

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

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September 5, 1996 to September 7, 1996

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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

CHAPTER 316

H.P. 1274 - L.D. 1804

An Act to Restructure the State's
Electric Industry

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

Sec. 1. 35-A MRSA §3139, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. 2. 35-A MRSA §3140, sub-§§1, 3 and 4, as enacted by PL 1987, c. 141, Pt. A, §6, are amended to read:

1. Foreign electric utility to notify commission before acting within this State. A foreign electric utility ~~acting under section 3139~~ shall, before constructing, purchasing, owning, controlling, operating, managing or otherwise participating in a joint or common interest in a utility facility within this State:

A. Notify the commission in writing of the action to be taken by the utility; and

B. Provide any information reasonably required by the commission under section 3132.

3. Registered office and agent; service of process. A foreign electric utility ~~acting under section 3139~~ shall:

A. ~~Designate~~ Shall designate and continuously maintain in this State a registered office and a registered agent in accordance with Title 13-A, section 1212; and

B. ~~Be~~ is subject to service of process, notice or demand as provided in Title 13-A, section 1212.

4. Certificate of agency with regulatory jurisdiction over foreign electric utility. Upon the filing with the commission of a certificate of the appropriate regulatory agency of the state of domicile or principal locus of a foreign electric utility, or of the United States, stating either that the agency has regulatory jurisdiction over the issuance of stocks, bonds or other evidences of indebtedness payable more than 12 months from date of issue by that foreign electric utility to finance a utility facility in this State or that the agency has general supervision of that foreign electric utility in the conduct of its electric utility business, that foreign electric utility ~~shall~~ may not be deemed an "electric utility" as defined in section 102, subsection 5, merely by reason of the exercise by it of the authority granted in former section 3139.

Sec. 3. 35-A MRSA c. 32 is enacted to read:

CHAPTER 32

ELECTRIC INDUSTRY RESTRUCTURING§3201. Definitions

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

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

2. Aggregate. "Aggregate" means to organize individual electricity consumers into a group or entity for the purpose of purchasing electricity on a group basis.

3. Aggregator. "Aggregator" means an entity that gathers individual customers together for the purpose of purchasing electricity.

4. Broker. "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity.

5. Competitive electricity provider. "Competitive electricity provider" means a marketer, broker, aggregator or any other entity selling electricity to the public at retail.

6. Consumer-owned transmission and distribution utility. "Consumer-owned transmission and distribution utility" means any transmission and distribution utility wholly owned by its consumers, including, but not limited to:

A. The transmission and distribution portion of a rural electrification cooperative organized under chapter 37;

B. The transmission and distribution portion of an electrification cooperative organized on a cooperative plan under the laws of the State;

C. A municipal or quasi-municipal transmission and distribution utility;

D. The transmission and distribution portion of a municipal or quasi-municipal entity providing generation and other services; and

E. A transmission and distribution utility wholly owned by a municipality.

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

8. Electric billing and metering services.

"Electric billing and metering services" means the following services:

- A. Billing and collection;
- B. Provision of a meter;
- C. Meter maintenance and testing; and
- D. Meter reading.

9. Entity. "Entity" means a person or organization, including but not limited to any political, governmental, quasi-governmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization.

10. Generation assets. "Generation assets" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the generation of electric power.

11. Generation service. "Generation service" means the provision of electric power to a consumer through a transmission and distribution utility but does not encompass any activity related to the transmission or distribution of that power.

12. Large, investor-owned transmission and distribution utility. "Large, investor-owned transmission and distribution utility" means an investor-owned transmission and distribution utility serving more than 50,000 retail customers.

13. Marketer. "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.

14. Public entity. "Public entity" includes the State, any political subdivision of the State, a municipality and any quasi-municipal entity.

15. Qualifying facility. "Qualifying facility" has the same meaning as provided in section 3303.

16. Small, investor-owned transmission and distribution utility. "Small, investor-owned transmission and distribution utility" means an investor-owned transmission and distribution utility serving 50,000 or fewer retail customers.

17. Retail access. "Retail access" means the right of a retail consumer of electricity to purchase generation service from a competitive electricity provider.

18. Transmission and distribution plant. "Transmission and distribution plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the transmission, distribution or delivery of

electricity for light, heat or power for public use and includes all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used, or to be used, for the transmission or distribution of electricity for light, heat or power for public use.

19. Transmission and distribution utility.

"Transmission and distribution utility" means a person, its lessees, trustees, receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State.

§3202. Retail access; deregulation

1. Right to purchase generation. Beginning on March 1, 2000, all consumers of electricity have the right to purchase generation services directly from competitive electricity providers.

2. Deregulation of generation services. Except as otherwise provided in this chapter, competitive electricity providers are not subject to regulation under this Title on or after March 1, 2000.

3. Aggregation permitted; limitation. When retail access begins, consumers of electricity may aggregate their purchases of generation service in any manner they choose. If a public entity serves as an aggregator, it may not require consumers of electricity within its jurisdiction to purchase generation service from that entity.

4. Electric billing and metering services. Beginning March 1, 2002, pursuant to rules adopted by the commission, the provision of electric billing and metering services is subject to competition. The commission by rule may establish an earlier date for the beginning of competition for the provision of billing or metering services, except that the commission may not set a beginning date that is prior to March 1, 2000.

The commission by rule shall establish minimum standards necessary to protect consumers of these services and codes of conduct governing the relationship among transmission and distribution utilities providing electric billing and metering services, any affiliates of transmission and distribution utilities providing such services and providers of such services that are not affiliated with a transmission and distribution utility. The commission shall determine each transmission and distribution utility's costs of providing electric billing and metering services that are reflected in consumer rates, including capital costs, depreciation, operating expenses and taxes, and shall separate this portion of the consumer rate into a separate charge.

Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

§3203. Licensing of competitive electricity providers; consumer protections; enforcement

1. Authority. In order to provide effective competition in the market for the generation and sale of electricity in the State and to provide an orderly transition from the current form of regulation to retail access, the commission shall license competitive electricity providers in accordance with this section.

2. Requirements. A competitive electricity provider may not undertake the sale of electricity at retail in this State without first receiving a license from the commission. Before approving a license application, the commission must receive from the applicant:

A. Evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason;

B. Evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities;

C. Disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the commission in the 12 months prior to the date of license application;

D. Evidence of the ability to satisfy the renewable resource portfolio requirement established under section 3210; and

E. Disclosure of the names and corporate addresses of all affiliates of the applicant.

The commission shall consider the need for requiring and, if it determines there is a need, may require a competitive electricity provider to file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service.

3. Informational filings; public information. The commission shall establish by rule information disclosure and filing requirements for competitive electricity providers. The rules must require generation providers to file their generally available rates, terms and conditions with the commission. The commission, subject to appropriate protective orders,

may require the submission of individual service contracts or any other confidential information from a competitive electricity provider.

The commission by rule shall establish standards for publishing and disseminating, through any means considered appropriate, information that enhances consumers' ability to effectively make choices in a competitive electricity market.

Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

4. Standard consumer protection provisions.

As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a customer, wherever located, with a demand of 100 kilowatts or less:

A. May not terminate generation service without at least 30 day prior notice to the customer;

B. Must offer service to the customer for a minimum period of 30 days;

C. Must allow the customer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection;

D. May not telemarket services to the customer if the customer has filed with the commission a written request not to receive telemarketing from competitive electricity providers;

E. Must provide to the customer within 30 days of contracting for retail service a disclosure of information provided to the commission pursuant to rules adopted under subsection 3 in a standard written format established by the commission; and

F. Must comply with any other provisions adopted by the commission by rule or order.

5. Licensing renewals and revocations. Consistent with all applicable requirements of Title 5, chapter 375, the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.

6. Consumer protection standards; rules. The commission shall establish by rule consumer protection standards and standards to protect and promote market competition in order to protect retail consum-

ers of electricity from fraud and other unfair and deceptive business practices.

7. Penalties. In an adjudicatory proceeding, the commission may impose a penalty of up to \$5,000 for each violation of this section or any consumer protection rule adopted under this section. Each day a violation continues constitutes a separate offense. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under section 117.

8. Dispute resolution. The commission shall resolve disputes between competitive electricity providers and retail consumers of electricity concerning standards established pursuant to subsection 6.

9. Additional actions. The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider.

10. Cease and desist orders. The commission may issue a cease and desist order:

A. Following an adjudicatory hearing held in conformance with Title 5, chapter 375, subchapter IV, if the commission finds that any competitive electricity provider or transmission and distribution utility has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the commission or any lawful order issued by the commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004; or

B. In an emergency, without hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider or a transmission and distribution utility is selling electricity to retail consumers without being duly licensed or is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues in force and effect until further order of the commission or until stayed by a court of competent jurisdiction. In a subsequent hearing the commission shall in a final order affirm, modify or set aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the commission.

11. Restitution. The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.

12. Enforcement. The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it.

13. Notice to Attorney General. If the commission has reason to believe that any competitive electricity provider or transmission and distribution utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

14. Disconnection restricted. A transmission and distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under section 3212.

15. Standard billing. The commission shall consider requiring standard billing information on bills for electric power service. If standard billing information is required, the commission shall investigate the possibility of adopting standards consistent with other New England states. The commission may not prohibit transmission and distribution utilities from contracting with generation service providers to include both entities' charges on a single bill. The commission may not preclude the inclusion of other information on bills for electric power service.

16. Access to load data. Upon request from a competitive electricity provider, the commission shall provide load data on a class basis that is in the possession of a transmission and distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.

17. Rules. Except as otherwise provided in this section, rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

§3204. Divestiture of generation

1. Divestiture required; exceptions. Except as provided in subsection 3, on or before March 1, 2000, each investor-owned electric utility shall divest all generation assets and generation-related business activities other than any:

A. Contract with a qualifying facility or with a demand-side management or conservation provider, broker or host;

B. Ownership interest in a nuclear power plant;

C. Ownership interest in a facility located outside the United States; or

D. Ownership interest in a generation asset that the commission determines is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

No later than January 1, 1999, each investor-owned electric utility shall submit to the commission a plan to accomplish the divestiture required under this subsection. In an adjudicatory proceeding, the commission shall review the plans for consistency with this chapter. By July 1, 1999, the commission shall issue an order approving the plan or modifying the plan to make it consistent with the requirements of this chapter. An investor-owned electric utility shall divest its generation assets in accordance with the commission's order.

2. Commission may require divestiture of Maine Yankee interests. Notwithstanding any other provision of this chapter, the commission, if necessary to achieve the purposes of this chapter, may, in an adjudicatory proceeding, require any investor-owned transmission and distribution utility to divest its ownership interests in the Maine Yankee Atomic Power Company on or after January 1, 2009. The commission may order divestiture under this subsection only after notice to all interested parties and an opportunity for those parties to be heard.

3. Extension; separation required. An investor-owned electric utility may apply to the commission for an extension to permit the utility to divest one or more generation assets after March 1, 2000. The commission shall grant an extension if the commission finds that an extension would be likely to improve the sale value of those assets on the market. If the commission grants an extension, the utility shall transfer to a distinct corporate entity by March 1, 2000 the generation assets to which the extension applies. Conduct of the utility and any affiliated corporate entity receiving the generation assets is governed by section 3205.

The commission by rule shall establish the procedure for granting extensions. By March 1, 1999, the

commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

4. Sale of capacity and energy required. The commission by rule shall require each investor-owned electric utility after February 28, 2000 to sell rights to capacity and energy from all generation assets and generation-related business, including purchased power contracts that are not divested pursuant to subsection 1, except those rights to capacity and energy that the commission determines are necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

In the rules adopted under this subsection, the commission shall establish procedures to promote the maximum market value for these rights. Nothing in this subsection prohibits a utility from re-negotiating, buying out or buying down a contract with a qualifying facility in accordance with applicable laws. By March 1, 1999, the commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

5. Ownership of generation prohibited. Except as otherwise permitted under this chapter, on or after March 1, 2000, an investor-owned transmission and distribution utility may not own, have a financial interest in or otherwise control generation or generation-related assets.

6. Generation assets permitted. On or after March 1, 2000, notwithstanding any other provision in this chapter, the commission may allow an investor-owned transmission and distribution utility to own, have a financial interest in or otherwise control generation and generation-related assets to the extent that the commission finds that ownership, interest or control is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

7. Corporate law; exemptions. An order of the commission directing or approving divestiture renders an electric utility and its directors, officers and shareholders exempt from Title 13-A, sections 514, 517, 624 and 720 and from the Uniform Fraudulent Transfer Act, Title 14, chapter 504 for the matters addressed by the order. A divestiture pursuant to a commission order directing or approving the divestiture does not constitute a sale of all or substantially all of the assets of a corporation within the meaning of Title 13-A, chapter 10.

§3205. Marketing; large utilities

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

A. "Affiliated competitive provider" means a competitive electricity provider whose relationship with a large investor-owned transmission and distribution utility qualifies it as an affiliated interest.

B. "Distribution utility" means a large investor-owned transmission and distribution utility that has an affiliated competitive provider.

C. "Purchasing entity" means a person that purchases 10% or more of the stock of a distribution utility on or after the effective date of this section.

D. "Related entity" means:

(1) Any person who owns, directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of the purchasing entity;

(2) Any person 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1);

(3) Any person 10% or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;

(4) Any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a purchasing entity, provided that the person or group of persons beneficially owns more than 3% of the purchasing entity's voting securities; or

(5) Any purchasing entity of which any person defined in subparagraphs (1) to (4) is an affiliated interest.

E. "Voting securities" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company.

2. Marketing permitted. On and after the beginning of retail access, a large investor-owned transmission and distribution utility may not sell electric energy or capacity to any retail consumer of electricity. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated competitive provider may sell electric energy or capacity to retail consumers of electricity:

A. Outside the service territory of the distribution utility with which it is affiliated; and

B. Within the service territory of the distribution utility with which it is affiliated, except that:

(1) The affiliated competitive provider may not sell or contract to sell more than 33% of the total kilowatt hours sold within the service territory of the distribution utility, as determined by the commission by rule; and

(2) In accordance with section 3212, the affiliated competitive provider may not at any one time provide or bid to provide standard-offer service for more than 20% of electric load within the territory of the transmission and distribution utility with which it is affiliated.

No later than January 1, 2005, based on its evaluation of the development of the competitive retail electric sales market, the commission shall complete an evaluation of the need for the market share limitation imposed under paragraph B, subparagraph (1) and shall report its findings together with any recommendations to the joint standing committee of the legislature having jurisdiction over utility matters.

3. Standards of conduct. The following provisions govern the conduct of a distribution utility and an affiliated competitive provider.

A. A distribution utility may not, through a tariff provision or otherwise, give its affiliated competitive provider or customers of its affiliated competitive provider preference over nonaffiliated competitive electricity providers or customers of nonaffiliated competitive electricity providers in matters relating to any regulated product or service.

B. All regulated products and services offered by a distribution utility, including any discount, rebate or fee waiver, must be available to all customers and competitive electricity providers simultaneously to the extent technically possible and without undue or unreasonable discrimination.

C. A distribution utility may not sell or otherwise provide regulated products or services to its affiliated competitive provider without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for that product or service.

D. A distribution utility shall process all similar requests for a regulated product or service in the same manner and within the same period of time.

E. A distribution utility may not condition or tie the provision of any regulated product, service or rate agreement by the distribution utility to the provision of any product or service in which an affiliated competitive provider is involved.

F. A distribution utility shall process all similar requests for information in the same manner and within the same period of time. A distribution utility may not provide information to an affiliated competitive provider without a request when information is made available to nonaffiliated competitive electricity providers only upon request. A distribution utility may not allow an affiliated competitive provider preferential access to any nonpublic information regarding the distribution system or customers taking service from the distribution utility that is not made available to nonaffiliated competitive electricity providers upon request, and a distribution utility shall instruct all of its employees not to provide affiliated competitive providers or nonaffiliated competitive electricity providers any preferential access to nonpublic information.

G. Employees of a distribution utility may not share with any affiliated competitive provider or any nonaffiliated competitive electricity provider:

(1) Any market information acquired from the affiliated competitive provider or from any nonaffiliated competitive electricity provider; or

(2) Any market information developed by the distribution utility in the course of responding to requests for distribution service.

H. A distribution utility shall keep a log of all requests for information made by the affiliated competitive provider and nonaffiliated competitive electricity providers and the date of the response to such requests. The log is subject to periodic review by the commission. The commission shall establish categories of requests for information and shall specify which categories, if any, are sufficiently trivial to be exempt from the log requirements imposed under this paragraph.

I. A distribution utility may not release any proprietary customer information without the prior written authorization of the customer.

J. A distribution utility shall refrain from giving any appearance of speaking on behalf of its affiliated competitive provider. Neither a distribution utility nor an affiliated competitive provider may in any way represent that any advantage accrues to customers or others in the use of the dis-

tribution utility's services as a result of that customer or others dealing with the affiliated competitive provider. A distribution utility may not engage in joint advertising or marketing programs of any sort with its affiliated competitive provider, nor may the distribution utility promote or market any product or service offered by its affiliated competitive provider. The commission shall maintain a current list of all competitive providers. If a customer requests information about competitive electricity providers, the distribution utility shall provide a copy of a list on which competitive electricity providers appear in random sequence and not in alphabetical order. The distribution utility may not in any manner promote its affiliated competitive provider.

K. Employees of a distribution utility may not state or provide to any customer or potential customer any opinion regarding the reliability, experience, qualifications, financial capability, managerial capability, operations capability, customer service record, consumer practices or market share of any affiliated competitive provider or nonaffiliated competitive electricity provider.

L. Employees of a distribution utility may not be shared with, and must be physically separated from those of, an affiliated competitive provider. The commission may approve an exemption from these separation requirements upon a finding by the commission that:

(1) Sharing employees or facilities would be in the best interest of the public;

(2) Sharing employees or facilities would have no anticompetitive effect; and

(3) The costs of any shared employees or facilities can be fully and accurately allocated between the distribution utility and the affiliated competitive provider.

Any request for an exemption must be accompanied by a full and transparent allocation of costs for any shared facilities or general and administrative support services. The commission shall allow a reasonable opportunity for parties to submit comments regarding any request for an exemption. An exemption is valid until the commission determines that modification or removal of the exemption is necessary.

M. A distribution utility and its affiliated competitive provider shall keep separate books of accounts and records, which are subject to review by the commission.

N. A distribution utility shall establish and file with the commission a dispute resolution proce-

dures to address complaints alleging violations of this section or any rules adopted pursuant to this section. A dispute resolution procedure must, at a minimum, designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the claimant in writing within 30 days after the complaint was received, including a description of any action taken and the complainant's right to file a complaint with the commission if not satisfied with the results of the investigation. The distribution utility shall maintain a log of all new, resolved and pending complaints. The log is subject to annual review by the commission and must include, at a minimum, the written statement of the complaint and the resolution of the complaint or the reason why the complaint is still pending.

O. A distribution utility shall maintain its books of account and records of its transmission and distribution operations separately from those of its affiliated competitive provider, and the transmission and distribution books of account and records must be available for commission inspection.

P. A distribution utility shall maintain in a public place and file with the commission current written procedures implementing the standards of conduct established by this section and rules adopted by the commission pursuant to this section. Such written procedure must be in detail sufficient to enable customers and the commission to determine that the company is in compliance with the requirements of this section.

4. Rules. The commission shall adopt rules implementing the provisions of this section, including:

A. Rules governing the tracking of the amount of kilowatt-hour sales by any affiliated competitive provider compared to the total kilowatt-hour sales within the service territory of the affiliated distribution utility;

B. Rules governing the procedure for divestiture; and

C. Rules establishing standards of conduct for distribution utilities and affiliated competitive providers consistent with the requirements of this section.

Beginning on the effective date of competition and annually thereafter, copies of the rules adopted under this section must be provided by distribution utilities to every employee of the distribution utility and posted prominently in every employee location.

Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375,

subchapter II-A and must be provisionally adopted by March 1, 1999.

5. Penalties. The commission shall require the distribution utility to divest the affiliated competitive provider if the commission determines in an adjudicatory proceeding that:

A. The distribution utility or an affiliated competitive provider has knowingly violated any provision of this section or any rule adopted by the commission pursuant to this section; and

B. The violation resulted or had the potential to result in substantial injury to retail consumers of electric energy or to the competitive retail market for electric energy.

The commission may impose administrative penalties of up to \$10,000 for a violation of any provision of this section or any rule adopted by the commission pursuant to this section. Each day of a violation constitutes a separate offense. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under section 117.

6. Prohibition; divestiture. If, after the effective date of this section, 10% or more of the stock of a distribution utility is purchased by an entity:

A. The purchasing entity and any related entity may not sell or offer for sale generation service to any retail consumer of electric energy in this State; and

B. If, in an adjudicatory proceeding, the commission determines that an affiliated competitive provider obtains an unfair market advantage as a result of the purchase, the commission shall order the distribution utility to divest the affiliated competitive provider.

If the commission orders a divestiture pursuant to this subsection, the distribution utility must complete the divestiture within 12 months of the order to divest, unless the commission grants an extension. Upon application by the distribution utility, the commission may grant an extension for the purpose of permitting the utility to complete a divestiture that has been initiated in good faith but not finalized within the 12-month period. The commission shall oversee and approve a divestiture in accordance with rules adopted pursuant to subsection 4.

7. Effect of divestiture. If the commission orders a distribution utility to divest an affiliated competitive provider pursuant to this section, the distribution utility may not have an affiliated interest in a competitive electricity provider after the divestiture.

§3206. Marketing; small utilities

1. Small utilities; limitations. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated interest of a small investor-owned transmission and distribution utility may sell retail generation service to retail consumers of electricity located within or outside the service territory of the small investor-owned transmission and distribution utility with which it is affiliated.

2. Rules of conduct. By July 1, 1998, the commission shall open a rule-making proceeding to determine the extent of separation between a small investor-owned transmission and distribution utility and an affiliated competitive electricity provider necessary to avoid cross-subsidization and market power abuses. By March 1, 1999, the commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. In adopting rules under this subsection, the commission shall consider all relevant issues, including, but not limited to:

- A. Codes of conduct that may be required to ensure the effectiveness of the separation requirement;
- B. Restrictions on employee activities;
- C. Accounting standards; and
- D. Information and service comparability requirements.

3. Commission study. The commission shall conduct a study to determine the most effective and efficient means of ensuring that the portions of this State that are currently connected to the New England electric grid through transmission lines that pass through Canada are connected to the grid in a manner that ensures that customers in those portions of the State are able to take full advantage of retail access. By January 1, 1999, the commission shall complete its study and report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over utility matters.

§3207. Marketing; consumer-owned utilities

1. Consumer-owned utilities; limitations. Consumer-owned transmission and distribution utilities:

- A. May sell retail generation service only within their respective service territories; and
- B. May not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service.

2. Commission review of marketing within territory. Notwithstanding any other provision of this chapter, the commission by rule shall limit or prohibit sale of generation services by competitive providers within the service territory of a consumer-owned transmission and distribution utility if the commission determines that allowing such sales would cause the consumer-owned transmission and distribution utility to lose its tax-exempt status under federal or state law. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§3208. Stranded cost recovery

1. Stranded costs defined. For the purposes of this section, the term "stranded costs" means a utility's legitimate, verifiable and unmitigable costs made unrecoverable as a result of the restructuring of the electric industry required by this chapter and determined by the commission as provided in this subsection.

2. Calculation. For each electric utility, the commission shall determine the sum of the following to the extent they qualify as stranded costs pursuant to subsection 1:

- A. The costs of a utility's regulatory assets related to generation;
- B. The difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and
- C. The difference between future contract payments and the market value of a utility's purchased power contracts.

When determining the market value of generation assets and purchased power contracts, the commission shall rely to the greatest extent possible on market information, including, but not limited to, market valuations that become known as generation assets and the rights to power under contracts with qualifying facilities are sold.

3. Exclusions. Notwithstanding any other provision of this chapter, the commission may not include any costs for obligations incurred on or after April 1, 1995 in a utility's stranded costs, except that the commission may include:

- A. Regulatory assets created after April 1, 1995 and prior to March 1, 2000 for:
 - (1) The amortization of costs associated with the restructuring of a qualifying facility contract;
 - (2) Costs deferred pursuant to rate plans; or

(3) Energy conservation costs;

B. Obligations incurred by a utility after April 1, 1995 and prior to March 1, 2000 that are beyond the control of the electric utility; and

C. Obligations incurred by an electric utility after April 1, 1995 to reduce potential stranded costs.

4. Mitigation. An electric utility shall pursue all reasonable means to reduce its potential stranded costs and to receive the highest possible value for generation assets and contracts, including the exploration of all reasonable and lawful opportunities to reduce the cost to ratepayers of contracts with qualifying facilities. The commission shall consider a utility's efforts to satisfy this requirement when determining the amount of a utility's stranded costs.

5. Stranded costs recoverable. When retail access begins, the commission shall provide a transmission and distribution utility a reasonable opportunity to recover stranded costs through the rates of the transmission and distribution utility, as provided in this section. The opportunity must be comparable to the utility's opportunity to recover stranded costs before the implementation of retail access under this chapter. Nothing in this chapter may be construed to give a transmission and distribution utility a greater or lesser opportunity to recover stranded costs than existed prior to the implementation of retail access. The commission may reduce or increase the amount of stranded costs that the commission allows a utility to recover based on the efforts of the utility to mitigate its stranded costs.

6. Determination of stranded costs charges. Before retail access begins, the commission shall estimate the stranded costs for each electric utility in the State. The commission shall use these estimates as the basis for a stranded costs charge to be charged by each transmission and distribution utility when retail access begins. In 2003 and every 3 years thereafter until the utility is no longer recovering adjustable stranded costs, the commission shall correct any substantial inaccuracies in the stranded costs estimates associated with adjustable stranded costs and adjust the stranded costs charges to reflect any such correction. The commission may correct adjustable stranded costs estimates and adjust the stranded costs charges at any other time. When correcting stranded costs estimates and adjusting stranded costs charges, the commission shall make any change effective only prospectively and may not reconcile past estimates to reflect actual values.

For purposes of this subsection, "adjustable stranded costs" means stranded costs other than stranded costs associated with divested generation assets.

7. Recovery of stranded costs. The commission shall set an amount of recoverable stranded costs after calculating the net aggregate value of all divested assets that had proceeds exceeding book costs against the aggregate value of all other stranded electricity generation assets. The commission may not shift cost recovery among customer classes in a manner inconsistent with existing law, as applicable.

8. Proceedings. The commission shall conduct separate adjudicatory proceedings to determine the stranded costs for each investor-owned utility and each consumer-owned utility. In the same proceedings, the commission shall establish the revenue requirements for each transmission and distribution utility and stranded costs charges to be charged by each transmission and distribution utility when retail access begins. The proceedings must be completed by July 1, 1999.

§3209. Rate design

The commission shall set charges and rates collected by transmission and distribution utilities in accordance with this section.

1. Applicable law. The design of rate recovery for the collection of transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter must be consistent with existing law, as applicable. The commission may continue to permit recovery, in transmission and distribution utility rates, of costs previously incurred by the utility when it was an integrated electric utility that are not included in the recovery of stranded costs pursuant to section 3208.

2. Proceeding. Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before October 1, 1999 for the design of cost recovery for transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter and for the design of rates for backup or standby service.

3. Exit fees. A customer who significantly reduces or eliminates consumption of electricity due to self-generation, conversion to an alternative fuel or demand-side management may not be assessed an exit or reentry fee in any form for the reduction or elimination of consumption or reestablishment of service with a transmission and distribution utility.

4. Decommissioning costs. As required by federal law, rule or order, the commission shall include in the rates of a transmission and distribution utility decommissioning expenses associated with a nuclear unit.

§3210. Renewable resources

1. Policy. In order to ensure an adequate and reliable supply of electricity for Maine residents and to encourage the use of renewable and indigenous resources, it is the policy of this State to encourage the generation of electricity from renewable sources and to diversify electricity production on which residents of this State rely in a manner consistent with this section.

2. Definition. As used in this section, the term "renewable resource" means a source of electrical generation that generates power that can physically be delivered to the control region in which the New England Power Pool, or its successor as approved by the Federal Energy Regulatory Commission, has authority over transmission and that:

A. Qualifies as a qualifying small power production facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997;

B. Qualifies as a qualifying cogeneration facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997 and was constructed prior to January 1, 1997; or

C. Whose total power production capacity does not exceed 100 megawatts and that relies on one or more of the following:

- (1) Fuel cells;
- (2) Tidal power;
- (3) Solar arrays and installations;
- (4) Wind power installations;
- (5) Geothermal installations;
- (6) Hydroelectric generators;
- (7) Biomass generators; or
- (8) Generators fueled by municipal solid waste in conjunction with recycling.

3. Portfolio requirements. As a condition of licensing pursuant to section 3203, each competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that no less than 30% of its portfolio of supply sources for retail electricity sales in this State are accounted for by renewable resources. By January 1, 1999, the commission shall provisionally adopt rules establishing reasonable procedures for implementing this requirement. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

4. Report. In view of property tax benefits, developments in other states and the development of a market for tradable credits for satisfying renewable resource requirements, the commission shall review the 30% portfolio requirement and make a recommendation for any change to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters no later than 5 years after the beginning of retail competition.

5. Funding for research and development. The commission by rule shall establish a program allowing retail consumers of electricity to make voluntary contributions to fund renewable resource research and development. The program must:

A. Include a mechanism for customers to indicate their willingness to make contributions;

B. Provide that transmission and distribution utilities collect and account for the contributions and forward them to the commission; and

C. Provide for a distribution of the funds to the University of Maine System, the Maine Maritime Academy or the Maine Technical College System for renewable resource research and development.

Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§3211. Conservation programs

The commission shall require transmission and distribution utilities to implement energy conservation programs and include the cost of any such programs in the rates of transmission and distribution utilities. The commission shall require transmission and distribution utilities to select energy efficiency service providers through periodic competitive bidding programs. The commission shall establish a reasonable level of funding for those programs comparable to the amount expended for similar programs in the year 1999 and regularly review the amount of funding needed.

By July 1, 1998, the commission shall commence a rule-making proceeding on energy conservation programs. By July 1, 1999, the commission shall provisionally adopt rules establishing energy conservation programs in compliance with this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

§3212. Standard offer

When retail access begins, the commission shall ensure that standard-offer service is available to all consumers of electricity.

1. Establishment of terms and conditions.

The commission shall open a rule-making proceeding no later than October 1, 1997 to establish terms and conditions for standard-offer service that include, but are not limited to:

A. Entry and exit restrictions;

B. Protection against a standard-offer service provider's failure to provide service as contracted for;

C. Appropriate rate design issues;

D. Retaining averaged prices for all customers in the same class; and

E. Credit, collection and disconnection practices.

By February 15, 1998, the commission shall provisionally adopt rules establishing terms and conditions for standard-offer service. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

2. Selection of standard-offer service providers.

After terms and conditions for standard-offer service have been established under subsection 1, the commission shall administer a bid process to select a standard-offer service provider for that transmission and distribution utility's service territory. By July 1, 1999, the commission shall review the bid submissions for each transmission and distribution utility and select the standard-offer service provider or providers for that utility's service territory.

A. The commission shall determine the general credit data and specific information from general load and usage data that transmission and distribution utilities must provide to potential standard-offer service bidders, including, but not limited to, monthly demand and energy consumption and the number of customers in each customer class. The commission shall ensure that individual customer confidentiality is preserved in this process and that a transmission and distribution utility releases customer-specific data only with the customer's permission. If the transmission and distribution utility incurs additional costs to develop and produce the required data, the commission shall permit that utility to recover those costs through transmission and distribution rates.

B. The commission shall establish the maximum duration of a standard-offer service contract after considering all relevant factors, including, but not limited to, market risks and the need for price stability and contract flexibility.

C. A competitive electricity provider that is an affiliate of a large investor-owned transmission and distribution utility may submit bids to provide standard-offer service for up to 20% of the electric load within the service territory of the large investor-owned transmission and distribution utility with which it is affiliated. To prevent the unfair use of information possessed by a large investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.

D. A consumer-owned transmission and distribution utility and a small investor-owned transmission and distribution utility may submit bids to provide standard-offer service for that utility's service territory. To prevent the unfair use of information possessed by a consumer-owned transmission and distribution utility or a small investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.

By February 15, 1998, the commission shall provisionally adopt rules establishing a methodology for structuring the bidding process for standard-offer service in order to implement the provisions of this subsection. In adopting rules, the commission shall consider methods to ensure, to the extent possible, at least 3 providers of standard-offer service in each transmission and distribution utility service territory, as long as the method does not result in any significant adverse impacts on rates paid by consumers. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

3. Price cap; investigation. If the qualifying bids under subsection 2 for standard-offer service in any service territory, when combined with the regulated rates of transmission and distribution service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission shall investigate whether the implementation of retail access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place. Pursuant to section 3217, the commission shall notify the Legislature of the results of its investigation and its determination.

4. Implementation period. Standard-offer service must be available until March 1, 2005. By January 1, 2004, the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and

in the public interest. The commission shall conclude the investigation by June 30, 2004 and report its results to the Legislature pursuant to section 3217.

5. Territorial and rate class application.

Nothing in this section precludes the commission from permitting or requiring different terms and conditions for standard-offer service in different utility service territories or for different customer classes.

§3213. Bill unbundling; consumer education

1. Unbundled bills. Beginning January 1, 1999, electric utilities shall issue bills that state the current cost of electric capacity and energy separately from transmission and distribution charges and other charges for electric service. By January 31, 1998, each electric utility shall file with the commission a bill unbundling proposal. The commission shall complete its review of those proposals and adopt a rule establishing unbundled bill requirements by July 1, 1998. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

2. Consumer education advisory board; rules.

The commission shall adopt rules implementing a consumer education program in compliance with this subsection.

A. The commission shall immediately organize a consumer education advisory board to investigate and recommend methods to educate the public about the implementation of retail access and its impact on consumers. The commission shall ensure broad representation of residential, industrial and commercial electric consumers, public agencies and the electric industry on the advisory board. Members of the board shall serve without compensation.

B. In its recommendations, the advisory board shall address:

- (1) The level of funding necessary for adequate educational efforts and the appropriate source of that funding;
- (2) The aspects of retail access on which consumers need education;
- (3) The most effective means of accomplishing the education of consumers;
- (4) The appropriate entities to conduct the education effort; and
- (5) Any other issue relevant to the education of consumers regarding the implementation of retail access and its impact on consumers.

C. The commission shall consider the recommendations of the advisory board when adopting rules to implement a consumer education program. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. The commission shall provide these rules to the Legislature in accordance with Title 5, chapter 375, subchapter II-A, no later than February 1, 1998.

§3214. Needs-based low-income assistance

1. Policy. In order to meet legitimate needs of electricity consumers who are unable to pay their electricity bills in full and who satisfy eligibility criteria for assistance, and recognizing that electricity is a basic necessity to which all residents of the State should have access, it is the policy of the State to ensure adequate provision of financial assistance.

2. Low-income assistance. In order to continue existing levels of financial assistance for low-income households and to meet future increases in need caused by economic exigencies, the commission shall:

A. Receive funds collected by all transmission and distribution utilities in the State at a rate set by the commission in periodic rate cases; and

B. Set initial funding for programs based on an assessment of aggregate customer need in periodic rate cases. The funding formula may not result in assistance being counted as income or as a resource in other means-tested assistance programs for low-income households. To the extent possible, assistance must be provided in a manner most likely to prevent the loss of other federal assistance.

3. Special rate. Nothing in this section may be construed to prohibit a transmission and distribution utility from offering any special rate or program for low-income customers that is not in effect as of the effective date of this chapter, subject to the approval of the commission.

4. Financial support. If the Legislature appropriates from the General Fund financial support for households and individuals receiving assistance under this section, the commission may not terminate the assistance provided by transmission and distribution utilities unless the General Fund source has completely replaced such assistance. The commission may adjust the assistance provided pursuant to this section based on the amount of any financial support from the General Fund and may reinstitute assistance subsequent to any termination of assistance if the commission finds that the General Fund source no longer completely replaces such assistance.

§3215. Commission authority and responsibility

1. Authority. Without limiting the commission's authority under any other provision of law, the commission may:

A. Intervene and participate in proceedings at the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the United States Department of Energy and other federal agencies and in proceedings conducted by Canadian or other authorities or agencies whenever the interests of competition, consumers of electricity or economic development in this State are affected; and

B. Monitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or to any federal agency regarding:

(1) The safety and economic effects or potential effects of market competition on nuclear units; and

(2) The effects or potential effects of market competition on Maine's air quality.

2. Findings; responsibility. The Legislature finds that, in order for retail competition in this State to function effectively, the governance of any independent system operator with responsibility for operations of the regional transmission system must be fully independent of influence by market participants. The commission shall use all means within its authority and resources to advocate for and promote the interests of Maine ratepayers in any proceeding at the Federal Energy Regulatory Commission involving the development, governance, operations or conduct of an independent system operator.

§3216. Transition; utility employees

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

A. "Eligible employees" means all employees of an electric utility:

(1) Who are not officers of the utility;

(2) Who are employed by the utility on January 1, 1998; and

(3) Who are laid off due to retail competition.

Absent other just cause, a layoff after March 1, 2000 is deemed to have been due to retail competition. The commission by rule shall establish a date after which a layoff is deemed not to have been due to retail competition. An employee is not an eligible employee by reason of

the transfer of the employee's job duties or assignment within a company or within affiliated companies at similar levels of compensation.

B. "Retail competition" means:

(1) Retail access; or

(2) The sale or merger of any generation asset that occurs prior to March 1, 2000.

2. Substantive plan. Prior to the beginning of retail access, each investor-owned electric utility shall prepare a plan for providing transition services and benefits for eligible employees. The plan must:

A. Include a program to assist eligible employees in maintaining fringe benefits and obtaining employment that makes use of their potential;

B. For 2 years after the beginning of retail access, provide to eligible employees retraining services and out-placement services and benefits, including intensive vocational-interests-and-aptitude screening;

C. Provide full tuition for 2 years at the University of Maine or a vocational or technical school in the State or other reasonable retraining services of value equal to full in-state tuition for 2 years at the University of Maine, at the discretion of the eligible employee;

D. For 24 months or until permanent replacement coverage is obtained through reemployment, whichever comes first, provide continued health care insurance at the benefit and contribution levels existing during employment with the utility; and

E. Provide severance pay equal to 2 weeks of base pay for each year of full-time employment.

The plan may include provisions for providing early retirement benefits.

3. Procedural requirements. Each investor-owned utility shall file with the commission a plan for providing transition services and benefits for eligible employees that conforms to the requirements of subsection 2. A plan must be filed prior to the utility finalizing any transaction that would result in an eligible employee being laid off or at least 90 days prior to the start of retail access, whichever is first. Prior to filing the plan with the commission, the utility shall inform its employees and their certified representatives of the provisions of the proposed plan and, in accordance with applicable law, shall confer with those employees or their certified representatives regarding the impact of the proposed plan on those employees and measures to minimize any resulting hardships on those employees.

While a plan is in effect, an investor-owned utility shall file notice with the commission of any closure or relocation of facilities and any action or reorganization that will result in layoffs. The notice must include a description of the actions, the reasons for them and an assessment of their effects on the utility's employees.

4. Collective bargaining. If an investor-owned electric utility company or one or more of its subsidiary or parent companies is party to a collective bargaining agreement recognized by federal or state law, and if as a result of retail competition any of those companies creates, acquires or merges with any other entity, that entity shall continue to recognize and bargain with the union representing the employees of the company at the time of the creation, acquisition or merger and shall refrain from making unilateral changes in the employees' terms and conditions of employment. In addition, any successor employer is bound to the terms of the collective bargaining agreement to the extent permitted by federal law. Nothing in this section prevents any company, corporation or other business from entering into any collective agreement as allowed by state or federal law.

5. Cost recovery. The commission shall allocate the reasonable accrual increment cost of the services and benefits required under this section to ratepayers through charges collected by the transmission and distribution utility. All charges collected must be transferred to a system benefits administrator in the transmission and distribution utility and used to provide services and benefits pursuant to the requirements of this section.

6. Rules. The commission shall adopt rules necessary to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§3217. Reports

1. Annual restructuring report. On December 31st of each calendar year, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over utility matters a report describing the commission's activities in carrying out the requirements of this chapter and the activities relating to changes in the regulation of electric utilities in other states.

In its report the commission shall provide an accounting of the commission's actual and estimated future costs of enforcing and implementing the provisions of this chapter governing the relationship between a transmission and distribution utility and an affiliated competitive electricity provider and the costs incurred by transmission and distribution utilities in complying with those provisions. The commission shall also provide an assessment of the effects of imposing these

costs on ratepayers and the potential effects of assessing transmission and distribution utilities for these costs and prohibiting the costs from being passed through to ratepayers.

2. Proposed changes. If the commission determines, after providing interested parties an opportunity to be heard, that any provision in this chapter is not in the public interest, the commission shall present a report to the joint standing committee of the Legislature having jurisdiction over utility matters stating the basis for the commission's conclusion and including draft legislation designed to modify this chapter consistent with the public interest.

3. Independent system operator. The commission shall monitor events in the region pertaining to:

A. The development of an independent system operator with responsibility for transmission reliability;

B. The management of competitive access to the regional transmission system; and

C. Rights to negotiate potential contracts between sellers and buyers of electricity.

If the commission determines that there exists insufficient independence on the part of the independent system operator from any provider of wholesale transmission, competitive electricity provider or electric utility, or if it determines any other problem threatens regional transmission reliability, the commission shall provide a report to the joint standing committee of the Legislature having jurisdiction over utility matters with a recommendation as to what actions within the authority of the State are available to remedy this problem.

Sec. 4. Rules on filings by competitive electricity providers. In adopting by rule requirements for competitive electricity providers pursuant to the Maine Revised Statutes, Title 35-A, section 3203, subsection 3 the commission may consider any requirements that the commission believes appropriate and shall consider the following filing requirements:

1. A statement of average prices at representative levels of kilowatt-hour usage in the most recent 6-month period;

2. A description of the average duration of supply arrangements with retail customers in the most recent 6-month period;

3. An explanation addressing whether pricing arrangements are fixed or will vary over a specified time period;

4. A statement indicating percentages of electricity supply over the recent 6-month period

under categories of generation, including, but not limited to, oil-fired, nuclear, hydroelectric, coal, biomass or other renewable resources and regional spot market purchases; and

5. A listing of expected air emissions and a comparison of those emissions to a regional average, as determined by the commission, for nitrous oxide, sulfur dioxide, mercury, fine particulates, radionuclides and carbon dioxide, calculated for a competitive electricity provider's supply sources in the aggregate over the most recent 6-month period.

Sec. 5. Conservation and qualifying facility contracts. All existing contracts and agreements in effect as of March 1, 2000 between electric utilities and energy resource providers, including but not limited to qualifying facilities, continue in effect notwithstanding any other provision of this Act, and the rights of the parties to these contracts and agreements may not be abrogated or diminished as a result of implementing this Act.

All existing electric utilities shall provide each qualifying facility and each demand-side management or conservation provider, broker or host with whom it has contracts as of March 1, 2000 the option to have the contract or contracts:

1. Retained by the transmission and distribution utility if it is the same legal entity as the electric utility that entered into the contract or contracts; or
2. Assigned by the existing electric utility to the transmission and distribution utility if it exists as a distinct legal entity after implementation of the provisions of this Act.

If contracts with qualifying facilities in existence on March 1, 2000 contain provisions for the simultaneous purchase of energy, or energy and capacity, by an electric utility from a qualifying facility and by a qualifying facility from an electric utility, the transmission and distribution utility shall continue to sell at retail all transmission and distribution services to the qualifying facility, including the transmission of any energy, or energy and capacity, the qualifying facility may obtain in the competitive market. In the case of each such qualifying facility contract and each demand-side management or conservation contract assigned or retained as provided for in this section, any requirement pursuant to the contract that the qualifying facility or customer or host implementing demand-side management or conservation measures remain a customer of the electric utility that was an original party to the contract or any requirement pursuant to the contract to purchase a certain amount of electricity from that electric utility is deemed to be fully satisfied by the qualifying facility, customer, or host (a) remaining a customer of the transmission and distribution utility that has retained the contract, or to

whom it has been assigned pursuant to the option provided for in this section, (b) receiving any such required amounts of electricity by making purchases in the competitive energy market, and (c) receiving such purchases over the facilities of the transmission and distribution utility. The transmission and distribution utility shall make payments required under any such demand-side management or conservation contracts or this Act and is entitled to collect those payments in rates and charges as provided for in the Maine Revised Statutes, Title 35-A.

Sec. 6. Qualifying facility contracts tied to retail tariffs. Certain contracts for the sale of energy, or energy and capacity, by qualifying facilities contain terms that establish or adjust the purchase rate based upon the retail tariff rate or changes to that retail tariff rate paid by the qualifying facility to the electric utility for its purchases of electricity or upon reference to a particular retail tariff rate or changes in such retail tariff rate. The Legislature finds that after the date of retail access as provided for in this Act, a question may arise as to whether there is a retail tariff rate that provides for a comparable standard for sale of combined generation and transmission or distribution services. Following the implementation of retail access as provided for in this Act, the Public Utilities Commission shall, at the request of any qualifying facility, annually establish a rate using the same terminology as may be found in the contract, such as "industrial tariff" or "Principal Base Rate" or other reference term. Such rate or reference term will then be used to establish or adjust the rate for the purchase of energy, or energy and capacity, under the contract. Any such rate or reference term will be established by adjusting the applicable rate or reference term or actual contract rate, as the case may be, as it stood as of the date of implementation of deregulation, by the applicable annual change in the average of the total price paid for electric services by all retail customers in Maine taking service at the same voltage level as the customer whose rate or reference term is being established. The total price paid for electric services for this purpose includes the price paid by customers for transmission and distribution services, including any access charges, for electric energy and capacity, for stranded costs included in transmission and distribution company charges, for metering services and for any special facilities or equipment necessary for the customers to take service and any other fee, levy, premium, license, surcharge or other charge imposed by or pursuant to the act of any transmission and distribution utility, any competitive electricity provider or any arm, agency or institution of government collected from such customers as a condition of obtaining those electric services. If the average price can not be determined in any year due to the absence or unavailability of data, then the commission shall use changes in the federally established Gross

Domestic Product Price Index to determine the rate or reference term for that year. Solely for purposes of establishing a purchase rate under the applicable contract, the rate or reference term so established is deemed to be the applicable retail tariff or other reference term used in the contract for the qualifying facility's purchases of retail electric services from the utility purchaser under the contract, notwithstanding the actual price paid for such services established in accordance with this Act.

Sec. 7. Short term energy rate contracts.

After March 1, 2000, the Public Utilities Commission, no less frequently than annually, shall establish, for the 12-month period succeeding the annual date of establishment of such rates, short-term-energy-only rates for use in the purchase of energy by an electric utility where such a short-term-energy-only rate is used in a contract between a qualifying facility and an electric utility. The commission shall amend chapter 36, section 3 of its rules to comply with requirements of this section. The commission shall establish short-term-energy-only rates for both on-peak and off-peak hours, as defined by the commission by rule as of January 1, 1997, and, at the request of an electric utility or a qualifying facility, establish time-differentiated, peak and off-peak short-term-energy-only rates for any other hours defined in the applicable contract. After March 1, 2000, short-term-energy-only rates are defined as the estimated cost for the wholesale purchase of energy in Maine that includes fuel costs, start-up costs and variable operating and maintenance costs expressed on a cents-per-kilowatt-hour basis using the number of significant digits as employed in the establishment of the short-term-energy-only rate as of January 1, 1997 and adjusted to reflect the line loss costs or savings for deliveries at the various voltage levels for which the commission established adjustments as of January 1, 1997. In making estimates of short-term-energy-only rates, the commission shall be guided by the average market price for purchases of short-term energy in Maine during the 12 months previous to the period for which the rates will be estimated. In determining this average market price, the commission shall use, to the extent available, generally accepted and publicly available indicators of the market price or the components of market price as published or, if unavailable, the market price elsewhere in New England that the commission determines to represent a market price similar to the market price that would exist in Maine given relevant market conditions in the State at the time of the estimation.

Sec. 8. Other contracts. Consistent with this Act, the Public Utilities Commission by rule shall establish methods for establishing any rate, term, condition or other provision of any contract between an electric utility and a qualifying facility that may arguably be rendered impractical or impossible to perform or implement as a result of the restructuring

of the electric industry pursuant to this Act, including but not limited to a method for establishing terms related to long-term avoided costs, as defined in chapter 36 of the commission's rules, as in effect on the effective date of this Act. By November 1, 1997, the commission shall commence a rulemaking establishing the method for establishing terms related to long-term avoided costs. The rules must establish methods that preserve the intent and purposes embodied in the contractual provisions. At the request of a party to a qualifying facility contract or pursuant to the terms of a contract, the commission shall employ the methodology established by the rules to address the impracticability or impossibility associated with provisions of the contract so as to preserve the intent and purposes embodied in the contract. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

Sec. 9. New contracts. Notwithstanding the Maine Revised Statutes, Title 35-A, chapter 33, an electric utility or transmission and distribution utility may not be required pursuant to Title 35-A, chapter 33 to enter into a contract to purchase power from a qualifying facility after the effective date of this Act. Nothing in this section abrogates existing law or rules that provide qualifying facilities with the right to sell energy to an electric utility prior to March 1, 2000 on an as-available basis at the utility's short-term-only rate or to sell capacity and energy to an electric utility at any time before or after March 1, 2000 on a basis voluntarily and mutually agreed to by the qualifying facility and the electric utility.

Sec. 10. Recommendation for low-income assistance program. On or before January 1, 1998, the Public Utilities Commission and the State Planning Office shall provide to the Joint Standing Committee on Utilities and Energy, the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on Taxation, and to any other committees of relevant jurisdiction, legislation that funds assistance to low-income consumers of electricity through the General Fund or through a tax on all energy sources in the State. The commission and the State Planning Office shall solicit public comment prior to the production of draft legislation and also solicit public comment before finalizing its legislative proposal.

Sec. 11. Conforming amendments. By December 31, 1998, the Public Utilities Commission shall identify and submit to the joint standing committee having jurisdiction over utilities and energy matters legislation proposing amendments required to conform other statutes to the provisions of this Act.

Sec. 12. Authority. The joint standing committee having jurisdiction over utilities and energy

matters may report out legislation concerning electric industry restructuring to the Second Regular Session of the 118th Legislature or to the First Regular Session of the 119th Legislature or the Second Regular Session of the 119th Legislature.

See title page for effective date.

CHAPTER 317

H.P. 1058 - L.D. 1490

An Act Allowing Appellate Review by an Aggrieved Contemnor

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

PART A

Sec. A-1. 15 MRSA §1004, as enacted by PL 1987, c. 758, §20, is amended to read:

§1004. Applicability and exclusions

This chapter applies to the setting of bail for a defendant in a criminal proceeding, including the setting of bail for an alleged contemnor in a plenary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66. It does not apply to the setting of bail in extradition proceedings under sections 201 to 229 or post-conviction review proceedings under sections 2121 to 2132 or probation revocation proceedings under Title 17-A, sections 1205 to 1207, except to the extent and under the conditions stated in those sections. This chapter applies to the setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a material witness only as specified in sections 1103 and 1104, respectively.

Sec. A-2. 15 MRSA §§1103 and 1104 are enacted to read:

§1103. Summary contempt proceeding involving a punitive sanction

The setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, including any appeal under section 2115-B, is a matter wholly within the discretion of the court. Subchapters IV and V apply.

§1104. Material witness; arrest and bail

If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure the presence of that person by subpoena, the court may order the arrest of that person and may require that person to give bail for that person's appearance as a witness, utilizing the same standards for release as for a defendant preconviction bailable as of right under subchapter II. Subchapters IV and V also apply.

PART B

Sec. B-1. 15 MRSA §2115-B is enacted to read:

§2115-B. Appeal by aggrieved contemnor

1. Summary contempt proceedings involving punitive sanctions. In a summary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, before a Judge of the District Court, Probate Court or Administrative Court, a contemnor who is aggrieved by an order and imposition of a punitive sanction may appeal, as provided under section 2111 and the applicable Maine Rules of Criminal Procedure, to the Superior Court and, if unsuccessful, to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure. In a like proceeding, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, before a Justice of the Superior Court or a Justice of the Supreme Judicial Court, any contemnor aggrieved by an order and imposition of a punitive sanction may appeal to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure.

2. Plenary contempt proceedings involving punitive sanctions. In a plenary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, any contemnor aggrieved by an adjudication and imposition of a punitive sanction tried other than in the Superior Court or Supreme Judicial Court may appeal, as provided under section 2111 and the applicable Maine Rules of Criminal Procedure, to the Superior Court, and if unsuccessful, to the Supreme Judicial Court, sitting as the Law Court, as provided under section 2115 and the applicable Maine Rules of Criminal Procedure. In a like proceeding instituted under either the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule