

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 433

S.P. 172

In Senate, February 6, 1995

**An Act to Reduce the Cost of Electricity and to Provide for Market
Competition in the Production and Sales of Electricity.**

Reference to the Committee on Utilities and Energy suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator CLEVELAND of Androscoggin.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 35-A MRSA c. 32** is enacted to read:

6 **CHAPTER 32**

8 **MARKET COMPETITION IN ELECTRIC GENERATION**
DIVESTITURE

10 **§3201. Policy; findings**

12 The Legislature finds that free market competition among
14 nonutility, independent generators of electricity has the
16 potential for long-term benefits for electric utility
18 ratepayers. While the Legislature recognizes that transmission
20 and distribution services are most economically provided by
22 regulated monopolies, it finds that there is no natural monopoly
24 inherent in electric power generation. Accordingly, the
Legislature finds it is in the best interest of ratepayers that
electric utilities divest themselves of all utility generation
assets by January 1, 2001. The Legislature also finds that
divestiture should not alter the energy policy of this State to
require least cost planning and encourage energy conservation,
the economic use of fuel and the maximum efficient utilization of
indigenous energy resources.

26 **§3202. Definitions**

28 As used in this chapter, unless the context otherwise
30 indicates, the following terms have the following meanings.

32 **1. Compensable legal interest.** "Compensable legal interest"
34 means any legal interest in a generation asset that divestiture
36 causes to be injured or otherwise affected in a manner requiring
compensation under the United States Constitution or the
Constitution of Maine.

38 **2. Divest.** "Divest" means to dispossess of all proprietary
40 interest in an asset by means of a sale or other conveyance for
42 valuable consideration to a person who is not an affiliate of an
electric utility, as determined pursuant to section 707.

44 **3. Divestiture.** "Divestiture" means the process by which an
46 electric utility divests itself of generation assets or the
result of that process.

48 **4. Generation asset.** "Generation asset" means any facility,
50 plant or other asset used to generate electric energy.
"Generation asset" does not include conservation or
demand-side-management devices or facilities that are reasonably
and economically severable as assets from facilities that

2 generate electric energy. "Generation asset" does not include
3 any contractual rights or interests in any capacity of a facility
4 or energy produced by a facility, including a qualifying
5 facility, as defined in section 3303, subsection 7, that is not
6 owned or operated by the electric utility or a person affiliated
7 with the utility.

8 **§3203. Electric utilities; divestiture plan**

10 No later than June 1, 1996, each electric utility whose
11 total sales of electric energy for purposes other than resale
12 exceeded 300,000,000 kilowatt hours during any calendar year
13 shall develop and submit to the commission a detailed plan to
14 divest the utility of all generation assets. The divestiture
15 plan must address, at a minimum, the following:

16 **1. Asset valuation.** Methodologies used by the utility for
17 valuing generation assets under its plan;

18 **2. Corporate finance issues.** The nature of all restrictions
19 in relevant bond indentures and other relevant corporate finance
20 issues relating to divestiture and the means by which the utility
21 proposes that these issues be addressed in an economical and
22 timely fashion;

23 **3. Minimum value.** Estimates of the minimum price for which
24 each generation asset, if sold separately, would need to be sold
25 in order to protect the interests of ratepayers, shareholders and
26 others with a compensable legal interest and the lowest
27 reasonable price for which the generation assets, taken as a
28 whole, would need to be sold in order to protect the interests of
29 ratepayers, shareholders and others with a compensable legal
30 interest;

31 **4. Highest reasonable value.** Estimates of the highest price
32 for which the utility reasonably believes each generation asset
33 could be sold if sold separately and an estimate of the total
34 market value of all generation assets if divestiture of the
35 assets is accomplished according to the utility's preferred
36 strategy proposed under subsection 5;

37 **5. Divestiture strategy.** The utility's preferred strategy
38 for divestiture. The utility shall provide a detailed evaluation
39 of the short-term and long-term costs and benefits to ratepayers,
40 shareholders and others with a compensable legal interest
41 associated with each of the following possible divestiture
42 strategies:

43 **A. Packaging more marketable generation assets with less**
44 **marketable generation assets;**

2 B. Scheduling sales to take advantage of favorable market
3 conditions or to avoid unfavorable market conditions;

4 C. Establishing competitive bidding procedures;

6 D. Developing a specialized negotiation process, distinct
7 from or integrated with a competitive bidding procedure,
8 designed specifically to generate an optimum sale price for
9 generation assets while avoiding unnecessary delays in
10 closing sales; and

12 E. Packaging the sale of a generation asset with a
13 simultaneous agreement to purchase some or all of the
14 asset's output.

16 6. Alternate strategies. One or more alternate strategies
17 for divestiture and a detailed analysis of the risks and benefits
18 of each alternate strategy as compared with the preferred
19 strategy proposed under subsection 5;

22 7. Division of revenues and costs. Suggestions for, and
23 justifications of, formulas for allocating divestiture revenues
24 and transaction costs among ratepayers, shareholders and others
25 with a compensable legal interest; and

26 8. Information ordered by commission. Any other relevant
27 information required by the commission by rule or order.

30 **§3204. Commission review and analysis**

32 The commission shall review and analyze all plans submitted
33 in accordance with section 3203 and shall recommend divestiture
34 plans for all electric utilities. The commission shall make
35 specific findings concerning the following:

36 1. Unified or separate plan. Whether a unified plan for the
37 sale of generation assets by electric utilities is feasible or
38 whether there are compelling reasons why each utility should
39 proceed under one or more unique divestiture plans;

42 2. Risks and benefits. The nature and extent of the various
43 costs, risks and benefits for ratepayers, shareholders and others
44 with a compensable legal interest associated with each plan
45 submitted by each utility pursuant to section 3203;

46 3. Regional considerations. Whether there are regional
47 considerations, such as access to and membership in the New
48 England power pool, as defined in section 4103, subsection 4,
49 that should be factored into the adoption of any divestiture plan;

2 4. Federal laws. The extent to which federal laws,
particularly the Federal Power Act, the Public Utility Regulatory
4 Policies Act of 1978 and the Energy Policy Act of 1992,
implementing rules and interpretive case law, may affect the
6 following:

8 A. Utility divestiture;

10 B. Utility access to power and power markets after
divestiture; and

12 C. Limitations on commission jurisdiction after divestiture;
14 and

16 5. Creation of power market. The measures needed to be
taken to create an adequate electric power supply market after
18 divestiture.

20 The commission shall evaluate options for addressing any
issues raised by this analysis.

22 The commission shall complete its analysis by June 1, 1997.

24 **§3205. Rulemaking**

26 The commission may adopt any rules necessary to implement
the provisions of this chapter. In adopting any rule that
28 imposes additional requirements on utilities submitting plans
under section 3203, the commission shall act in a timely fashion
30 to ensure that utilities have ample opportunity to complete their
plans by the deadline established in section 3203.
32

34 **§3206. Commission report and plans; committee reporting option**

36 1. Commission hearings. Prior to submitting a report under
this section, the commission shall hold at least 5 hearings in
38 various locations throughout the State to take testimony on
utility plans for divestiture submitted pursuant to this chapter.

40 2. Report. By January 1, 1998 the commission shall submit
to the Legislature a report containing a summary of its findings
42 under section 3204 and its recommended plan or plans for
divestiture in accordance with the following.
44

46 A. The report must include a primary plan that will result
in complete divestiture for each affected electric utility
on or before January 1, 2001.

48 B. The report may contain alternate plans to achieve
50 divestiture later than January 1, 2001 provided the report

2 includes a detailed discussion of why complete divestiture
4 by that date is imprudent or otherwise unadvisable. The
6 alternate plan or plans may provide for partial divestiture
8 by January 1, 2001, no divestiture until some later date or
no divestiture of certain generation assets or may include
any other provisions or suggestions, provided that every
deviation from the primary plan, offered pursuant to
paragraph A, is identified and justified.

10 C. The report must include all draft legislation necessary
12 to implement the plan or plans offered pursuant to
paragraphs A and B.

14 D. The report must include any other information of which
16 the commission believes the Legislature should be informed.

18 3. Utilities committee reporting option. The joint
20 standing committee of the Legislature having jurisdiction over
22 utility matters shall review the report submitted by the
commission under this section and is authorized to report out a
bill to the Second Regular Session of the 118th Legislature to
implement a plan or plans that will achieve the purposes of this
chapter and result in divestiture.

26 **STATEMENT OF FACT**

28
30 This bill establishes a process that is designed to result
in divestiture by electric utility companies of generation assets.

32 Under this bill:

34 1. Electric utilities must submit to the Public Utilities
36 Commission by June 1, 1996 a detailed plan for divestiture;

38 2. The commission must complete a review of the plans by
June 1, 1997;

40 3. By January 1, 1998, the commission must have held
42 hearings on the plans and must submit to the Legislature its
44 report on divestiture. The report must include a plan for
complete divestiture by January 1, 2001. The report may include
alternate plans if the commission finds that complete divestiture
by the year 2001 is imprudent; and

2 4. The Joint Standing Committee on Utilities is authorized
to report out a bill to the Second Regular Session of the 118th
4 Legislature in 1998 to achieve divestiture.