

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1426

7 S.P. 531

In Senate, April 29, 1985

8 Submitted by the Public Utilities Commission pursuant to Joint Rule 24.  
9 Reference to the Committee on Utilities suggested and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Baldacci of Penobscot.

11 Cosponsored by Representative Richard of Madison, Representative  
Clark of Millinocket and Representative Nicholson of South Portland.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT to Make Changes in the Laws Governing  
18 Public Utilities.  
19

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

22 Sec. 1. 35 MRSA §13-A, as amended by PL 1983, c.  
23 237, is further amended by adding after the 2nd para-  
24 graph a new paragraph to read:

25 No electric company may be required to file a pe-  
26 tion for approval prior to rebuilding or relocating  
27 an existing transmission line unless it intends to  
28 increase the operating voltage of the line and the  
29 operating voltage of the rebuilt line is equal to or  
30 greater than 100 kilovolts. Beginning on January 1,  
31 1986, and annually thereafter, each electric company  
32 shall file with the commission a schedule of trans-  
33 mission line rebuilding or relocation projects which  
34 it intends to carry out during the next 5 years. The  
35 schedule shall describe each project, showing the  
36 length, location and estimated cost. If the commis-

1 sion determines that an investigation of a transmis-  
2 sion reconstruction project is warranted, it shall  
3 notify the electric company within 60 days of the an-  
4 ual filing, and the electric company shall then be  
5 required to comply with the provisions of this sec-  
6 tion with respect to that project.

7       Sec. 2. 35 MRSA §13-A, 7th ¶, as enacted by PL  
8 1983, c. 237, is amended to read:

9       When the petition is filed, the electric company  
10 or companies involved shall pay to the Public Utili-  
11 ties Commission an amount equal to 2/100th of 1% of  
12 the estimated cost of the purchase or conversion to  
13 erect, repair, maintain, rebuild or relocate the fa-  
14 cility as may be applicable. The utility or utili-  
15 ties may, at the time of the filing of notice of its  
16 intent to file the petition, request the commission  
17 to waive all or a portion of the filing fee. The  
18 commission shall rule on the request for waiver with-  
19 in 60 days. Notwithstanding any other provision of  
20 law, filing fees paid as required under this para-  
21 graph shall be segregated, apportioned and expended  
22 by the Public Utilities Commission for the purposes  
23 of this section. Any portion of the filing fee that  
24 is received from any utility or utilities and is not  
25 expended by the commission to process the petition  
26 for a certification of public convenience and neces-  
27 sity shall be returned to the utility or utilities.

28       Sec. 3. 35 MRSA §19, first ¶, as reallocated by  
29 PL 1983, c. 862, §78, is amended to read:

30       All money collected by the Public Utilities Com-  
31 mission in the form of filing fees ~~or~~, expense reim-  
32 bursements ordered by the commission or payments for  
33 services such as reproduction and distribution of  
34 copies of commission decisions and photocopying or  
35 for the use of facilities shall be deposited with the  
36 Treasurer of State in an account to be known as the  
37 Public Utilities Commission Reimbursement Fund, which  
38 shall be a continuous carrying account, with appro-  
39 prate subaccounts, for reimbursement of commission  
40 expenses incurred in processing the associated mat-  
41 ters or providing the associated services or  
42 facilities which generated the filing fee ~~or~~, expense  
43 reimbursement or payment and so much thereof as may

1 be required is appropriated for these purposes, and  
2 for refund of the unexpended portion of the filing  
3 fee. All such payments shall be made to the commis-  
4 sion after approval of the State Controller and in no  
5 event may the payments exceed the amounts received by  
6 the Treasurer of State from the Public Utilities Com-  
7 mission.

8 Sec. 4. 35 MRSA §19, as enacted by PL 1983, c.  
9 815, §1, is reallocated to be 19 MRSA §20.

10 Sec. 5. 35 MRSA §72, 2nd ¶, as amended by PL  
11 1983, c. 214, §1, is further amended to read:

12 Municipal and quasi-municipal water corporations  
13 which elect to set rates under this section shall not  
14 file with the commission or increase any rate, toll  
15 or charge without first holding a public hearing at  
16 which any person, firm or corporation which pays  
17 those rates, tolls or charges to the municipal or  
18 quasi-municipal water corporations may testify and  
19 may question the officials present regarding such  
20 proposed increase. The municipal or quasi-municipal  
21 water corporation as described in this section shall,  
22 at least 14 days prior to the hearing, publish a no-  
23 tice of the proposed rate increase and the hearing  
24 including the date, time, place and purpose of the  
25 hearing ~~at least twice~~ in a newspaper of general cir-  
26 culation in the area encompassed by the municipal or  
27 quasi-municipal water corporation. In addition, each  
28 municipal or quasi-municipal water corporation shall  
29 give one notice of the proposed rate increase and the  
30 date, time and place of the hearing to each of its  
31 ratepayers. The published and individual notices  
32 shall include a statement describing the amount of  
33 the increase and the percentage increase for each  
34 customer class. At the commencement of each hearing  
35 held pursuant to this section, the municipal or qua-  
36 si-municipal water corporation shall inform those  
37 present that the rate increase may be investigated by  
38 the Public Utilities Commission in accordance with  
39 this section. The water utility shall file its  
40 changed rates with the commission within 30 days of  
41 the public hearing, but not sooner than 10 days fol-  
42 lowing the public hearing.

43 Sec. 6. 35 MRSA §73, sub-§5, ¶E, as enacted by  
44 PL 1981, c. 438, §5, is amended to read:

1 E. To provide for a contingency ~~reserve fund~~  
2 allowance by providing rates to reflect up to a  
3 5% addition to yearly revenues over what is re-  
4 quired to operate the water company; ~~in accord-~~  
5 ~~ance with section 3311.~~ If this allowance results  
6 in an excessive surplus, rates may be set which  
7 use the excess to offset future revenue require-  
8 ments.

9 Sec. 7. 35 MRSA §104, sub-§3, as amended by PL  
10 1983, c. 604, is further amended to read:

11 3. Consent by commission. No public utility may  
12 extend or receive credit or make or receive a loan to  
13 or from an affiliated interest or make any contract  
14 or arrangement for the furnishing of management, su-  
15 pervision of construction, engineering, accounting,  
16 legal, financial or similar services, or for the fur-  
17 nishing of any service other than those enumerated  
18 with any affiliated interest unless and until such  
19 contract or arrangement shall have been found by the  
20 commission not to be adverse to the public interest  
21 and shall have received its written approval.

22 Any such contract or arrangement filed with the com-  
23 mission hereunder shall be deemed approved unless the  
24 commission disapproves such within 60 days of filing.  
25 The commission may, however, suspend the effective  
26 date of the contract or arrangement for an additional  
27 60 days if necessary to enable the commission to com-  
28 plete its review of the contract or arrangement.

29 The commission may approve a contract or arrangement  
30 undertaken subsequent to the effective date of this  
31 Act, subject to such terms and, conditions, and  
32 requirements as it deems necessary to safeguard the  
33 public interest. If such contracts or arrangements  
34 are not consented to or approved by the commission as  
35 provided in this section, that contract or arrange-  
36 ment is void and the commission may disallow, for  
37 rate-making purposes, payments or such part of any  
38 such payments thereunder as the commission finds not  
39 to be in the public interest.

40 The commission shall, in the case of any utility or  
41 groups of utilities, have the power to exempt  
42 herefrom, from time to time, such classes of transac-

1 tions as it may specify by rule or regulation in ad-  
2 vance and which in its judgment will not be adverse  
3 to the public interest.

4 Commission approval of any such contract or arrange-  
5 ment under this section shall not limit or restrict  
6 the powers of the commission in determining and fix-  
7 ing any rate, fare, toll, charge, classification,  
8 schedule or joint rate as provided in chapters 1 to  
9 17.

10 Sec. 8. 35 MRSA §175 is enacted to read:

11 §175. Approval of long-term leases

12 No public utility may enter into a long-term  
13 lease with a term of 3 years or more without the  
14 written approval of the commission. The commission's  
15 procedure and standards governing approval shall be  
16 similar to those which apply to applications under  
17 section 171.

18 Sec. 9. 35 MRSA §292, as amended by PL 1983, c.  
19 141, §2, is further amended to read:

20 §292. Notice of complaint

21 The commission immediately upon the filing of  
22 that complaint shall notify in writing the public  
23 utility complained of that a complaint has been made,  
24 and of the nature thereof. If at the expiration of 7  
25 days therefrom that public utility shall not have re-  
26 moved the cause of complaint to the satisfaction of  
27 the commission, the commission shall proceed to set a  
28 time and place for a hearing as provided. The utility  
29 shall file its response to the complaint within 10  
30 days of the date the notice of complaint is issued.  
31 After receipt of the response, if the commission is  
32 satisfied that the utility has taken adequate steps  
33 to remove the cause of the complaint or that the com-  
34 plaint is without merit, the complaint may be dis-  
35 missed. If the complaint is not dismissed, the com-  
36 mission may allow for all parties to attempt to re-  
37 solve the cause of the complaint to their mutual sat-  
38 isfaction or proceed to set a hearing on the com-  
39 plaint. The hearing shall be promptly set if a mutu-  
40 ally satisfactory resolution does not appear to be

1 forthcoming. In the absence of an informal disposi-  
2 tion pursuant to Title 5, section 9053, the commis-  
3 sion shall render a decision upon the complaint no  
4 later than 9 months after its filing.

5       Sec. 10. 35 MRSA §355 is amended to read:

6 §355. Illegal issue of stocks, bonds or notes; mis-  
7 appropriation of proceeds

8       Any director or officer of any public utility who  
9 shall directly or indirectly issue or cause to be is-  
10 sued any stocks, bonds, notes or other evidences of  
11 indebtedness contrary to chapters 1 to 17, or who  
12 shall apply the proceeds from the sale thereof to any  
13 other purpose than that specified in the order of the  
14 commission shall, upon conviction thereof, be pun-  
15 ished by a fine of not less than \$500 or by imprison-  
16 ment for not less than one year nor more than 10  
17 years, or by both.

18       Sec. 11. 35 MRSA §2326, as amended by PL 1983,  
19 c. 822, §3, is further amended to read:

20 §2326. Transactions

21       The rate paid by the public utility for the pur-  
22 chase of electricity as described in this section  
23 shall be determined by the small power producer or  
24 cogenerator and the public utility electric company  
25 or cooperative. In the event that the small power  
26 producer or cogenerator and the public utility elec-  
27 tric company or cooperative are unable to agree to a  
28 contract for electricity, or to a price for the elec-  
29 tricity purchased by the public utility, or to an equi-  
30 table apportionment of existing transmission and  
31 distribution line improvement costs, the commission  
32 shall require the utility to purchase the power at  
33 such rates and under such terms as the commission  
34 shall establish by rule or order. In the event com-  
35 peting petitions are filed by small power producers  
36 or cogenerators which are otherwise equivalent with  
37 respect to the standards set forth in section 2327,  
38 and implementing rules promulgated by the commission,  
39 the commission may give preference to any such facil-  
40 ity that is fueled primarily by municipal solid  
41 waste. The equitable apportionment of existing

1 transmission and distribution line improvement costs  
2 by the commission shall be based upon the benefits to  
3 the small power producer or cogenerator and the pub-  
4 lic utility electric company or cooperative. The com-  
5 mission shall render a decision within 90 days 6  
6 months from receipt of a petition signed by a small  
7 power producer, cogenerator, public utility electric  
8 company or electric cooperative for commission  
9 intercession.

10 Sec. 12. 35 MRSA §2361, sub-§4, as enacted by PL  
11 1983, c. 531, §2, is amended to read:

12 4. Telecommunications equipment plan. The Of-  
13 fice of Deafness shall develop a plan to make spe-  
14 cial telecommunications equipment available to deaf,  
15 hearing impaired and speech impaired persons, and to  
16 distribute moneys from the Telecommunications Equip-  
17 ment Fund. The plan shall be developed by the Office  
18 of Deafness ~~and approved by the commission~~ annually,  
19 not later than January 1st, ~~after appropriate notice~~  
20 ~~and hearing in accordance with the rulemaking proce-~~  
21 ~~dures in Title 5, chapter 375.~~ The plan shall pro-  
22 vide for the expenditure of moneys from the fund for  
23 the benefit of deaf, hearing impaired and speech im-  
24 paired persons for the purchase, lease, upgrading,  
25 installation, maintenance and repair of special tele-  
26 communications equipment capable of serving their  
27 needs. Persons who are profoundly deaf or speech im-  
28 paired so that they cannot use the telephone for  
29 expressive or receptive communications, as verified  
30 by a written report from an otologist, audiologist or  
31 physician are eligible for the assistance from the  
32 fund. The plan shall include specific criteria that  
33 will govern the priorities assigned to various per-  
34 sons who need this equipment. The criteria shall  
35 take into account household income, degree of impair-  
36 ment, need for emergency communications, living ar-  
37 rangements and other factors deemed relevant by the  
38 Office of Deafness.

39 Sec. 13. 35 MRSA §3311, as enacted by PL 1979,  
40 c. 455, is repealed.

41 Sec. 14. 35 MRSA §3358, as enacted by PL 1981,  
42 c. 688, is amended to read:



1     §3358. Cost of review

2         The licensee shall submit to the commission, with  
3     the initial filing or upon a subsequent formal review  
4     of a decommissioning financing plan under this sub-  
5     chapter, a filing fee as determined by the commis-  
6     sion, but not to exceed ~~§35,000~~ \$50,000, in order to  
7     assist in covering the cost of review by the commis-  
8     sion. Within one year after establishment of a  
9     decommissioning fund under this subchapter, the li-  
10    censee may recover the licensing fee from the fund.  
11    Notwithstanding any other provision of law, money re-  
12    ceived from the filing fee shall be segregated, ap-  
13    portioned and expended by the Public Utilities Com-  
14    mission for the purposes stated in this section, with  
15    a report to the joint standing committee of the Leg-  
16    islature having jurisdiction over appropriations and  
17    financial affairs. Any unexpended funds from the  
18    filing fee shall be transferred to the  
19    decommissioning trust fund after approval of the  
20    plan.

21         **Sec. 15. Compliance.** Any utility which has  
22    failed to comply with the Maine Revised Statutes, Ti-  
23    tle 35, section 3311, 2nd paragraph, shall not be re-  
24    quired to act in accordance with that section, but  
25    shall be subject to Title 35, section 73, subsection  
26    5, paragraph E, as amended by section 5, of this Act.

27                     STATEMENT OF FACT

28         Section 1 clarifies the necessity for commission  
29    approval of the repair, maintenance, rebuilding or  
30    relocation of existing transmission lines of 100  
31    kilovolts or more. The Revised Statutes, Title 35,  
32    section 13-A, currently requires commission approval  
33    when any electric utility proposes to erect certain  
34    generating or transmission facilities. There has  
35    been uncertainty as to the application of this statu-  
36    te to the repair, maintenance or rebuilding of  
37    transmission facilities. The Public Utilities Com-  
38    mission has attempted to reduce the confusion by  
39    means of an advisory ruling (Docket No. 83-250), but  
40    statutory clarification appears preferable. This  
41    bill provides this clarification by requiring approv-  
42    al of projects which involve an upgrade in voltage to

1 100 kilovolts or which the Public Utilities Commis-  
2 sion notifies the utility it wishes to investigate.  
3 The bill requires electric utilities to file a sched-  
4 ule of transmission line reconstruction projects with  
5 the commission on an annual basis. If the commission  
6 believes that a reconstruction project should be in-  
7 vestigated, it will have the power to require a fil-  
8 ing under the Revised Statutes, Title 35, section  
9 13-A.

10 Section 2 deletes an erroneous reference to " the  
11 purchase or conversion" in the Revised Statutes, Ti-  
12 tle 35, section 13-A, and substitutes correct lan-  
13 guage.

14 Section 3 provides that payments received by the  
15 Public Utilities Commission for such incidental ser-  
16 vices as reproduction and distribution of commission  
17 decisions, photocopying and mailing of documents, and  
18 use of photocopying and other services or facilities  
19 will be deposited in the Public Utilities Commission  
20 Reimbursement Fund, from which the commission may  
21 then be reimbursed for its associated costs.

22 Section 5 assures that the notices issued by a  
23 municipal or quasi-municipal water utility which  
24 elects to set its own rates by holding a hearing con-  
25 tain an adequate description of the amount of the  
26 proposed increase and its impact on the ratepayers.  
27 At the present time the law merely requires that they  
28 "publish a notice of the proposed rate increase and  
29 the hearing" and "give one notice of the proposed  
30 rate increase and the date, time and place of the  
31 hearing to each of its ratepayers." The law does not  
32 require the utility to include sufficient detail con-  
33 cerning the amount of the rate increase so as to ap-  
34 prise a customer of its impact. This bill requires  
35 the utility notices to include the amount of the in-  
36 crease and its impact on the rates of various custom-  
37 er classes. The bill also removes the requirement  
38 that the utility publish notice twice. A single pub-  
39 lication is sufficient in light of the requirement  
40 that individual notice is also required to be pro-  
41 vided to each of its ratepayers.

42 Sections 6, 13 and 15 clarify the current statu-  
43 tory provisions governing the creation of a reserve

1 fund for municipal and quasi-municipal water utili-  
2 ties and delete unreasonable restrictions associated  
3 the water utilities. The Revised Statutes, Title 35,  
4 section 3311, authorizes the commission to provide  
5 that municipal and quasi-municipal water utilities  
6 may collect rates to establish a contingency fund to  
7 be accrued by collecting up to an additional 5% in  
8 annual revenues. Title 35, section 3311, 2nd para-  
9 graph further provides that any revenues collected in  
10 excess of the limitations set forth must be trans-  
11 ferred to the sinking fund or applied in payment on  
12 outstanding debt. If the utility has no sinking fund  
13 or outstanding debt, the excess must be returned to  
14 the customers. This bill deletes Title 35, section  
15 3311, and leaves the general language in Title 35,  
16 section 73, thereby allowing the water utility dis-  
17 cretion in the application of any excess. The exer-  
18 cise of this discretion would be subject to commis-  
19 sion oversight. The purpose of the bill is to remove  
20 the inflexible standards in Title 35, section 3311,  
21 2nd paragraph, which may require inefficient or  
22 uneconomic disposition of any excess revenues, for  
23 example the premature retirement of inexpensive debt.  
24 The bill also adds the requirement that any excessive  
25 surplus be used to reduce future rates.

26 Section 7 provides that a contract between a pub-  
27 lic utility and an affiliated interest which is not  
28 approved by the commission shall be void. The law  
29 currently states that no public utility may make a  
30 contract without first receiving approval and that  
31 the commission may disallow for rate-making purposes  
32 payments made pursuant to an unapproved contract  
33 which it finds not to be in the public interest. If  
34 a utility enters into an unapproved contract, it has  
35 violated the law, but the contract is still recog-  
36 nized as valid and binding even though it may not be  
37 in the utility's or customer's interest. The bill  
38 remedies this deficiency by providing that a contract  
39 does not exist unless first approved by the Public  
40 Utilities Commission.

41 Section 8 enacts a provision which requires com-  
42 mission approval before the utility enters into a  
43 long-term lease. The law currently required commis-  
44 sion approval before a public utility may issue  
45 stocks, bonds, notes or other evidences of indebted-

1      ness, payable at periods of more than 12 months after  
2      the date of the issuance. This bill would require  
3      the Public Utilities Commission approval of long-term  
4      leases with a term of 3 years or more. Long-term  
5      leases are a recognized means of financing and should  
6      be subject to the Public Utilities Commission review  
7      to the same extent as other long-term financing meth-  
8      ods.

9              Section 9 provides for the informal resolution of  
10     10-person complaints against utilities without the  
11     need for a formal hearing in every case. The law  
12     currently may be read to require that, if after the  
13     expiration of 7 days after a utility is notified by  
14     the Public Utilities Commission of the filing of a  
15     formal 10-person complaint, the utility has not re-  
16     moved the cause of the complaint to the satisfaction  
17     of the commission, the commission shall proceed to  
18     set a time and place for a hearing, which shall be  
19     promptly set. In most cases 7 days is not an ade-  
20     quate amount of time during which the commission may  
21     determine whether the cause of the complaint is re-  
22     moved to its satisfaction. Furthermore, the filing  
23     of a formal 10-person complaint is often followed by  
24     a period during which the utility, the customers and  
25     the commission staff may attempt to work out an  
26     agreeable resolution. This informal process should  
27     be allowed sufficient time before the commission must  
28     make its determination and set a formal hearing. The  
29     proposed bill requires the utility to file its re-  
30     sponse within 10 days, but allows the commission ade-  
31     quate additional time to determine if the cause of  
32     the complaint has been removed to its satisfaction  
33     and allows for attempts at informal resolution.

34             Section 10 removes the mandatory imprisonment  
35     penalty found in the law governing the illegal issue  
36     of utility securities or misappropriation of the  
37     proceeds. The law currently provides that a person  
38     responsible for the illegal issuance of public utili-  
39     ty securities or the application of the proceeds for  
40     a purpose other than that specified in the order of  
41     the commission shall, upon conviction, be punished by  
42     imprisonment for not less than one year and not more  
43     than 10 years. This bill provides the additional  
44     sanction of a fine, as now exists for the making of  
45     false statements as to the issue of securities, so  
46     that imprisonment is not the only penalty.

Section 11 extends the period during which the commission must render a decision on a disputed contract between a utility and a small power producer or cogenerator from 90 days to 6 months. The law currently allows the Public Utilities Commission only 90 days to render a decision when it is petitioned to resolve a dispute between a utility and a small power producer or cogenerator. In cases of substantial disagreement, there may be considerable litigation which cannot be concluded within 90 days.

Section 12 deletes the requirement that the Telecommunications equipment plan, which is developed annually by the Office of Deafness of the Bureau of Rehabilitation, must be approved by the Public Utilities Commission. The social and policy considerations involved in decisions as to the proper allocation of funds to assist the hearing and speech impaired are not within the primary areas of commission responsibility. These decisions are better to remain with the Office of Deafness. Although the commission's expertise in hearing procedure may have been required previously, it now appears that the Office of Deafness should be able to conduct any necessary proceedings.

Section 14 increases the fee to be submitted upon the filing of a decommissioning financing plan from \$35,000 to \$50,000 in order to more adequately cover the costs incurred by the Public Utilities Commission in reviewing the plan. The bill also provides that the commission may require a filing fee to cover the costs of any subsequent formal review of the plan.

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