

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1007

S.P. 331

In Senate, March 23, 1993

An Act to Enhance Competition in Electric Utilities.

Reference to the Committee on Utilities suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CARPENTER of York.

Cosponsored by Senators: SUMMERS of Cumberland, VOSE of Washington, Representatives:
CARR of Sanford, DONNELLY of Presque Isle, MORRISON of Bangor.

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

2 **Sec. 1. 35-A MRSA §707, sub-§6** is enacted to read:

4 **6. Wholesale generators excepted.** An affiliated interest
6 does not include any exempt wholesale generator or person covered
8 by the provisions of section 708, subsection 5.

10 **Sec. 2. 35-A MRSA §708, sub-§2, ¶A,** as enacted by PL 1987, c.
12 141, Pt. A, §6, is amended to read:

14 A. Unless exempted by rule or order of the commission or by
16 subsection 5, ~~no~~ a reorganization may not take place without
18 the approval of the commission. ~~Ne~~ A reorganization may not
20 be approved by the commission unless it is established by
22 the applicant for approval that the reorganization is
24 consistent with the interests of the utility's ratepayers
26 and investors. The commission shall rule upon all requests
28 for approval of a reorganization within 60 days of the
filing of the request for approval. If it determines that
the necessary investigation ~~cannot~~ can not be concluded
within 60 days, the commission may extend the period for a
further period of no more than 120 days. In granting its
approval, the commission shall impose such terms, conditions
or requirements as, in its judgment, are necessary to
protect the interests of ratepayers. These conditions shall
must include provisions ~~which~~--assure that ensure the
following:

30 (1) That the commission has reasonable access to
32 books, records, documents and other information
34 relating to the utility or any of its affiliates,
36 except that the Public Utilities Commission may not
38 have access to trade secrets unless it is essential to
the protection of the interests of ratepayers or
investors. The commission shall afford trade secrets
and other information such protection from public
disclosure as is provided in the Maine Rules of Civil
Procedure;

40 (2) That the commission has all reasonable powers to
42 detect, identify, review and approve or disapprove all
44 transactions between affiliated interests;

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

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

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

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

(7) That reasonable limitations be imposed upon the total level of investment in nonutility business, except that the commission may not approve or disapprove of the nature of the nonutility business;

(8) That the commission has reasonable remedial power including, but not limited to, the power, after notice to the utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the utility in the event that divestiture is necessary to protect the interest of the utility, ratepayers or investors. A divestiture order shall must provide a reasonable period within which the divestiture shall must be completed; and

(9) That neither ratepayers nor investors are adversely affected by the reorganization.

Sec. 3. 35-A MRSA §708, sub-§5 is enacted to read:

5. Exceptions; exempt wholesale generators and entities to provide consulting or project management services. The following actions, arrangements and transactions are exempt from the provisions of subsection 2:

A. The creation, organization, extension, liquidation, dissolution or termination of, or the consolidation, merger or transfer of ownership or control of or in, or the making acquisition or maintenance of an interest in one or more exempt wholesale generators as defined in Section 32(A)(1) of the Public Utility Holding Company Act of 1935, as amended, 15 United States Code, Section 79, whether direct or indirect or in whole or in part, accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities, property or cash; and

B. The creation, organization, extension, liquidation, dissolution or termination of, or the consolidation, merger or transfer of ownership or control of or in, or the making acquisition or maintenance of an interest or investment in one or more persons as defined in section 102, whether

2 direct or indirect or in whole or in part, accomplished by
3 the issue, sale, acquisition, lease, exchange, distribution
4 or transfer of voting securities, property or cash, for the
5 purpose of providing consulting or project management
6 services to other businesses, including but not limited to
7 services with respect to any aspect of demand-side
8 management.

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10 A utility undertaking any action, arrangement or transaction
11 under this subsection shall notify the commission of the action,
12 arrangement or transaction at least 10 days before the effective
13 date of the action, arrangement or transaction. This subsection
14 does not limit or restrict the powers of the commission in
15 determining and fixing any rate, fare, tolls, changes,
16 classification, schedule or joint rate as provided in this Title,
17 except that the commission shall permit a reasonable sharing
18 between the utility's investors and ratepayers of gains and
19 losses resulting from business activities or transactions made
20 possible by reorganizations.

22 STATEMENT OF FACT

23
24 This bill exempts from the regulatory approval and
25 conditioning requirements of the Maine Revised Statutes, Title
26 35-A, section 708, transactions to establish and invest in exempt
27 wholesale generators as defined in the federal Public Utility
28 Holding Company Act of 1935, and transactions and investments for
29 the purpose of engaging in consulting and project management
30 services.