

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

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
1999

ers necessary. Any medical information provided as part of the appeal is a confidential record as defined in Title 1, section 402, subsection 3, paragraph A.

C. A license holder whose appeal is approved under this subsection may purchase a number of trap tags up to the number of trap tags purchased in 1996 or 1997, whichever is greater. For each following year, the license holder may purchase up to an increase of 100 trap tags each year as long as the total number does not exceed the trap limit established by rule for the zone in which the person fishes a majority of that person's traps.

Issuance of trap tags on appeal is at the discretion of the commissioner, except that trap tags may not be issued unless the criteria in paragraph A are met. Decisions of the commissioner must be in writing.

4. Trap limit for zone. A person may not purchase a number of trap tags greater than the trap limit established by rule for a lobster management zone in which that person fishes.

5. Repeal. This section is repealed December 31, 2001.

Sec. 7. Report. The Lobster Advisory Council shall report to the Joint Standing Committee on Marine Resources by February 1, 2000 on methods to limit effort in the lobster fishery for the purpose of conserving the lobster resource. The Lobster Advisory Council, in consultation with the lobster management policy councils and members of the lobster management zones, shall consider methods to control effort and the potential impacts of those methods on traditional fishing practices. Methods to be considered may include, but are not limited to, the following: establishing a tiered license program; providing for the transfer of a license to a family member; increasing license and trap tag fees; and instituting more severe penalties for violations of laws relating to the lobster resource. The Joint Standing Committee on Marine Resources may report out legislation to the Second Regular Session of the 119th Legislature regarding limited effort in the lobster fishery.

See title page for effective date.

CHAPTER 398

H.P. 1509 - L.D. 2154

An Act to Amend the Electric Industry Restructuring Laws

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

PART A

Sec. A-1. 5 MRSA §200-B, sub-§1, as repealed and replaced by PL 1995, c. 625, Pt. A, §2, is amended to read:

1. Public utility services. As used in this section, the term "public utility services" means services furnished by a public utility as defined in Title 35-A, section 102, subsections 7, 8, 12, 14, 15, 19, 20-B and 22 whether or not subject to the jurisdiction of the Public Utilities Commission.

Sec. A-2. 35-A MRSA §101, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§101. Statement of purpose

The purpose of this Title is to ensure that there is a regulatory system for public utilities in the State ~~which that~~ is consistent with the public interest and with other requirements of law and to provide for reasonable licensing requirements for competitive electricity providers. The basic purpose of this regulatory system is to ~~assure~~ ensure safe, reasonable and adequate service ~~at rates which~~ and to ensure that the rates of public utilities are just and reasonable to customers and public utilities.

Sec. A-3. 35-A MRSA §102, sub-§2-A is enacted to read:

2-A. Competitive service provider. "Competitive service provider" means a competitive electricity provider as defined in section 3201, subsection 5.

Sec. A-4. 35-A MRSA §102, sub-§5, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. A-5. 35-A MRSA §102, sub-§6, as amended by PL 1997, c. 710, §1, is repealed.

Sec. A-6. 35-A MRSA §102, sub-§6-A, as enacted by PL 1997, c. 710, §2 and affected by §10, is repealed.

Sec. A-7. 35-A MRSA §102, sub-§13, as amended by PL 1995, c. 225, §2, is further amended to read:

13. Public utility. "Public utility" includes every gas utility, natural gas pipeline utility, ~~electric~~ transmission and distribution utility, telephone utility, water utility, public heating utility and ferry, as those terms are defined in this section, and each of those utilities is declared to be a public utility. "Public utility" does not include the operation of a radio paging service, as that term is defined in this section, or mobile telecommunications services unless only one entity or an affiliated interest of that entity, as

defined in section 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency spectrum assigned by the Federal Communications Commission to provide mobile service to the service area.

Nothing in this subsection precludes:

A. The jurisdiction, control and regulation by the commission pursuant to private and special act of the Legislature;

B. The commission's jurisdiction and control over and regulation of a public utility that provides, in addition to other services, radio paging service or mobile telecommunications services;

C. The commission's jurisdiction and control over and regulation of basic exchange telephone service offered by a provider of mobile telecommunications services if, after investigation and hearing, the commission determines that the provider is engaged in the provision of basic exchange telephone service; and

D. Negotiations for, or negates agreements or arrangements existing on the effective date of this paragraph relating to, rates, terms and conditions for interconnection provided by a telephone utility to a company providing radio paging or mobile telecommunications services.

Sec. A-8. 35-A MRSA §102, sub-§16-A, as enacted by PL 1997, c. 710, §3, is amended to read:

16-A. Self generation. "Self generation" means the generation of electricity for the use of an entity that owns, leases, operates, controls or manages, in whole or in part, generation assets, as defined in section 3201, subsection 10, provided that the electricity is not transmitted over transmission and distribution plant, as defined in ~~section 3201, subsection 18~~ 20-A.

Sec. A-9. 35-A MRSA §102, sub-§§20-A and 20-B are enacted to read:

20-A. 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 and other devices, materials, apparatus and 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.

20-B. Transmission and distribution utility. "Transmission and distribution utility" means a

person, its lessees, trustees or receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State, except where the electricity is distributed by the entity that generates the electricity through private property alone solely for that entity's own use or the use of the entity's tenants and not for sale to others.

Sec. A-10. 35-A MRSA §103, sub-§2, ¶C is enacted to read:

C. The commission shall oversee the activities of competitive service providers to the extent provided in this Title.

Sec. A-11. 35-A MRSA §109, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Public utilities. ~~No~~ A member or employee of the commission ~~shall~~ may not:

A. Have any official or professional connection or relation with any public utility or competitive service provider operating within this State;

B. Hold any stock or securities in any public utility or competitive service provider operating within this State;

C. Render a professional service against any such public utility or competitive service provider; or

D. Be a member of a firm ~~which~~ that renders service against any such public utility or competitive service provider.

Sec. A-12. 35-A MRSA §115, sub-§3, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

3. Forfeitures and penalties. ~~The~~ Unless otherwise provided, the following provisions apply to forfeitures and penalties.

A. A complaint for the recovery of a forfeiture or penalty may be made by the commission or one of its members.

B. A suit to recover any forfeiture or penalty may be brought in the name of the State in the Superior Court in the county where the main office of the public utility is located or in Kennebec County.

C. An action commenced by the commission ~~shall~~ must be prosecuted by the Attorney General.

Sec. A-13. 35-A MRSA §307, 3rd ¶, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

For the purposes of this section, a "general increase in rates" means any change in the rates, tolls and charges of the public utility, the effect of which is to increase the annual operating revenues of a public utility by more than 1%, provided that this term does not include a rate change made for the sole purpose of implementing a fuel cost adjustment rate, pursuant to ~~section 3101~~ or section 4703 or a rate change made for the sole purpose of implementing an energy conservation adjustment rate, pursuant to section 3154.

Sec. A-14. 35-A MRSA §310, sub-§3, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

3. Exception: Municipal and quasi-municipal water utilities and consumer-owned transmission and distribution utilities. This section ~~shall~~ does not apply to:

A. Municipal or quasi-municipal corporations ~~which that~~ are water utilities within the definition of section 102, any provisions in any charter notwithstanding, and ~~which that~~ elect to proceed pursuant to the terms of section 6104, unless by the express terms of section 6104, the provisions of this section are made applicable to those corporations; or

B. Consumer-owned electric transmission and distribution utilities organized in accordance with chapter 35, unless by the express terms of chapter 35 the provisions of this section are made applicable to those districts.

Sec. A-15. 35-A MRSA §313, sub-§§2 and 4, as enacted by PL 1995, c. 129, §1, are amended to read:

2. Charges. A campground owner or operator may charge a submeter user only for kilowatt hours used by that submeter user. The charge that a campground owner or operator may charge a submeter user for electric service may not exceed the kilowatt usage of the submeter user multiplied by the combined rate per kilowatt hour that the campground owner or operator is charged by the electric transmission and distribution utility and competitive electricity provider.

4. Interpretation; not resale. A submeter user is not a customer of the electric transmission and distribution utility or competitive electricity provider providing service to the master-metered campground owner or operator. For purposes of this Title, a submeter user is not a customer of the campground owner or operator. Nothing in this section permits the

resale of electricity by a campground owner or operator.

Sec. A-16. 35-A MRSA §701, sub-§2, as amended by PL 1995, c. 225, §5, is further amended to read:

2. Renting facilities. This section does not prohibit a public utility from renting any facilities incident to the production, transmission, delivery or furnishing of electricity transmission and distribution service, gas, heat or water or the conveyance of telephone messages and paying a reasonable rental for the facilities.

Sec. A-17. 35-A MRSA §702, sub-§3, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

3. Service and facilities. Every public utility providing electric transmission and distribution or gas service, upon reasonable notice, shall furnish to all persons who may apply for facilities and service, suitable facilities and service consistent with policies approved or established by the commission, without undue delay and without unreasonable discrimination.

Sec. A-18. 35-A MRSA §704, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Residential customers. The commission shall adopt and promulgate reasonable rules after a hearing concerning the termination or disconnection of any residential customer's service by ~~an electric a~~ transmission and distribution, gas, water or telephone utility of the State. These rules ~~shall~~ apply generally to all such utilities within the commission's jurisdiction and ~~shall~~ must provide for adequate written notice by that utility to the residential customer that ~~his the~~ customer's utility bill has not been paid, and a notice of ~~his the~~ the prospective termination or disconnection and ~~his the~~ the right, prior to disconnection, to enter into reasonable installment payment arrangements with that utility; to settle any dispute concerning the proposed disconnection at an informal hearing with that utility and to appeal the results of that utility's decision to the commission. The rules ~~shall~~ must also provide that there may be no termination or disconnection during a limited medical emergency and for a just and reasonable procedure regarding reconnections of utility service and deposit requirements.

Sec. A-19. 35-A MRSA §752, sub-§2, as enacted by PL 1995, c. 348, §1, is amended to read:

2. Overhead high-voltage line. "Overhead high-voltage line" means all above-ground bare or insulated electrical conductors of voltage in excess of 600 volts, measured between conductors or measured between a conductor and the ground, that are owned

or operated by ~~an electric~~ a transmission and distribution utility, except those conductors that are:

- A. Enclosed in a rigid metallic conduit or flexible armored conduit; or
- B. On the premises of mines that are subject to the provisions of the Federal Mine Safety and Health Act of 1977, 30 United States Code, Section 801 and regulations adopted pursuant to that Act by the federal Mine Safety and Health Administration.

Sec. A-20. 35-A MRSA §906, as amended by PL 1997, c. 710, §4, is further amended to read:

§906. Commission authorization not required

1. Property and service outside the State. Except as provided in subsection 2 for ~~electric transmission and distribution~~ transmission and distribution utilities, notwithstanding any other provision of this chapter, a public utility is not required to apply to the commission for authority to issue stocks, bonds, notes or other evidences of indebtedness for the acquisition of property, for the purposes of carrying out its corporate powers, the construction, completion, extension or improvement of its facilities, or the improvement or maintenance of its service, outside the State.

2. Exception: Transmission and distribution utilities. Notwithstanding subsection 1, this chapter ~~shall apply~~ applies to any domestic ~~electric transmission and distribution~~ transmission and distribution utility acquiring and operating utility facilities outside the State for the purpose of serving customers within the State.

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

Sec. A-21. 35-A MRSA §1316, as amended by PL 1987, c. 769, Pt. A, §137, is further amended to read:

§1316. Testimony presented by employees of public utilities or competitive service providers to legislative committees and to the Public Utilities Commission

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

- A. "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, expressed or implied, but does not include an independent contractor.

- B. "Employer" means a public utility or competitive service provider licensed to do business in this State with one or more employees.

- C. "Legislative committee" means a joint standing committee or a joint select committee of the Legislature, a task force, commission or council or any other committee established by the Legislature and composed wholly or partly of Legislators for the purpose of conducting legislative business.

- D. "Own time" means an employee's vacation or personal time, earned as a condition of employment.

2. Right to provide testimony. ~~Every employee~~ Employees of a public utility ~~has~~ or competitive service provider have the right to represent ~~himself themselves~~ and to testify before a legislative committee or the commission on ~~his their~~ own time. ~~No~~ An employee of a public utility or competitive service provider who complies with this section may not be denied the right to testify before a legislative committee or the commission.

3. Discharge of, threats to or discrimination against employees of utility service providers for testimony presented to legislative committees or the commission. Unless otherwise provided for, a supervisor may not discharge, threaten or otherwise discriminate against an employee of a public utility or competitive service provider regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee, in compliance with this section, in good faith testifies before or provides information to a legislative committee or to the commission regarding the operation of the business of a public utility or competitive service provider or because the employee brings the subject matter of the testimony or information to the attention of a person having supervisory authority.

This subsection does not apply to an employee who has testified before or provided information to a legislative committee or to the commission unless the employee has first brought the subject matter of the testimony or information in writing to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable time to address the subject matter of the testimony or information. If appropriate, the employer, shall respond in writing.

4. Exceptions. The protection created in subsection 3 does not apply to testimony ~~which that~~, upon reasonable inquiry by the employee, would be found to be false, slanderous, libelous or defamatory or to testimony ~~which that~~ violates a term or condition of a collectively bargained agreement or to testimony ~~which that~~ discloses trade secrets or corporate

strategy, the disclosure of which would result in harm to the employer.

5. Civil actions for injunctive relief or other remedies. An employee of a public utility or competitive service provider who alleges a violation of ~~his~~ rights under this section and who has made reasonable efforts to exhaust all grievance procedures, as provided for in the contract of employment or which otherwise may be available at ~~his~~ the employee's place of employment, may bring a civil action, including an action for injunctive relief, within 90 days after the occurrence of that alleged violation or after the grievance procedure or similar process terminates. The action may be brought in the Superior Court for the county where the alleged violation occurred, the county where the complainant resides or the county where the person against whom the civil complaint is filed resides. An employee must establish each and every element of ~~his~~ the employee's case by a preponderance of the evidence.

6. Remedies ordered by court. A court, in rendering a judgment in an action brought pursuant to this section, may order reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights or any combination of these remedies. A court may also award the prevailing party all or a portion of the costs of litigation, including reasonable attorneys' fees and witness fees, if the court determines that the award is appropriate.

7. Collective bargaining rights. This section does not diminish or impair the rights of a person under any collective bargaining agreement.

8. Jury trial; common-law rights. Any action brought under this section may be heard by a jury. Nothing in this section derogates any common-law rights of an employee or employer.

Sec. A-22. 35-A MRSA §1321, as amended by PL 1995, c. 226, §4, is further amended to read:

§1321. Orders altered or amended

The commission may at any time rescind, alter or amend any order it has made including an order fixing any rate or rates, tolls, charges or schedules of a public utility or an order relating to matters within the jurisdiction of the commission with respect to a competitive service provider only if it gives the public utility or competitive service provider and all parties to the original proceeding, to the extent practical, written notice and after opportunity for those parties to present evidence or argument, as determined appropriate by the commission. Certified copies of amended orders must be served and take effect as provided for original orders. Nothing in this section is intended to grant to the commission authority to

establish or approve the rates charged by competitive service providers.

Sec. A-23. 35-A MRSA §1322, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§1322. Orders temporarily suspended, altered or amended

1. Orders temporarily amended. When the commission finds it necessary to prevent injury to a public utility's business or to the interest of the people, or if the commission finds there is an emergency, it may temporarily alter, amend or, with the public utility's consent, suspend existing rates, schedules or orders affecting ~~any~~ the public utility. When the commission finds it necessary to prevent injury to a competitive service provider's business or to the interest of the people, or if the commission finds there is an emergency, it may temporarily alter, amend or, with the competitive service provider's consent, suspend existing orders affecting the competitive service provider.

2. Rates. Rates made under this section ~~shall~~:

A. Apply to one or more of the public utilities in the State or to any part of them as the commission directs; and

B. Take effect and remain in force as the commission prescribes.

3. Limitation of authority. Nothing in this section is intended to grant the commission authority to establish or approve the rates charged by competitive service providers.

Sec. A-24. 35-A MRSA §1702, sub-§1, ¶B, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

B. The reasonableness and adequacy of the service furnished or proposed to be furnished by any public utility or competitive service provider;

Sec. A-25. 35-A MRSA §1702, sub-§3, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

3. Petition to initiate proceedings. The Public Advocate may petition the commission to initiate proceedings to review, investigate and take appropriate action with respect to the rates or service of any public utility or competitive service provider when determined necessary by the Public Advocate.

Sec. A-26. 35-A MRSA §1702, sub-§5, as amended by PL 1989, c. 660, is further amended to read:

5. Intervention on behalf of public. The Public Advocate may, on behalf of the using and consuming public, or any particular group of consumers, petition to initiate, or intervene and appear in, any proceedings before the commission, appeals from orders of the commission, or proceedings before state and federal agencies and courts in which the subject matter of the action affects the customers of any utility or competitive service provider doing business in this State, except that the Public Advocate may not intervene in any proceeding in which the commission staff is representing a position substantially similar to that of the Public Advocate, as determined by the Public Advocate.

Sec. A-27. 35-A MRSA §1702, sub-§7, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

7. Assist customers of consumer-owned transmission and distribution utilities. The Public Advocate shall assist customers of consumer-owned electric transmission and distribution utilities in reviewing proposed rate increases and preparing questions and testimony for public hearings and, on request of a customer and when determined necessary by the Public Advocate, intervene in the proceedings conducted in accordance with chapter 35.

Sec. A-28. 35-A MRSA §1709, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§1709. Conflicts of interest

In addition to the limitations of Title 5, section 18, the Public Advocate or any employee of the Public Advocate may not have any official or professional connection or relation with, or hold any stock or securities in, any public utility or competitive service provider operating within this State; render any professional service against any such public utility or competitive service provider; or be a member of a firm ~~which that~~ renders any such service.

Sec. A-29. 35-A MRSA §2101, as amended by PL 1997, c. 707, §2, is further amended to read:

§2101. Organization of certain public utilities

A public utility for the operation of telephones and for the purpose of making, ~~generating,~~ selling, distributing and supplying gas or ~~electricity~~ electric transmission and distribution service or for the operation of water utilities, ferries or public heating utilities in any municipality, or 2 or more adjoining municipalities, within the State, may be organized as a legal entity authorized under the laws of the State, including Title 13-A.

Sec. A-30. 35-A MRSA §2102, sub-§2, as amended by PL 1991, c. 342, §4, is further amended to read:

2. Approval not required. Except as provided in section 2104, the commission's approval is not required for a public utility to furnish service in any municipality in which that public utility is furnishing service on October 8, 1967. Approval is not required for the operation of a radio paging service or mobile telecommunications services. Approval is not required for ~~an electric~~ a transmission and distribution utility to ~~sell and~~ distribute electricity to any other electric transmission and distribution utility.

Sec. A-31. 35-A MRSA §2103, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§2103. Transmission and distribution utility and cooperative authorized to serve same area

After September 1, 1967, where a cooperative organized under chapter 37 and any other electric transmission and distribution utility are serving or authorized to serve the same municipality, neither the cooperative nor the other utility may bring electrical service to a new location except as provided in this section.

1. Notice. The cooperative or utility must notify the other cooperative or utility and the commission, in writing, of the request by the party for electrical service, where bringing the service requires the extension of existing distribution facilities.

2. Filing objections. If, after notice, the other cooperative or utility opposes the bringing of electrical service to the new service location, within 7 days of receipt of the notice of proposed service, it shall:

A. File objections to the bringing of the electrical service with the commission; and

B. Send a copy of its objections to the utility or cooperative and to the party requesting electrical service.

3. Decision. If objections are filed, the commission shall immediately set a hearing date, and shall determine whether the cooperative or the other utility shall serve. If, after notice, either the cooperative or the utility fails to file its objections pursuant to subsection 2, it will be conclusively presumed that the cooperative or the utility, as the case may be, has consented to the furnishing of the service.

4. Temporary service pending a decision. Pending the final determination of the right to serve, the commission may order temporary service brought to the prospective new service location without prejudice to the rights of any party.

Sec. A-32. 35-A MRSA §2108, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§2108. Corporations may hold real estate

Corporations organized under ~~sections~~ section 2101 and former section 2109 may purchase, hold and convey real estate and personal property that are necessary for the purposes for which they are created.

Sec. A-33. 35-A MRSA §2109, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. A-34. 35-A MRSA §2305, as amended by PL 1995, c. 349, §§1 and 2, is further amended to read:

§2305. Transmission and distribution utilities may construct lines

Every ~~electric~~ transmission and distribution utility may construct and maintain its lines in, upon, along, over, across and under the roads and streets in any municipality in which it is authorized to supply electricity, subject to the conditions and restrictions provided in this chapter and chapter 25.

No person except ~~an electric~~ a transmission and distribution utility may construct and maintain its lines with poles or other structures carrying electricity in, upon, along or under the roads, streets and public ways maintained by any municipality unless, in addition to meeting the requirements of section 2503, the applicable licensing authority finds that:

2. Posting surety bonds. The applicant has posted with the licensing authority a surety bond in accordance with terms and conditions established by the licensing authority in an amount sufficient to:

A. Protect the public from claims, demands and actions arising out of improper construction of the line; and

3. Duplication of or interference with transmission and distribution facilities. The commission has found that the line neither constitutes a duplication of ~~electric~~ transmission and distribution facilities nor interferes physically with the adequate and safe delivery of electricity to others. A commission finding is not required under this subsection if the only nonutility facility in the public way is a facility providing service from the person's abutting property or abutting easement to a utility facility in the public way and that utility facility is within 30 feet of the person's property line or easement.

A utility that enters into any written agreement with the owner of a line with regard to that line shall record that agreement in the registry of deeds in the county in which the line is placed.

The owner of a line is responsible for properly maintaining the line. If the owner of a line fails to maintain a line properly and a municipality incurs any expense in maintaining the line or pays any damages as a result of the owner's failure to maintain the line properly, the municipality may assess the owner of the line the amount of those actual costs. The assessment must be in writing and must specify the amount of the assessment, the basis for the assessment and that a lien will be created on the real estate of the owner of the line if the assessment is not paid within 90 days. If the owner of the line does not pay the assessment within 90 days, a lien is created on the real estate of the owner of the line situated in the municipality to secure the payment of actual costs incurred by the municipality. This lien may be treated and enforced in the same manner as a tax lien under Title 36, chapter 105, subchapter IX, article 2. In addition to any other available remedies, a person aggrieved by a lien imposed or enforced by a municipality under this section may bring an action in Superior Court for a determination of the validity of the lien.

This section does not apply to state and state aid highways maintained by the State.

~~An electric~~ A transmission and distribution utility may not ~~provide~~ deliver electricity ~~for over~~ any line in, upon, along or under roads, streets and public ways maintained by a municipality if the lines or poles were constructed by a person other than ~~an electric~~ a transmission and distribution utility, unless the ~~electric~~ transmission and distribution utility is provided with certified copies of the findings by the applicable licensing authority of compliance with subsection 2 and the commission's findings pursuant to subsection 3.

Sec. A-35. 35-A MRSA §2305-A, as enacted by PL 1995, c. 349, §3, is amended to read:

§2305-A. Transmission and distribution utilities, telephone utilities and cable television companies to conform to standards

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

A. "Cable television company" has the same meaning as in Title 30-A, section 2001.

B. "Most recent edition of the Standard" means the 1993 edition or any subsequent edition of the Standard adopted by the commission pursuant to this section.

C. "Standard" means the National Electrical Safety Code (NESC)-ANSI-C2.

2. Applicable national standard. Except as otherwise provided in this section or by rule of the commission adopted pursuant to this section, every ~~electric~~ transmission and distribution utility, telephone utility and cable television company shall design, construct, operate and maintain its lines and equipment in conformance with the applicable provisions of the most recent edition of the Standard.

3. Review of standards by commission. Whenever a new or revised edition of the Standard is published, ~~an electric~~ a transmission and distribution utility, telephone utility or cable television company may request the commission to hold a hearing on whether the new or revised Standard should be adopted.

A. If a hearing is requested within 120 days of the publication of the new or revised Standard, the commission shall hold a hearing and shall either adopt the new or revised Standard or, pursuant to subsection 4, amend or reject the new or revised Standard. If a hearing is requested and held under this paragraph, the new or revised Standard does not go into effect in any form except as expressly provided by the commission in its order.

B. If a hearing is not requested within 120 days of the publication of the new or revised Standard, the commission is deemed to have adopted the new or revised Standard effective on the 180th day after publication. Existing facilities that meet the requirements of the previously applicable Standard but which do not meet the requirements of the new or revised Standard may remain in noncompliance only if grandfathered under the new edition.

4. Modifications, deletions and waivers to Standard. The commission may, at its discretion and after appropriate hearing, modify, delete or waive individual requirements of the Standard. The commission may make a modification or deletion or grant a waiver of a national standard of practice contained in the Standard only if it finds one of the following:

A. Other measures achieving equivalent levels of safety will be substituted for the modified, deleted or waived national standard; or

B. The national standard is not applicable or is unduly burdensome for the level of safety achieved under local conditions.

Modifications, deletions or waivers of individual requirements of the Standard remain in force until the next edition of the Standard is adopted by the commission pursuant to subsection 3 or the modifica-

tion, deletion or waiver is repealed by the commission, whichever occurs first.

Pursuant to subsection 3, paragraph A, ~~an electric~~ a transmission and distribution utility, telephone utility or cable television company may petition the commission to continue approved modifications, deletions or waivers under a new or revised Standard. Unless the commission reaffirms a modification, deletion or waiver in its order adopting a new or revised Standard, a modification, deletion or waiver is deemed repealed on adoption of the new or revised Standard.

5. Additional safety measures. The commission may, at its discretion and after appropriate hearing, require safety measures in addition to those required by the Standard. An additional requirement remains in force for 10 years from its effective date unless the commission:

A. Repeals the requirement; or

B. Reaffirms the requirement by order. Each reaffirmation must occur within 10 years of the original effective date of the requirement or within 10 years of the last affirmation.

Sec. A-36. 35-A MRSA §2306, as amended by PL 1997, c. 707, §4, is further amended to read:

§2306. No taking property without consent

~~No~~ A public utility organized under ~~sections~~ section 2101 and former section 2109 may not take, appropriate or use the location, pipes, lines, land or other property of any other person doing or authorized to do a similar business, without consent of the other person, except by ~~private and special act~~ Private and Special Act of the Legislature.

Sec. A-37. 35-A MRSA §2515, first ¶, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

Every corporation organized under ~~sections~~ section 2101 and former section 2109 is liable in all cases to repay a municipality all sums of money that the municipality is obliged to pay on a judgment recovered against it for damages caused by an obstruction, digging up or displacement of a way or street by the corporation, together with ~~attorneys~~ attorney's fees and expenses necessarily incurred in defending the municipality in the actions. The corporation shall:

Sec. A-38. 35-A MRSA §2516, sub-§1, as amended by PL 1995, c. 225, §10, is further amended to read:

1. Permit required to cut wires and remove poles. A person may not cut, disconnect or remove the wires or poles of a telephone or ~~electric~~ transmission and distribution utility in order to move a build-

ing, alter, repair or improve a street, bridge or way, or for any other purpose unless that person:

A. Applies in writing to the municipal officers of the municipalities in which changes or alterations of wires or poles are desired, or in which a building is to be moved; and

B. Receives a written permit from the officers.

Sec. A-39. 35-A MRSA §2522, first ¶, as enacted by PL 1993, c. 399, §1, is amended to read:

Notwithstanding any other provision of law, ~~an~~ ~~electric~~ a transmission and distribution utility or telephone utility may trim, cut or remove by cutting trees located within the public right-of-way of a public way and may trim or cut portions of trees encroaching upon the public right-of-way when necessary to ensure safe and reliable service if:

Sec. A-40. 35-A MRSA §2902, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. To promote markets for borrowing. To foster and promote by all reasonable means the provision of adequate markets and costs for borrowing money by public utilities, for the financing of the provision, manufacture, ~~generation~~, transmission and distribution of electricity, gas and water and for the financing of energy conservation measures and renewable energy resources designed to reduce the use of electricity and gas;

Sec. A-41. 35-A MRSA §2903, sub-§7, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

7. Public utility. "Public utility" means any ~~electric~~ transmission and distribution utility, water utility or gas utility ~~which that~~ is subject to the jurisdiction of the commission.

Sec. A-42. 35-A MRSA §3101, as amended by PL 1987, c. 671, §1, is repealed.

Sec. A-43. 35-A MRSA §3102, as amended by PL 1987, c. 490, Pt. A, §4, is further amended to read:

§3102. Recovery of cost of canceled or abandoned electric generating facility or transmission or distribution plant

1. Determining rate-making treatment. In determining the rate-making treatment for a utility's investment in a canceled or abandoned electric generating ~~facilities~~ facility or transmission or distribution plant, the commission shall balance the interests of the utility and ratepayers in a just and reasonable manner in each individual case. The

commission may not permit a utility to recover in rates any costs incurred imprudently in relation to an investment in a canceled or abandoned electric generating facility or transmission or distribution plant.

2. Canceled or abandoned generating facility or transmission or distribution plant. As used in this section, the term "canceled or abandoned generating ~~facilities~~ facility or transmission or distribution plant" means any electric generating facility or transmission or distribution plant canceled or abandoned by the owner or by the joint participants in the facility in accordance with the terms of applicable agreements or otherwise.

~~**3. Exception.** This section does not apply to any canceled or abandoned electric generating facility for which the commission has authorized a recovery of any portion of the costs of that facility from ratepayers prior to July 25, 1984.~~

~~**4. This section not intended to indicate preference.** Neither anything in this section nor the repeal of section 52-A of former Title 35 is intended to indicate a preference for any particular rate-making treatment of a utility's investment in a canceled or abandoned plant and the manner of the recovery, if any, of the investment shall be left to the commission's discretion.~~

~~**5. Canceled plant recovery filing fee.** Any utility requesting recovery in rates of its investment in a canceled or abandoned electric generating facility shall pay to the commission a filing fee of \$150,000 for each facility. The utility may request the commission to waive all or a portion of the filing fee. The commission shall rule on the request for waiver within 30 days. Filing fees paid as required in this section shall be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from any utility and is not expended by the commission for the purposes of this section shall be returned to the utility.~~

Sec. A-44. 35-A MRSA §3103, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§3103. Minimum charge

1. Utilities required to provide minimum charge. Any ~~electric~~ transmission and distribution utility serving more than 5,000 customers ~~which that~~ has a residential rate combining energy and demand costs in a single rate ~~which that~~ neither declines nor increases, but is flat as consumption increases shall recover its customer costs through the same rate. As part of that rate, each such ~~electric~~ transmission and distribution utility shall provide for a minimum charge to include such an amount of kilowatt hours as the commission ~~shall determine~~ determines.

2. Billing of minimum charge. The minimum charge shall must be billed to the customer in such a manner that all transmission and distribution charges to the customer for residential service appear on the bill as a single item. ~~This requirement does not prohibit separate information concerning the fuel cost adjustment, as defined in section 3101, from appearing on the statement.~~

Sec. A-45. 35-A MRSA §3131, as amended by PL 1997, c. 710, §5, is further amended to read:

§3131. Definitions

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

1. Domestic transmission and distribution utility. "Domestic electric transmission and distribution utility" means any entity organized under the laws of this State to generate, transmit or distribute electricity.

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

2. Energy. "Energy" means an entitlement to energy for a period greater than 3 years.

3. Foreign electric utility. "Foreign electric utility" means any entity organized under the laws of a state other than this State, or a province of Canada, ~~which~~ that is authorized under the laws of the state or province in which it is organized to generate, transmit or distribute electricity, or to own, operate or otherwise participate in utility facilities or interests in utility facilities.

3-A. Fuel conversion. "Fuel conversion" means conversion of a permanently installed generating facility of more than 1000 kilowatts to use a type of fuel different from that which the facility currently is equipped to use.

4. Generating capacity. "Generating capacity" means an entitlement to the output of 1,000 kilowatts or more of an electric generating facility or facilities for a period greater than 3 years.

5. Transmission capacity. "Transmission capacity" means an entitlement to transmission services over a transmission line with a capacity greater than 100 kilovolts for periods greater than 3 years.

6. Utility facility. "Utility facility" means an item of plant used or useful in the electric transmission and distribution utility business, and includes, but is not limited to, such items of plant as generating stations, transmission lines, office buildings and equipment and transportation equipment.

7. Corridor. "Corridor" means an area no greater than 1/2 mile in width in which a proposed transmission line is to be located.

Sec. A-46. 35-A MRSA §3132, as amended by PL 1997, c. 710, §6, is further amended to read:

§3132. Construction of transmission lines prohibited without prior order of the commission

~~An electric~~ A transmission and distribution utility may not construct any generating facility or transmission line covered by subsection 1, ~~1-A~~ or 2 or rebuild or relocate any transmission line as investigated by the commission under subsection 3 unless the commission has issued a certificate of public convenience and necessity approving construction.

1. Construction of generating facility and resulting line. ~~Whenever any electric utility or utilities proposes to erect within this State a permanently installed generating facility of more than 1,000 kilowatts or any transmission line capable of operating at 100 kilovolts or more, the construction of which is required to carry the capacity or energy produced by the generating facility, the following provisions apply.~~

~~A. The utility or utilities shall file with the commission, no less than 3 months in advance of submitting its petition for approval of the proposed facility or lines, a notice of its intent to file the petition.~~

~~The notice of intent to file shall inform the commission of the location, size, type of facility, estimated cost and proposed construction schedule of the generating facility or lines, together with such other facts and details concerning the proposed facility or lines as the commission by rule prescribes.~~

~~B. The petition for approval of the proposed generating facility or lines shall contain such information as the commission by rule prescribes.~~

~~C. The petition for approval shall be set down for public hearing.~~

~~D. The commission shall issue its order within 15 months after the petition is filed with the commission unless the period is either extended by agreement of all the parties or by the commission upon its determination that the party seeking the extension would, because of circumstances beyond that party's control for which it has no reasonable substitute, be unreasonably disadvantaged unless the extension were granted, provided that the party to that time had prosecuted its case in good faith and with due diligence.~~

~~E. The utility or utilities shall send the municipalities in which any part of the proposed transmission line is to be located a copy of the application, including a copy of the proposed corridor or corridors. Any municipality through which any part of the proposed transmission line is to be located that requests to be an intervenor becomes an intervenor to the proceeding.~~

~~1-A. **Purchase of capacity or energy and resulting line.** Whenever any electric utility or utilities propose to purchase any generating capacity, transmission capacity or energy as defined in section 3131 and erect any transmission line capable of operating at 100 kilovolts or more, the construction of which is required to carry the capacity or energy purchased, the following provisions shall apply.~~

~~A. The purchase of the generating capacity, transmission capacity or energy shall be subject to section 3133.~~

~~B. The construction of the resulting transmission line shall be subject to this section, except that the notice of intent must be filed no less than 2 months in advance of submitting the petition for approval and the commission shall issue its order within 12 months after the petition is filed.~~

2. Construction of transmission line. Except as otherwise provided in subsection 3-A, whenever any electric transmission and distribution utility or utilities propose to erect within this State a transmission line capable of operating at 100 kilovolts, or more, ~~and the transmission line does not result from the construction of a generating facility pursuant to this section or the purchase of generating capacity, transmission capacity or energy,~~ the utility or utilities shall file a petition for the approval of the proposed line. ~~The petition is subject to the requirements of subsection 1, paragraphs B and C. The petition for approval of the proposed transmission line must contain such information as the commission by rule prescribes. The petition for approval must be set down for public hearing. The commission shall issue its order within 6 months after the petition is filed unless this period is extended as provided in subsection 1, paragraph D either by agreement of all the parties or by the commission upon its determination that the party seeking the extension would, because of circumstances beyond that party's control, be unreasonably disadvantaged unless the extension were granted, provided that the party to that time had prosecuted its case in good faith and with due diligence.~~

At the time of filing of a petition for approval of a proposed line under this section, the utility shall send a copy of the petition by certified mail to the municipi-

pal officers of the municipality or municipalities in which the line is to be located.

3. Transmission line rebuilding or relocation projects. Each electric transmission and distribution utility shall file annually with the commission a schedule of transmission line rebuilding or relocation projects ~~which that~~ it intends to carry out during the next 5 years concerning transmission lines that will become, or will remain at, voltages of 100 kilovolts or more. The schedule ~~shall~~ must describe each project, showing the length, location and estimated cost.

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

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

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

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

4. Corridor of proposed transmission line. The electric transmission and distribution utility or utilities shall submit a map to the commission with its application. The map must:

A. Be available to the public at the offices of the commission and at the local town office where

any portion of the proposed transmission line is to be located;

B. Indicate the proposed corridor or corridors of the transmission line and a description of any planned equipment and facilities to be placed there; and

C. Be prepared in cooperation with the appropriate natural resource protection agencies and the affected municipalities.

5. Commission approval of a proposed line.

The commission may approve or disapprove all or portions of a proposed transmission line and shall make such orders regarding its character, size, installation and maintenance as are necessary, having regard for any increased costs caused by the orders.

6. Commission order; certificate of public convenience. In its order, the commission shall make specific findings with regard to the need for the proposed facilities transmission line. If the commission finds that a need exists, it shall issue a certificate of public convenience and necessity for the facilities transmission line. If the commission orders or allows the erection of the facilities transmission line, the order is subject to all other provisions of law and the right of any other agency to approve the facilities transmission line. The electric transmission and distribution utility may submit a petition for and obtain approval of a proposed transmission line under this section before applying for approval under municipal ordinances adopted pursuant to Title 30-A, Part 2, Subpart 6-A; and Title 38, section 438-A and, except as provided in subsection 4, before identifying a specific route or route options for the proposed transmission line. Except as provided in subsection 4, the commission may not consider the petition insufficient for failure to provide identification of a route or route options for the proposed transmission line. The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance of the certificate, the decision by the utility to erect or construct was prudent. At the time of its issuance of a certificate of public convenience and necessity, the commission shall send to each municipality through which a proposed corridor or corridors for a transmission line extends a separate notice that the issuance of the certificate does not override, supersede or otherwise affect municipal authority to regulate the siting of the proposed transmission line.

7. Environmental protection agency modification. If the commission has issued a certificate of public convenience and necessity for a proposed transmission or ~~generating facilities line~~ and the Board of Environmental Protection in an order under Title 38, section 484, makes a modification in the location,

size, character or design of the facilities transmission line, the company shall:

A. Deliver a copy of the order to the commission; and

B. State the nature of the modifications and all cost adjustments occasioned by the modifications to the cost of the proposed facilities transmission line relied upon by the commission in issuing its certificate of public convenience and necessity under this section.

8. Cost adjustments. If the cost adjustments specified in subsection 7 exceed the cost relied upon by the commission in the original proceeding under this section by more than 20% of the original cost, the utility may not proceed with any construction of the proposed facilities transmission line, the commission's original certificate of public convenience and necessity notwithstanding. The commission, upon notification of the cost increase, shall:

A. Reopen its original decision concerning the facilities transmission line;

B. Make specific findings with regard to the need for the facilities transmission line to the same extent and with the same authority as if the company's petition for approval were before it; and

C. Except as modified in this section, retain all authority granted to it under section 1321.

9. Filing fee; waiver of fee. When a petition is filed under this section, the electric transmission and distribution utility or utilities involved shall pay to the commission an amount equal to 2/100 of 1% of the estimated cost to erect, rebuild or relocate the facility transmission line provided that in the case of a petition filed under subsection 2, the fee ~~shall be~~ is 4/100 of 1%. The utility may, at the time of the filing of notice of its intent to file the petition, or, in the case of lines subject to subsection 2, at the time of the filing of the petition, request the commission to waive all or a portion of the filing fee. The commission shall rule on the request for waiver within 30 days.

Filing fees paid as required under this subsection ~~shall~~ must be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from any utility and is not expended by the commission to process the petition for a certificate of public convenience and necessity ~~shall~~ must be returned to the utility.

10. Exemption from filing fees. Notwithstanding any other requirement in this section, the commission may, by rule, exempt from filing fees applications

concerning transmission lines ~~not associated with a major new generating facility or construction of small generating facilities~~, the review of which does not place an unusual burden on the commission's budget.

11-A. Amendments, extensions and renewals of contracts originally subject to commission approval. This section applies to any amendment, extension or renewal of any contract between the utility and other parties with an ownership interest governing the terms of their participation in the construction of a ~~generation or transmission facility line~~ subject to this section, if the original contract was subject to approval by the commission. The commission may waive the approval requirements of this section with respect to a particular amendment, extension or renewal or a group of amendments, extensions or renewals upon request ~~under subsection 4~~. If the commission does not respond to a request for waiver within 30 days, the request is deemed to have been granted. The commission shall prescribe by rule the content of a request for waiver and procedures for the expeditious processing of requests in certain circumstances.

11-B. Amendments, extensions and renewals of contracts not originally subject to commission approval. For any amendment, extension or renewal of any contract otherwise subject to this section, but when the original contract was not subject to approval by the commission, the utility shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval under this section is not required.

12. Waiver of notice. The commission may waive any of the notice requirements in this section in advance of filing.

Sec. A-47. 35-A MRS §3133, as amended by PL 1995, c. 357, §§3 to 5, is further amended to read:

§3133. Purchase of transmission capacity prohibited without prior order of the commission

1. Commission approval required for purchases. ~~An electric utility may not purchase any generating capacity, transmission capacity or energy or carry out a fuel conversion as defined in section 3131, unless the commission has issued a certificate of public convenience and necessity approving the purchase or conversion or has waived the approval requirements pursuant to subsection 11.~~ A transmission and distribution utility may not purchase any ~~generating capacity, transmission capacity or energy or carry out a fuel conversion as defined in section 3131~~, unless the commission has issued a certificate of public convenience and necessity approving the purchase or conversion or has waived the approval requirements pursuant to subsection 11.

2. Notice of intent to file. The utility or utilities shall file with the commission, no less than 2 months in advance of submitting its petition for a certificate of public convenience and necessity for the proposed

~~purchase or conversion~~, a notice of its intent to file the petition. The notice ~~shall~~ **must** inform the commission of the terms of the proposed purchase ~~or conversion~~ and, after receiving the notice, the commission may, by rule or otherwise, require the petitioner to make available such additional information as it determines necessary. The commission may waive the requirement that at least 2 ~~months~~ **months'** advance notice be given. The commission shall rule on any request for waiver within 60 days. If there is then outstanding for the utility a long-range plan approved pursuant to section 3134, the utility need not provide an advance notice of its intent to file the petition.

3. Petition for certificate of public convenience and necessity. The petition for a certificate of public convenience and necessity ~~shall~~ **must** contain such information as the commission may by rule prescribe.

4. Hearing. The petition ~~shall~~ **must** be set down for public hearing.

5. Deadline for issuance of commission order. The commission shall issue its order within 12 months after the petition is filed. If there is then outstanding for the utility a long-range plan approved pursuant to section 3134, the commission shall issue its order within 9 months of filing.

6. Certificate of public convenience and necessity. The following provisions apply to the issuance of a certificate of public convenience and necessity.

A. In its order, the commission shall make specific findings with regard to the need for the purchase ~~or conversion~~ and, if the commission finds that a need exists, it shall issue a certificate of public convenience and necessity for the purchase ~~or conversion~~.

~~B. In ruling upon a fuel conversion petition, the commission may consider the benefit to the public of any increased security of fuel supply which may result from the conversion.~~

C. The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance of the certificate, the decision by the utility to purchase ~~or convert~~ was prudent.

7. Exclusions. Nothing in this section applies to ~~any purchases made by an electric utility from any cogenerator or small power producer, as defined in chapter 33.~~

~~**7-A. Consumer-owned electric utilities.** Extensions of existing wholesale power purchase arrangements by consumer-owned electric utilities, as defined in section 3501, subject to Federal Energy~~

~~Regulatory Commission review with respect to rates, are exempt from prior review under this section.~~

8. Filing fee. When the petition is filed, the utility or utilities involved shall pay to the commission an amount equal to 2/100 of 1% of the estimated cost of the purchase ~~or conversion~~. The utility or utilities may, at the time of the filing of notice of its intent to file the petition, request the commission to waive all or a portion of the filing fee. The commission shall rule on a request for waiver within 30 days.

Filing fees paid as required by this subsection ~~shall~~ must be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from any utility or utilities and is not expended by the commission to process the petition for a certificate of public convenience and necessity ~~shall~~ must be returned to the utility or utilities.

~~**9. Imported power.** In its review of any petition filed on or after January 1, 1987, for approval of the purchase of generating capacity or energy from outside the State, the commission may consider the comparative economic impact on the State of production of additional power within the State, investments in energy conservation and the purchase of the power from outside the State.~~

10-A. Renewal of contracts for purchase originally subject to commission approval. The requirements of this section apply to any amendment, extension or renewal of any contract between the utility and other parties governing the terms of their participation in a purchase ~~or conversion~~ subject to this section, if the original contract was subject to approval by the commission.

10-B. Renewal of contracts not originally subject to commission approval. For any amendment, extension or renewal of any contract otherwise subject to this section for which the original contract was not subject to approval by the commission, the utility shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval under this section is not required.

11. Waiver of approval requirements. The commission may waive the notice and approval requirements of this section on its own motion or upon request of any party ~~except that the commission may not waive the approval requirements if the purchase or fuel conversion involves generating capacity that exceeds either 5% of the installed capacity of the utility or 30 megawatts of capacity.~~ The commission shall rule on a request for a waiver within 60 days. Prior to considering a waiver, the commission shall ensure that notice by mail has been sent, and an opportunity to be heard permitted, to persons who

commonly participate in commission proceedings and persons whose contracts the commission determines may be affected by the agreement. The commission may prescribe by rule the content of a request for waiver and procedures for the expeditious processing of the request in certain circumstances.

Sec. A-48. 35-A MRSA §3133-A, as amended by PL 1995, c. 357, §§6 to 9, is further amended to read:

§3133-A. Significant agreements and contracts relating to transmission capacity prohibited without prior order of the commission

1. Certificate of public convenience and necessity. Except as provided in subsection 3, ~~an electric a transmission and distribution~~ utility may not enter into any significant agreement or contract, as defined in subsection 2, unless the commission has issued a certificate of public convenience and necessity approving the proposed agreement or contract or has waived the approval requirements pursuant to subsection 6. The utility must file a notice with the commission no less than 2 months in advance of submitting its petition for a certificate of public convenience and necessity for the proposed agreement or contract. The commission may require the petitioner to make available such additional information as it determines necessary. The petition must contain such information as the commission may by rule prescribe. The petition must be set down for public hearing. The commission shall issue its order within 12 months after the complete petition is filed. If there is then outstanding a long-range plan for the utility pursuant to section 3134 that includes the agreement or contract, the utility need not provide advance notice of its intent to file the petition and the commission shall issue its order within 9 months after the complete petition is filed.

In its order, the commission shall make specific findings with regard to the agreement or contract. If the commission finds that a need for it exists and it is reasonable and consistent with the public interest, the commission shall issue the certificate of public convenience and necessity.

The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance, the decision by the utility to enter into the agreement or contract was prudent.

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

A. "Significant agreement or contract" means a contract or other agreement enforceable as a contract that binds the utility to a future course of

action with respect to supplying, purchasing, ~~dispatching~~ or exchanging ~~generating capacity, energy or~~ transmission capacity or any renewal, amendment or extension of any contract or agreement that is for a period of longer than 3 years and involves one of the following, whichever is less:

- (1) More than 5,000 kilowatts of electrical ~~generating~~ transmission capacity, or 50,000,000 kilowatt hours or more of energy per year, flowing over a transmission line with a capacity greater than 100 kilovolts;
- (2) More than 10% of the ~~generating capacity, transmission capacity or energy generation~~ of the utility; or
- (3) ~~More~~ The transmission of an amount equal to more than 1.0% of the total annual kilowatt hour sales of in the utility utility's service territory.

3. Exclusions. This section does not apply to any contract or agreement for which commission approval is required under section 3132 or 3133 ~~or to any contract with a cogenerator or small power producer as defined by section 3303.~~ This section applies to contracts or agreements ~~which~~ that take effect on or after the effective date of this section.

4. Filing fee. A utility or utilities filing a petition under this section shall pay to the Public Utilities Commission at the time of filing an amount equal to 2/100 of 1% of the estimated cost of the contract or agreement. The utility or utilities, at or before the time of filing of notice of its intent to file the petition, may request the commission to waive all or a portion of the filing fee as unnecessary to help defray the cost of review. The commission shall rule on the request for waiver within 60 days.

Notwithstanding this Title, filing fees paid as required in this subsection ~~shall~~ must be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from a utility or utilities and is not expended by the commission to process the petition for a certificate of public convenience and necessity ~~shall~~ must be returned to the utility or utilities.

5-A. Amendments, extensions and renewals. The requirements of this section apply to any amendment, extension or renewal of any significant agreement or contract subject to this section, if the original contract was subject to approval by the commission.

5-B. Amendments, extensions and renewals of contracts not originally subject to commission approval. For any amendment, extension or renewal

of any contract otherwise subject to this section when the original contract was not subject to approval by the commission, the utility shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval is not required under this section.

6. Waiver of approval requirements. The commission may waive the notice and approval requirements of this section upon its own motion or upon the request of any party, ~~except that the commission may not waive the approval requirements if the agreement involves generating capacity that exceeds the larger of 5% of the installed capacity of the utility or 50 megawatts of capacity.~~ The commission shall rule on a request for a waiver within 60 days. Prior to considering a waiver, the commission shall ensure that notice by mail has been sent, and an opportunity to be heard permitted, to persons who commonly participate in commission proceedings and persons whose contracts the commission determines may be affected by the agreement. The commission may prescribe by rule the content of a request for waiver and procedures for expeditious processing of the request in certain circumstances.

Sec. A-49. 35-A MRSA §3134, as amended by PL 1987, c. 378, §2, is further amended to read:

§3134. Long-range plan

1. Filing by transmission and distribution utilities. Every ~~electric~~ transmission and distribution utility in whose service territory total sales of electric energy for purposes other than resale exceeded ~~300,000,000 kilowatt~~ 300,000,000 kilowatt hours during any calendar year may submit to the commission a long-range ~~energy~~ plan for the 15-year period subsequent to the date the plan is submitted. This plan shall:

A. Include the utility's annual peak-load forecasts, annual energy forecasts, ~~projected annual fuel mix type and location of proposed generating facilities and alternatives,~~ type and route of major proposed transmission lines and alternatives and an analysis of the cost and financing of the plan, together with such other information as the commission may by rule require; and

B. List and describe all the assumptions used by the utility in formulating the plan required by this section.

2. Hearing and decision. The commission shall set down for public hearing each long-range ~~energy~~ plan filed in accordance with subsection 1. Notice of the hearing and opportunity to intervene ~~shall~~ must be provided in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, and the commis-

sion's rules of practice and procedure. The commission shall issue a decision approving, disapproving or modifying each plan within one year after the filing of such energy plan in accordance with this subsection. Each long-range energy plan as approved or modified by the commission shall constitute constitutes the energy plan of the filing utility and, unless altered as the result of judicial review or subsequently modified by commission order, shall represent represents the final finding of fact of the matters contained in the plan for the purposes of subsection 3.

3. Purchase of transmission capacity. If, at the time the commission issues an order granting a certificate of public convenience and necessity to a utility pursuant to section 3133, there is in existence a long-range energy plan for the utility approved or modified by the commission 2 years or less before the date of the order, the certificate shall may not be granted unless the purchase or conversion conforms to that plan. The findings by the commission, as embodied in its order under subsection 2, shall to the extent relevant represent the commission's findings of fact of the matters contained in the order in any proceeding pursuant to section 3133 that is decided within 2 years from the date of the order.

4. Plans of consumer-owned transmission and distribution utilities. The commission may order the filing of a long-range energy plan, comparable to the plan authorized in this section, by a consumer-owned electric transmission and distribution utility, as defined in section 3501. The order shall must allow sufficient time for its preparation. A consumer-owned utility may file a comparable plan on its own initiative. Any plan submitted under this subsection may be filed in concert with other consumer-owned electric transmission and distribution utilities.

A plan is comparable to a plan otherwise authorized in this section if it provides the same or similar data to the fullest extent possible, taking into account the size and resources of the consumer-owned utility.

The plan shall must be reviewed by the commission in accordance with subsection 2. ~~If a plan has been approved by the commission, the consumer-owned electric utility shall not agree to the extension of an existing wholesale power contract, exempted from prior review under section 3133, which is not consistent with the plan.~~

Sec. A-50. 35-A MRSA §3135, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§3135. Physical connection between lines of utilities authorized

1. Connection with feed lines. ~~An electric A transmission and distribution utility may extend its lines to connect with the feed lines of any other~~

~~electric transmission and distribution utility generating and selling electricity. The generating utility shall furnish electricity if requested to the extent of its reasonable capacity and at reasonable rates, provided that the commission so orders upon application, after public hearing of all parties interested. The commission may fix such terms and conditions as will safeguard the rights and interests of both utilities.~~

~~Ten individuals who contemplate the organization of an electric utility may petition for a public hearing under this subsection. The commission may hold its hearing on the petition and make its order. If the petitioners organize an electric utility and begin business within one year, the order shall be effective to give authority to the electric utility.~~

2. Emergency connection and transport of energy. The commission, in the interest of public convenience and necessity, may order any utility ~~which that~~ is principally engaged in the manufacture, transmission, and distribution ~~or sale~~ of electricity directly to the public or to be used ultimately by the public to transport temporarily electricity over its transmission or distribution facilities at a reasonable charge and in a manner as the commission directs when the transmission will alleviate an electric power shortage within this State ~~which that~~ exists by reason of an emergency.

Whenever the commission, upon its own motion or upon application of any electric transmission and distribution utility, after due notice to all interested parties and an opportunity for a hearing, makes findings based upon substantial evidence that an emergency exists and that action is necessary and appropriate in the public interest and is not detrimental to the interests of investors and consumers, it may order a utility to establish physical connection of its transmission or distribution facilities with the facilities of one or more other utilities to ~~sell electricity to, to exchange electricity with, to~~ transmit or distribute electricity for any other utility for a temporary period.

The commission may not compel a company to ~~sell, exchange,~~ transmit or distribute electricity under this subsection when to do so would impair its ability to render adequate service to its customers ~~or would require it to enlarge its generating facilities.~~

The commission may prescribe the terms and conditions of the arrangement to be made between the utilities affected by the order, including the compensation or reimbursement reasonably due to any of them, and, in the case of a new physical connection, the apportionment of costs between them or among them provided that a utility making application for or receiving the benefit of a connection ~~which that~~ will inure to its sole benefit assumes the entire cost of the connection.

Sec. A-51. 35-A MRSA §3136, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§3136. Transmission and distribution utilities have eminent domain; approval

1. Land necessary for location of transmission lines carrying 5,000 volts. Any electric transmission and distribution utility may take and hold by right of eminent domain lands and easements necessary for the proper location of its transmission lines ~~which that~~ are designed to carry voltages of 5,000 volts or more and of necessary appurtenances, located within the territory in which the utility is authorized to do public utility business, in the same manner and under the same conditions as set forth in chapter 65.

2. Right of eminent domain not applicable. The right of eminent domain granted in subsection 1 does not apply to:

- A. Lands or easements located within 300 feet of an inhabited dwelling;
- B. Lands or easements on or adjacent to any developed or undeveloped water power;
- C. Lands or easements so closely paralleling existing wire lines of other utilities that the proposed transmission lines would substantially interfere with service rendered over the existing lines, except with the consent of the owners; and
- D. Lands or easements owned or used by railroad corporations.

3. Prior right to locate distribution lines and appurtenances in right-of-way limits of public way. Electric Transmission and distribution utilities may take and hold by right of eminent domain land or easements necessary for the proper location of their distribution lines and the necessary appurtenances, but only where the electric transmission and distribution utilities had a prior right to locate their distribution lines and necessary appurtenances in the right-of-way limits of a public way and the body having jurisdiction over the public way has caused the electric utility to remove its distribution lines and appurtenant structures outside the right-of-way limits of the public way. This right does not apply to lands or easements as specified in subsection 2, paragraphs B, C and D.

4. Commission approval; environmental factors. A location to be taken by eminent domain for such transmission or distribution lines must be approved by the commission. Environmental factors to be considered for proper location of a transmission line are not subject to review by the commission when the location of the transmission line has received site location of development approval under Title 38, section 484.

Sec. A-52. 35-A MRSA §3137, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§3137. Area within which domestic transmission and distribution utility may transmit electricity; taxation by other states

1. Domestic transmission and distribution utility may transmit electricity inside or outside this State. Notwithstanding any limitation imposed by its charter, each domestic electric transmission and distribution utility may ~~generate and~~ transmit electricity and acquire and operate anywhere inside or outside this State utility facilities or interests in utility facilities of any nature or form used or required to be used in its service to the public, provided that nothing in this section authorizes a utility to ~~sell~~ distribute electricity in this State to any person or within any area, except as otherwise authorized by its charter or the general statutes of this State.

2. Legislative consent to application of laws of other states with respect to taxes. Legislative consent is given to the application of the laws of other states with respect to taxation, payments in lieu of taxes and the assessment of taxes or payments in lieu of taxes to any domestic electric transmission and distribution utility ~~which that~~ is acting outside this State under this section.

Sec. A-53. 35-A MRSA §3138, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§3138. Joint ownership of facility; waiver of right to partition

Notwithstanding Title 14, chapter 719, any domestic electric transmission and distribution utility or foreign electric utility that acquires or owns a joint or common interest with one or more other electric utilities or other persons in any property ~~which that~~ is used or acquired for use as a utility facility may surrender or waive its right to have a partition by division or partition by sale of the property for a period ~~which that~~ does not exceed the period for which the property is used or useful for electric transmission and distribution utility purposes.

Sec. A-54. 35-A MRSA §3140, sub-§4, as amended by PL 1997, c. 316, §2, is further amended to read:

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 may not be deemed an ~~"electric utility"~~ a "transmission and distribution utility" as defined in section 102, subsection ~~§ 20-B~~, merely by reason of the exercise by it of the authority granted in former section 3139.

Sec. A-55. 35-A MRSA §3140, sub-§5, as enacted by PL 1997, c. 710, §7, is repealed.

Sec. A-56. 35-A MRSA §3141, sub-§§1 and 2, as enacted by PL 1987, c. 141, Pt. A, §6, are amended to read:

1. Utility facilities owned by domestic transmission and distribution utility. All utility facilities, real and personal, situated within this State and owned by a domestic ~~electric transmission and distribution~~ utility are subject to assessment and taxation to the same extent and in the same manner as provided in Title 36.

2. Utility facilities owned by foreign electric utility. All utility facilities situated within this State and owned by a foreign electric utility other than a municipal or quasi-municipal corporation or other political subdivision of a state or province are subject to assessment and taxation to the same extent and in the same manner as though owned by a domestic ~~electric transmission and distribution~~ utility.

Sec. A-57. 35-A MRSA §3152, as amended by PL 1993, c. 402, §1, is further amended to read:

§3152. Policy and findings

1. Increased efficiency. The Legislature declares and finds that improvements in ~~electric transmission and distribution~~ utility rate design and related regulatory programs have great potential for reducing the cost of electric utility services to consumers, for encouraging energy conservation and efficient use of existing facilities and for minimizing the need for expensive new electric ~~generating and~~ transmission capacity. It is the purpose of this chapter to:

A. Require the commission to relate ~~electric transmission and distribution~~ rates more closely to the costs of providing ~~electric transmission and distribution~~ service; and

~~B. Encourage the commission to set electric rates to promote the maximum efficient utilization of natural energy resources existing in the State in order to promote the use of indigenous energy resources to the extent that this will reduce overall electric costs or electric rates, or both, provided equivalent consideration is given~~

~~to the goals of reducing costs and reducing rates; and~~

C. Require the commission to consider the ability of low-income residential customers to pay in full for electric services as ~~electric transmission and distribution~~ rates are redesigned consistent with these policies.

Sec. A-58. 35-A MRSA §3153-A, as amended by PL 1993, c. 402, §2, is further amended to read:

§3153-A. Public Utilities Commission to develop proposals to improve transmission and distribution utility rate design

1. Proposals and programs developed. The commission, as it determines appropriate, shall order ~~electric transmission and distribution~~ utilities to develop and submit specific rate design proposals and related programs for implementing energy conservation and energy efficiency techniques and innovations, either in conjunction with or independent of any rate-making proceeding pending before the commission. The proposals, as the commission determines, must be designed to encourage energy conservation, minimize the need for new ~~electrical generating transmission and distribution~~ capacity, minimize costs of ~~electricity transmission and distribution~~ service to consumers, minimize ~~transmission and distribution~~ rates over the long term or short term and take into account the needs of low-income customers. In approving a proposal under this section, the commission shall give equivalent consideration to the goals of minimizing costs and minimizing ~~transmission and distribution~~ rates of ~~electricity~~ to consumers. Proposals must include, but are not limited to, proposals that provide for the development and implementation of:

A. Load management techniques;

B. Rates that reflect marginal costs of services at different voltages, times of day or seasons of the year, including long-run marginal costs associated with the construction of new ~~electric generating transmission and distribution~~ facilities;

~~C. Policies that encourage economic use of fuel and the maximum efficient utilization of natural energy resources indigenous to the State;~~

D. Rates or other regulatory policies that encourage ~~electric transmission and distribution~~ utility system reliability;

E. ~~Electric Transmission and distribution~~ utility financing or subsidization of capital improvements undertaken by ratepayers to conserve electricity used by the ratepayers in the future. ~~The commission may approve and allow cost recov-~~

~~ery for proposals that result in savings in fuel other than electricity. This paragraph applies to future programs for utility financing of energy conservation or load management and to programs that the commission has already approved prior to September 29, 1987 as long as the goal of such programs is to economically defer or eliminate the need for transmission and distribution plant upgrades. In addition to programs undertaken pursuant to this paragraph, programs may be undertaken pursuant to section 3211 to achieve goals other than that identified in this paragraph;~~

F. As defined by the commission by rule, cost-effective conversions of electric space heat systems to systems relying on other fuels and other techniques for enabling homeowners and tenants to replace on-peak, winter period electric usage with less expensive sources of heat;

G. Rates or bill payment assistance programs for residential customers who have been certified eligible for state or federal fuel assistance that take into account the difficulty these customers have paying in full for electric service or that target assistance to these customers in the most efficient manner, taking into account the necessity of maintaining electric service; and

H. Rates that allow incremental use or maintenance of existing use when those rates serve to minimize rate levels for all electric transmission and distribution customers. In approving any proposal for rates that allow incremental use or maintenance of existing use, the commission shall seek to ensure that rates for all customer classes will be lower than they would have been had the commission not approved the proposal.

3. Implementation of rebate structures. The Public Utilities Commission may require an electric transmission and distribution utility to implement rebate structures for installation or upgrade of an electric service entrance to encourage energy efficient buildings and discourage energy inefficient buildings. In designing these programs, the commission shall give due consideration to safety.

Sec. A-59. 35-A MRSA §3154, sub-§1, as amended by PL 1993, c. 91, §8, is further amended to read:

1. Rate design and conservation improvements. The commission shall mandate, after notice and hearing on the proposed schedule, a scheduled phasing-in of the improvements in electric transmission and distribution utility rate design and related regulatory programs submitted and approved under section 3153-A and is authorized to order utilities to implement electric transmission and distribution utility

rate design improvements approved by the commission on a temporary, pilot and experimental basis, affecting either a portion or all of any class of consumers of any utility as the commission may determine is appropriate to carry out the purposes of this subchapter, and order other energy conservation techniques, programs and innovations relating to electric transmission and distribution utility service that, in the commission's judgment, are practicable, just and reasonably related to fulfilling the purposes of this chapter. In ordering any rate design improvements or any other programs for implementing energy conservation techniques and innovations referred to in section 3153-A, the commission shall consider rate design stability and shall ~~assure~~ ensure the revenue requirements of the utility.

Sec. A-60. 35-A MRSA §3154, sub-§4, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. A-61. 35-A MRSA §3154, sub-§5, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

5. Load management devices. The commission shall mandate, in any electric transmission and distribution utility rate schedule approved or taking effect after January 1, 1983, a rate for any user who installs a load management device, approved by the commission, ~~which that~~ reflects the savings to the utility resulting from the use of the device.

Sec. A-62. 35-A MRSA §3154, sub-§7, as enacted by PL 1991, c. 769, §1 and affected by §3, is amended to read:

7. Interruptible rates. In any general rate design case pending on or initiated after April 1, 1992, the commission, upon request, shall determine interruptible rates consistent with and by reference to its determination of utility transmission and distribution capacity costs. Interruptible rates must be designed so as to encourage the long-term availability of interruptible resources, including interruptible options for all customer classes.

Sec. A-63. 35-A MRSA §3154, sub-§8, as enacted by PL 1993, c. 262, §1, is repealed.

Sec. A-64. 35-A MRSA §3156, sub-§4, as enacted by PL 1993, c. 712, §6, is repealed.

Sec. A-65. 35-A MRSA c. 31, sub-c. IV, as amended, is further amended by repealing and replacing the headnote to read:

SUBCHAPTER IV

OLDER CITIZENS TRANSMISSION AND DISTRIBUTION SERVICE POLICY

Sec. A-66. 35-A MRSA §3171, as corrected by RR 1993, c. 1, §104, is amended to read:

§3171. Title

This subchapter may be known and cited as the "Older Citizens ~~Electric~~ Transmission and Distribution Service Policy."

Sec. A-67. 35-A MRSA §3172, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§3172. Policy

It is declared that it is a policy of the State to insure an adequate ~~electric~~ transmission and distribution utility service to older citizens at a price they can afford. Older citizens today face a special crisis in surviving under the constant increase in the cost of living and particularly in the cost of fuel and utility services. It is the purpose of lifeline ~~electric~~ transmission and distribution service to alleviate the upward spiral in the cost of ~~electric~~ transmission and distribution service to older citizens and at the same time to encourage as well as reward the conservation of scarce energy supplies by adopting the approach of constant per unit cost for the use of electricity. It is the policy of the State that older citizens be able to receive ~~electric~~ transmission and distribution service for basic necessities of modern life, such as lighting and refrigeration, at a stable, fair and reasonable minimum cost and to encourage the reduction of electricity consumption for all other uses beyond such basic necessities.

Sec. A-68. 35-A MRSA §3181, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. A-69. 35-A MRSA §3182, as amended by PL 1987, c. 490, Pt. B, §§8 and 9, is repealed.

Sec. A-70. 35-A MRSA §3191, as amended by PL 1991, c. 769, §2, is repealed.

Sec. A-71. 35-A MRSA §3195, as amended by PL 1993, c. 614, §1, is further amended to read:

§3195. Commission authority to promote transmission and distribution utility efficiency

1. Rate-adjustment mechanisms. This Title may not be construed to prohibit the commission from or to restrict the commission in establishing or authorizing any reasonable rate-adjustment mechanisms to promote efficiency in ~~electric~~ transmission and distribution utility operations and least-cost planning. Rate-adjustment mechanisms may include, but are not limited to:

A. Decoupling of utility profits from utility sales through revenue reconciliation;

B. Reconciliation of actual revenues or costs with projected revenues or costs, either on a total or per customer basis;

C. Adjustment of revenues based on reconciled, indexed or forecasted costs; and

D. Positive or negative financial incentives for efficient operations.

2. Just and reasonable rates. In determining the reasonableness of any rate-adjustment mechanism established under this subchapter, the commission shall apply the standards of section 301 to ~~assure~~ ensure that the rates resulting from the implementation of the mechanism are just and reasonable.

3. Value of utility property. Notwithstanding section 303, rate-adjustment mechanisms established under this section may be used to establish the value of the ~~electric~~ transmission and distribution utility's property.

4. Ratepayer protection. In determining the reasonableness of any rate-adjustment mechanisms, the commission shall consider the transfer of risks associated with the effect of the economy and the weather on the utility's sales. To the extent these risks are transferred from the utility to its customers, the commission shall consider in a rate proceeding the effect of the transfer of risk in determining a utility's allowed rate of return.

5. Annual report. The commission shall submit to the joint standing committee of the Legislature having jurisdiction over utilities matters an annual report detailing any actions taken or proposed to be taken by the commission under this section, including actions or proposed actions on mechanisms for protecting ratepayers from the transfer of risks associated with rate-adjustment mechanisms. The report must be submitted by December 31st of each year.

6. Rate flexibility. Notwithstanding sections 307 and 703, the commission, in an adjudicatory proceeding, may authorize ~~an electric~~ a transmission and distribution utility to implement a program under which:

A. The utility may change its schedule of rates with limited notice to the commission; and

B. The utility may enter into contracts for the sale of ~~electricity~~, transmission and distribution services and related management services with limited or no prior express approval by the commission.

The commission shall render its decision in any adjudicatory proceeding held for the purposes of

authorizing a utility to implement a program consistent with this subsection within 9 months of the initiation of the proceeding. In the adjudicatory proceeding, the commission shall establish the terms and conditions under which a program is authorized under this subsection. ~~As part of a program adopted under this subsection, the commission may waive the requirements of section 3101. Any program authorized under this subsection must be consistent with section 3191.~~ The authority granted to the commission under this subsection is in addition to the authority of the commission granted under other provisions of this Title and nothing in this subsection may be construed to limit the authority of the commission under any other provision of this Title.

Sec. A-72. 35-A MRSA §3201, sub-§§3 and 13, as enacted by PL 1997, c. 316, §3, are amended to read:

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

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

Sec. A-73. 35-A MRSA §3201, sub-§§18 and 19, as enacted by PL 1997, c. 316, §3, are repealed.

Sec. A-74. 35-A MRSA §3203, sub-§13-A is enacted to read:

13-A. Investigation. The commission may investigate any matter relating to the provision of service by a competitive electricity provider pursuant to this chapter. In conducting an investigation under this subsection, the commission shall use the procedures established under section 1303, subsection 2.

Sec. A-75. 35-A MRSA §3203, sub-§18 is enacted to read:

18. Confidentiality of consumer information. Information concerning customers of a competitive electricity provider is subject to the same confidentiality protections afforded utility customer information under section 704, subsection 5.

Sec. A-76. 35-A MRSA §3301, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. A-77. 35-A MRSA §3303, as amended by PL 1987, c. 769, Pt. A, §143, is further amended to read:

§3303. Definitions

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

1. Associate. "Associate" means any person other than ~~an electric~~ a transmission and distribution utility that substantially participates in the ownership or operation of a cogeneration or small power production facility or any person that contracts to receive the thermal output of a cogeneration facility.

1-A. Affiliate. "Affiliate" means any person who, as determined by the commission:

A. Directly controls, is controlled by or is under common control with an electric generation enterprise; or

B. Substantially owns, is substantially owned by or is substantially under common ownership with, an electric generation enterprise.

2. Cogenerator. "Cogenerator" means a municipality or person:

A. Owning or operating a facility ~~which that~~ generates electricity and steam or other useful forms of energy ~~which that~~ are used for commercial, industrial, heating or cooling purposes; and

B. Not primarily engaged in the generation or sale of electricity, other than the electricity generated at the cogeneration facility.

For purposes of this chapter, a cogenerator is considered not primarily engaged in the generation or sale of electricity if 50% or less of the equity interest in the cogeneration facility is owned by ~~an electric~~ a transmission and distribution utility, a subsidiary of ~~an electric~~ a transmission and distribution utility or an affiliate of ~~an electric~~ a transmission and distribution utility.

3. Existing transmission and distribution line improvement costs. ~~"Existing transmission and distribution line improvement costs" means any costs the utility reasonably incurs for upgrading and improving transmission and distribution lines and related facilities that are already operable as part of that utility's existing power grid.~~

4. Interconnection costs. ~~"Interconnection costs" means the reasonable costs incurred solely due to connecting the qualifying facility with the existing facilities of the electric utility purchasing the power. Interconnection costs do not include the costs of improvements to existing transmission and distribution lines.~~

5. Municipal solid waste. "Municipal solid waste" means solid waste emanating from domestic

and commercial sources within the State over which municipalities are authorized to exercise control.

6. Municipal solid waste energy recovery facility. "Municipal solid waste energy recovery facility" means a "small power producer" ~~as defined in this section, which that~~ depends upon municipal solid waste for at least 50% of its energy.

7. Qualifying facility. "Qualifying facility" means any small power producer or cogenerator as defined in this chapter.

8. Renewable resources. "Renewable resources" means resources that are capable of being reproduced, replenished or restored following the use of these resources and resources that are inexhaustible. Renewable resources ~~shall~~ include biomass, wood, water, waste, solid waste, as defined by Title 38, section 1303, solar energy and wind, but do not include nuclear fuel sources, coal and oil.

9. Small power producer. "Small power producer" means a municipality or person owning or operating a power production facility with a power production capacity ~~which that~~, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and ~~which that~~ depends upon renewable resources for its primary source of energy. For purposes of this chapter, a power producer is not considered a "small power producer" if more than 50% of the equity interest in the power production facility is owned by a electric transmission and distribution utility, a subsidiary of a electric transmission and distribution utility or an affiliate of a electric transmission and distribution utility.

Sec. A-78. 35-A MRSA §3304, as amended by PL 1987, c. 613, §4, is repealed.

Sec. A-79. 35-A MRSA §3305, sub-§§1 and 3, as enacted by PL 1987, c. 141, Pt. A, §6, are repealed.

Sec. A-80. 35-A MRSA §3306, as amended by PL 1987, c. 490, Pt. A, §7, is further amended to read:

§3306. Transactions

1. Rate. The small power producer or cogenerator and the electric transmission and distribution utility shall determine the rate paid by the electric transmission and distribution utility for the purchase of electricity as described in this section.

2. Small power producer or cogenerator and public utility unable to agree. In the event that the small power producer or cogenerator and the electric transmission and distribution utility are unable to

agree to a contract for electricity, or to a price for the electricity purchased by the utility, or to an equitable apportionment of existing transmission and distribution line improvement costs, the commission shall require the utility to purchase the power at such rates and under such terms as the commission establishes by rule or order.

3. Competing petitions filed by small power producers. In the event competing petitions are filed by small power producers or cogenerators ~~which that~~ are otherwise equivalent with respect to the standards set forth in ~~former~~ section 3307, and implementing rules ~~promulgated~~ adopted by the commission, the commission may give preference to any facility that is fueled primarily by municipal solid waste.

4. Apportionment of transmission and distribution line improvement costs. The commission shall base the equitable apportionment of existing transmission and distribution line improvement costs upon the benefits to the small power producer or cogenerator and the electric transmission and distribution utility.

5. Commission decision on petition. The commission shall issue a decision within 6 months from receipt of a petition signed by a small power producer, cogenerator or electric transmission and distribution utility for commission intercession.

6. Filing fee. The petitioner or petitioners requesting commission intercession shall pay to the commission an amount equal to \$1,000 per megawatt of capacity of the facility in issue. The petitioner or petitioners may request the commission to waive all or part of the filing fee. The commission shall rule on the request for waiver within 30 days. ~~Notwithstanding any other provision of law, filing~~ Filing fees paid as required in this subsection ~~shall~~ must be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from any petitioner or petitioners and is not expended by the commission to process the request for intercession ~~shall~~ must be returned to the petitioner or petitioners.

Sec. A-81. 35-A MRSA §3307, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. A-82. 35-A MRSA §3308, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§3308. Energy and capacity purchases from small power producers and cogenerators by transmission and distribution utilities affected by the filing of a petition in bankruptcy or for reorganization

1. Establishment of a purchase price for energy or energy and capacity delivered to a trustee or reorganized utility. If ~~an electric a transmission and distribution utility which that~~ has entered into a power purchase contract with a small power producer or cogenerator for the purchase of energy or energy and capacity pursuant to ~~former~~ section 3305, subsection 1 or section 3306, files for bankruptcy or for reorganization under the bankruptcy laws of the United States and, if the trustee in bankruptcy or debtor, receiver, examiner or any other party in possession and control of the assets of the ~~electric transmission and distribution~~ utility rejects that power purchase contract pursuant to the United States Bankruptcy Code or any similar power or law, the trustee, debtor, receiver, examiner or other party in possession and control of the assets of the ~~electric transmission and distribution~~ utility ~~shall be~~ is obligated to continue to purchase without interruption from the small power producer or cogenerator whose contract was rejected any energy or energy and capacity ~~which that~~ the small power producer or cogenerator makes available to it. If the power purchase contract is rejected, the avoided cost for the energy; or energy and capacity for the time period commencing on the date of the rejection and ending on the original expiration date of the rejected contract ~~shall~~ must be the avoided cost determined for the period as if the determination were being made on the date on which the ~~electric transmission and distribution~~ utility and small power producer or cogenerator entered into the rejected contract.

2. Nature of capacity contract. If a small power producer or cogenerator contracts to provide ~~an electric a transmission and distribution~~ utility with electric generating capacity, that portion of the power purchase contract ~~which that~~ requires the delivery of the capacity ~~shall may~~ not be executory in nature under the laws of the State once the small power producer or cogenerator has first made available to the ~~electric transmission and distribution~~ utility the electric generating capacity. This section ~~shall may~~ not be interpreted to mean that any other sections of such a contract are executory in nature.

3. Commission approval of rates of reorganized utility. At any time that the commission is requested or required to approve rates for ~~an electric a transmission and distribution~~ utility ~~which that~~ has rejected a power purchase contract with a small power producer or cogenerator as a result of a bankruptcy or reorganization proceeding, or to approve rates of a person controlling and in possession of the assets of ~~an electric a transmission and distribution~~ utility ~~which that~~ was a party to such a rejected contract, it ~~shall may~~ not grant any rate approval; unless the ~~electric transmission and distribution~~ utility or person seeking the rates includes within the rates provision for payment for all energy and capacity made available by

a small power producer or cogenerator, either at the original contract rate or at the rate specified in subsection 1.

Any person who is obligated to comply with this section may not be permitted to operate as ~~an electric a transmission and distribution~~ utility in the State, unless it is in full compliance with this section.

Sec. A-83. 35-A MRS §3309, as enacted by PL 1993, c. 712, §7, is amended to read:

§3309. Performance of contracts; commercially reasonable business practices

In the performance or enforcement of any contract for the purchase of energy resources by ~~an electric a transmission and distribution~~ utility, all parties shall act in good faith and observe reasonable commercial standards of fair dealing. Conformance to this standard does not constitute imprudent utility behavior.

Sec. A-84. 35-A MRS c. 35, as amended, is further amended by repealing and replacing the headnote to read:

CHAPTER 35

CONSUMER-OWNED TRANSMISSION AND DISTRIBUTION UTILITIES

Sec. A-85. 35-A MRS §3501, as amended by PL 1987, c. 490, Pt. C, §9, is further amended to read:

§3501. Definitions

1. Consumer-owned transmission and distribution utility. For the purposes of this chapter, "consumer-owned ~~electric transmission and distribution~~ utility" means any ~~electric transmission and distribution~~ utility ~~which that~~ is wholly owned by its consumers, including, but not limited to:

- A. Any rural electrification cooperative organized under chapter 37;
- B. Any electrification cooperative organized on a cooperative plan under the laws of the State;
- C. Any municipal or quasi-municipal ~~electric transmission and distribution~~ utility;
- D. The ~~electric~~ portion of any municipal or quasi-municipal entity providing ~~electric and other~~ transmission and distribution services; and
- E. Any ~~electric transmission and distribution~~ utility wholly owned by a municipality.

Sec. A-86. 35-A MRSA §3502, as amended by PL 1995, c. 255, §§1 to 6, is further amended to read:

§3502. Procedures for changes in rates

Notwithstanding section 310, any consumer-owned electric transmission and distribution utility that proposes to increase rates, tolls or charges by not more than 15% of the utility's annual operating revenues or proposes to decrease rates, tolls or charges in any amount may elect to set rates pursuant to this section and section 3503. ~~These sections do not apply to fuel adjustment clauses as governed by section 3401.~~

1. Public hearing. A consumer-owned electric transmission and distribution utility that elects to set rates under this section may not increase or decrease any rate, toll or charge without first holding a public hearing at which the Public Advocate and any customer of the consumer-owned electric transmission and distribution utility may present testimony and may question the officials present regarding the proposed rate change.

2. Notification. The consumer-owned electric transmission and distribution utility shall, at least 30 days prior to the hearing, publish a notice of the amount of the proposed rate change, the percent of change for each customer class and the hearing, including the date, time, place and purpose of the hearing, in a newspaper of general circulation in the area encompassed by the consumer-owned electric transmission and distribution utility. In addition, 60 days prior to the hearing, the consumer-owned electric transmission and distribution utility shall notify the commission and the Public Advocate of its intent to change rates, tolls or charges.

3. Ratepayer notification. Each consumer-owned electric transmission and distribution utility shall give, at least 30 days prior to the public hearing, one notice to each of its ratepayers of:

- A. The amount of the proposed rate change;
- B. The percent of change for each customer class;
- C. The customer's right to request information relating to the present and proposed rates;
- D. The customer's right to an open and fair hearing and to further hearings before the commission;
- E. The availability of assistance from the Public Advocate;
- F. The date, time, place and purpose of the hearing; and

G. The customer's right to petition the commission to investigate the proposed rate change, the requirement that signatures on petitions filed pursuant to subsection 8 are invalid unless accompanied by the printed names and addresses of the signers and the fact that the utility will, upon request, provide customers with petition forms that include space for signatures and the printed names and addresses of the signers.

4. Customer rights. At the commencement of each hearing held pursuant to this section, the consumer-owned electric transmission and distribution utility shall inform those present of customer rights as specified in subsection 3, that the rate change may be investigated by the commission in accordance with subsection 8 and that petitions filed pursuant to subsection 8 must bear the signature, printed name and address of the signer. Upon request, the utility shall provide customers with petition forms that include a place for signatures and the printed names and addresses of the signers.

5. Supporting materials. The consumer-owned electric transmission and distribution utility shall file a copy of all materials supporting the proposed rate change with the commission and the Public Advocate, at least 30 days prior to the hearing. A copy of all material supporting the proposed rate change must be made available to customers for examination at the offices of the consumer-owned electric transmission and distribution utility for at least 30 days prior to the hearing. The consumer-owned electric transmission and distribution utility shall promptly provide any relevant additional material or information requested by a customer or by the commission or by the Public Advocate.

6. Filing changed rates. The consumer-owned electric transmission and distribution utility shall file its changed rates with the commission within 30 days of the public hearing, but not sooner than 10 days following the public hearing. The commission may order the consumer-owned electric transmission and distribution utility to correct any mathematical or clerical errors.

7. Effective date of rate change. Subject to the notice and waiver requirements of section 307, consumer-owned electric transmission and distribution utilities electing to set rates under this section may establish an effective date for any rate change of at least one month, but not more than 9 months, from the date the rates are filed with the commission.

8. Authority to investigate rate changes. If, within 30 days of the public hearing, 10% of the customers of the consumer-owned electric transmission and distribution utility or 750 customers, whichever is less, file with the utility and with the

commission petitions requesting a review of the rate change by the commission, the rate change may be suspended, investigated, reviewed and changed by the commission in accordance with section 310, except that no suspension ordered issued by the commission pursuant to section 310 may be effective for a period greater than 9 months from the date the rate changes were filed.

9. Procedures for suspension of rate change.

If the number of signatures on the petition is at least 750 or if the number of signatures on the petition equals or exceeds 10% of the customers indicated on the consumer-owned electric transmission and distribution utility's most recent annual report on file with the commission, the commission may suspend the rate change pursuant to section 310. The commission shall notify the electric utility of the suspension.

10. Transmission and distribution utility may challenge petitions.

A consumer-owned electric transmission and distribution utility has 10 days from the receipt of notice to notify the commission and the lead petitioner whether it intends to contest any aspect of the validity of the petitions, after which it loses that right. If the utility intends to challenge the validity of individual signatures on the petitions, it shall identify, in its notice to the commission and lead petitioner, the specific signatures it is challenging and state the grounds for challenging each signature it believes is invalid. When the utility files its notice of intent to challenge the validity of the petitions, the utility shall provide the commission and the lead petitioner with a list of its customers. If the electric utility notifies the commission in a timely fashion that it wishes to contest the validity of the petitions, the commission shall set the matter for hearing. It shall hold the hearing and issue its decision on the validity of the petitions within 30 days of notification by the electric utility that it intends to contest the validity of the petitions. If the commission finds the petitions to be invalid, it shall lift its order of suspension. For the purposes of this section, "customer" means, in the case of residential accounts, any one adult residing in a household where the utility's electric transmission and distribution service is provided and, in the case of all other accounts where the utility's electric transmission and distribution service is provided, a corporate officer, a partner or a proprietor. No more than one person may sign on behalf of an account. ~~No~~ A person may not sign on behalf of more than one account unless the person is a customer at each account.

A signature on a petition filed pursuant to subsection 8 is valid only if accompanied by the printed name and address of the signer. If a petition filed pursuant to subsection 8 bears a sufficient total number of signatures but an insufficient number of printed names

and addresses of the signers, the lead petitioner has 7 days from receipt of notice of the utility's challenge to cure the invalidity. If the utility's only challenge to a petition relates to the absence of printed names or addresses of the signers of the petition and the lead petitioner cures the invalidity as provided in this subsection, the commission is not required to hold a hearing under this subsection.

11. Review of rates under section 310. Nothing in this section prohibits a consumer-owned electric transmission and distribution utility from petitioning the commission for review pursuant to section 310 in the first instance.

12. Frequency of rate increases. ~~No~~ A consumer-owned electric transmission and distribution utility may not institute a general increase in its rates under this section within one year of its most recent general increase in rates pursuant to this section. For the purposes of this section, a "general increase in rates" means any change in the rates, tolls and charges of ~~the electric a consumer-owned transmission and distribution~~ electric transmission and distribution utility, the effect of which is to increase the annual operating revenues of ~~an electric a consumer-owned transmission and distribution~~ electric transmission and distribution utility by more than 1%, ~~but does not include a rate change made for the sole purpose of implementing a fuel cost adjustment rate, pursuant to section 3104.~~

13. Penalty. If, upon the filing of a rate change pursuant to this section, the commission finds that the utility has failed to comply with this section, the commission may suspend the rates for investigation pursuant to section 310. If there is a substantial procedural violation of this section, the commission may prohibit the utility from filing rates pursuant to this section in its next rate case.

Sec. A-87. 35-A MRSA §3503, as amended by PL 1999, c. 102, §1, is further amended to read:

§3503. Rates for consumer-owned transmission and distribution utilities

1. Scope of section. Notwithstanding any other provision of law or any charter to the contrary and in addition to any charter or private and special laws creating or affecting any consumer-owned electric transmission and distribution utility, the rate, toll or charge made, exacted, demanded or collected by the consumer-owned electric transmission and distribution utility is governed by this section.

2. Definition. As used in this section, the term "governing body" means the governing body of a consumer-owned electric transmission and distribution utility.

3. Just and reasonable rates. The governing body shall establish and file rates, tolls and charges

~~which that~~ are just and reasonable and ~~which that~~ provide revenue as may be required for the consumer-owned electric transmission and distribution utility to perform its public utility service and to attract necessary capital on just and reasonable terms.

4. Nondiscriminatory rates. The governing body shall establish and file rates ~~which that~~ are nondiscriminatory and ~~which that~~ are applied on a nondiscriminatory basis.

5. Purposes. The governing body may establish and file rates under this section to provide revenue for the following purposes, but no other:

A. To pay the current expenses for operating and maintaining the electric transmission and distribution system and to provide for normal renewals and replacements;

B. To provide for the payment of the interest on the indebtedness created or assumed by the utility;

C. For consumer-owned electric transmission and distribution utilities, except rural electrification cooperatives:

(1) To provide each year a sum equal to not less than 2% nor more than 10% of the term indebtedness represented by the issuance of bonds created or assumed by the utility, which sum must be turned into a sinking fund and kept to provide for the extinguishment of term indebtedness. The money set aside in this sinking fund and all interest accrued to this fund must be devoted to the retirement of the term obligations of the utility and may be invested in such securities as savings banks in the State are allowed to hold;

(2) To provide for annual principal payments on serial indebtedness created or assumed by the utility; and

(3) To provide for a contingency reserve fund, 1/2 of which may be used for capital purposes, to reflect up to a 25% addition to yearly revenues over the amount required to operate the electric utility, not including purchased power supply costs, if any. Any surplus in excess of this 25% must be used to offset future revenue requirements in the setting of rates. Any interest generated on these funds must be deposited into the contingency reserve fund. The balance in the contingency reserve fund at the close of the utility's fiscal year may not exceed 25% of the yearly revenues over the amount required to operate the electric utility, not in-

cluding purchased power supply costs, if any; and

D. For rural electrification cooperatives supplying or authorized to supply energy, to provide for debt service coverage by providing rates to reflect an additional amount no more than the amount of yearly long-term interest payments. The total amount of equity may not exceed the level of equity required by the lender and in no case may exceed 40% of the rural electrification cooperative's total assets minus total reserves as shown on the cooperative's annual report to the commission submitted pursuant to section 504, subsection 2. Any surplus in excess must be used to offset future revenue requirements in the setting of rates.

The limitations set out in this subsection apply only in the case of rates established pursuant to this section and do not limit the discretion of the commission in setting rates under any other section.

6. Penalty. If, as a result of investigation pursuant to section 310, 1302 or 1303, the commission finds that the utility has set rates pursuant to section 3502 ~~which that~~ significantly exceed the limits of this section, the commission may order the utility to use any existing surplus to offset future revenue requirements and may suspend the utility's rights pursuant to section 3502 for a specified time period.

Sec. A-88. 35-A MRSA §3504, as repealed and replaced by PL 1989, c. 101, is amended to read:

§3504. Treatment of certain small consumer-owned transmission and distribution utilities

1. Exemption. Upon request of a consumer-owned electric transmission and distribution utility of not more than 150 customers, the commission may exempt the utility from any of the requirements of any commission rules and this Title, with the exception of sections 3502 and 3503.

2. Rule-making considerations. The commission shall take into account the form of governance of consumer-owned electric transmission and distribution utilities when promulgating rules and shall state in any notice of proposed rulemaking relating to those utilities what consideration has been given to the ability of those utilities to regulate matters covered under their own authority and, in promulgating those rules, ~~shall~~ may not impose unreasonable requirements on consumer-owned electric transmission and distribution utilities.

Sec. A-89. 35-A MRSA §3734, sub-§§1 and 2, as enacted by PL 1987, c. 141, Pt. A, §6, are amended to read:

1. Incorporators are members. Each incorporator of a cooperative is a member of the cooperative, but no other person may become a member unless that person agrees to use electric energy transmission and distribution service or other services furnished by the cooperative when they are made available through its facilities.

2. Requirements of membership. Any member of a cooperative who agrees to use electric energy transmission and distribution service shall cease to be a member if ~~he~~ that member does not use electric energy transmission and distribution service supplied by the cooperative within 6 months after it is made available to ~~him~~ or if electric energy transmission and distribution service is not made available to ~~him~~ by the cooperative within 2 years after ~~he~~ the member becomes a member or such lesser period as the bylaws of the cooperative may provide.

Sec. A-90. 35-A MRSA §3905, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§3905. Existing districts

Any quasi-municipal district organized under the private and special laws ~~which that is an electric a~~ transmission and distribution utility within the meaning of section 102, may reorganize in accordance with this chapter. In addition to the methods of sections 3903 and 3904, the trustees may, by majority vote, petition the municipal officers for an election and those officers shall hold an election in accordance with those sections.

Sec. A-91. 35-A MRSA §3911, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§3911. Eminent domain

A district may exercise the right of eminent domain under the same conditions and for the same purposes as other electric transmission and distribution utilities under section 3136. Title to property acquired ~~shall~~ must be taken in the name of the district.

Sec. A-92. 35-A MRSA §4132, sub-§11, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

11. Plan. Individually or jointly with any other person to plan, finance, acquire, construct, improve, purchase, operate, maintain, use, share costs of, own, lease, sell, dispose of or otherwise participate in projects or portions of projects, the product or service from them, securities or obligations issued or incurred in connection with the financing of them or research and development relating to them, inside or outside the State. The agency may also enter into and perform contracts with any person with respect to the powers set out in this subsection. If the agency acquires or

owns an interest as a tenant in common with others in any projects, the surrender or waiver by the agency or by the other property owner of its right to partition the property for a period not exceeding the period for which the property is used or useful for electric utility purposes may not be invalid and unenforceable by reason of length of the period, or as unduly restricting the alienation of the property;

Sec. A-93. 35-A MRSA §4135, sub-§2, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

2. Property taxes. All real and personal property acquired by the agency is subject to taxes to the same extent as real and personal property owned by other electric transmission and distribution utilities.

Sec. A-94. 35-A MRSA §4301, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Investment in nuclear power plants. The Legislature finds that construction of a nuclear power plant is a major financial investment, which will have consequences for ~~ratepayers~~ consumers for years to come. In the recent past, investments in nuclear power plants have caused severe financial strain on consumers ~~and utilities~~.

Sec. A-95. 35-A MRSA §4302, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Question submitted to voters. ~~After review of the proposed plant by the commission in accordance with section 3132 or 3133, but prior~~ Prior to the construction of any nuclear power plant within the State, the question of approving that construction ~~shall~~ must be submitted to the voters of the State in the manner prescribed by law for holding a statewide election. This question ~~shall~~ must be submitted to the legal voters of the State at the next following statewide election. The ~~city aldermen, town selectmen~~ municipal officers and plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of construction by voting on the following question:

"Do you approve construction of the nuclear power plant proposed for (insert locations)?"

Sec. A-96. 35-A MRSA §4303, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§4303. Notice; effective date of certificate; prohibition

~~Upon issuance of a certificate of public convenience and necessity under section 3132 or 3133 for any nuclear power plant within this State, the commission shall notify the Secretary of State. No certificate may be effective until 30 days after submission to the voters, as prescribed in section 4302. Construction may not commence on a nuclear power plant without approval by the voters, as prescribed in section 4302.~~

Sec. A-97. 35-A MRSA §4352, sub-§10, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

10. Owner. "Owner" means any electric transmission and distribution utility ~~which that~~ owns any portion of a nuclear power plant, whether directly or through ownership of stock in a company ~~which that~~ owns any portion of a nuclear power plant or through membership in a holding company ~~which that~~ owns any portion of a nuclear power plant or through other means.

Sec. A-98. 35-A MRSA §4353, sub-§2, ¶C, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

C. The share of the estimated decommissioning expenses attributed to each electric utility to which the plant supplies power;

Sec. A-99. 35-A MRSA §4353, sub-§3, ¶B, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

B. The commission shall approve the decommissioning financing plan if it finds that the licensee, in the judgment of the commission, has provided reasonable assurance that:

- (1) The estimated time of closing of the nuclear power plant and the estimated cost of decommissioning are reasonable;
- (2) The share of the estimated cost of decommissioning for each electric utility to which the plant supplies power is reasonable;
- (3) The principal and income ~~which that~~ will have accumulated in the decommissioning trust fund at the estimated time of closing the plant will be adequate to cover the estimated cost of decommissioning, plus the expenses of administering the fund;
- (4) The provisions of the proposed form of the decommissioning trust fund will ensure that the funds in the trust are judiciously invested and will adequately protect the funds until decommissioning is completed and, in

the event the licensee proposes to establish its own decommissioning fund committee, that the licensee-established committee will ensure that the funds in the trust are judiciously invested and will adequately protect the funds until decommissioning is completed;

(5) The assets in the fund ~~cannot~~ can not be withdrawn unless approved by the decommissioning fund committee under section 4355, subsection 5, prior to completion of decommissioning;

(6) Contributions to the fund are equitably spread over the useful life of the plant to the extent feasible;

(7) The plans and options for insuring against or otherwise financing any shortfall in the fund resulting from a premature closing are adequate and reasonable;

(8) The owners are legally bound to accept their respective shares of the ultimate financial responsibility for decommissioning and the plan reflects full compliance with section 4356; and

(9) The plan will periodically be reviewed and revised to reflect more closely the costs and available techniques for decommissioning. This update ~~shall~~ must occur at least every 5 years.

Sec. A-100. 35-A MRSA §4355, sub-§6, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

6. Expenditure of money remaining after decommissioning. Upon termination of decommissioning, the commission shall conduct a final audit of the decommissioning trust fund. The commission may by rule, if the public interest requires, establish a decommissioning contingency reserve at that time. If there are assets remaining in the fund attributable to a given plant, after its decommissioning has been completed, those assets ~~shall~~ must be returned, in proportion to their payments, to the owners and any other persons who originally made payments to the licensee for decommissioning purposes in accordance with the order or orders of any regulatory agency having jurisdiction. No portion of the remaining assets in a fund may accrue to the benefit of the licensee.

~~An electric~~ A transmission and distribution utility in the State ~~which that~~ receives remaining decommissioning funds under this subchapter shall distribute the funds equitably, under the guidance of the commission, to its customers.

Sec. A-101. 35-A MRSA §4391, sub-§3, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

3. Owner. "Owner" means any electric utility ~~which that~~ owns any portion of a nuclear power plant, whether directly or indirectly, through ownership of stock in a company ~~which that~~ owns any portion of a nuclear power plant, through membership in a holding company ~~which that~~ owns any portion of a nuclear power plant or through other means.

Sec. A-102. 35-A MRSA §4392, sub-§7, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

7. Assets remaining in the fund. Any assets remaining in the fund at the time of dissolution ~~shall~~ must be returned, in proportion to their payments, to the owners and any other persons who originally made payments to the licensee for the fund. Any amounts returned to the ~~electric~~ transmission and distribution utilities within the State will be subject to ultimate rate treatment by the commission. No portion of the remaining assets in the fund may accrue to the benefit of the licensee.

Sec. A-103. 36 MRSA §6652, sub-§1-C, ¶¶B, C and D, as enacted by PL 1997, c. 729, Pt. B, §2, are amended to read:

B. Except as provided in paragraph C, reimbursement may not be made for property used to produce or transmit energy primarily for sale. Energy is primarily for sale if 2/3 or more of the useful energy is directly or indirectly sold and transmitted during the property tax year through the facilities of a transmission and distribution utility as defined in Title 35-A, section ~~3204~~ 102, subsection ~~49~~ 20-B.

C. A cogeneration facility is eligible for reimbursement on that portion of property taxes paid multiplied by a fraction, the numerator of which is the total amount of useful energy produced by the facility that is directly used by a manufacturing facility without transmission over the facilities of a transmission and distribution utility as defined in Title 35-A, section ~~3204~~ 102, subsection ~~49~~ 20-B and the denominator of which is the total amount of useful energy produced.

D. For purposes of this subsection, unless the context indicates otherwise, the following terms have the following meanings.

(1) "Cogeneration facility" means the eligible property within a facility that produces electrical energy, thermal energy or both for commercial or industrial use when less than 2/3 of the useful energy produced

by the facility during the property tax year is sold and transmitted directly or indirectly through the facilities of a transmission and distribution utility, as defined in Title 35-A, section ~~3204~~ 102, subsection ~~49~~ 20-B. "Cogeneration facility" includes eligible property within a heat recovery steam generator.

(2) "Useful energy" is energy in any form that does not include waste heat, efficiency losses, line losses or other energy dissipation.

Sec. A-104. Application. This Part is not intended to affect the calculation of a transmission and distribution utility's stranded costs pursuant to the Maine Revised Statutes, Title 35-A, section 3208.

Sec. A-105. Effective date. This Part takes effect on March 1, 2000.

PART B

Sec. B-1. 35-A MRSA §3202, sub-§5 is enacted to read:

5. International transmission contracts. Notwithstanding section 3204, transmission and distribution utilities, including consumer-owned utilities, that operate or manage a portion of the grid connected to the New England grid by transmission lines that pass through Canada may enter into commercially reasonable contracts with Canadian electric utilities for the purchase of back-up services, tie-line interruption services, ancillary services, transmission services or any other service that promotes effective retail electric competition in northern Maine. The transmission and distribution utilities shall make all such contract services available to competitive electricity providers at cost, on an equitable basis. Commission approval of such contracts is not required. Nothing in this subsection exempts from commission jurisdiction utility operations or activities undertaken pursuant to such contracts.

PART C

Sec. C-1. 35-A MRSA §116, sub-§1, as corrected by RR 1995, c. 1, §29, is amended to read:

1. Utilities subject to assessments. Every electric transmission and distribution, gas, telephone and water utility and ferry subject to regulation by the commission is subject to an assessment ~~of not more than 35%~~ on its intrastate gross operating revenues to produce no more than \$4,473,000 ~~in revenues annually beginning in the 1991-92 fiscal year and not more than \$4,918,000 in revenues annually beginning in the 1992-93 fiscal year.~~ The commission shall

assess transmission and distribution utilities at a rate sufficient to produce \$3,370,000 and shall assess all other utilities at a rate sufficient to produce \$1,548,000. The commission shall determine the assessments annually prior to May 1st and assess each utility for its pro rata share for expenditure during the fiscal year beginning July 1st. Each utility shall pay the assessment charged to the utility on or before July 1st of each year. Any increase in the assessment that becomes effective subsequent to May 1st may be billed on the effective date of the act authorizing the increase.

A. The assessments charged to utilities under this section are just and reasonable operating costs for rate-making purposes.

B. For the purposes of this section, "intrastate gross operating revenues" means intrastate revenues derived from filed rates, except revenues derived from sales for resale.

C. Gas utilities subject to the jurisdiction of the commission solely with respect to safety are not subject to any assessment.

D. The commission may correct any errors in the assessments by means of a credit or debit to the following year's assessment rather than reassessing all utilities in the current year.

E. The commission may exempt utilities with annual intrastate gross operating revenues under \$50,000 from assessments under this section.

PART D

Sec. D-1. 35-A MRSA §3202, sub-§4, as enacted by PL 1997, c. 316, §3, is amended to read:

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~~ 2001.

PART E

Sec. E-1. 35-A MRSA §3202, sub-§6 is enacted to read:

6. Exception. Notwithstanding any other provision of this chapter, an electric utility whose system is not physically connected to any transmission and distribution utility is exempt from this chapter. The commission shall ensure that such an electric utility's rates, including consideration of generation-related costs, are just and reasonable.

PART F

Sec. F-1. 35-A MRSA §3212, sub-§2, as amended by PL 1997, c. 691, §§6 and 7, is further amended to read:

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 December 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.

Notwithstanding any other provision of this Title, the commission may, in the event of a default by a standard-offer service provider, require the transmission and distribution utility in whose service territory the provider was providing standard-offer service to arrange and to provide for default service. Notwithstanding any other provision of this Title, the commission may, in the event that the commission receives no bids to provide standard-offer service in a transmission and distribution utility's territory or the commission determines that the bids it receives are inadequate or unacceptable, require the transmission and distribution utility to arrange and to provide for default service. The arrangement and provision of such default service by a transmission and distribution utility does not constitute selling electric energy or

capacity at retail for purposes of section 3205, subsection 2.

Notwithstanding Title 5, section 1831, the commission is not subject to rules adopted by the State Purchasing Agent in conducting the competitive bidding process required under this section.

PART G

Sec. G-1. 35-A MRSA §3205, sub-§3, ¶H, as enacted by PL 1997, c. 316, §3, is amended to read:

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 and shall keep a log of any other transactions between the distribution utility and the affiliated provider that the commission may by rule require. 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.

Sec. G-2. 35-A MRSA §3205, sub-§3, ¶Q is enacted to read:

Q. A distribution utility may not subsidize the business of its affiliated competitive provider at ratepayer expense in any manner not specifically authorized under this section.

Sec. G-3. 35-A MRSA §3205, sub-§§5 to 7, as enacted by PL 1997, c. 316, §3, are repealed.

Sec. G-4. 35-A MRSA §3206-A is enacted to read:

§3206-A. Marketing; investor-owned utilities; penalties

1. Penalties. The commission shall require an investor-owned transmission and distribution utility to divest an affiliated competitive provider if the commission determines in an adjudicatory proceeding that:

A. The distribution utility or an affiliated competitive provider has knowingly violated section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections; 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 \$100,000 for a violation of section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections. Each day of a violation constitutes a separate offense. In addition, the commission may require disgorgement of profits or revenues realized as a result of a violation of section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under section 117.

2. Prohibition; divestiture. If, after the effective date of this section, 10% or more of the stock of an investor-owned transmission and 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 investor-owned transmission and 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.

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

As used in this section, the term "affiliated competitive provider" means a competitive electricity provider whose relationship with an investor-owned transmission and distribution utility qualifies it as an affiliated interest.

Sec. G-5. Modification of rules. The Public Utilities Commission shall modify its major substantive rule, Chapter 304: Standard of Conduct for Transmission and Distribution Utilities and Affiliated

Competitive Electricity Providers, as follows to bring it into conformity with the changes to law accomplished pursuant to this Part:

1. Add a provision providing that an investor-owned electric utility may not subsidize the business of its affiliated competitive provider at ratepayer expense in a manner not specifically authorized by the Maine Revised Statutes, Title 35-A, section 3205; and

2. Modify the penalty provisions to increase the administrative penalties from a maximum of \$10,000 to a maximum of \$100,000 and provide for disgorgement of profits in addition to the administrative penalty for violations of the standards of conduct.

The Public Utilities Commission is not required to hold hearings or conduct other formal proceedings to modify its major substantive rule in accordance with this section and such modifications do not require review or approval of the Legislature prior to becoming effective.

PART H

Sec. H-1. 2 MRSA §6-A, sub-§1, as amended by PL 1985, c. 693, §§2 and 14 and c. 737, Pt. C, §5, is further amended to read:

1. Chair. The salary of the ~~chairman~~ chair of the commission shall be within salary range 91, step G, for fiscal year 1987; and salary range 91, step H, for fiscal year 1988, and annually thereafter is equal to the salary of the Chief Justice of the Superior Court as established pursuant to Title 4, section 4, subsection 2-A and section 102, subsection 1.

Sec. H-2. 2 MRSA §6-A, sub-§2, as repealed and replaced by PL 1987, c. 402, Pt. A, §5, is amended to read:

2. Commission members. The salary of members of the commission shall be within salary range 90, step G, for fiscal year 1987; and salary range 90, step H, for fiscal year 1988, and annually thereafter is equal to the salary of an Associate Justice of the Superior Court as established pursuant to Title 4, section 102, subsections 2 and 2-A.

Sec. H-3. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Part.

	1999-00	2000-01
PUBLIC UTILITIES COMMISSION		
Public Utilities - Administrative Division		
Personal Services	\$52,394	\$78,216
All Other	(52,394)	(78,216)

Deallocates funds from a reduction in All Other costs to provide an allocation for an increase in the salary of the chair and commission members of the Public Utilities Commission.

PUBLIC UTILITIES COMMISSION

TOTAL	\$0	\$0
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PART I

Sec. I-1. 35-A MRSA §3210, sub-§1, as enacted by PL 1997, c. 316, §3, is amended to read:

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

Sec. I-2. 35-A MRSA §3210, sub-§2, as enacted by PL 1997, c. 316, §3, is repealed and the following enacted in its place:

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

A. "Efficient resource" means a source of electrical generation that:

(1) 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, was constructed prior to January 1, 1997 and meets the following efficiency standard:

(a) During any calendar year, the sum of the useful power output and the useful thermal energy output of the facility is no less than 60% of the total energy input to the facility.

For purposes of this paragraph, the term "useful power output" means the electrical or mechanical energy made available for use, exclusive of any energy used in the power production process. For purposes of this paragraph, the term "useful thermal energy" means thermal energy made available to an industrial or commercial process, net of any heat contained in condensate return and makeup water, used in a heating application or used in a space cooling application.

B. "Eligible resource" means a source of electrical generation that:

(1) 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, or to the Maritimes Control Area; and

(2) Is either a renewable resource or an efficient resource.

C. "Renewable resource" means a source of electrical generation:

(1) That qualifies as a 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; or

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

- (a) Fuel cells;
- (b) Tidal power;
- (c) Solar arrays and installations;
- (d) Wind power installations;
- (e) Geothermal installations;
- (f) Hydroelectric generators;
- (g) Biomass generators; or
- (h) Generators fueled by municipal solid waste in conjunction with recycling.

Sec. I-3. 35-A MRSA §3210, sub-§§3 and 4, as enacted by PL 1997, c. 316, §3, are amended to read:

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~~ is accounted for by renewable eligible resources. If a competitive electricity provider represents to a customer that the provider is selling to the customer a portfolio of supply sources that includes more than 30% eligible resources, the resources necessary to supply more than 30% of that customer's load may not be applied to meet the aggregate 30% portfolio requirement. ~~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 eligible 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.

Sec. I-4. Modification of rules. The Public Utilities Commission shall modify its major substantive rule, Chapter 311: Renewable Resource Portfolio Requirement, as follows to bring it into conformity with the changes to law accomplished pursuant to this Part:

1. Change the renewable resources portfolio requirement to an eligible resources portfolio requirement;

2. Change the definition of "renewable resource" to conform with the definition of that term provided in the Maine Revised Statutes, Title 35-A, section 3210, subsection 2, paragraph C;

3. Add a definition of "efficient resource" that conforms with the definition of that term provided in Title 35-A, section 3210, subsection 2, paragraph A; and

4. Insert a provision that if a competitive electricity provider represents to a customer that the provider is selling to the customer a portfolio of supply sources that includes more than 30% eligible resources, the resources necessary to supply more than 30% of that customer's load may not be applied to meet the aggregate 30% portfolio requirement.

The Public Utilities Commission is not required to hold hearings or conduct other formal proceedings to modify its major substantive rule in accordance with this section, and such modifications do not require review or approval of the Legislature prior to becoming effective.

PART J

Sec. J-1. 35-A MRSA §3203, sub-§2, ¶¶D and E, as enacted by PL 1997, c. 316, §3, are amended to read:

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; ~~and~~

Sec. J-2. 35-A MRSA §3203, sub-§2, ¶F is enacted to read:

F. Evidence that the applicant is registered with the State Tax Assessor as a seller of tangible personal property pursuant to Title 36, section 1754-B, together with a statement that the applicant agrees to be responsible for the collection and remission of taxes in accordance with Title 36, Part 3 on all taxable sales of electricity made by the applicant to consumers located in this State.

PART K

Sec. K-1. 35-A MRSA §3204, sub-§10 is enacted to read:

10. Retail contracts for bundled electricity service extending beyond March 1, 2000. If a transmission and distribution utility has entered into a contract to provide bundled electricity service to a retail customer at a price other than the applicable tariffed rate for a term extending beyond March 1, 2000, the utility shall attempt to renegotiate and reform the contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the contract, except that an investor-owned transmission and distribution utility may not agree to provide directly or indirectly generation service to the customer on or after March 1, 2000.

The utility shall reform the contract so that the customer pays a total price for delivered electricity on an annual basis during the remaining term of the contract equal to the price contained in the contract. If the customer has exercised due diligence to obtain the lowest price from a competitive electricity provider for generation service for the remaining term of the contract, the utility shall reform the contract to provide a price for transmission and distribution services, stranded costs and all other applicable utility charges that is equal to the difference between the original contract price and the price for generation service obtained by the customer. If the customer has failed to exercise due diligence, the price must be equal to the difference between the original contract price and a reasonable market price for generation service for that customer.

If after good faith negotiations the contracting parties are unable to agree to a reformed contract, either party may petition the commission to resolve the dispute. The commission shall determine any unresolved issues and impose a reformed contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the original contract. Prior to its final determination, the commission shall review updated

information provided by the retail customer concerning the price of its generation service. The commission may not approve a retail contract with a price term longer than the expected duration of the retail customer's generation service contract. Changes to a contract reformed under this subsection take effect on March 1, 2000. A transmission and distribution utility shall ensure that any contract subject to this subsection has been reformed before that date.

PART L

Sec. L-1. 35-A MRSA §3208, sub-§8, as enacted by PL 1997, c. 316, §3, is amended to read:

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~~ December 1, 1999.

Sec. L-2. 35-A MRSA §3209, sub-§2, as enacted by PL 1997, c. 316, §3, is amended to read:

2. Proceeding. Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before ~~October~~ December 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.

PART M

Sec. M-1. 35-A MRSA §3216, sub-§1, ¶A, as enacted by PL 1997, c. 316, §3, is amended to read:

A. "Eligible employees" means all full-time and part-time 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.

Sec. M-2. 35-A MRSA §3216, sub-§2, ¶E, as enacted by PL 1997, c. 316, §3, is amended to read:

E. Provide severance pay equal to 2 weeks of current base pay for each year of full-time and one week of current base pay for each year of part-time employment.

Sec. M-3. Retroactivity. This Part is retroactive to September 19, 1997.

PART N

Sec. N-1. 35-A MRSA §3204, sub-§3, as enacted by PL 1997, c. 316, §3, is amended to read:

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 or generation-related business activities 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 or would be likely to reduce the level of the utility's stranded costs. ~~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.

Sec. N-2. Modification of rules. The Public Utilities Commission shall modify its major substantive rule, Chapter 307: Sale of Capacity and Energy of Undivested Generation Assets: Extension of Divestiture Deadline, as follows to bring it into conformity with the changes to law accomplished pursuant to this Part:

1. Change the rule to provide that the commission shall grant an extension of the divestiture deadline if it finds that the extension would be likely to improve the sale value of those assets on the market or would be likely to reduce the level of the utility's stranded costs; and

2. Delete section 10, subsection B of the rule that requires that 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.

The Public Utilities Commission is not required to hold hearings or conduct other formal proceedings to modify its major substantive rule in accordance with this section, and such modifications do not require review or approval of the Legislature prior to becoming effective.

See title page for effective date, unless otherwise indicated.

CHAPTER 399

S.P. 833 - L.D. 2233

An Act to License Interpreters for the Deaf and Hard-of-Hearing

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

Sec. 1. 5 MRSA §48, sub-§5, as enacted by PL 1997, c. 749, §1, is amended to read:

5. Provide information. The Division of Deafness must provide information to the public, including state agencies and individuals who work with interpreters, regarding the registration licensure requirements provided under Title 32, chapter 22.

Sec. 2. 10 MRSA §8001, sub-§38, as amended by PL 1997, c. 727, Pt. C, §1 and c. 749, §2, is further amended by amending the last blocked paragraph to read:

The Office of Licensing and Registration also administers the following regulatory functions: licensure of athletic trainers; registration of massage therapists; registration licensure of interpreters for the deaf and hard-of-hearing; registration of persons pursuant to the Charitable Solicitations Act; and registration of transient sellers, including door-to-door home repair transient sellers.

Sec. 3. 32 MRSA §1521, sub-§1-A is enacted to read:

1-A. Deaf interpreter. "Deaf interpreter" means a person whose sense of hearing is nonfunctional for the purpose of communication, whose primary means of communication is visual or tactile and who provides intermediary interpreting.

Sec. 4. 32 MRSA §1521, sub-§2, as enacted by PL 1997, c. 749, §3, is amended to read:

2. Deaf person. "Deaf person" means a person whose sense of hearing is nonfunctional for the

purpose of communication and whose primary means of communication is visual or tactile.

Sec. 5. 32 MRSA §1521, sub-§5, as enacted by PL 1997, c. 749, §3, is amended to read:

5. Interpreting. "Interpreting" means the process of providing accessible communication between and among persons who are deaf, hard of hearing and can hear, and who do not share a common means of communication. This process includes, without limitation, interpreting and transliterating and visual-gestural, auditory and tactile communication when a linguistic intermediary between a deaf or hard-of-hearing person and another person translates the spoken utterances or signs, gestures or writing of either person into a linguistic form other than that which that person uses as a primary and preferred form of communication. For the purposes of this chapter, "interpreting" or "transliterating" does not mean communication using cued speech.

Sec. 6. 32 MRSA §1521, sub-§6, ¶C, as enacted by PL 1997, c. 749, §3, is amended to read:

C. Intermediary interpreting, which means interpreting services rendered by a deaf ~~person~~ interpreter to facilitate communication between another deaf person and another ~~registered licensed~~ registered interpreter or between 2 or more deaf persons.

Sec. 7. 32 MRSA §1522, sub-§2, as enacted by PL 1997, c. 749, §3, is amended to read:

2. Licensure. The commissioner shall ~~register~~ license a person who has successfully complied with the application process established by the department, paid the required fees established by the department under sections 1527 and 1528 and met the qualifications for ~~registration licensure~~ registration licensure as set forth in section 1524. The commissioner shall make available, at cost, a directory that contains the names of all individuals ~~registered licensed~~ registered licensed pursuant to this chapter.

Sec. 8. 32 MRSA §1522, sub-§4 is enacted to read:

4. Advisory council. The commissioner, as necessary, may select members of the interpreting profession and other interested parties to serve on an advisory council to advise and consult with the commissioner concerning the regulation of interpreters for the deaf and hard-of-hearing. Service on the council is not in itself a conflict of interest regardless of the occupations or associations of the members.

Sec. 9. 32 MRSA §1523, as enacted by PL 1997, c. 749, §3, is amended to read:

§1523. Privileged communication