

**Maine Revised Statute Title 35-A, Chapter 1:  
ORGANIZATION, GENERAL POWERS AND DUTIES**

**Table of Contents**

<b>Part 1. PUBLIC UTILITIES COMMISSION .....</b>	
Section 101. STATEMENT OF PURPOSE.....	3
Section 102. DEFINITIONS.....	3
Section 103. ESTABLISHMENT OF COMMISSION; POWERS AND DUTIES; SEAL AND OFFICE.....	7
Section 104. IMPLIED POWERS.....	8
Section 105. APPOINTMENT AND TERM.....	8
Section 106. CHAIRMAN OF THE PUBLIC UTILITIES COMMISSION.....	8
Section 107. THE PUBLIC UTILITIES COMMISSION STAFF.....	9
Section 108. COMMISSION ACTION; QUORUM; NOTICE (REPEALED).....	10
Section 108-A. COMMISSION ACTION; QUORUM; NOTICE.....	10
Section 109. CONFLICTS OF INTEREST.....	11
Section 110. REMOVAL OF COMMISSIONER.....	12
Section 111. RULES; ASSISTANCE.....	12
Section 112. POWER TO OBTAIN INFORMATION.....	12
Section 113. MANAGEMENT AUDIT.....	13
Section 114. UTILITY PERSONNEL RECORDS.....	14
Section 115. ENFORCEMENT OF STATE LAWS.....	14
Section 116. FUNDING OF THE COMMISSION .....	15
Section 117. REIMBURSEMENT FUND.....	18
Section 118. PARTICIPATION WITH OTHER REGULATORY BODIES.....	19
Section 119. FIVE-YEAR REVIEW.....	19
Section 120. ANNUAL REPORT.....	19
Section 121. MODEL CODE (CONTAINS TEXT WITH VARYING EFFECTIVE DATES) (WHOLE SECTION TEXT REPEALED 12/1/10 BY T. 35-A, §121, SUB-§3) (WHOLE SECTION TEXT EFFECTIVE UNTIL 12/1/10).....	20
Section 122. ENERGY INFRASTRUCTURE CORRIDORS (CONTAINS TEXT WITH VARYING EFFECTIVE DATES) (WHOLE SECTION TEXT EFFECTIVE UNTIL 7/30/11) (WHOLE SECTION TEXT REPEALED 7/30/11 BY T. 35-A, §122, SUB-§10).....	21



## 35-A §101. STATEMENT OF PURPOSE

The purpose of this Title is to ensure that there is a regulatory system for public utilities in the State that is consistent with the public interest and with other requirements of law and to provide for reasonable licensing requirements for competitive electricity providers. The basic purpose of this regulatory system is to ensure safe, reasonable and adequate service and to ensure that the rates of public utilities are just and reasonable to customers and public utilities. [1999, c. 398, Pt. A, §2 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 398, §A2 (AMD). 1999, c. 398, §§A104,105 (AFF).

## 35-A §102. DEFINITIONS

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

**1. Commission.** "Commission" means the Public Utilities Commission.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Commissioner.** "Commissioner" means one of the members of the Public Utilities Commission.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2-A. Competitive service provider.** "Competitive service provider" means a competitive electricity provider as defined in section 3201, subsection 5.

[ 1999, c. 398, Pt. A, §3 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

**3. Corporation.** "Corporation" includes municipal and quasi-municipal corporations.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**4. Customer.** "Customer" includes any person, government or governmental division which has applied for, been accepted and is currently receiving service from a public utility.

[ 1987, c. 628, §1 (RPR) .]

**5. Electric utility.**

[ 1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §4 (RP) .]

**6. Electric plant.**

[ 1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §5 (RP) .]

**6-A. Excluded electric plant.**

[ 1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §6 (RP) .]

**7. Ferry.** "Ferry" includes every person, its lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any vessel and which is subject to commission's jurisdiction under chapter 51.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**7-A. Gas marketer.** "Gas marketer" means an entity that sells natural gas to retail consumers in the State.

[ 1999, c. 143, §1 (NEW) .]

**8. Gas utility.** "Gas utility" includes every person, that person's lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any gas plant for compensation within this State, except when gas is made or produced on and distributed by the maker or producer through private property alone solely for its own tenants and not for sale to others, or when the gas is sold solely for use in vehicles fueled by natural gas or to a liquid gas system that serves fewer than 10 customers as long as no portion of the liquid gas system is located in a public place or that serves a single customer if the liquid gas system is located entirely on the customer's premises. "Gas utility" does not include a gas marketer whose business in the State is restricted to selling natural gas to retail consumers and who does not provide natural gas transmission or distribution service.

[ 1999, c. 718, §14 (AMD) .]

**9. Gas plant.** "Gas plant" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas for light, heat or power.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**9-A. Mobile telecommunications services.** "Mobile telecommunications services" means telecommunications services licensed by the Federal Communications Commission for mobile use.

[ 1991, c. 342, §1 (NEW) .]

**10. Natural gas pipeline utility.** "Natural gas pipeline utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court owning or operating for compensation within this State any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of natural gas, or any person or corporation which has applied to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity or to the Public Utilities Commission for a certificate of authorization to operate a natural gas pipeline within the State.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**11. Person.** "Person" includes a corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, trust, estate, any other legal entity or natural person.

[ 1997, c. 707, §1 (AMD) .]

**12. Public heating utility.**

[ 1999, c. 579, §2 (RP) .]

**13. Public utility.** "Public utility" includes every gas utility, natural gas pipeline utility, transmission and distribution utility, telephone utility, water utility and ferry, as those terms are defined in this section, and each of those utilities is declared to be a public utility. "Public utility" does not include the operation of

a radio paging service, as that term is defined in this section, or mobile telecommunications services unless only one entity or an affiliated interest of that entity, as defined in section 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency spectrum assigned by the Federal Communications Commission to provide mobile service to the service area.

Nothing in this subsection precludes:

A. The jurisdiction, control and regulation by the commission pursuant to private and special act of the Legislature; [1991, c. 342, §2 (RPR).]

B. The commission's jurisdiction and control over and regulation of a public utility that provides, in addition to other services, radio paging service or mobile telecommunications services; [1991, c. 342, §2 (RPR).]

C. The commission's jurisdiction and control over and regulation of basic exchange telephone service offered by a provider of mobile telecommunications services if, after investigation and hearing, the commission determines that the provider is engaged in the provision of basic exchange telephone service; and [1991, c. 342, §2 (RPR).]

D. Negotiations for, or negates agreements or arrangements existing on the effective date of this paragraph relating to, rates, terms and conditions for interconnection provided by a telephone utility to a company providing radio paging or mobile telecommunications services. [1991, c. 342, §2 (RPR).]

[ 1999, c. 579, §3 (AMD) .]

**14. Radio common carrier.** "Radio common carrier" means an entity that provides communications services primarily by use of radio or other wireless means.

[ 1991, c. 342, §3 (AMD) .]

**15. Radio paging service.** "Radio paging service" is a service provided by a communication common carrier engaged in rendering signaling communication. Signaling communication is one-way communication from a base station to a mobile or fixed receiver, or to multipoint mobile or fixed receivers by audible or subaudible means, for the purpose of activating a signaling device in the receiver or communicating information to the receiver, whether or not the information is to be retained in record form. It is limited to the following types of communications.

A. An optical readout paging service is one which communicates a message to a receiver which displays the message on an optical or tactile readout, either in a permanent form or a temporary form. [1987, c. 141, Pt. A, §6 (NEW).]

B. A tone only paging service is one which activates an aural, visual or tactile signaling device when received. [1987, c. 141, Pt. A, §6 (NEW).]

C. A tone-voice paging service is one which transmits tone to activate a signaling device and audio circuit in the addressed receiver, following which a voice-grade signal is transmitted, to be amplified by the audio circuit. [1987, c. 141, Pt. A, §6 (NEW).]

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**16. Rate design stability.** "Rate design stability" means the implementation of interclass cost allocation or intraclass rate design changes to any existing customer class, of the magnitude or on such a schedule as to not be seriously adverse to the existing class of customers.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**16-A. Self generation.** "Self generation" means the generation of electricity for the use of an entity that owns, leases, operates, controls or manages, in whole or in part, generation assets, as defined in section 3201, subsection 10, provided that the electricity is not transmitted over transmission and distribution plant, as defined in subsection 20-A.

[ 1999, c. 398, Pt. A, §8 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

**17. Telegraph utility.**

[ 1995, c. 225, §3 (RP) .]

**18. Telegraph line.**

[ 1995, c. 225, §3 (RP) .]

**18-A. Telephone service.** "Telephone service" is the offering of a service that transmits communications by telephone, whether the communications are accomplished with or without the use of transmission wires.

[ 2003, c. 153, §2 (NEW) .]

**19. Telephone utility.** "Telephone utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, that provides telephone service for compensation inside this State. "Telephone utility" does not include any person or entity that is excluded from the definition of "public utility" as defined in subsection 13, subject to the provisions of subsection 13, paragraphs A to C.

[ 2003, c. 153, §1 (AMD) .]

**20. Telephone line.**

[ 2003, c. 153, §3 (RP) .]

**20-A. Transmission and distribution plant.** "Transmission and distribution plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the transmission, distribution or delivery of electricity for light, heat or power for public use and includes all conduits, ducts and other devices, materials, apparatus and property for containing, holding or carrying conductors used, or to be used, for the transmission or distribution of electricity for light, heat or power for public use.

[ 1999, c. 398, Pt. A, §9 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

**20-B. Transmission and distribution utility.** "Transmission and distribution utility" means a person, its lessees, trustees or receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State, except where the electricity is distributed by the entity that generates the electricity through private property alone solely for that entity's own use or the use of the entity's tenants and not for sale to others.

[ 1999, c. 398, Pt. A, §9 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

**21. Vessel.** "Vessel" includes every boat which is owned, controlled, operated or managed for public use in the transportation of persons or property for compensation within this State.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**22. Water utility.** "Water utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing any water works for compensation within this State, including any aqueduct organized under former Title 35, chapter 261 and any of its predecessors.

[ 1987, c. 490, Pt. C, §2 (AMD) .]

**23. Water works.** "Water works" includes all reservoirs, tunnels, shafts, dams, dikes, head gates, pipes, flumes, canals, structures and appliances, and all real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for municipal and domestic use.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 490, §C2 (AMD). 1987, c. 613, §1 (AMD). 1987, c. 628, §1 (AMD). 1991, c. 342, §§1-3 (AMD). 1993, c. 178, §1 (AMD). 1995, c. 225, §§2,3 (AMD). 1997, c. 707, §1 (AMD). 1997, c. 710, §§1-3 (AMD). 1997, c. 710, §10 (AFF). 1999, c. 143, §§1,2 (AMD). 1999, c. 398, §§A3-9 (AMD). 1999, c. 579, §§2,3 (AMD). 1999, c. 718, §14 (AMD). 1999, c. 398, §§A104,105 (AFF). 2003, c. 153, §§1-3 (AMD).

## 35-A §103. ESTABLISHMENT OF COMMISSION; POWERS AND DUTIES; SEAL AND OFFICE

**1. Establishment.** There is established the Public Utilities Commission which shall consist of 3 members.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Powers and duties.** The commission has the following powers and duties.

A. All public utilities are subject to the jurisdiction, control and regulation of the commission and to this Title. [1987, c. 141, Pt. A, §6 (NEW).]

B. The commission shall set the basic policies of the Public Utilities Commission and shall regulate public utilities in accordance with this Title. [1987, c. 141, Pt. A, §6 (NEW).]

C. The commission shall oversee the activities of competitive service providers to the extent provided in this Title. [1999, c. 398, Pt. A, §10 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

D. The commission shall oversee and manage the Emergency Services Communication Bureau established under Title 25, chapter 352. [2003, c. 359, §5 (NEW).]

[ 2003, c. 359, §5 (AMD) .]

**3. Seal and office.** The commission shall have a seal and be provided with office space.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 398, §A10 (AMD). 1999, c. 398, §§A104,105 (AFF). 2003, c. 359, §5 (AMD).

### 35-A §104. IMPLIED POWERS

The provisions of this Title shall be interpreted and construed liberally to accomplish the purpose of this Title. The commission has all implied and inherent powers under this Title, which are necessary and proper to execute faithfully its express powers and functions specified in this Title. [1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

### 35-A §105. APPOINTMENT AND TERM

**1. Appointment.** The Governor shall appoint 3 members to the Public Utilities Commission. The appointments shall be subject to review by the joint standing committee of the Legislature having jurisdiction over public utilities and to confirmation by the Legislature. Members of the commission shall devote full time to their duties.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Term.** The commissioners shall serve for terms of 6 years.

A. Each term shall end on March 31st of the 6th year of the term. The terms shall be staggered so that one ends in 1987 and every 6 years thereafter, one ends in 1989 and every 6 years thereafter, and one ends in 1991 and every 6 years thereafter. [1987, c. 141, Pt. A, §6 (NEW) .]

B. A commissioner may continue to serve beyond the end of this term until a successor is appointed and qualified. [1987, c. 141, Pt. A, §6 (NEW) .]

C. Any vacancy occurring in the commission shall be filled by appointment for the unexpired portion of the term. [1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

### 35-A §106. CHAIRMAN OF THE PUBLIC UTILITIES COMMISSION

The following provisions apply to the chairman of the Public Utilities Commission. [1987, c. 141, Pt. A, §6 (NEW) .]

**1. Appointment.** The Governor shall designate one member of the commission as chairman.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. General duties.** The chairman shall:

A. Be the principal executive officer of the commission in carrying out its policies; [1987, c. 141, Pt. A, §6 (NEW) .]

B. Preside at meetings of the commission; and [1987, c. 141, Pt. A, §6 (NEW) .]

C. Be responsible for the expedient organization of the commission's work. [1987, c. 141, Pt. A, §6 (NEW).]

**3. Hearings.** For any particular hearing or series of hearings before the commission, the chairman may assign himself or another commissioner to attend.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**4. Acting chairman.** When absent one working day or more, the chairman shall name another commissioner to act as chairman.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW).

### **35-A §107. THE PUBLIC UTILITIES COMMISSION STAFF**

The following provisions apply to the commission's staff. [2009, c. 122, §7 (AMD).]

**1. Appointment.** The commission shall appoint:

A. An administrative director, a director of telephone and water utility industries, a director of electric and gas utility industries, a director of energy programs and a director of consumer assistance; [2009, c. 122, §7 (AMD).]

B. With the approval of the Attorney General, a general counsel; and [1987, c. 141, Pt. A, §6 (NEW).]

C. An assistant administrative director. [1987, c. 141, Pt. A, §6 (NEW).]

[ 2009, c. 122, §7 (AMD) .]

**2. Salary and conditions of employment.** Salaries and conditions of employment of employees of the commission are as follows.

A. The general counsel, the administrative director, the assistant administrative director, the director of telephone and water utility industries, the director of electric and gas utility industries, the director of energy programs and the director of consumer assistance serve at the pleasure of the commission and their salaries must be set by the commission within the ranges established by Title 2, section 6-A. [2009, c. 122, §7 (AMD).]

B. The compensation of the staff attorney and utility analyst positions are fixed by the commission with the approval of the Governor, but the compensation may not in the aggregate exceed the total amount appropriated or allocated in the commission's budget. [1993, c. 118, §1 (AMD).]

C. The salaries of the other subordinate officials and employees of the commission, other than those of the general counsel, the administrative director, the assistant administrative director, the director of telephone and water utility industries, the director of electric and gas utility industries, the director of energy programs, the director of consumer assistance and the staff attorney and utility analyst positions, are subject to the Civil Service Law. [2009, c. 122, §7 (AMD).]

D. [1993, c. 118, §3 (RP).]

E. The commissioners and all employees receive actual expenses when traveling on official business. [2009, c. 122, §7 (AMD).]

[ 2009, c. 122, §7 (AMD) .]

**3. Commission's access to staff.** Each commissioner may have access to the Public Utilities Commission staff and to any information available to the commission, subject to Title 5, section 9055.

[ 2009, c. 122, §7 (AMD) .]

**4. Delegation of powers and duties to the staff.** The commission may delegate to its staff such powers and duties as the commission finds proper. All delegations existing as of the effective date of this section are valid.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**5. Administrative director's duties.** The administrative director:

A. Shall keep a record of the proceedings of the commission, which must be open to inspection at all times; and [2009, c. 122, §7 (AMD).]

B. May certify all official acts of the commission, administer oaths and issue subpoenas, processes, notices, orders and other documents necessary to the performance of the commission's duties. [1987, c. 141, Pt. A, §6 (NEW).]

[ 2009, c. 122, §7 (AMD) .]

**6. Assistant administrative director's duties.** The assistant administrative director shall assist the director in the performance of the director's duties and in the absence of the director has the same power as the director.

[ 2009, c. 122, §7 (AMD) .]

**7. Commission counsel.** The commission may employ counsel in any proceeding, investigation or trial.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**8. Dismissal.** After successful completion of a probationary period, the employees occupying the positions of staff attorney and utility analyst may be dismissed, suspended or otherwise disciplined only for cause.

[ 1993, c. 589, §2 (AMD) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 631, §3 (AMD). 1993, c. 118, §§1-3 (AMD). 1993, c. 589, §2 (AMD). 1997, c. 586, §§2,3 (AMD). 2003, c. 606, §§1,2 (AMD). 2007, c. 482, §5 (AMD). 2009, c. 122, §7 (AMD).

### **35-A §108. COMMISSION ACTION; QUORUM; NOTICE** (REPEALED)

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 614, §1 (AMD). 1993, c. 36, §1 (RP).

### **35-A §108-A. COMMISSION ACTION; QUORUM; NOTICE**

A majority of the duly appointed commissioners constitutes a quorum and the act or decision of a majority of commissioners present, if at least a quorum is present, is the act or decision of the commission in any formal proceeding before the commission. [1993, c. 36, §2 (NEW).]

Notwithstanding Title 1, section 406, the commission is required to give notice of public proceedings only if the commission will deal with the expenditure of public funds or if the commission will make any of the following decisions in proceedings before it: a decision to initiate rulemaking or to adopt or modify a rule pursuant to Title 5, chapter 375, subchapter II; a decision making an advisory ruling pursuant to Title 5, chapter 375, subchapter III; a decision to commence an adjudicatory proceeding, an interim decision in an adjudicatory proceeding that will affect the substantive or procedural rights of any party, or a final decision at the conclusion of an adjudicatory proceeding, all pursuant to Title 5, chapter 375, subchapter IV; or a decision in any other proceeding pursuant to this Title or the commission's rules that requires commission approval or decision. In addition, if the commission is participating as a party in a proceeding before a federal agency and the commission will adopt a position in that federal proceeding, the commission shall give to other parties from the State who are participating in the federal proceeding notice of the public proceeding at which the commission may adopt that position. [1993, c. 36, §2 (NEW).]

## SECTION HISTORY

1993, c. 36, §2 (NEW).

**35-A §109. CONFLICTS OF INTEREST**

In addition to the limitations of Title 5, section 18, the following limitations apply to prevent conflicts of interest. [1987, c. 141, Pt. A, §6 (NEW).]

**1. Public utilities.** A member or employee of the commission may not:

A. Have any official or professional connection or relation with any public utility or competitive service provider operating within this State; [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. Hold any stock or securities in any public utility or competitive service provider operating within this State; [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

C. Render a professional service against any such public utility or competitive service provider; or [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

D. Be a member of a firm that renders service against any such public utility or competitive service provider. [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[ 1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

**2. Appointment to civil office.** No commissioner may hold any other civil office of profit or trust under the Federal Government or State Government except the office to notary public.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**3. Political party.** No commissioner may serve on or under a committee of a political party.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

## SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 398, §A11 (AMD). 1999, c. 398, §§A104,105 (AFF).

## 35-A §110. REMOVAL OF COMMISSIONER

Any willful violation of this Title by a commissioner shall constitute sufficient cause for his removal by the Governor, on the address of both branches of the Legislature or by impeachment pursuant to the Constitution of Maine, Article IX, Section 5. [1987, c. 141, Pt. A, §6 (NEW).]

### SECTION HISTORY

1987, c. 141, §A6 (NEW).

## 35-A §111. RULES; ASSISTANCE

The commission may adopt rules and may employ assistance to carry out its responsibilities under this Title. [1987, c. 141, Pt. A, §6 (NEW).]

### SECTION HISTORY

1987, c. 141, §A6 (NEW).

## 35-A §112. POWER TO OBTAIN INFORMATION

**1. Investigation of management of business.** The commission may inquire into the management of the business of all public utilities and shall keep itself informed as to the manner and method in which each is conducted.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Facilities and information to be furnished.** Every public utility shall furnish the commission with:

A. All reasonable facilities for the prompt and faithful discharge of its duties; and [1987, c. 141, Pt. A, §6 (NEW).]

B. All information necessary to perform its duties and carry into effect this Title. If it is unable to furnish the information, it shall give a good and sufficient reason for the failure, and the reason for the failure shall be verified by an officer, owner or agent of the public utility and returned to the commission at its office within the time fixed by the commission. [1987, c. 141, Pt. A, §6 (NEW).]

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**3. Inspection of books and papers; confidentiality.** The following provisions apply to inspection of books and papers.

A. The commission or any commissioner or any person employed by it for that purpose, may upon demand inspect and copy the books, accounts, papers, records and memoranda of any public utility in relation to its business and affairs. [1987, c. 141, Pt. A, §6 (NEW).]

B. A person other than a commissioner must produce his authority to make an inspection. [1987, c. 141, Pt. A, §6 (NEW).]

C. A person employed by the commission to inspect utilities documents may not divulge information ascertained by inspection except:

(1) To the commission; or

(2) Under direction of the commission. [1987, c. 141, Pt. A, §6 (NEW).]

D. Any person who violates this subsection is guilty of a Class E crime. [1987, c. 141, Pt. A, §6 (NEW).]

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**4. Production of documents; failure to obey.** The commission may require the production of documents as follows.

A. The commission may require, by order or subpoena to be served on any public utility or its agent in the same manner that a summons is served in a civil action in the Superior Court, the production of any books, accounts, papers, records or verified copies of them kept by a public utility or within the control of a public utility in any office or place within or outside the State, so that an examination may be made by the commission or under its direction. [2003, c. 505, §7 (AMD).]

B. [2003, c. 505, §8 (RP).]

C. Subject to the requirements of the United States Constitution and the Constitution of Maine and upon a finding that there is probable cause to believe that a public utility is altering, amending, removing or destroying any of its books, accounts, papers or records in an attempt to frustrate an investigation of the commission, a Judge of the District Court or a Justice of the Peace, at the request of the commission and without notice, may issue a search warrant requiring seizure of those documents that are necessary for the commission to discharge its duties. [1993, c. 165, §1 (NEW).]

[ 2003, c. 505, §§7, 8 (AMD) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1993, c. 165, §1 (AMD). 2003, c. 505, §§7,8 (AMD).

### 35-A §113. MANAGEMENT AUDIT

**1. Audit.** The commission may require the performance of a management audit of the operations of any public utility in order to determine:

A. The degree to which a public utility's construction program evidences planning adequate to identify realistic needs of its customers; [1987, c. 141, Pt. A, §6 (NEW).]

B. The degree to which a public utility's operations are conducted in an effective, prudent and efficient manner judged by the standards prevailing in the utility industry; [1987, c. 141, Pt. A, §6 (NEW).]

C. The degree to which a public utility minimizes or avoids inefficiencies which otherwise would increase costs to customers; or [1987, c. 141, Pt. A, §6 (NEW).]

D. Any other consideration which the commission finds relevant to rate setting under chapter 3, sections 301 and 303. [1987, c. 141, Pt. A, §6 (NEW).]

**2. Independent auditor.** The commission may have a management audit performed by an independent auditor. If the commission finds it reasonable and necessary to have the audit performed, it may:

A. Select the independent auditor; [1987, c. 141, Pt. A, §6 (NEW).]

B. Require a public utility to pay for the costs of a management audit of its operations; and [1987, c. 141, Pt. A, §6 (NEW).]

C. Require the public utility to execute a contract with the independent auditor. [1987, c. 141, Pt. A, §6 (NEW).]

**3. Costs.** The full cost of the management audit shall be recovered from ratepayers. In ordering an audit, the commission shall consider the impact of the cost of the audit upon the ratepayers and other alternatives that are available.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW).

### 35-A §114. UTILITY PERSONNEL RECORDS

**1. Confidential.** The following records of public utilities are confidential and, except as otherwise provided in subsection 3, are excluded from the books, accounts, papers, records, memoranda, documents and information otherwise available to the commission under this Title and may not be open to public inspection:

- A. Materials prepared for and used specifically in the examination or evaluation of applicants for positions with a public utility, including working papers, research materials, records and examinations; [1987, c. 141, Pt. A, §6 (NEW).]
- B. Records containing the following:
  - (1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
  - (2) Performance evaluations and personal references;
  - (3) Information pertaining to the credit worthiness of a named employee;
  - (4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; or
  - (5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations or any other information or materials that may result in disciplinary action; or [1987, c. 141, Pt. A, §6 (NEW).]
- C. Other information to which access by the general public is prohibited by law. [1987, c. 141, Pt. A, §6 (NEW).]

**2. Compliance.** Failure or refusal by any public utility or any officer, agent or attorney of any public utility to comply with any order, data request or subpoena calling for the production of those records other than an order issued pursuant to subsection 3, shall not serve as the basis for any civil or criminal fine, penalty or forfeiture.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**3. In camera inspection.** Upon request by the commission staff, the Public Advocate or intervenor in a matter before the commission or upon the commission's own motion and for good cause shown, the commission may order a public utility to produce for in camera inspection by the commission or hearing examiner the records designated confidential under subsection 1. The employee whose records are the subject of such a request shall be notified by the commission of the request and shall be given the opportunity to be heard before an order to produce is issued. If the commission or hearing examiner determines after in camera inspection that a record is reasonably relevant to the matter before it and that production of the record is not unjust or unlawful and that the materiality of the record outweighs any harm to the employee from its disclosure, the commission or hearing examiner may order that the record be made a part of the discovery or evident aspects of the proceedings, subject to the terms and conditions that are just, due consideration being given to the privacy interests of the employee involved.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW).

### 35-A §115. ENFORCEMENT OF STATE LAWS

The following provisions apply to the enforcement of state laws. [1987, c. 141, Pt. A, §6 (NEW) .]

**1. Commission's duties.** The commission shall:

A. Inquire into any neglect or violation of state laws by a public utility doing business within the State; [1987, c. 141, Pt. A, §6 (NEW).]

B. Inquire into any neglect or violation of state laws by the officers, agents, employees or any person operating the plant of a public utility; [1987, c. 141, Pt. A, §6 (NEW).]

C. Enforce this Title and all other laws relating to public utilities; and [1987, c. 141, Pt. A, §6 (NEW).]

D. Report all possible criminal violations of this Title and all other laws relating to public utilities to the Attorney General. [2003, c. 505, §9 (AMD).]

[ 2003, c. 505, §9 (AMD) .]

**2. Duties of the Attorney General and district attorneys.** Upon the request of the commission, the Attorney General or the district attorney of the proper county shall:

A. Aid in any investigation, hearing or trial conducted under this Title; and [1987, c. 141, Pt. A, §6 (NEW).]

B. Institute and prosecute all proceedings for the enforcement of this Title and of all other state laws relating to public utilities and to the punishment of violations. [1987, c. 141, Pt. A, §6 (NEW).]

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**3. Administrative penalties.** Unless otherwise provided, the following provisions apply to administrative penalties.

A. A complaint for the enforcement of an administrative penalty may be made by the commission. [2003, c. 505, §10 (AMD).]

B. A suit to enforce any administrative penalty may be brought in the name of the State in the Superior Court in the county where the main office of the public utility is located or in Kennebec County. [2003, c. 505, §10 (AMD).]

C. An action commenced by the commission must be prosecuted by the Attorney General. [1999, c. 398, Pt. A, §12 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[ 2003, c. 505, §10 (AMD) .]

## SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 398, §A12 (AMD). 1999, c. 398, §§A104,105 (AFF). 2003, c. 505, §§9,10 (AMD).

**35-A §116. FUNDING OF THE COMMISSION**

**1. Utilities subject to assessments.** Every transmission and distribution, gas, telephone and water utility and ferry subject to regulation by the commission is subject to an assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for the Public Utilities Commission Regulatory Fund established pursuant to this section. The budget for the Public Utilities Commission Regulatory Fund is subject to legislative review and approval in accordance with subsection 2. The portion of the total assessment applicable to each category of public utility is based on an accounting by the commission of the portion of the commission's resources devoted to matters related to each category. The commission shall develop a reasonable and practicable method of accounting for resources devoted by the commission to matters related to each category of public utility. Assessments on each public utility within each category must be based on the utility's gross intrastate operating revenues. The commission

shall determine the assessments annually prior to May 1st and assess each utility for its pro rata share for expenditure during the fiscal year beginning July 1st. Each utility shall pay the assessment charged to the utility on or before July 1st of each year. Any increase in the assessment that becomes effective subsequent to May 1st may be billed on the effective date of the act authorizing the increase.

A. The assessments charged to utilities under this section are just and reasonable operating costs for rate-making purposes. [1987, c. 141, Pt. A, §6 (NEW).]

B. For the purposes of this section, "intrastate gross operating revenues" means intrastate revenues derived from filed rates and rates that are exempt from filing requirements pursuant to rules adopted by the commission under section 307-A, except revenues derived from sales for resale. [2007, c. 478, §1 (AMD).]

C. Gas utilities subject to the jurisdiction of the commission solely with respect to safety are not subject to any assessment. [1995, c. 1, §29 (COR).]

D. The commission may correct any errors in the assessments by means of a credit or debit to the following year's assessment rather than reassessing all utilities in the current year. [1987, c. 141, Pt. A, §6 (NEW).]

E. The commission may exempt utilities with annual intrastate gross operating revenues under \$50,000 from assessments under this section. [1987, c. 631, §4 (NEW).]

[ 2007, c. 478, §1 (AMD) .]

**2. Committee recommendations; legislative approval of budget.** The commission shall submit its budget recommendations as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666. The commission shall make a presentation of its budget recommendations contained in any current services budget legislation and any supplemental budget legislation to the joint standing committee of the Legislature having jurisdiction over public utilities matters. The joint standing committee of the Legislature having jurisdiction over public utilities matters shall review the commission's recommendations and make recommendations to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs regarding the budget of the commission, including but not limited to all expenditures from the fund established pursuant to this section. The commission shall make an annual report in accordance with section 120 of its planned expenditures for the year and on its use of funds in the previous year. In addition to the assessments authorized under this section, the commission may also receive other funds as appropriated or allocated by the Legislature.

[ 2007, c. 16, §2 (AMD) .]

**3. Deposit of funds.** All revenues derived from assessments levied against utilities described in this section shall be deposited with the Treasurer of State in a separate account to be known as the Public Utilities Commission Regulatory Fund.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**4. Use of funds.** The Public Utilities Commission may use the revenues provided in accordance with this section to defray the costs incurred by the commission pursuant to this Title, including administrative expenses, general regulatory expenses, consulting fees and all other reasonable costs incurred to administer this Title.

[ 2007, c. 240, Pt. P, §1 (AMD) .]

**5. Unexpended funds.** Any amount of the funds that is not expended at the end of a fiscal year does not lapse, but is carried forward to be expended for the purposes specified in this section in succeeding fiscal years.

[ 2005, c. 135, §2 (AMD) .]

**6. Violations.**

[ 2003, c. 505, §11 (RP) .]

**7. Special assessment.**

[ 1991, c. 343, §4 (RP) .]

**8. Public Advocate assessment.** Every utility subject to assessment under this section is subject to an additional annual assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for operating the Office of Public Advocate. The portion of this assessment applicable to each category of public utility is based on an accounting by the Public Advocate of resources devoted to matters related to each category. The Public Advocate shall develop a reasonable and practicable method of accounting for resources devoted by the Public Advocate to matters related to each category of public utility. Assessments on each public utility within each category must be based on the utility's gross intrastate operating revenues. The revenues produced from this assessment are transferred to the Public Advocate Regulatory Fund and may only be used to fulfill the duties specified in chapter 17. The assessments charged to utilities under this subsection are considered just and reasonable operating costs for rate-making purposes. The Public Advocate shall develop a method of accounting for staff time within the Office of Public Advocate. All professional and support staff shall account for their time in such a way as to identify the percentage of time devoted to public utility regulation and the percentage of time devoted to other duties that may be required by law.

A. The Public Advocate shall submit its budget recommendations as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1665. The assessments and expenditures provided in this section are subject to legislative approval. The Public Advocate shall make an annual report of its planned expenditures for the year and on its use of funds in the previous year. The Public Advocate may also receive other funds as appropriated by the Legislature. [1997, c. 424, Pt. B, §5 (AMD) .]

B. The Public Advocate may use the revenues provided in accordance with this section to fund the Public Advocate and 9 employees and to defray the costs incurred by the Public Advocate pursuant to this Title, including administrative expenses, general expenses, consulting fees and all other reasonable costs incurred to administer this Title. [1999, c. 259, §3 (AMD) .]

C-1. Funds that are not expended at the end of a fiscal year do not lapse but must be carried forward to be expended for the purposes specified in this section in succeeding fiscal years. [2005, c. 135, §3 (AMD) .]

[ 2007, c. 539, Pt. KK, §13 (AMD) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 631, §§4,5 (AMD). 1989, c. 58, §§1,2 (AMD). 1989, c. 571, §A3 (AMD). 1989, c. 875, §§E44,45 (AMD). 1991, c. 9, §§E19-21 (AMD). 1991, c. 343, §§1-4 (AMD). 1991, c. 528, §CC2 (AMD). 1991, c. 591, §CC2 (AMD). 1991, c. 528, §RRR (AFF). 1993, c. 118, §4 (AMD). 1993, c. 174, §1 (AMD). 1993, c. 633, §§1,2 (AMD). 1993, c. 633, §3 (AFF). 1995, c. 225, §4 (AMD). 1995, c. 368, §L1 (AMD). 1995, c. 665, §O1 (AMD). RR 1995, c. 1, §29 (COR). 1997, c. 424, §§B4,5 (AMD). 1997, c. 586, §4 (AMD). 1997, c. 643, §J1 (AMD). 1997, c. 719,

§1 (AMD). 1999, c. 259, §3 (AMD). 1999, c. 398, §C1 (AMD). 2001, c. 28, §1 (AMD). 2001, c. 136, §1 (AMD). 2003, c. 272, §§1,2 (AMD). 2003, c. 505, §§11,12 (AMD). 2005, c. 3, §J1 (AMD). 2005, c. 135, §§1-3 (AMD). 2007, c. 16, §§1, 2 (AMD). 2007, c. 240, Pt. P, §1 (AMD). 2007, c. 478, §1 (AMD). 2007, c. 539, Pt. KK, §13 (AMD).

## 35-A §117. REIMBURSEMENT FUND

**1. Filing fees expense; reimbursements and payment for services.** All money collected by the commission in the form of filing fees, expense reimbursements ordered by the commission or payment for services shall be deposited with the Treasurer of State in an account to be known as the Public Utilities Commission Reimbursement Fund. Services for which the commission receives payment include the reproduction and distribution of copies of commission decisions, agenda and dockets, photocopying and the use of facilities. This account is a continuous carrying account, with appropriate subaccounts, for reimbursement of commission expenses incurred in processing the associated matters or providing the associated services or facilities which generated the filing fee, expense reimbursement or payment. So much of the filing fee, expense reimbursement or payment as may be required by the commission is allocated for these purposes and for the refund of the unexpended portion of the filing fee.

[ 1989, c. 159, §1 (AMD) .]

**2. State Controller's approval.** All payments under this section shall be made to the commission after approval of the State Controller. In no event may the payments exceed the amounts received by the Treasurer of State from the Public Utilities Commission. Upon certification by the administrative director of the commission that certain amounts in the Public Utilities Commission Reimbursement Fund are not required by the commission, the Treasurer of State shall transfer the amounts to the General Fund.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**3. Administrative penalties.** Except as provided in this subsection, all administrative penalties collected by the commission must be deposited into the Public Utilities Commission Reimbursement Fund.

A. The commission may use amounts collected as administrative penalties and deposited in the Public Utilities Commission Reimbursement Fund to reimburse the commission for additional expenses associated with the enforcement activities that resulted in the collection of the penalty. [ 2005, c. 432, §1 (NEW) .]

B. After deducting any amount used pursuant to paragraph A, the commission may, to the extent practicable and in as equitable and fair a manner as possible, apply administrative penalties, along with any accrued interest, in accordance with this paragraph. The commission shall seek to apply the amount in a manner that benefits those customers affected or potentially affected by the violation, if they can reasonably be identified or, if the commission determines this application of the amount to be impractical or unreasonable, in a manner that benefits the class or group of customers affected or potentially affected by the violation. In order to achieve the purposes of this paragraph, the commission may apply the funds:

- (1) In the form of a direct payment or credit to the customers or group or class of customers affected or potentially affected by the violation resulting in the administrative penalty;
- (2) To supplement a low-income assistance or outreach program that the commission determines would benefit customers affected or potentially affected by the violation resulting in the administrative penalty;
- (3) To supplement the conservation program fund established pursuant to section 3211-A, subsection 5;
- (4) To supplement the telecommunications education access fund established pursuant to section 7104-B; or

(5) To supplement any other program or fund that the commission determines would benefit customers affected or potentially affected by the violation.

Amounts applied pursuant to this paragraph to supplement an existing program or fund may not result in a reduction in other funding provided for the program or fund unless the reduction is outside the commission's control and the commission finds that application of the penalty amount to the fund or program is the most appropriate use of the penalty and the net effect will be an increase in total funding available to the program or fund. [ 2005, c. 432, §1 (NEW) . ]

[ 2005, c. 432, §1 (AMD) . ]

**4. Budget approval.** The commission shall submit its budget recommendations for the Public Utilities Commission Reimbursement Fund as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666.

[ 1997, c. 424, Pt. B, §6 (NEW) . ]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1989, c. 159, §1 (AMD). 1997, c. 424, §B6 (AMD). 2003, c. 505, §13 (AMD). 2005, c. 432, §1 (AMD).

### 35-A §118. PARTICIPATION WITH OTHER REGULATORY BODIES

The commission may participate with other state and federal public utility regulatory bodies, including the Federal Energy Regulatory Commission and the Federal Communications Commission, or their successors, in joint hearings and studies relating to mutually regulated utilities. [1987, c. 141, Pt. A, §6 (NEW) . ]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW).

### 35-A §119. FIVE-YEAR REVIEW

Commencing with a review in 1985, the commission shall review the laws governing Public Utilities Commission operations and areas of jurisdiction every 5 years. Upon the review, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over utilities legislation to remove any outdated provisions. [1987, c. 141, Pt. A, §6 (NEW) . ]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW).

### 35-A §120. ANNUAL REPORT

The commission shall report annually, before February 1st, to the joint standing committee of the Legislature having jurisdiction over public utilities on: [1987, c. 141, Pt. A, §6 (NEW) . ]

**1. Budget.** The commission's planned expenditures for the year and its use of funds in the previous year, including the expenditures from the Public Utilities Commission Regulatory Fund as established pursuant to section 116;

[ 1999, c. 584, §1 (AMD) . ]

**2. Various fees.** The waiver, exemption, receipt and expenditure of any filing fees, expenses, reimbursements or fines collected under this Title, on a case-by-case basis;

[ 1999, c. 584, §1 (AMD) . ]

**3. Regional issues.** The commission's efforts undertaken in accordance with its authority under this Title to promote and protect consumer interests through participation in and presentations before regional entities and federal agencies with jurisdiction over regional marketplaces that affect the State's consumers. The commission must provide an assessment of staffing requirements to undertake these responsibilities;

[ 2001, c. 137, §1 (AMD) .]

**4. Rural issues.** The commission's efforts undertaken in accordance with its authority under this Title to ensure that rural areas of this State are not disadvantaged as utility industries are restructured and competitive markets developed. The commission shall identify any rural issues that it has determined may require legislative action;

[ 2009, c. 122, §8 (AMD) .]

**5. Telephone exemptions.** The commission's activities undertaken pursuant to its authority to grant exemptions to telephone utilities from certain portions of this Title;

[ 2009, c. 122, §9 (AMD) .]

**6. Significant developments.** Any significant developments in the utility sectors or other areas of commission oversight; and

[ 2009, c. 122, §10 (NEW) .]

**7. Other.** All other subjects that the commission is required to include in the annual report pursuant to law.

[ 2009, c. 122, §11 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 9, §E22 (AMD). 1999, c. 584, §1 (AMD). 2001, c. 137, §§1,2 (AMD). 2009, c. 122, §§8-11 (AMD).

### 35-A §121. MODEL CODE

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

*(WHOLE SECTION TEXT REPEALED 12/1/10 by T. 35-A, §121, sub-§3)*

*(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/1/10)*

**1. Development; rules.** The commission shall adopt by rule a model building energy code, including a ventilation code, that is consistent with any other model building codes adopted by the State and with the building energy standards established in Title 10, section 1415-C, subsection 3 and section 1415-D. The commission shall ensure that the model code is not inconsistent with any other applicable state code or standard, including, but not limited to, any fire safety code, plumbing code, oil and solid fuel equipment standard, propane and natural gas equipment standard or boiler and pressure vessel standard.

Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2003, c. 645, §6 (NEW) .]

**2. Model code.** After the effective date of rules adopted pursuant to subsection 1, a municipality may not adopt a building energy code other than the model building energy code or an amended version of the model building energy code. For purposes of this subsection, "amended version of the model energy building code" means a version of the code that does not include certain parts or portions of the code or that creates new exemptions from its requirements but does not include a version of the code that includes modifications

to any standard established in the code. Nothing in this section requires a municipality to adopt a building energy code. A municipality that has a building energy code in effect prior to the effective date of the rules may continue to keep that code, but if the municipality replaces its energy code it must adopt the model building energy code or an amended version of the model energy building code in accordance with this subsection.

[ 2005, c. 350, §15 (AMD) .]

**3. (WHOLE SECTION TEXT EFFECTIVE UNTIL 12/1/10) Repeal.** This section is repealed December 1, 2010.

[ 2009, c. 261, Pt. A, §15 (AMD) .]

#### SECTION HISTORY

2003, c. 645, §6 (NEW). 2005, c. 350, §15 (AMD). 2007, c. 699, §19 (AMD). 2009, c. 261, Pt. A, §15 (AMD).

## **35-A §122. ENERGY INFRASTRUCTURE CORRIDORS**

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

*(WHOLE SECTION TEXT EFFECTIVE UNTIL 7/30/11)*

*(WHOLE SECTION TEXT REPEALED 7/30/11 by T. 35-A, §122, sub-§10)*

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Department" means the Department of Environmental Protection. [2007, c. 656, Pt. A, §3 (NEW).]

B. "Energy infrastructure" includes electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include generation interconnection transmission facilities or energy generation facilities. [2007, c. 656, Pt. A, §3 (NEW).]

C. "Energy infrastructure corridor" or "corridor" means a geographic area within the State designated by the commission in accordance with this section for the purposes of siting energy infrastructure. [2007, c. 656, Pt. A, §3 (NEW).]

D. "Generation interconnection transmission facility" has the same meaning as in section 3132, subsection 1-B. [2007, c. 656, Pt. A, §3 (NEW).]

E. "Interested person" means a person that can demonstrate to the commission the financial and technical capability to engage in the development and construction of energy infrastructure. [2007, c. 656, Pt. A, §3 (NEW).]

F. "Project" means the development or construction of energy infrastructure within an energy infrastructure corridor. [2007, c. 656, Pt. A, §3 (NEW).]

G. "Tribe" includes the Penobscot Nation, as defined in Title 30, section 6203, subsection 10; the Passamaquoddy Tribe, as defined in Title 30, section 6203, subsection 7; the Houlton Band of Maliseet Indians, as defined in Title 30, section 6203, subsection 2 and the Aroostook Band of Micmacs, as defined in Title 30, section 7202, subsection 1. [2007, c. 656, Pt. A, §3 (NEW).]

[ 2007, c. 656, Pt. A, §3 (NEW) .]

**2. Designation of energy infrastructure corridors.** The commission may, upon petition, designate energy infrastructure corridors in accordance with this subsection.

A. The commission may designate an energy infrastructure corridor only by rule. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

(1) The rulemaking to designate an energy infrastructure corridor must include a public hearing in which any member of the public may submit oral or written testimony or comments, which must be incorporated into the rule-making record in accordance with Title 5, section 8052, subsection 1. The commission shall provide an opportunity for examination of the petitioner at a rule-making hearing. The commission shall allow for written comments by any member of the public up to 7 days prior to the hearing. The commission shall allow a second round of written comments to be filed within 10 days of the hearing or within such longer time as the commission may direct.

(2) In any rulemaking regarding the designation of an energy infrastructure corridor, the commission shall address all written comments, including those submitted pursuant to subsection 3, and state its rationale for adopting or rejecting any proposals or recommendations contained in those written comments.

(3) A designation of an energy infrastructure corridor must be based on substantial evidence in the record of the rule-making hearing. [2007, c. 656, Pt. A, §3 (NEW).]

B. The commission may commence a proceeding to designate an energy infrastructure corridor only upon the filing of a petition for the designation of a corridor by the Office of the Public Advocate, the Executive Department, Governor's Office of Energy Independence and Security or an interested person. [2007, c. 656, Pt. A, §3 (NEW).]

C. The commission shall dismiss a petition for the designation of an energy infrastructure corridor filed under this subsection if, after preliminary review, the commission determines that the petition:

(1) Does not contain sufficient information to support the designation of an energy infrastructure corridor; or

(2) Was filed by a person other than the Office of the Public Advocate, Executive Department, Governor's Office of Energy Independence and Security or an interested person as defined by subsection 1, paragraph E. [2007, c. 656, Pt. A, §3 (NEW).]

D. The commission may designate an energy infrastructure corridor only if the commission finds that the future development of energy infrastructure within the corridor is reasonably likely to be:

(1) In the public interest, including, but not limited to, consideration of:

(a) Encouraging colocation of energy infrastructure;

(b) Enhancing the efficient utilization of existing energy infrastructure; and

(c) Limiting impacts on the landscape; and

(2) Consistent with environmental and land use laws and rules of the State. A finding that the future development of energy infrastructure within the corridor is reasonably likely to be consistent with environmental and land use laws and rules of the State under this paragraph has no evidentiary value in a subsequent consolidated environmental permit proceeding undertaken by the department pursuant to subsection 6. [2007, c. 656, Pt. A, §3 (NEW).]

E. In designating a geographic area as an energy infrastructure corridor, the commission shall limit the geographic area of the corridor to an area no greater in breadth and scope than is necessary to achieve the purposes of this section. [2007, c. 656, Pt. A, §3 (NEW).]

F. The commission may not designate an energy infrastructure corridor that is located on any of the following lands:

(1) Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A;

(2) Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6;

(3) Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9;

(4) Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2;

(5) Lands that constitute a park as defined in Title 12, section 1801, subsection 7 and Baxter State Park; and

(6) Federally owned land. [2007, c. 656, Pt. A, §3 (NEW).]

[ 2007, c. 656, Pt. A, §3 (NEW) .]

**3. Consultation and notification required; comments.** Prior to designating an energy infrastructure corridor under subsection 2, the commission shall, at a minimum, notify, consult with and accept comments from:

A. The department; [2007, c. 656, Pt. A, §3 (NEW).]

B. Appropriate state and federal energy and natural resources protection agencies, as specified by rules adopted pursuant to subsection 9; [2007, c. 656, Pt. A, §3 (NEW).]

C. The municipalities in which the corridor would be located; [2007, c. 656, Pt. A, §3 (NEW) .]

D. The Maine Land Use Regulation Commission, if the proposed energy infrastructure corridor, or any portion of the corridor, is located within unorganized or deorganized territories of the State; and [2007, c. 656, Pt. A, §3 (NEW).]

E. A tribe, if the proposed energy infrastructure corridor, or any portion of the corridor, is located on land of a tribe other than those lands specified in subsection 2, paragraph F. [2007, c. 656, Pt. A, §3 (NEW) .]

[ 2007, c. 656, Pt. A, §3 (NEW) .]

**4. Use of corridors; certificate and permit required.** Development or construction of energy infrastructure within an energy infrastructure corridor is governed by this subsection.

A. A transmission and distribution utility may not engage in development or construction of a transmission line covered by section 3132 within an energy infrastructure corridor, unless:

(1) The commission has issued a certificate of public convenience and necessity approving the transmission line in accordance with section 3132; and

(2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6. [2007, c. 656, Pt. A, §3 (NEW).]

B. A transmission and distribution utility may not engage in development or construction of energy infrastructure other than a transmission line covered by section 3132 within an energy infrastructure corridor, unless:

(1) The commission has issued a corridor use certificate approving the project in accordance with subsection 5; and

(2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6. [2007, c. 656, Pt. A, §3 (NEW).]

C. A person that is not a transmission and distribution utility may not engage in development or construction of energy infrastructure within an energy infrastructure corridor, unless:

(1) The commission has issued a corridor use certificate approving the project in accordance with subsection 5; and

(2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6. [2007, c. 656, Pt. A, §3 (NEW).]

[ 2007, c. 656, Pt. A, §3 (NEW) .]

**5. Corridor use certificate.** Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, except for a transmission and distribution utility that proposes a transmission line subject to the requirements of section 3132, that person shall file with the commission a petition for a corridor use certificate. The petition for the corridor use certificate must contain such information as the commission by rule requires. The commission shall process a petition for a corridor use certificate in an adjudicatory proceeding. The commission shall issue a corridor use certificate upon a finding that the project is:

A. In the public interest; and [2007, c. 656, Pt. A, §3 (NEW).]

B. Reasonably likely to:

- (1) Minimize utility rates or increase the reliability of utility service;
- (2) Have the net effect of reducing the release of greenhouse gases; or
- (3) Enhance economic development within the State. [2007, c. 656, Pt. A, §3 (NEW).]

[2007, c. 656, Pt. A, §3 (NEW).]

**6. Environmental review; consolidated environmental permit.** Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, that person shall file with the department an application for a consolidated environmental permit. The department shall adopt by rule pursuant to subsection 9 a process for the review of applications and the issuance of the consolidated environmental permit in accordance with this subsection. The department may request comments from and consult with other agencies and programs that are required by law to issue separate approvals for some or all projects.

A. A consolidated environmental permit issued by the department takes the place of any other permits or licenses that the department would otherwise require for the proposed project. [2007, c. 656, Pt. A, §3 (NEW).]

B. The application for a consolidated environmental permit must contain such information as the department requires, including, but not limited to, all studies and documentation necessary to determine whether the proposed project is in compliance with the environmental laws of the State administered by the department. [2007, c. 656, Pt. A, §3 (NEW).]

C. The applicant for a consolidated environmental permit shall pay a fee specified by rule and reimburse the department for any additional costs of regulatory review, including expenses for outside peer review or other consultants or experts assisting the department in its review. Outside review of applications under this subsection is governed by Title 38, section 344-A, except that the Commissioner of Environmental Protection is not required to obtain the consent of the applicant to enter into an agreement with an outside reviewer or require that the costs of the outside review be reimbursed by the applicant. [2007, c. 656, Pt. A, §3 (NEW).]

D. The department shall issue its decision on an application for a consolidated environmental permit within a timeframe specified by department rule or guideline. The decision may specify approval, denial or approval in part and denial in part. A proposed project may not be undertaken if it is denied in whole or in part by the department. [2007, c. 656, Pt. A, §3 (NEW).]

E. Upon issuance of a consolidated environmental permit, the department shall certify to the commission that the permit has been issued and whether the proposed project complies, in part or in whole, with the environmental laws of the State administered by the department and whether other agencies and programs that are required by law to issue separate approvals for some or all aspects of the project have taken final agency action on those matters requiring their separate approval. [2007, c. 656, Pt. A, §3 (NEW).]

F. The department shall enforce the terms of the consolidated environmental permit. [2007, c. 656, Pt. A, §3 (NEW).]

G. The terms of the consolidated environmental permit may require additional submissions by the permit holder, studies and approvals with conditions. [2007, c. 656, Pt. A, §3 (NEW).]

If the department receives an application for a permit to develop or construct energy infrastructure within an energy infrastructure corridor prior to adopting a rule to implement this subsection, the department shall process the application in accordance with the department's existing review and permitting procedures.

[2007, c. 656, Pt. A, §3 (NEW) .]

**7. Eminent domain.** This subsection grants and limits certain rights of eminent domain with respect to energy infrastructure corridors.

A. The eminent domain authority of a transmission and distribution utility within an energy infrastructure corridor is governed by section 3136. [2007, c. 656, Pt. A, §3 (NEW).]

B. Subject to approval by the commission, a person that is not a transmission and distribution utility that receives a corridor use certificate under subsection 5 to develop energy infrastructure within an energy infrastructure corridor may take and hold by right of eminent domain lands and easements within that corridor necessary for the proper location of the energy infrastructure covered by the corridor use certificate in the same manner and under the same conditions as set forth in chapter 65. The right of eminent domain granted in this paragraph does not apply to:

- (1) Lands or easements located within 300 feet of an inhabited dwelling;
- (2) Lands or easements on or adjacent to any developed or undeveloped water power;
- (3) Lands or easements so closely paralleling existing wire lines of other utilities that the proposed energy infrastructure would substantially interfere with service rendered over the existing lines, except with the consent of the owners;
- (4) Lands or easements owned or used by railroad corporations, except as authorized pursuant to section 2311;
- (5) Lands or easements owned by the State; and
- (6) Transmission and distribution plant that is owned, controlled, operated or managed by a transmission and distribution utility on the effective date of this section. [2007, c. 656, Pt. A, §3 (NEW).]

C. The commission may take and hold by right of eminent domain lands and easements within an energy infrastructure corridor in accordance with this paragraph, notwithstanding any transmission and distribution utility ownership of the lands or easements.

- (1) The commission may exercise the authority under this paragraph only in an adjudicatory proceeding upon a petition by the Office of the Public Advocate or the Executive Department, Governor's Office of Energy Independence and Security demonstrating that such action is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor. A determination by the commission that the exercise of eminent domain under this paragraph is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor constitutes reviewable final agency action.
- (2) The amount of any lands or easements taken by the commission pursuant to this subsection may be no greater than is required to avoid the harm to electricity consumers identified under subparagraph (1).
- (3) The right of eminent domain granted in this paragraph does not apply to personal property, fixtures or improvements that constitute transmission and distribution plant.

(4) The commission may exercise the right of eminent domain for the purposes of this paragraph in the same manner and under the same conditions as set forth in chapter 65. For the purposes of the exercise of eminent domain authorized by this paragraph, the commission is both a person and the State.

(5) The commission is authorized to assess transmission and distribution utilities to the extent necessary to obtain sufficient funds to pay for lands and easements taken pursuant to this subsection.

(6) The commission, in an adjudicatory proceeding upon petition by the Office of the Public Advocate or the Executive Department, Governor's Office of Energy Independence and Security, may transfer or convey to any person or state agency lands and easements once acquired, except that a transmission and distribution utility whose lands or easements were taken pursuant to this paragraph must be given the first opportunity to acquire the lands or easements to the extent necessary or useful in the performance of its duties as a transmission and distribution utility.

(7) The commission shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters during the next regular session of the Legislature following the acquisition of lands or easements by eminent domain. [2007, c. 656, Pt. A, §3 (NEW).]

[ 2007, c. 656, Pt. A, §3 (NEW) .]

**8. Utility service territory.** Nothing in this section modifies existing restrictions on entities providing service within a public utility's service territory provided under chapter 21.

[ 2007, c. 656, Pt. A, §3 (NEW) .]

**9. Rules.** The commission shall adopt by rule standards and procedures to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted by the commission for the designation of an energy infrastructure corridor, pursuant to subsection 2, paragraph A, are major substantive rules.

[ 2007, c. 656, Pt. A, §3 (NEW) .]

**10. Repeal.** This section is repealed July 30, 2011.

[ 2007, c. 656, Pt. A, §3 (NEW) .]

#### SECTION HISTORY

2007, c. 656, Pt. A, §3 (NEW).

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