

MAINE STATE LEGISLATURE

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(New Title)
(New Draft of H.P. 1842, L.D. 1837)
SECOND REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document **No. 2114**

H. P. 2267 House of Representatives, March 30, 1982
Reported by Report B from the Committee on Public Utilities. Sent
up for concurrence and ordered printed under Joint Rules No. 2
EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-TWO

**AN ACT to Provide that Corporate Re-
organizations Affecting Public
Utilities be Subject to Approval
by the Public Utilities Commission.**

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

**Sec. 1. 35 MRSA §104, sub-§1, ¶A, sub-¶¶(3) and (4),
as enacted by PL 1977, c. 426, §1, are amended to read:**

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

(4) Any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, provided that the person or group

1 of persons beneficially owns more than 3% of the
2 public utility's voting securities; or

3 **Sec. 2. 35 MRSA §104, sub-§1, ¶A, sub-¶(5) is enacted**
4 **to read:**

5 (5) Any public utility company of which any
6 person defined in subsections 1 to 4 is an affili-
7 ated interest.

8 **Sec. 3. 35 MRSA §104, sub-§1, ¶B-1 is enacted to read:**

9 B-1. "Reorganization" means any creation, organiza-
10 tion, extension, consolidation, merger, transfer of
11 ownership or control, liquidation, dissolution or
12 termination, direct or indirect, in whole or in part,
13 of an affiliated interest accomplished by the issue,
14 sale, acquisition, lease, exchange, distribution or
15 transfer of voting securities or property. The commis-
16 sion may decide what other public utility actions con-
17 stitute a reorganization to which the provisions of
18 this section apply. Reorganizations include any reor-
19 ganizations for which a proceeding for approval is
20 pending before any state or federal agency or court on
21 or after the effective date of this paragraph. For
22 purposes of this subsection, a reorganization does not
23 include any proceedings under the federal antitrust
24 laws.

25 **Sec. 4. 35 MRSA §104, sub-§1, ¶D is enacted to read:**

26 D. "Voting security" means any security presently
27 entitling the owner or holder thereof to vote in the
28 direction or management of the affairs of a company or
29 any proprietary or other interest serving the same pur-
30 pose.

31 **Sec. 5. 35 MRSA §104, sub-§3-A is enacted to read:**

32 3-A. Reorganization subject to commission
33 approval. Reorganization shall be subject to commission
34 approval as follows.

35 A. Unless exempted by rule or order of the commission,
36 no reorganization may take place without the approval
37 of the commission. No reorganization may be approved
38 by the commission unless it is established by the
39 applicant for approval that the reorganization is con-
40 sistent with the interests of the utility's ratepayers
41 and investors. The commission shall rule upon all

1 requests for approval of a reorganization within 60
2 days of the filing of the request for approval. If it
3 deems that the necessary investigation cannot be con-
4 cluded within 60 days, the commission may extend the
5 period for a further period of no more than 120 days.
6 In granting its approval, the commission shall impose
7 such terms, conditions or requirements as, in its judg-
8 ment, are necessary to protect the interests of
9 ratepayers. These conditions shall include provisions
10 which assure the following:

11 (1) That the commission has reasonable access to
12 books, records, documents and other information
13 relating to the utility or any of its affiliates,
14 except that the Public Utilities Commission shall
15 not have access to trade secrets unless such ac-
16 cess is essential to the protection of the inter-
17 ests of ratepayers or investors. The commission
18 shall afford trade secrets and other information
19 such protection from public disclosure as is pro-
20 vided in the Maine Rules of Civil Procedure;

21 (2) That the commission has all reasonable powers
22 to detect, identify, review and approve, or disap-
23 prove, all transactions between affiliated inter-
24 ests;

25 (3) That the utility's ability to attract capital
26 on reasonable terms, including the maintenance of
27 a reasonable capital structure, is not impaired;

28 (4) That the ability of the utility to provide
29 safe, reasonable and adequate service is not
30 impaired;

31 (5) That the utility continues to be subject to
32 applicable laws, principles and rules governing
33 the regulation of public utilities;

34 (6) That the utility's credit is not impaired or
35 adversely affected;

36 (7) That reasonable limitations be imposed upon
37 the total level of investment in nonutility busi-
38 nesses, except that the commission shall not have
39 the authority to approve or disapprove of the
40 nature of the nonutility business;

41 (8) That the commission has reasonable remedial
42 power including, but not limited to, the power,

1 after notice to the utility and all affiliated
2 entities of the issues to be determined and the
3 opportunity for an adjudicatory proceeding, to
4 order the divestiture of the utility in the event
5 that divestiture is necessary to protect the
6 interests of the utility, ratepayers or investors.
7 A divestiture order shall provide a reasonable
8 period within which the divestiture shall be com-
9 pleted; and

10 (9) That neither ratepayers nor investors are
11 adversely affected by any reorganization.

12 B. The commission may intervene on behalf of the State
13 in any proceeding before any state or federal agency or
14 court before which an application for approval of reor-
15 ganization is pending. The commission may enter into
16 any binding settlement related to any proceeding in
17 which the commission has intervened and may exercise
18 any powers or rights provided by that settlement and
19 may enforce those powers or rights.

20 Sec. 6. 35 MRSA §104, sub-§4, first sentence, as
21 enacted by PL 1977, c. 426, §1, is amended to read:

22 The commission shall may, by general rules applicable alike
23 to all public utilities affected thereby, exempt classes of
24 reorganizations from the requirements of subsection 3-A.
25 The commission may, by general rules, waive the filing and
26 necessity for approval of contracts and arrangements de-
27 scribed in subsection 3 in cases of:

28 Sec. 7. Transitional provision. Title 35, section
29 104, as amended, applies to any reorganization pending on
30 the date on which amendments to that section, adopted by the
31 Second Regular Session of the 110th Legislature, enter into
32 effect without regard to the date when any affected utility
33 has sought appropriate regulatory sanction from the United
34 States Securities and Exchange Commission or any other
35 regulatory body. This includes the reorganization proposed
36 by Central Maine Power Company. If the commission has
37 reached a mutual agreement with any affected utility, with
38 respect to any matter included in Title 35, section 104,
39 prior to the effective date of this Act, it shall deem such
40 an agreement to constitute a partial approval of the pending
41 reorganization to the extent of that mutual agreement, and
42 no affected utility may be required to apply, with regard to
43 such matters, for further commission approval. Nothing in
44 this transitional provision may affect the commission's
45 authority to approve any portion of a pending reorganization

1 on which no such mutual agreement has been reached prior to
2 the effective date, nor may it authorize the commission to
3 exercise jurisdiction with respect to any action by a util-
4 ity that has been completed and put into effect which might
5 have been deemed to be a reorganization.

6

STATEMENT OF FACT

7 The new draft retains the purpose of the original bill,
8 enabling the Public Utilities Commission to approve corpo-
9 rate reorganization before the fact. The new draft defines
10 reorganization and sets reasonable criteria for Public
11 Utilities Commission approval in order to protect the inter-
12 ests of the utility's ratepayers and investors.

13 In view of the proposed reorganization plan for Central
14 Maine Power Company pending before the United States Securi-
15 ties and Exchange Commission, the Joint Standing Committee
16 on Public Utilities has written both Central Maine Power
17 Company and the United States Securities and Exchange Com-
18 mission requesting, in the event this new draft is enacted,
19 that any regulatory action be consistent with this new
20 draft.

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