

§3133-A. Significant agreements and contracts relating to transmission capacity prohibited without prior order of the commission

1. Certificate of public convenience and necessity. Except as provided in subsection 3, a transmission and distribution utility may not enter into any significant agreement or contract, as defined in subsection 2, unless the commission has issued a certificate of public convenience and necessity approving the proposed agreement or contract or has waived the approval requirements pursuant to subsection 6. The utility must file a notice with the commission no less than 2 months in advance of submitting its petition for a certificate of public convenience and necessity for the proposed agreement or contract. The commission may require the petitioner to make available such additional information as it determines necessary. The petition must contain such information as the commission may by rule prescribe. The petition must be set down for public hearing. The commission shall issue its order within 12 months after the complete petition is filed. If there is then outstanding a long-range plan for the utility pursuant to section 3134 that includes the agreement or contract, the utility need not provide advance notice of its intent to file the petition and the commission shall issue its order within 9 months after the complete petition is filed.

In its order, the commission shall make specific findings with regard to the agreement or contract. If the commission finds that a need for it exists and it is reasonable and consistent with the public interest, the commission shall issue the certificate of public convenience and necessity.

The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance, the decision by the utility to enter into the agreement or contract was prudent. [PL 1999, c. 398, Pt. A, §48 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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

A. "Significant agreement or contract" means a contract or other agreement enforceable as a contract that binds the utility to a future course of action with respect to supplying, purchasing or exchanging transmission capacity or any renewal, amendment or extension of any contract or agreement that is for a period of longer than 3 years and involves one of the following, whichever is less:

- (1) More than 5,000 kilowatts of electrical transmission capacity, or 50,000,000 kilowatt hours or more of energy per year, flowing over a transmission line with a capacity greater than 100 kilovolts;
- (2) More than 10% of the transmission capacity of the utility; or
- (3) The transmission of an amount equal to more than 1.0% of the total annual kilowatt hour sales in the utility's service territory. [PL 1999, c. 398, Pt. A, §48 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[PL 1999, c. 398, Pt. A, §48 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

3. Exclusions. This section does not apply to any contract or agreement for which commission approval is required under section 3132 or 3133. This section applies to contracts or agreements that take effect on or after the effective date of this section.

[PL 1999, c. 398, Pt. A, §48 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

4. Filing fee. A utility or utilities filing a petition under this section shall pay to the Public Utilities Commission at the time of filing an amount equal to 2/100 of 1% of the estimated cost of the contract or agreement. The utility or utilities, at or before the time of filing of notice of its intent to file the petition, may request the commission to waive all or a portion of the filing fee as unnecessary to help defray the cost of review. The commission shall rule on the request for waiver within 60 days.

Notwithstanding this Title, filing fees paid as required in this subsection must be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from a utility or utilities and is not expended by the commission to process the petition for a certificate of public convenience and necessity must be returned to the utility or utilities. [PL 1999, c. 398, Pt. A, §48 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

5. Amendments, extensions and renewals.

[PL 1993, c. 91, §6 (RP).]

5-A. Amendments, extensions and renewals. The requirements of this section apply to any amendment, extension or renewal of any significant agreement or contract subject to this section, if the original contract was subject to approval by the commission.

[PL 1995, c. 357, §8 (AMD).]

5-B. Amendments, extensions and renewals of contracts not originally subject to commission approval. For any amendment, extension or renewal of any contract otherwise subject to this section when the original contract was not subject to approval by the commission, the utility shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval is not required under this section.

[PL 1993, c. 91, §7 (NEW).]

6. Waiver of approval requirements. The commission may waive the notice and approval requirements of this section upon its own motion or upon the request of any party. The commission shall rule on a request for a waiver within 60 days. Prior to considering a waiver, the commission shall ensure that notice by mail has been sent, and an opportunity to be heard permitted, to persons who commonly participate in commission proceedings and persons whose contracts the commission determines may be affected by the agreement. The commission may prescribe by rule the content of a request for waiver and procedures for expeditious processing of the request in certain circumstances.

[PL 1999, c. 398, Pt. A, §48 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY

PL 1987, c. 387, §4 (NEW). PL 1993, c. 91, §§6,7 (AMD). PL 1993, c. 119, §1 (AMD). PL 1995, c. 357, §§6-9 (AMD). PL 1999, c. 398, §A48 (AMD). PL 1999, c. 398, §§A104,105 (AFF).

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