

MAINE STATE LEGISLATURE

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UTILITIES AND ENERGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1380, L.D. 1935, Bill, "An Act to Ensure the Transferability of the Generating Assets of Electric Utilities"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Electric Utilities'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 35-A MRSA §102, sub-§6, as amended by PL 1987, c. 613, §1, is further amended to read:

6. Electric plant. "Electric plant" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, conservation, load management, transmission, delivery or furnishing of electricity for light, heat or power, for public use, and all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power for public use. "Electric plant" includes, but is not limited to, fixtures and personal property on the premises of a utility's customer, financed in whole or in part by that utility, and found by the commission to constitute a cost-effective investment in conservation or load management. In the case of these conservation or load management investments only, "electric plant" may include property actually owned by the customer or by a party other than the utility. The presence of property on the premises of a customer or other party, which property is included in the rate base of an electric

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utility as qualifying conservation or load management investment, shall may not cause the customer or other party to be determined to be a public utility for any purpose.

"Electric plant" does not include excluded electric plant, as defined in subsection 6-A.

Sec. 2. 35-A MRSA §102, sub-§6-A is enacted to read:

6-A. Excluded electric plant. "Excluded electric plant" means:

A. Prior to March 1, 2000, any generation assets, as defined in section 3201, subsection 10, and any related interconnecting transmission or distribution facilities used for the purpose of connecting one or more generation assets to transmission or distribution plant, as defined in section 3201, subsection 18, to the extent the generation assets are owned, leased, controlled, operated or managed for one or more of the following purposes:

(1) For the generation of electricity for sale for resale, or for sale at retail to any electric consumer for delivery outside of the State;

(2) For the generation of electricity by a small power producer or cogenerator for its own use, for its tenants or its associates, as provided in section 3305, subsection 2;

(3) For the generation of electricity by an electric generation enterprise for its own use or for its affiliates as provided in chapter 31, subchapter V; or

(4) For self generation, as defined in subsection 16-A.

Prior to March 1, 2000, "excluded electric plant" does not include electric plant owned, leased, controlled, operated or managed by an entity that was regulated by the commission as an electric utility before September 19, 1997 or by an entity owning, operating, leasing, managing or controlling a nuclear power plant, as defined in section 4352, subsection 9.

B. After February 29, 2000, "excluded electric plant" means any generation assets, as defined in section 3201, subsection 10, other than generation assets held by an electric utility pursuant to section 3204, subsection 3 or 6.

Sec. 3. 35-A MRSA §102, sub-§16-A is enacted to read:

2 16-A. Self generation. "Self generation" means the
4 generation of electricity for the use of an entity that owns,
 leases, operates, controls or manages, in whole or in part,
6 generation assets, as defined in section 3201, subsection 10,
 provided that the electricity is not transmitted over
8 transmission and distribution plant, as defined in section 3201,
 subsection 18.

10 **Sec. 4. 35-A MRSA §906, sub-§3** is enacted to read:

12 3. Domestic electric utility. For purposes of this section
14 only, the term "domestic electric utility" does not include an
 entity that is not an electric utility as a result of the
16 application of section 102, subsection 6-A.

18 **Sec. 5. 35-A MRSA §3131, sub-§1-A** is enacted to read:

20 1-A. Electric utility. "Electric utility" has the same
 meaning as defined in section 102, subsection 5.

22 **Sec. 6. 35-A MRSA §3132, sub-§3-A,** as enacted by PL 1989, c.
24 60, §4, is amended to read:

26 3-A. Minor transmission line construction projects. Each
 domestic electric utility shall file annually with the commission
28 a schedule of minor transmission line construction projects ~~which~~
 that it intends to carry out during the next 5 years concerning
30 transmission lines that will be capable of operating at 100
 kilovolts or more. A minor transmission line construction
32 project ~~shall be~~ is a transmission line construction project, the
 cost of which does not exceed 25% of the utility's current annual
34 transmission property depreciation charge. The schedule ~~shall~~
 must describe each project, showing the length, location and
 estimated cost.

36
38 If the commission determines that an investigation of any minor
 transmission line construction project is warranted, it shall
40 notify the electric utility within 60 days of the annual filing
 and the electric utility ~~shall then be required to~~ must then
42 comply with the provisions of this section with respect to that
 project. The absence of commission notification requiring the
44 utility to file a petition does not preclude such notification in
 subsequent years.

46 For purposes of this subsection only, the term "domestic electric
48 utility" does not include an entity that is not an electric
 utility as a result of the application of section 102, subsection
 6-A.

2 **Sec. 7. 35-A MRSA §3140, sub-§5** is enacted to read:

4 5. Exemption. An entity that is not an electric utility as
6 a result of the application of section 102, subsection 6-A is
 exempt from the requirements of this section.

8 **Sec. 8. 35-A MRSA §3142, sub-§3-A** is enacted to read:

10 3-A. Retail electric service. For the purposes of this
12 section "retail electric service" does not include the sale of an
14 electric commodity from an excluded electric plant, as defined in
16 section 102, subsection 6-A, unless the sale is of generation
 service, as defined in section 3201, subsection 11, to a person
 who is not an affiliate, as defined in section 3180, subsection 1.

18 **Sec. 9. 35-A MRSA §3204, sub-§8** is enacted to read:

20 8. Authority to transfer title. Except as otherwise
22 expressly provided by law, a law of this State enacted prior to
24 September 1, 1997, including any private and special law, that
26 grants generation-asset-related rights, privileges or immunities
 to an investor-owned electric utility is deemed to grant
 authorization to the investor-owned electric utility to convey or
 otherwise transfer those rights, privileges or immunities in
 accordance with this section only if:

28 A. The investor-owned utility provides to the commission a
30 copy of the law granting the rights, privileges or
 immunities and a description of the proposed transfer; and

32 B. The commission makes a written finding that the law
34 grants rights, privileges or immunities that are generation
36 assets required to be divested under this section or that
 are necessary to the ownership or operation of generation
 assets required to be divested under this section.

38 Upon the issuance of a written finding by the commission under
40 paragraph B, an electric utility is authorized to transfer those
42 generation-asset-related rights, privileges and immunities
44 identified in the written finding of the commission, provided
46 that the electric utility complies with all other applicable
 requirements of law, including section 1101. The commission may
 issue a written finding under paragraph B in an order approving a
 divestiture of generation assets, pursuant to section 1101.

48 For purposes of this subsection, "generation-asset-related
50 rights, privileges or immunities" means rights, privileges or
 immunities that constitute generation assets or that are
 necessary to the ownership or operation of generation assets.

including water rights associated with hydro-electric facilities. For purposes of this subsection, the term "investor-owned electric utility" includes an affiliate of an investor-owned electric utility to the extent that the affiliate is transferring an asset that the affiliate is required to divest pursuant to this section.

Nothing in this subsection may be interpreted to permit the transfer of any rights, privileges or immunities that by law are expressly nontransferable or that are transferable only on condition, unless the condition is met. Nothing in this subsection may be interpreted as extinguishing or affecting any lawful rights, privileges or immunities that any person or entity or the public may have in any property held or transferred by an electric utility. Nothing in this section authorizes the sale or transfer of any right of eminent domain. Any right of eminent domain held by an investor-owned electric utility in relation to generation-asset-related rights, privileges or immunities terminates upon the divestiture of the generation-asset-related rights, privileges or immunities.

Sec. 10. Application and interpretation. Whether an entity that owns, leases, controls, operates or manages electric plant, other than "excluded electric plant" as defined in the Maine Revised Statutes, Title 35-A, section 102, subsection 6-A, is an electric utility is determined by application of applicable provisions of the Maine Revised Statutes, Title 35-A. The definition of "excluded electric plant" under Title 35-A, section 102, subsection 6-A may not be construed to affect the application of other provisions of Title 35-A in any way other than to create the specific exclusions provided for in subsection 6-A. Nothing in this Act may be construed to affect the meaning of the term "for public use" as used in Title 35-A.'

SUMMARY

This amendment replaces the bill.

This amendment creates a definition of "excluded electric plant." Under this amendment, ownership of excluded electric plant does not cause an entity to be considered an electric utility or to be subject to regulation as an electric utility under the Maine Revised Statutes, Title 35-A. Prior to March 1, 2000, "excluded electric plant" includes generators used to produce energy sold at wholesale, small power producers, cogenerators, electric generation enterprises and self generators. After February 29, 2000, "excluded electric plant" includes all generation assets, other than assets held by an electric utility.

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2 Under this amendment, the Legislature grants a limited
4 authorization to electric utilities to transfer certain rights,
6 privileges or immunities that have been granted by law to the
8 electric utilities. The authorization is limited as follows.

10 1. No authorization is given if there is an express
12 provision in law denying authorization to transfer the rights,
14 privileges or immunities.

16 2. If by law the rights, privileges or immunities may only
18 be transferred upon condition, the condition must be met.

20 3. The authorization includes only those rights, privileges
22 and immunities that are generation assets or that are necessary
24 to the ownership or operation of generation assets required by
26 law to be divested.

28 4. The authorization is granted only on the condition that
30 the law granting the right, privilege or immunity is provided to
32 the Public Utilities Commission and the commission makes a
34 written finding that the law does in fact grant rights,
36 privileges or immunities that are generation assets or that are
38 necessary to the ownership or operation of generation assets
40 required to be divested.

5. The authorization does not exempt an electric utility
from complying with other requirements of law, including
obtaining Public Utilities Commission approval for the transfer
of the assets.

6. The authorization does not extinguish or affect any
lawful rights, privileges or immunities that any person, entity
or the public may have in any property held or transferred by an
electric utility.

7. The authorization does not permit the sale or transfer
of any right of eminent domain and any right of eminent domain
held by an electric utility terminates upon the divestiture of
assets to which the right relates.