

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1002

H. P. 795

House of Representatives, March 5, 1979

On Motion of Mr. Blodgett of Waldoboro, referred to the Committee on Public Utilities. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Davies of Orono.

Cosponsors: Mrs. Huber of Falmouth and Mr. Michael of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

AN ACT to Encourage Industrial Cogeneration and Small Power Production  
Facilities Using Renewable Sources of Energy.

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

Sec. 1. 35 MRSA § 2314, as enacted by PL 1977, c. 633, is repealed.

Sec. 2. 35 MRSA c. 172 is enacted to read:

CHAPTER 172

SMALL POWER PRODUCTION FACILITIES  
AND COGENERATION FACILITIES

§ 2321. Title

This chapter shall be known and may be cited and referred to as the "Small Power Production Facilities Act."

§ 2322. Purpose

The Legislature finds that it is in the best interest of the State to reduce the State's dependence upon fossil fuels for its energy needs. It is necessary to diversify energy producing systems and energy sources to ensure an adequate and

reliable supply of energy for Maine citizens. The Legislature further finds that the development of small energy production facilities using renewable resources and cogeneration facilities will have a significant and beneficial effect upon this State.

The Legislature intends through this legislation to encourage the development of energy producing systems using renewable resources; particularly abundant, indigenous, renewable resources or resources in close proximity to Maine. It is further the intent of the Legislature to promote the more efficient use of existing energy systems particularly through the cogeneration of power.

#### § 2323. Definitions

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

1. Cogenerator. "Cogenerator" means a person or corporation:

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

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

2. Renewable resources. "Renewable resources" mean 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, solar and wind, but shall exclude nuclear fuel sources, coal and oil.

3. Small power producer. "Small power producer" means a person or corporation owning or operating a power production facility with a power production capacity which, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and which depends upon renewable resources for its primary source of energy. A small power producer shall not include a public utility, a subsidiary of a public utility or an affiliate of a public utility that owns or operates a small power production facility generating power from renewable resources.

#### § 2324. Control and regulation of generating facilities

A qualifying small power production facility and a cogeneration facility, as defined in section 2323, shall not be a public utility for the purposes of this chapter. A qualifying small power production facility and a cogeneration facility shall not be subject to control or regulation by the Public Utilities Commission, except that commission determination and regulation of rates of public utilities which include purchases of power from a qualifying small power production facility or cogeneration facility shall not be considered control or regulation of these facilities.

**§ 2325. Sale of electricity**

1. Authorized markets for electricity. Any small power producer or cogenerator may sell electricity without prior approval or rate approval by the commission to:

- A. Any electric public utility corporation or cooperative authorized to make, generate, sell or distribute electricity;
- B. Any governmental agency or educational institution or facility; and
- C. No more than a total of 3 commercial and industrial users of electricity.

2. Use of electricity by the producer. Any small power producer or cogenerator may generate or distribute electricity through his private property solely for his own use or the use of his tenants and not for sale to others without approval or regulation by the commission.

**§ 2326. Transactions**

The rate paid by the public utility for the purchase of electricity as described in this section shall be determined by the small power producer or cogenerator and the public utility electric corporation or cooperative. In the event that the small power producer or cogenerator and the public utility electric corporation or cooperative are unable to mutually agree to a contract for electricity or to a price for the electricity purchased by the public utility, the commission may require the utility to purchase the power, determine the price, or both. The commission shall render a decision within 60 days from receipt of a petition signed by a small power producer, cogenerator, public utility electric corporation or electric cooperative for commission intercession.

**§ 2327. Review of rates**

During a rate proceeding before the commission which involves the review of rates paid by a public utility for electricity purchased by the utility from a small power producer, or upon petition to the commission in accordance with section 2326, the commission shall follow the standards prescribed in this section as the basis of the commission's decision pertaining to these rates.

1. Term of contract. Long-term contracts for the purchase of electricity from small power producers and cogenerators shall be encouraged by rates that make these contracts feasible for small power producers, cogenerators, public utility electric corporations and electric cooperatives.

2. Cost of new plant and equipment. The cost of a new plant and equipment and the affect of a new plant and equipment on the cost of electricity otherwise incurred by a public utility or electric cooperative shall be compared to the cost of energy provided by a small power producer or cogenerator for the term or duration of a contract between a small power producer or cogenerator and a public utility or electric cooperative.

3. **Cost of fossil fuel.** The cost of fossil fuel at the time a contract is signed between a small power producer or cogenerator and a public utility electric corporation or electric cooperative and the cost of fossil fuel for the term or duration of this contract shall be compared to the cost of electricity provided by a small power producer or cogenerator.

4. **Displacement of fossil fuel.** Displacement of fossil fuel by the production of energy from renewable resources or by the more efficient use of energy by cogeneration shall be encouraged by rates paid to small power producers or cogenerators that make displacement feasible.

5. **Availability and reliability of power.** The rate charged by a small power producer or cogenerator for electricity produced shall reflect the reliability of the power with respect to the number of hours per day and days per year that it is available; the time of day and season of the year at which the electricity is made available; and the time of day, season of the year and the total need for power required by a public utility electric corporation or electric cooperative.

#### STATEMENT OF FACT

The intent of this bill is to encourage the development of small hydroelectric power facilities and other types of small power production facilities as well as cogeneration facilities. The definitions of small power producer and cogenerator are the same as the federal definitions.

According to the provisions of this bill, a small power producer and a cogenerator are not public utilities subject to the jurisdiction of the Public Utilities Commission, except that the commission may review and determine rates paid by a public utility to a small power producer or cogenerator during a rate proceeding before the commission.

Small power producers and cogenerators are permitted to contract with public utilities for the sale of electricity to the utilities and to mutually agree upon a price for the generated electricity. In the event that there is not mutual agreement, the issue may be decided by the Public Utilities Commission. The commission may decide the price and require the utility to purchase the electricity.

In determining the rate upon request or during a rate proceeding before the Public Utilities Commission, the commission is guided by standards that include the cost of a new plant and equipment that a utility would otherwise incur, the cost of fossil fuel, the displacement of fossil fuel resulting from electricity purchased from small power producers and cogenerators and the reliability of power derived from these sources.