

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1785

H.P. 1258

House of Representatives, April 14, 1997

An Act to Provide for a Simplified Restructuring of the Electric Industry.

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative USHER of Westbrook.
Cosponsored by Senator PENDLETON of Cumberland and
Representatives: AHEARNE of Madawaska, GAGNE of Buckfield, HATCH of Skowhegan,
RICHARD of Madison, Senators: FERGUSON of Oxford, MICHAUD of Penobscot.

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

4 Sec. 1. 35-A MRSA c. 44-A is enacted to read:

6 CHAPTER 44-A

8 ELECTRIC INDUSTRY RESTRUCTURING

10 §4411. Definitions

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

14 1. Affiliated interest. "Affiliated interest" has the same
16 meaning as provided in section 707, subsection 1, paragraph A.

18 2. Competitive provider. "Competitive provider" means a
20 generator, marketer, broker, aggregator or any other entity
selling electric power to retail customers through a transmission
and distribution utility on or after the effective date of retail
competition.

22 3. Divest. "Divest" means to legally transfer ownership
24 and control to an entity that is not an affiliated interest.

26 4. Effective date of retail competition. "Effective date
28 of retail competition" means January 1, 2000, except that if the
commission finds that retail competition is not in the best
interests of the State, "effective date of retail competition"
30 means a date established by future enactment of law. The
commission shall determine that retail competition is not in the
32 best interests of the State if it finds the following:

34 A. The electric grid serving the New England region will not
36 be managed by an independent system operator on or after
January 1, 2000; or

38 B. A competitive retail electric market, including a free,
40 forward market for bilateral contracts in energy and
capacity for customers of all sizes, will not exist in the
New England region on January 1, 2000.

42 The commission shall make a determination of whether retail
44 competition is in the best interests of the State no later than
January 1, 1999.

46 5. Generation asset. "Generation asset" means an asset that
48 is capable of producing electric energy and is owned or
controlled by an electric utility or in which the electric

2 utility has a business or contractual interest but does not
3 include:

4 A. A qualifying facility;

6 B. A nuclear power plant; or

8 C. A generating facility located outside the United States.

10 6. Independent system operator. "Independent system
11 operator" means a person responsible for managing the operations
12 of an electric transmission system that is free from the control
13 or undue influence of any one or more competitive providers. An
14 independent system operator is not free from the control of one
15 or more competitive providers if:

16 A. One or more competitive providers have any role in the
17 selection of the independent system operator;

20 B. One or more competitive providers have any role in the
21 selection of a person who selects the independent system
22 operator; or

24 C. One or more competitive providers have a role in the
25 operation or management of the independent system operator.

26 7. Qualifying facility. "Qualifying facility" has the same
27 meaning as provided in section 3303.

30 8. Transmission and distribution plant. "Transmission and
31 distribution plant" means any real estate, fixtures and personal
32 property owned, controlled, operated or managed in connection
33 with or to facilitate the transmission, distribution or delivery
34 of electricity for light, heat or power for public use and all
35 conduits, ducts or other devices, materials, apparatus or
36 property for containing, holding or carrying conductors used for
37 the transmission of electricity for light, heat or power for
38 public use.

40 9. Transmission and distribution utility. "Transmission
41 and distribution utility" means a person, its lessees, trustees,
42 receivers or trustees, appointed by a court, owning, controlling,
43 operating or managing any transmission and distribution plant on
44 or after the effective date of retail competition. An electric
45 utility owning, controlling, operating or managing any
46 transmission and distribution plant on the effective date of
47 retail competition becomes on that date a transmission and
48 distribution utility.

2 10. Uneconomic costs. "Uneconomic costs" means those
generation related costs that an electric utility has incurred or
4 for which it is liable that are in excess of comparable current
market costs and that are rendered unrecoverable due to the
6 transition to retail electric competition.

8 §4412. Retail electric competition

10 1. Retail electric competition. Except as provided in this
chapter but notwithstanding any other provision of this Title, on
12 or after the effective date of retail electric competition, a
competitive provider may sell to any retail consumer electric
14 energy or capacity or other energy-related products or services
other than transmission and distribution services. Except as
16 otherwise provided by the commission by rule, these products or
services must be delivered to the customer over the transmission
18 and distribution facilities of a transmission and distribution
utility.

20 2. Regulation of providers. Except as provided in this
chapter but notwithstanding any other provision of this Title, on
22 and after the effective date of competition, competitive
providers are not electric utilities and are not subject to
24 commission regulation as electric utilities. The commission may
by rule:

26 A. Establish and enforce reasonable licensing requirements
28 for competitive providers, which must be designed to
encourage ease of entry into the market by smaller
30 competitors; and

32 B. Establish and enforce reasonable standards of conduct
34 for competitive providers that protect consumers from
misrepresentation, fraud and abuse, including unauthorized
36 switching of customer accounts between competitive providers.

38 §4413. Divestiture

40 1. Assets divested. On or before the effective date of
retail competition, an electric utility shall divest generation
42 assets by auction.

44 2. Proceeds of divestiture. The proceeds of any
divestiture by an electric utility of a generation asset must be
46 netted against the book value of the asset and any surplus must
be used to reduce the remaining liabilities of the utility. Any
48 deficiency must be collected at the discretion of the commission
pursuant to section 4414, subsection 2.

2 3. Utility activities after effective date of retail
3 competition. On and after the effective date of retail
4 competition, an electric utility may operate only as a
5 transmission and distribution utility and may not operate or
6 provide services as a competitive provider, except that any
7 electric utility that has a contract with a qualifying facility
8 or an ownership or other interest in a nuclear power plant
9 located in the State may continue to sell at wholesale the
10 electric power it purchases from those sources. The commission
11 shall adopt rules governing the manner in which a transmission
12 and distribution utility may market and sell that power. Except
13 as otherwise provided in this chapter, on and after the effective
14 date of competition, a transmission and distribution utility is
15 subject to regulation by the commission as an electric utility.

16 **§4414. Transmission and distribution rates; mitigation;**
17 **generation contracts**

18
19 Notwithstanding any other provision of law, on and after the
20 effective date of competition, the commission shall establish the
21 rates for transmission and distribution services in accordance
22 with this section.

23
24 1. Equitable and balanced. The commission shall ensure
25 that rates for transmission and distribution services are
26 equitable, balanced and in the public interest. In setting
27 rates, the commission shall balance the interests of ratepayers,
28 the interests of the shareholders of the transmission and
29 distribution utility and the need to improve the state economy.
30 Rates that are in the public interest include rates that are
31 designed to improve the state economy and are consistent with the
32 constitutional rights of the transmission and distribution
33 utility.

34
35 2. Uneconomic cost recovery. The commission shall ensure
36 that a transmission and distribution utility has a similar
37 opportunity to recover uneconomic costs on and after the
38 effective date of competition as the preceding, vertically
39 integrated electric utility did before that date.

40
41 3. Mitigation. Rates set by the commission under this
42 section must provide incentives to ensure that a transmission and
43 distribution utility pursues all opportunities to achieve
44 appropriate mitigation of all uneconomic costs. Appropriate
45 mitigation includes extensions of contracts with qualifying
46 facilities that lower the per-kilowatt-hour cost to the
47 transmission and distribution utility.

48
49 4. Unbundling. Rates set pursuant to this section for
50 transmission and distribution services must be separated from

2 rates for other electric services and, except as otherwise
3 provided in this chapter, may not include recovery of any costs
4 associated with a transmission and distribution utility's:

6 A. Ownership interests in operation of generating assets;

8 B. Contractual interests in qualifying facilities; or

10 C. Ownership interests in or operation of any nuclear power
11 plant located in this State.

12 5. Proceedings. All proceedings under this section to
13 establish the rates and charges for services of transmission and
14 distribution utilities, including proceedings to review and
15 evaluate uneconomic costs, are adjudicatory proceedings within
16 the meaning of Title 5, section 8002, subsection 1.

18 **§4415. Obligation to connect; disconnection**

20 On and after the effective date of retail electric
21 competition, a transmission and distribution utility shall on the
22 request of a person seeking electric service within the
23 transmission and distribution utility's service territory,
24 connect that person to the utility's transmission and
25 distribution system. The commission may establish rules
26 governing transmission and distribution utility disconnection of
27 customers from the transmission and distribution system.

28 **§4416. Entrance and exit fees**

30 A transmission and distribution utility may not impose or
31 collect any rate or charge for the entrance or exit of a customer
32 from the transmission and distribution system, except with the
33 voluntary agreement of the customer.

34 **§4417. Standard offer**

36 The commission shall require by rule each transmission and
37 distribution utility to make available a standard service offer
38 to all customers who choose not to purchase in the competitive
39 energy market on or after the effective date of competition. The
40 standard service offer is an offer by a transmission and
41 distribution utility for the sale of electricity by one or more
42 competitive providers and sold to consumers at a rate per
43 kilowatt hour established at least every 3 years by a competitive
44 bidding process established by the commission by rule. The
45 commission may establish different standard service offers for
46 different classes of customers. When possible, the commission
47 shall structure standard service offers in a manner that
48 is consistent with the public interest.

2 encourages competition among energy suppliers bidding to provide
3 the standard service.

4 **§4418. Trade practices enforcement**

6 The commission may investigate violations of and prosecute
7 enforcement actions pursuant to Title 5, chapter 10 and Title 10,
8 chapter 201 if the violation involves the services or products of
9 a competitive provider or a transmission and distribution utility.

10 **§4419. Rules**

12 Rules adopted by the commission pursuant to this chapter are
13 major substantive rules as defined in Title 5, chapter 375,
14 subchapter II-A.

16 **Sec. 2. Conforming amendments.** The Public Utilities
17 Commission, by January 1, 1998, shall submit to the Joint
18 Standing Committee on Utilities and Energy draft legislation
19 proposing amendments to the Maine Revised Statutes that the
20 commission determines necessary to carry out the purposes of
21 this chapter. The Joint Standing Committee on Utilities and
22 Energy may report out legislation on electric industry
23 restructuring to the Second Regular Session of the 118th
24 Legislature.

26
27
28 **SUMMARY**

30 This bill permits retail competition in the electric
31 industry beginning January 1, 2000 unless the Public Utilities
32 Commission determines that the New England electric transmission
33 system is not managed by an independent system operator or that a
34 competitive energy market does not exist in the New England
35 region.

36 This bill also requires electric utilities to divest all
37 their generation assets, other than interests in generation
38 assets located outside the United States, qualifying facilities
39 and interests in the Maine Yankee Atomic Power Company, by
40 auction, on or before the effective date of retail competition.
41 Beginning on the effective date of retail competition, electric
42 utilities are limited to and regulated by the Public Utilities
43 Commission as "transmission and distribution utilities" except
44 that the electric utilities are permitted to continue to market
45 and sell at wholesale electric energy to which they are entitled
46 under contracts with qualifying facilities and nuclear power
47 plants. The Public Utilities Commission continues to regulate
48 those sales. The Public Utilities Commission is required to
49 ensure that a transmission and distribution utility has a similar
50

2 opportunity to recover uneconomic costs on or after the effective
date of retail competition as it did before that date. Rates for
4 transmission and distribution services are fully unbundled from
rates for other services and regulated by the commission.

6 This bill creates a mechanism for the creation of standard
service offers for customers that do not wish to shop for power
8 in the competitive market and imposes on transmission and
distribution utilities an obligation to connect to their systems,
10 on request, any customer in their services territories.

12 This bill prohibits entrance and exit fees, except when
agreed to by the customer.

14 This bill permits the Public Utilities Commission to impose
16 licensing conditions on competitive energy providers and to
establish standards of conduct designed to protect consumers.
18 Competitive energy providers are otherwise exempt from regulation
by the Public Utilities Commission. This bill permits the Public
20 Utilities Commission to enforce antitrust and unfair trade
practices laws as those laws may apply to competitive energy
22 providers and transmission and distribution utilities and related
entities.