

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1959

6 S.P. 778

In Senate, January 31, 1986

7 Submitted by the Public Utilities Commission pursuant to Joint Rule 24.

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 Richard of Madison, Representative
Clark of Millinocket and Representative Vose of Eastport.

11
12 STATE OF MAINE
13

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

17 AN ACT to Clarify the Procedure for Appeals
18 of Decisions of the Public Utilities
19 Commission.
20

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

23 Sec. 1. 35 MRSA §303, as amended by PL 1975, c.
24 392, §2, is repealed and the following enacted in its
25 place:

26 §303. Review of commission action

27 1. Final decisions. An appeal from a final de-
28 cision of the commission may be taken to the Law
29 Court on questions of law in the same manner as an
30 appeal from a judgment of the Superior Court in a
31 civil action. Any person who has opposed and partic-
32 ipated in opposition to applications, petitions or
33 commission proceedings upon which a public hearing
34 was held and who is adversely affected by the final
35 decision of the commission is deemed a party for pur-

1 poses of taking an appeal from that decision. When a
2 law or rule regulating the taking of an appeal from
3 the Superior Court in a civil action uses the term
4 "the court," "the clerk," "the clerk of courts" or a
5 similar term, it shall for purposes of an appeal from
6 the commission be read respectively as "the commis-
7 sion," "the Administrative Director of the Commis-
8 sion" or other appropriate term. The notice of ap-
9 peal shall be accompanied by a brief statement of the
10 nature of the proceeding before the commission, a
11 copy of the decision, order or ruling complained of,
12 a statement of the grounds upon which the order or
13 ruling is claimed to be unlawful and a certificate
14 that the attorney for the plaintiff is of opinion
15 that there is the probable ground for the appeal as
16 to make it a fit subject for judicial inquiry and
17 that it is not intended for delay.

18 2. Additional court review. An appeal may also
19 be taken in the same manner as an appeal under sub-
20 section 1 when the justness or reasonableness of a
21 rate, toll or charge by any public utility or the
22 constitutionality of any ruling or order of the com-
23 mission is in issue, notwithstanding that the ruling
24 or order is not final.

25 3. Law Court jurisdiction is exclusive. The Law
26 Court shall have exclusive jurisdiction over appeals
27 and requests for judicial review of final decisions
28 and of rulings and orders subject to subsections 1
29 and 2, with the exception of the Superior Court's ju-
30 risdiction to review rules under Title 5, section
31 8058.

32 4. Stay. While an appeal under subsection 1 is
33 pending, no injunction may issue suspending or stay-
34 ing any order of the commission and the appeal shall
35 not excuse any person or corporation from complying
36 with and obeying any order or decision or any re-
37 quirement of any order or decision of the commission
38 or operate in any manner to stay or postpone the en-
39 forcement of the order or decision, except in such
40 cases and upon such terms as the commission may order
41 and direct. While an appeal under subsection 2 is
42 pending final determination by the court, the Chief
43 Justice, or in his absence any other justice, may en-
44 join or stay the effect of the ruling or order upon
45 such terms and conditions as he may deem proper.

1 5. Additional evidence. No evidence beyond that
2 contained in the record of the proceedings had before
3 the commission may be introduced before the court,
4 except that in cases where issues of confiscation or
5 of constitutional right are involved, the court may
6 order such additional evidence as it deems necessary
7 for the determination of such issues to be taken be-
8 fore the commission upon such terms and conditions as
9 to the court may deem proper. If the court orders
10 additional evidence to be taken, the commission shall
11 promptly hear and report that evidence to the court,
12 so that the proof may be brought as nearly as reason-
13 ably possible down to the date of its report to the
14 court. The commission may, after hearing the evi-
15 dence, modify its findings as to facts and its origi-
16 nal decision or orders by reason of the additional
17 evidence so taken, and it shall file with the court
18 that amended decision or orders and those modified or
19 new findings. If the commission modifies or amends
20 its original decision or orders, the appealing party
21 or any other party aggrieved by the modified or
22 amended decision or order may file with the court,
23 within such time as the court may allow, a specifica-
24 tion of errors claimed to have been made by the com-
25 mission in the modified decision or orders, which
26 specifications of errors shall be considered by the
27 court in addition to the errors asserted in the origi-
28 nal complaint on appeal.

29 6. Certification of decision. The result of the
30 appeal shall be certified by the clerk of the Law
31 Court to the administrative director of the commis-
32 sion and to the clerk of the Superior Court for Ken-
33 nebec County. The prevailing party shall recover
34 costs to be taxed by the Superior Court in accordance
35 with the law for the taxation of costs on appeal in
36 civil actions. Execution for these costs shall be
37 issued from the Superior Court of Kennebec County in
38 the same manner as in actions originating in the
39 court. Double costs shall be assessed by the court
40 upon any party whose appeal appears to the court not
41 to be a fit subject for judicial inquiry or appears
42 to be intended for delay.

43 7. Requests for reconsideration. No appeal of
44 any matter may be taken pursuant to subsection 1 or
45 2, unless the party has first requested the commis-

1 sion to reconsider or rehear its decision, ruling or
2 order with respect to the matter to be raised on ap-
3 peal.

4 Sec. 2. 35 MRSA §304 is repealed.

5 Sec. 3. 35 MRSA §305, as amended by PL 1977, c.
6 461, is repealed.

7 STATEMENT OF FACT

8 The purpose of this bill is to clarify the method
9 of appeal from decisions of the Public Utilities Com-
10 mission, promote appellate efficiency and prevent un-
11 necessary appeals.

12 1. The bill clarifies the method of appeal by
13 consolidating the 2 existing methods of appeal of the
14 Public Utilities Commission's decisions to the Law
15 Court into a single method of appeal, which neverthe-
16 less preserves the different protections and limita-
17 tions of the existing methods of appeal.

18 2. The bill promotes appellate efficiency by
19 providing the opportunity for clarification of the
20 Public Utilities Commission's decision upon a request
21 for reconsideration and by requiring the appellant to
22 identify the issues on appeal at the time the appeal
23 is filed and by clarifying the exclusive jurisdiction
24 of the Law Court over appeals of Public Utilities
25 Commission's decisions.

26 3. The bill prevents unnecessary appeals by re-
27 quiring the appellant to request the Public Utilities
28 Commission to reconsider its decision before an ap-
29 peal may be taken, providing an opportunity for reso-
30 lution of issues before judicial review is invoked.

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