

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1506

6
7 S.P. 570

In Senate, May 9, 1985

8 Reference to the Committee on Utilities suggested and ordered printed.

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

10 Presented by Senator Andrews of Cumberland.

Cosponsored by Representative Brown of Gorham, Representative Baker of Portland and Senator Usher of Cumberland.

11
12 STATE OF MAINE
13

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

17 AN ACT to Regulate Recovery of Costs of
18 Canceled or Abandoned Electric
19 Generating Facilities.
20

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

23 Sec. 1. 35 MRSA §52-B, as enacted by PL 1983, c.
24 811, §2, is repealed.

25 Sec. 2. 35 MRSA §52-C is enacted to read:

26 §52-C. Recovery of cost of canceled or abandoned
27 electric generating facilities

28 Except as provided in this section, no utility
29 may be entitled to recover any portion of costs in-
30 curring for canceled or unused electric generating fa-
31 ilities. On petition by a utility, the commission
32 may approve a plan for recovery of a portion of those
33 costs, but only in accordance with this section. That
34 plan may provide for recovery of a portion of those

1 costs by the transfer of shares in the utility to a
2 ratepayer voting trust established in accordance with
3 chapter 9-A.

4 1. Findings. It is determined that canceled or
5 unused generating facilities are not used or required
6 to be used in service to the public within the State
7 and that recovery of the costs incurred by utilities
8 for these facilities from the ratepayers constitutes
9 a contribution to the capital of these utilities by
10 the ratepayers and not a charge for services. It is
11 further found that the contribution of the ratepayers
12 to the cost of a canceled or unused electric generat-
13 ing facility is just compensation for any transfer of
14 shares of common stock by the utility to a ratepayer
15 voting trust approved in accordance with this sec-
16 tion.

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

20 A. "Additional costs" means any costs of a can-
21 celed or abandoned electric generating facility
22 except for the direct capital investment.

23 B. "Canceled or unused electric generating fa-
24 cility" means:

25 (1) Any electric generating facility can-
26 celed or abandoned by the owner or by the
27 joint participants in the facility in ac-
28 cordance with the terms of applicable agree-
29 ments or otherwise;

30 (2) Any other electric generating facility
31 which is not operated for the purpose of
32 generating electricity for the ratepayers of
33 the utility, whether or not the utility ob-
34 tains electricity from that facility for
35 sale to persons who are not ratepayers of
36 the utility; and

37 (3) Any interest in an electric generating
38 facility held by a utility which results in
39 a net loss because of disposition of that
40 interest by the utility for less than the

1 cost incurred by the utility to acquire that
2 interest.

3 C. "Direct capital investment" means money ex-
4 pended for goods and services, but does not in-
5 clude interest charges, financing charges or any
6 allowance for funds used during construction.

7 3. Recovery of costs prohibited. It is deter-
8 mined that canceled or unused generating facilities
9 are not used or required to be used in service to the
10 public within the State; that recovery of the costs
11 incurred by utilities for these facilities from the
12 ratepayers constitutes a contribution to the capital
13 of the utilities by the ratepayers and not a charge
14 for services; and that except as provided in this
15 section, no utility may be entitled to recover any
16 portion of costs incurred for canceled or unused gen-
17 erating facilities.

18 4. Recovery of costs through sale of shares to
19 ratepayers. Upon petition by a utility, the commis-
20 sion may approve a plan for recovery of the costs in-
21 curring by a utility for a canceled or unused electric
22 generating facility through the transfer of shares in
23 the utility to a trust established pursuant to sec-
24 tion 175, in consideration of the recovery of these
25 costs in rates charged to ratepayers. The plan shall
26 not be approved unless the commission finds that:

27 A. The plan balances the interests of the utili-
28 ty and ratepayers in a just and reasonable man-
29 ner;

30 B. No costs which would be recovered through
31 that plan were imprudently incurred by the utili-
32 ty;

33 C. The plan provides that the value of the
34 shares to be transferred to the trust:

35 (1) Represents the fair value of the con-
36 tributions to be made by the ratepayers to
37 the capital of the utility; and

38 (2) Represents at least that portion of the
39 total equity of the utility which the

1 amounts to be recovered under this subsection
2 represent in proportion to the existing
3 net worth of the utility, together with the
4 additional value attributable to the
5 utility's avoidance of financing charges be-
6 cause of the ratepayers' contribution of
7 capital;

8 D. The plan provides that the shares transferred
9 to the trust will:

10 (1) Be preferred as against the common
11 shares of the utility with respect to dis-
12 tribution of assets on liquidation;

13 (2) Not receive dividends, but, in accord-
14 ance with section 175, subsection 10, rates
15 charged by the utility would be reduced by
16 an amount equivalent to the dividends which
17 the ratepayers voting trust would receive if
18 its shares were entitled to dividends;

19 (3) Have the right to separately elect a
20 class of directors. That class of directors
21 shall:

22 (a) At all times, constitute the same
23 proportion of the total number of di-
24 rectors of the utility as the shares
25 held by the trust constitute the total
26 number of voting shares of the utility,
27 rounded to the nearest whole director,
28 rounded to the nearest whole director
29 but not fewer than one director; and

30 (b) Have all the rights and powers of
31 other directors of that utility;

32 (4) In all other respects, have the same
33 voting rights as the common shares of the
34 utility.

35 5. Utilities authorized to implement plan. On
36 approval of a plan for recovery of additional costs
37 through sale of shares to ratepayers by the commis-
38 sion in accordance with subsection 4, the utility
39 shall take actions necessary to implement it, includ-
40 ing:

1 Notwithstanding any other provision of law to the
2 contrary, upon the approval of the commission, a
3 ratepayer voting trust may be established for a util-
4 ity to hold shares of stock in that utility on behalf
5 of the class of its present and future ratepayers,
6 subject to this chapter. The ratepayer voting trust
7 shall be a nonprofit organization. A trust shall be
8 established for any utility which is awarded recovery
9 of costs through sale of shares to ratepayers in ac-
10 cordance with section 52-C.

11 1. Definitions. As used in this chapter, unless
12 the context otherwise indicates, the following terms
13 have the following meanings.

14 A. "Ratepayer" means any person who receives
15 electric service from the electric utility and is
16 billed for that service. Each separate account is
17 considered to be billed to a separate ratepayer.

18 2. Nonalienation. The trust or a ratepayer or
19 beneficiary of it shall not sell or otherwise alienate
20 any interest in the trust or in the shares held
21 by it, except for redemption of shares on liquidation
22 of the utility;

23 3. Ratepayers Trust Management Committee. The
24 affairs of the trust shall be managed by a Ratepayers
25 Trust Management Committee consisting of 5 members
26 elected by the ratepayers to serve staggered 3-year
27 terms. The Public Advocate shall be a nonvoting mem-
28 ber ex officio.

29 A. Each trustee shall serve a term of 3 years.

30 B. In the initial election of the trust, 2
31 trustees shall be elected for terms of 3 years,
32 one for a term of 2 years and 2 for terms of one
33 year.

34 C. Trustees may be reelected.

35 D. A vacancy in the committee shall be filled
36 for the remaining unexpired term of that posi-
37 tion.

38 E. Trustees must be ratepayers of the utility.

1 F. Directors of the utility, including directors
2 representing the trust, may not serve simulta-
3 neously as trustees.

4 4. Trust management. The Ratepayers Trust Man-
5 agement Committee may:

6 A. In all matters other than the election of di-
7 rectors, vote the shares of stock held by the
8 trust on behalf of the ratepayer voting trust;

9 B. Do all things necessary or prudent for the
10 management of the affairs of the trust;

11 C. Communicate regularly with the ratepayers
12 through information which the utility shall, sub-
13 ject only to a charge for the actual costs, in-
14 clude in its bills regularly mailed to the
15 ratepayers; and

16 D. Intervene as a party in a proceeding of the
17 commission relating to the utility, participate
18 in a legislative or regulatory proceeding affect-
19 ing the utility or the interests of the
20 ratepayers and retain counsel for that purpose.

21 5. Duties. The Ratepayers Trust Management Com-
22 mittee shall:

23 A. Prepare an annual report and an annual exter-
24 nal audit of the trust; and

25 B. Prepare and adopt bylaws to govern the man-
26 agement of the trust. The bylaws, and any amend-
27 ments to them, shall be subject to approval of
28 the Public Advocate.

29 6. Members of the board of directors of the
30 utility. The trust shall be represented on the board
31 of directors of the utility by a class of directors
32 elected annually by the ratepayers.

33 A. At the annual election of trustees, the
34 ratepayers shall elect, by written ballot, the
35 trust's directors, in accordance with the same
36 procedures as election of trustees under subsec-
37 tion 3.

1 B. Each director shall be a ratepayer of the
2 utility. Trustees may not simultaneously serve as
3 directors.

4 C. Until the first annual election, the initial
5 directors shall be appointed by the Public Advo-
6 cate.

7 7. Elections. Elections of trustees and
8 ratepayer members of the utility board of directors
9 shall be conducted annually as follows:

10 A. Each ratepayer of the utility, while he con-
11 tinues to be a ratepayer, shall be entitled to
12 one vote in elections of trustees and directors;

13 B. The Ratepayers Trust Management Committee
14 shall:

15 (1) Provide to the ratepayers timely notice
16 of the time and method of nomination and
17 election of trustees and directors; and

18 (2) Conduct those elections, subject to su-
19 pervision by the commission.

20 C. Candidates for the office of trustee or di-
21 rector shall be nominated by a petition signed by
22 at least 50 ratepayers;

23 D. Ballots for the election of trustees and di-
24 rectors, and reasonable written statements sub-
25 mitted by candidates or slates of candidates,
26 shall be included in bills mailed by the utility
27 to its ratepayers at least 30 days prior to the
28 date of each annual election, with actual ex-
29 penses for the mailing charged to the trust;

30 E. The management of the utility shall not par-
31 ticipate in or attempt to influence the election
32 of trustees or directors of the trust; and

33 F. Until the first annual election, the initial
34 trustees shall be appointed by the Public Advo-
35 cate and they shall immediately, by majority
36 vote, appoint interim directors to serve until
37 the first annual election.

1 8. Compensation. Each trustee, or utility board
2 member representing the trust, shall receive expenses
3 actually incurred for activities in their capacity as
4 a trustee or utility board member and per diem equal
5 to legislative per diem, subject to Title 5, section
6 12002-B.

7 A. A person who receives compensation, expenses
8 or any other funds from a utility for his duties
9 as a member of that utility's board of directors,
10 shall account to and pay over to the trust all
11 those funds received.

12 9. Budget. The budget of the Ratepayers Trust
13 Management Committee shall be established annually by
14 the ratepayers in accordance with the bylaws. The
15 budget shall not exceed 25¢ per ratepayer, unless the
16 ratepayers by written ballot authorize a higher fig-
17 ure at an election in which at least 40% of the
18 ratepayers cast ballots for and against the proposed
19 change. The expenses of the ratepayer voting trust
20 authorized in the budget shall be charged to the
21 utility and shall be an allowable expense for the
22 utility.

23 10. Dividends and distributions. No dividends
24 may be payable with respect to the shares held by the
25 ratepayer voting trust. Upon payment of any dividend
26 on common stock of the utility, the utility shall re-
27 duce the rates charged to the ratepayers of the util-
28 ity on a pro rata basis for all ratepayers by an ag-
29 gregate amount equivalent to the amount of the divi-
30 dend which the ratepayer voting trust would receive
31 if the shares held by the ratepayer voting trust re-
32 ceived dividends at the same rate as the common
33 shares of the utility, provided that the reduction in
34 rates is decreased by the amount of expenses of the
35 ratepayer voting trust charged to the utility in ac-
36 cordance with this section.

37 11. Liquidation. A distribution to the trust in
38 liquidation of the assets of the utility shall be ap-
39 plied:

40 A. First, to the balance of unpaid expenses of
41 the trust; and

