

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)

(New Draft of S.P. 338, L.D. 993)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1779

S.P. 604

In Senate, June-9, 1987

Reported by Senator Erwin of Oxford for the Committee on Utilities and printed under Joint Rule 2. Original Bill sponsored by Senator Kany of Kennebec. Cosponsored by: Senator Kerry of York, Senator Erwin of Oxford, Representative Richard of Madison.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

**AN ACT Relating to Significant Energy
Agreements and Contracts by Electric
Utilities.**

1
2
3
4

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

7 **Sec. 1. 35-A MRSA §3132, sub-§6, as enacted by**
8 **PL 1987, c. 141, Pt. A, §6, is amended to read:**

9 **6. Commission order; certificate of public con-**
10 **venience.** In its order, the commission shall make
11 **specific findings with regard to the need for the**
12 **proposed facilities. If the commission finds that a**
13 **need exists, it shall issue a certificate of public**
14 **convenience and necessity for the facilities. If the**
15 **commission orders or allows the erection of the fa-**

1 cilities, the order shall be subject to all other
2 provisions of law and the right of any other agency
3 to approve the facilities. The issuance of a certifi-
4 cate of public convenience and necessity establishes
5 that, as of the date of issuance of the certificate,
6 the decision by the utility to erect or construct was
7 prudent.

8 Sec. 2. 35-A MRSA §3132, sub-§11 is enacted to
9 read:

10 11. Amendments, extensions and renewals. This
11 section applies to any amendment, extension or renew-
12 al of any contract between the utility and other par-
13 ties with an ownership interest, governing the terms
14 of their participation in the construction of a gen-
15 eration or transmission facility subject to this sec-
16 tion, for which the original contract was subject to
17 approval by the commission.

18 A. The commission may waive the approval re-
19 quirements of this section with respect to a par-
20 ticular amendment, extension or renewal or a
21 group of amendments, extensions or renewals upon
22 request by the utility. The commission may also
23 wave the 3-month notice required in subsection
24 1. If the commission does not respond to a re-
25 quest for waiver within 30 days, the request
26 shall be deemed to have been granted. The com-
27 mission shall prescribe by rule the content of a
28 request for waiver and procedures for the expedi-
29 tious processing of requests in certain circum-
30 stances.

31 B. For any amendment, extension or renewal of
32 any contract otherwise subject to this section,
33 but for which the original contract was not sub-
34 ject to approval by the commission, the utility
35 shall file a copy of the proposed amendment, ex-
36 ension or renewal with the commission within 7
37 days of the day when the utility receives notice
38 of the proposal, but approval under this section
39 is not required.

40 Sec. 3. 35-A MRSA §3133, sub-§9 is enacted to
41 read:

1 9. Renewal of contracts for purchase or conver-
2 sion. This section applies to any amendment, exten-
3 sion or renewal of any contract between the utility
4 and other parties governing the terms of their par-
5 ticipation in a purchase or conversion subject to
6 this section, for which the original contract was
7 subject to approval by the commission.

8 A. The commission may waive the approval re-
9 quirements of this section with respect to a par-
10 ticular amendment, extension or renewal or a
11 group of amendments, extensions or renewals upon
12 request by the utility. The commission may also
13 wave the 2-month notice required in subsection
14 2. If the commission does not respond to a re-
15 quest for waiver within 30 days, the request
16 shall be deemed to have been granted. The com-
17 mission shall prescribe by rule the content of a
18 request for waiver and procedures for the expedi-
19 tious processing of the request in certain cir-
20 cumstances.

21 B. For any amendment, extension or renewal of
22 any contract otherwise subject to this section
23 for which the original contract was not subject
24 to approval by the commission, the utility shall
25 file a copy of the proposed amendment, extension
26 or renewal with the commission within 7 days of
27 the day when the utility receives notice of the
28 proposal, but approval under this section is not
29 required.

30 Sec. 4. 35-A MRSA §3133-A is enacted to read:

31 §3133-A. Significant agreements and contracts relat-
32 ing to generating capacity, energy or
33 transmission capacity prohibited without
34 prior order of the commission

35 1. Certificate of public convenience and neces-
36 sity. Except as provided in subsection 3, no elec-
37 tric utility may enter into any significant agreement
38 or contract, as defined in subsection 2, unless the
39 commission has issued a certificate of public con-
40 venience and necessity approving the proposed agreement
41 or contract. The utility shall file a notice with
42 the commission, no less than 2 months in advance of

1 submitting its petition for a certificate of public
2 convenience and necessity for the proposed agreement
3 or contract. The commission may require the peti-
4 tioner to make available such additional information
5 as it deems necessary. The petition shall contain
6 such information as the commission may by rule pre-
7 scribe. The petition shall be set down for public
8 hearing. The commission shall issue its order within
9 12 months after the complete petition is filed. If
10 there is then outstanding a long-range plan for the
11 utility pursuant to section 3134, which includes the
12 agreement or contract, the utility need not provide
13 advance notice of its intent to file the petition and
14 the commission shall issue its order within 9 months
15 after the complete petition is filed.

16 In its order, the commission shall make specific
17 findings with regard to the agreement or contract.
18 If the commission finds that a need for it exists and
19 it is reasonable and consistent with the public in-
20 terest, the commission shall issue the certificate of
21 public convenience and necessity.

22 The issuance of a certificate of public convenience
23 and necessity establishes that, as of the date of is-
24 suance, the decision by the utility to enter into the
25 agreement or contract was prudent.

26 2. Definitions. As used in this section, unless
27 the context indicates otherwise, the following terms
28 have the following meanings.

29 A. "Significant agreement or contract" means a
30 contract or other agreement enforceable as a con-
31 tract which binds the utility to a future course
32 of action with respect to supplying, purchasing,
33 dispatching or exchanging generating capacity,
34 energy or transmission capacity or any renewal,
35 amendment or extension of any contract or agree-
36 ment which is for a period of 3 years or more and
37 involves:

38 (1) One thousand kilowatts or more of elec-
39 trical generating capacity, or 10,000,000
40 kilowatt hours or more of energy per year,
41 flowing over a transmission line with a ca-
42 capacity greater than 100 kilovolts; or

1 (2) More than 10% of the generating capaci-
2 ty, transmission capacity or energy genera-
3 tion of the utility, whichever is less.

4 3. Exclusions. This section does not apply to
5 any contract or agreement for which commission ap-
6 proval is required under section 3132 or 3133 or to
7 any contract with a cogenerator or small power pro-
8 ducer as defined by section 3303. This section ap-
9 plies to contracts or agreements which take effect on
10 or after the effective date of this section.

11 4. Filing fee. A utility or utilities filing a
12 petition under this section shall pay to the Public
13 Utilities Commission at the time of filing an amount
14 equal to 2/100 of 1% of the estimated cost of the
15 contract or agreement. The utility or utilities, at
16 or before the time of filing of notice of its intent
17 to file the petition, may request the commission to
18 waive all or a portion of the filing fee as unneces-
19 sary to help defray the cost of review. The commis-
20 sion shall rule on the request for waiver within 60
21 days.

22 Notwithstanding this Title, filing fees paid as re-
23 quired in this subsection shall be segregated, appor-
24 tioned and expended by the commission for the pur-
25 poses of this section. Any portion of the filing fee
26 that is received from a utility or utilities and is
27 not expended by the commission to process the peti-
28 tion for a certificate of public convenience and ne-
29 cessity shall be returned to the utility or utili-
30 ties.

31 5. Amendments, extensions and renewals. This
32 section applies to any amendment, extension or renew-
33 al of any significant agreement or contract subject
34 to this section for which the original contract was
35 subject to approval by the commission.

36 A. The commission may waive the approval re-
37 quirements of this section with respect to an
38 particular agreement or group of agreements upon
39 request by the utility. The commission may also
40 waive the 2-month notice requirement in subsec-
41 tion 1. If the commission does not respond to a
42 request for waiver within 30 days, the request

1 shall be deemed to have been granted. The com-
2 mission shall prescribe by rule the content of a
3 request for waiver in certain circumstances.

4 B. For any amendment, extension or renewal of
5 any contract otherwise subject to this section
6 for which the original contract was not subject
7 to approval by the commission, the utility shall
8 file a copy of the proposed amendment, extension
9 or renewal with the commission within 7 days of
10 the day when the utility receives notice of the
11 proposal, but approval is not required under this
12 section.

13 STATEMENT OF FACT

14 The new draft adds to the Maine Revised Statutes,
15 Title 35-A, section 3132, formerly Title 35, section
16 13-A, a provision similar to section 3133, formerly
17 Title 35, section 13-B, that issuance of a certifi-
18 cate of public convenience and necessity establishes
19 that as of the date of issuance of the certificate,
20 the utility's decision is prudent.

21 The new draft retains the provision of the origi-
22 nal bill which enacts a new section now numbered sec-
23 tion 3133-A, requiring the Public Utilities Commis-
24 sion approval for significant agreements and con-
25 tracts. Contracts covered are limited to those major
26 energy and capacity contracts which are not currently
27 subject to the commission's approval, but contracts
28 with cogenerators and small power producers are ex-
29 cluded.

30 The new draft retains the provisions of the origi-
31 nal bill which authorizes the Public Utilities Com-
32 mission review of amendments under sections 3122 and
33 3133, formerly sections 13-A and 13-B, and under the
34 new section now numbered 3133-A, but substitutes a
35 7-day notification procedure for contracts which
36 predate the requirement of the Public Utilities Com-
37 mission to review. In those cases, if the Public
38 Utilities Commission wishes to review, it may do so
39 using authority elsewhere in the law.

1 The new draft also allows the Public Utilities
2 Commission to grant waivers of the notice and review
3 requirements. If the waiver is not granted within 30
4 days it is deemed granted.

5

3131060187