revenue obligation securities will be repaid through the revenues of the project and any other sources of revenues and collateral pledged to the repayment of those securities. To assist in making its determination the authority may engage, at the borrower's expense, independent consultants to assist in the evaluation of the project. In making this determination, the authority shall consider factors it considers necessary to measure and evaluate the sufficiency of the pledged revenues to repay the securities, including:

- (1) Whether individuals or entities obligated to repay the securities have demonstrated sufficient revenues from the project or from other sources to repay the securities and a strong probability that those revenues will continue to be available for the term of the securities;
- (2) Whether the applicant demonstrates a strong probability that the project will continue to operate and to provide the public benefits projected to be created for the term of the securities;
- (3) Whether the applicant demonstrates that the benefits projected to be created by the project are enhanced through the use of financial assistance from the authority;
- (4) Whether the applicant's creditworthiness is demonstrated by such factors as historical financial performance, management ability and the applicant's plan for marketing products or service and its ability to access conventional financing;
- (5) Whether the applicant meets or exceeds industry average financial performance ratios commonly accepted in determining creditworthiness in that industry. In assessing projected financial performance, the authority must consider the value and effect of any contractual labor cost reductions that will be in effect at the time the financial assistance is provided;

(6) Whether collateral securing the repayment obligation, valued in place and in use, is reasonably sufficient under the circumstances;

(7) Whether the owner will make an important equity contribution to the project. If the applicant requests financing assistance from the authority in an amount greater than \$25,000,000, the amount financed by the authority may not exceed \$25,000,000 plus 50% of the total project costs in excess of \$25,000,000. If other financing is subordinate to the financing provided by the authority, the amount financed by the authority may not exceed \$25,000,000 plus 70% of the total project costs in excess of \$25,000,000; and

(8) Whether the applicant demonstrates that the need for authority assistance is due to the reduced cost and increased flexibility of the financing for the project that result from the authority assistance and not from an inability to obtain necessary financing without the capital reserve fund security provided by the authority; [PL 2009, c. 372, Pt. D, §5 (AMD).]

L. In the case of transmission facilities projects, the applicant is creditworthy and there is a strong likelihood that the revenue obligation securities will be repaid through the revenues of the project and any other source of revenues and collateral pledged to the repayment of those securities. In order to make this determination, the authority shall consider such factors as it considers necessary and appropriate in light of the special purpose or other nature of the business entity owning the project to measure and evaluate the project and the sufficiency of the pledged revenues to repay the obligations, including:

(1) Whether the individuals or entities obligated to repay the obligations have demonstrated sufficient revenues from the project or from other sources to repay the obligations and a strong probability that those revenues will continue to be available for the term of the revenue obligation securities;

(2) Whether the applicant demonstrates a strong probability that the project will continue to operate and provide the public benefits projected to be created for the term of the revenue obligation securities;

(3) Whether the applicant demonstrates that the benefits projected to be created by the project are enhanced through the use of financing assistance from the authority;

(4) Whether the applicant's creditworthiness is demonstrated by factors such as its historical financial performance, management ability, plan for marketing its product or service and ability to access conventional financing;

(5) Whether the applicant meets or exceeds industry average financial performance ratios commonly accepted in determining creditworthiness in that industry;

(6) Whether the applicant demonstrates that the need for authority assistance is due to the reduced cost and increased flexibility of the financing for the project that result from authority assistance and not from an inability to obtain necessary financing without the capital reserve fund security provided by the authority;

(7) Whether collateral securing the repayment obligation is reasonably sufficient under the circumstances;

(8) Whether the proposed project enhances the opportunities for economic development;

(9) The effect that the proposed project financing has on the authority's financial resources; and

(10) Whether the Northern Maine Transmission Corporation, as established in section 9202, has recommended the project.

Upon request by the authority, state agencies, including but not limited to the Public Utilities Commission, shall provide necessary assistance to the authority in evaluating the feasibility of the project and its importance for northern Maine. In providing assistance, the Public Utilities Commission shall consider whether the proposed project enhances the competitiveness of the wholesale and retail energy market; how the proposed project is likely to affect energy prices for Maine residents; whether the proposed project will augment or enhance the reliability and stability of the grid; and whether there is likely to be a long-term need for the product as produced by the proposed project.

The authority may establish, pursuant to rules adopted in accordance with Title 5, chapter 375, subchapter 2, application procedures, approval criteria and reasonable fees for transmission facilities projects. Rules adopted by the authority under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. In addition, the authority may require the applicant to pay the reasonable costs of an evaluation of the project risks by an independent consultant. If the authority directs the applicant to pay for such an independent evaluation of the project, the authority shall make every reasonable effort, in its discretion, to minimize the cost of the evaluation and any delay such an evaluation may cause in authority action.

The authority may not finance any project involving an electric transmission line capable of operating at 69 kilovolts or more unless the Public Utilities Commission has issued a certificate of public convenience for the construction of the line pursuant to Title 35-A, section 3132; [PL 2009, c. 517, §7 (AMD).]

M. In the case of an Efficiency Maine project, as defined in section 963-A, subsection 10-A, there is a reasonable likelihood that the income, proceeds, revenues and funds of Efficiency Maine Trust derived from or held for activities under Title 35-A, chapter 97 or otherwise pledged to payment of the bonds will be sufficient to pay the principal, the interest and all other amounts that may at any time become due and payable under the bonds. In making this determination, the authority shall consider Efficiency Maine Trust's analysis of the proposed bond issue and the revenues to make payments on the bonds and may require such information, projections, studies and independent analyses as it considers necessary or desirable and may charge Efficiency Maine Trust reasonable fees and expenses. The authority may require that it be indemnified, defended and held harmless by Efficiency Maine Trust for any liability or cause of action arising out of or with respect to the bonds. The principal and interest of bonds must be made payable solely from the income, proceeds, revenues and funds of Efficiency Maine Trust derived from or held for activities under Title 35-A, chapter 97 or other provision of law. Payment of the principal and interest of bonds may be further secured by a pledge of a loan, grant or contribution from the Federal Government or other source in aid of activities of Efficiency Maine Trust under Title 35-A, chapter 97; [PL 2011, c. 261, §2 (AMD).]

N. In the case of recovery zone facility bonds, the project will benefit the county or counties in which it is located; and [PL 2011, c. 261, §3 (AMD).]

O. [PL 2017, c. 95, §1 (AMD); MRSA T. 10 §1043, sub-§2, ¶O (RP).]
[PL 2019, c. 160, §6 (AMD).]

3. Effect of certificate. A certificate of approval issued under this subchapter shall be conclusive proof that the authority has made the determinations required by this section.
[PL 1981, c. 476, §2 (NEW).]

4. Exception. This section and section 1044, subsection 2, shall not apply in the case of issue by the authority of revenue obligation securities for the purpose of acquiring one or more issues of outstanding revenue obligation securities issued by municipalities or one or more issues of any other bond not eligible for purchase pursuant to Title 30-A, chapter 225.

[PL 1987, c. 737, Pt. C, §§15, 106 (AMD); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

5. Assistance. In considering any request for financial assistance from an applicant for a project regulated by the Public Utilities Commission with respect to rates or terms of service or that requires for construction or operation authorization or certification from the commission, the commission, upon request of the authority, shall provide assistance in analyzing financial, economic or technical issues on which the commission has expertise. At the request of the commission, the authority shall assess the applicant a fee to be paid to the commission to reimburse the commission for any costs incurred by the commission that cannot be absorbed within its existing resources.

[PL 2011, c. 261, §5 (NEW).]

SECTION HISTORY

PL 1981, c. 476, §2 (NEW). PL 1981, c. 698, §§60-64 (AMD). PL 1985, c. 344, §63 (AMD). PL 1985, c. 714, §29 (AMD). PL 1987, c. 697, §10 (AMD). PL 1987, c. 737, §§C15,C106 (AMD). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,C10 (AMD). PL 1989, c. 585, §C12 (AMD). PL 1995, c. 4, §§5-7 (AMD). PL 1999, c. 484, §§5-7 (AMD). PL 2003, c. 506, §§2-4 (AMD). PL 2003, c. 689, §B6 (REV). PL 2009, c. 372, Pt. D, §§5-7 (AMD). PL 2009, c. 517, §§7-9 (AMD). PL 2011, c. 261, §§2-5 (AMD). PL 2011, c. 586, §3 (AMD). PL 2011, c. 655, Pt. MM, §8 (AMD). PL 2011, c. 655, Pt. MM, §26 (AFF). PL 2015, c. 504, §3 (AMD). PL 2017, c. 95, §1 (AMD). PL 2019, c. 160, §6 (AMD).

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