

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2680

H.P. 1937

House of Representatives, April 7, 2000

**An Act Concerning Certain Contracts Affected by Electric Industry
Restructuring.**

(EMERGENCY)

Reported by Representative DAVIDSON for the Joint Standing Committee on Utilities and Energy pursuant to Public Law 1997, chapter 316, section 12.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

2 **Emergency preamble. Whereas,** Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 **Whereas,** the law governing certain contracts affected by
6 electric industry restructuring needs to be modified immediately
to address certain unanticipated developments; and

8 **Whereas,** in the judgment of the Legislature, these facts
10 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
12 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

16 **Sec. 1. PL 1997, c. 316, §6** is repealed and the following
18 enacted in its place:

20 **Sec. 6. Qualifying facility contracts tied to retail tariffs.** Certain
22 contracts for the sale of energy, or energy and capacity, by
qualifying facilities contain terms that establish or adjust the
24 purchase rate based upon the retail tariff rate or changes to
that retail tariff rate paid by the qualifying facility to the
26 electric utility for its purchases of electricity or upon
reference to a particular retail tariff rate or changes in such
28 retail tariff rate. The Legislature finds that after the date of
retail access as provided for in this Act, a question may arise
30 as to whether there is a retail tariff rate that provides for a
comparable standard for sale of combined generation and
32 transmission or distribution services. Following the
implementation of retail access as provided for in this Act, the
34 Public Utilities Commission shall, at the request of a qualifying
facility or a utility that is a party to such a contract,
36 establish a contract rate as follows.

38 1. For contracts that involve arrangements for the
simultaneous purchase and sale of electricity:

40 A. For years in which the utility has sold the output of the
42 qualifying facility contract pursuant to the Maine Revised
Statutes, Title 35-A, section 3204, subsection 4 and the
44 qualifying facility has, as of the effective date of this
paragraph, contracted for retail power supply, the
46 commission shall establish or adjust the contract rate based
on the annual change, determined on a monthly basis, in the
48 average of the total price paid for electric services by all
retail customers in the utility's service territory taking
50 service at the same voltage level as the qualifying
facility. For purposes of this paragraph, the term "annual

2 charge determined on a monthly basis" means the charge
3 calculated by comparing the applicable figure for the month
4 for which a contract rate is to be established with the
5 applicable figure for the same month in the prior year;

6 B. For years in which the utility has sold the output of the
7 qualifying facility contract pursuant to Title 35-A, section
8 3204, subsection 4 and the qualifying facility has not, as
9 of the effective date of this paragraph, contracted for
10 retail power supply, the commission shall establish the
11 contract rate as a rate per kilowatt hour for each month
12 equal to the sum of the average per-kilowatt hour cost to
13 the qualifying facility of its purchases during the same
14 month of transmission and distribution service under all
15 applicable tariffs and of generation service. The qualifying
16 facility shall obtain its generation service through a
17 process that is approved by the commission; and

18 C. Notwithstanding any other provision of law, for years in
19 which the utility has not sold the output of the qualifying
20 facility contract pursuant to Title 35-A, section 3204,
21 subsection 4, the commission may direct the utility to sell
22 the output of the qualifying facility back to the qualifying
23 facility or otherwise act to place the qualifying facility
24 and utility as close as possible to their positions with
25 respect to the contract prior to the implementation of
26 retail access. In determining the positions of the
27 qualifying facility and the utility with respect to the
28 contract prior to the implementation of retail access, the
29 commission shall, at a minimum, consider and make specific
30 findings with regard to:

31 (1) Benefits the qualifying facility received under
32 the contract, including any ability to avoid the
33 purchase of standby service and the cost of balancing
34 short-term differences in power generation and use; and
35

36 (2) Benefits the utility received under the contract.

37 To the extent the commission is unable to restore both the
38 qualifying facility and the utility to their positions with
39 respect to the contract prior to the implementation of
40 retail access, the commission shall act to equitably
41 apportion the resulting costs and benefits between the
42 qualifying facility and the utility. The commission shall
43 issue a decision under this paragraph within 6 months of a
44 filing by a utility or a qualifying facility for a
45 determination pursuant to this paragraph.
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2 2. For any contract to which this section applies that does
not involve arrangements for the simultaneous purchase and sale
4 of electricity, the commission shall establish or adjust the
contract rate based on the annual change in the average of the
6 total price paid for electric services by all retail customers in
the utility's applicable rate class. The commission shall choose
8 the applicable rate class and specific methodology for
establishing or adjusting the rate to preserve as nearly as
10 possible the parties' benefits and burdens under the terms of the
contract, as amended.

12 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.

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FISCAL NOTE

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The Public Utilities Commission will incur some minor
additional costs to establish contract rates for certain
20 qualifying facility contracts affected by electric industry
restructuring. These costs can be absorbed within the
22 commission's existing budgeted resources.

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SUMMARY

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This bill, which is reported out by the Joint Standing
28 Committee on Utilities and Energy pursuant to Public Law 1997,
chapter 316, section 12, amends a provision of law governing
30 certain qualifying facility contracts affected by electric
industry restructuring. Under this bill, the Public Utilities
32 Commission is given authority, within certain parameters, to
establish contract rates based on the type of contract and the
34 factual context.