

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1994

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Legislative Document

No. 1874

S.P. 688

In Senate, February 15, 1994

**An Act to Reduce the Cost of Electricity and to Provide for Market Competition in the Production and Sales of Electricity.**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26. 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 CLEVELAND of Androscoggin.  
Cosponsored by Representatives: ADAMS of Portland, KONTOS of Windham, MARTIN of Eagle Lake.

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

2  
4 Sec. 1. 35-A MRSA c. 32 is enacted to read:

6  
8 CHAPTER 32

10 MARKET COMPETITION IN ELECTRIC GENERATION

12 DIVESTITURE

14 §3201. Policy; findings

16 The Legislature finds that free market competition among  
18 nonutility, independent generators of electricity has the  
20 potential for long-term benefits for electric utility  
22 ratepayers. While the Legislature recognizes that transmission  
24 and distribution services are most economically provided by  
26 regulated monopolies, it finds that there is no natural monopoly  
inherent in electric power generation. Accordingly, the  
Legislature finds it is in the best interest of ratepayers that  
electric utilities divest themselves of all utility generation  
assets by January 1, 2000. The Legislature also finds that  
divestiture should not alter the energy policy of this State to  
require least cost planning and encourage energy conservation,  
the economic use of fuel and the maximum efficient utilization of  
indigenous energy resources.

28 §3202. Definitions

30 As used in this chapter, unless the context otherwise  
indicates, the following terms have the following meanings.

32 1. Compensable legal interest. "Compensable legal interest"  
34 means any legal interest in a generation asset that divestiture  
36 causes to be injured or otherwise affected in a manner requiring  
compensation under the United States Constitution or the  
Constitution of Maine.

38 2. Divest. "Divest" means to dispossess of all proprietary  
40 interest in an asset by means of a sale or other conveyance for  
42 valuable consideration to a person who is not an affiliate of an  
electric utility, as determined pursuant to section 707.

44 3. Divestiture. "Divestiture" means the process by which an  
electric utility divests itself of generation assets or the  
46 result of that process.

48 4. Generation asset. "Generation asset" means any facility,  
plant or other asset used to generate electric energy.  
50 "Generation asset" does not include conservation or  
demand-side-management devices or facilities that are reasonably  
and economically severable as assets from facilities that

2 generate electric energy. "Generation asset" does not include  
4 any contractual rights or interests in any capacity of a facility  
6 or energy produced by a facility, including a qualifying  
8 facility, as defined in section 3303, subsection 7, that is not  
10 owned or operated by the electric utility or a person affiliated  
12 with the utility.

14 **§3203. Electric utilities; divestiture plan**

16 No later than June 1, 1995, each electric utility whose  
18 total sales of electric energy for purposes other than resale  
20 exceeded 300,000,000 kilowatt hours during any calendar year  
22 shall develop and submit to the commission a detailed plan to  
24 divest the utility of all generation assets. The divestiture  
26 plan must address, at a minimum, the following:

28 1. Asset valuation. Methodologies used by the utility for  
30 valuing generation assets under its plan;

32 2. Corporate finance issues. The nature of all restrictions  
34 in relevant bond indentures and other relevant corporate finance  
36 issues relating to divestiture and the means by which the utility  
38 proposes that these issues be addressed in an economical and  
40 timely fashion;

42 3. Minimum value. Estimates of the minimum price for which  
44 each generation asset, if sold separately, would need to be sold  
46 in order to protect the interests of ratepayers, shareholders and  
48 others with a compensable legal interest and the lowest  
50 reasonable price for which the generation assets, taken as a  
whole, would need to be sold in order to protect the interests of  
ratepayers, shareholders and others with a compensable legal  
interest;

4. Highest reasonable value. Estimates of the highest price  
for which the utility reasonably believes each generation asset  
could be sold if sold separately and an estimate of the total  
market value of all generation assets if divestiture of the  
assets is accomplished according to the utility's preferred  
strategy proposed under subsection 5;

5. Divestiture strategy. The utility's preferred strategy  
for divestiture. The utility shall provide a detailed evaluation  
of the short-term and long-term costs and benefits to ratepayers,  
shareholders and others with a compensable legal interest  
associated with each of the following possible divestiture  
strategies:

A. Packaging more marketable generation assets with less  
marketable generation assets;

2 B. Scheduling sales to take advantage of favorable market  
3 conditions or to avoid unfavorable market conditions;

4 C. Establishing competitive bidding procedures;

6 D. Developing a specialized negotiation process, distinct  
7 from or integrated with a competitive bidding procedure,  
8 designed specifically to generate an optimum sale price for  
9 generation assets while avoiding unnecessary delays in  
10 closing sales; and

12 E. Packaging the sale of a generation asset with a  
13 simultaneous agreement to purchase some or all of the  
14 asset's output.

16 6. Alternate strategies. One or more alternate strategies  
17 for divestiture and a detailed analysis of the risks and benefits  
18 of each alternate strategy as compared with the preferred  
19 strategy proposed under subsection 5;

22 7. Division of revenues and costs. Suggestions for, and  
23 justifications of, formulas for allocating divestiture revenues  
24 and transaction costs among ratepayers, shareholders and others  
25 with a compensable legal interest; and

26 8. Information ordered by commission. Any other relevant  
27 information required by the commission by rule or order.

28 **§3204. Commission review and analysis**

30 The commission shall review and analyze all plans submitted  
31 in accordance with section 3203 and shall recommend divestiture  
32 plans for all electric utilities. The commission shall make  
33 specific findings concerning the following:

36 1. Unified or separate plan. Whether a unified plan for the  
37 sale of generation assets by electric utilities is feasible or  
38 whether there are compelling reasons why each utility should  
39 proceed under one or more unique divestiture plans;

42 2. Risks and benefits. The nature and extent of the various  
43 costs, risks and benefits for ratepayers, shareholders and others  
44 with a compensable legal interest associated with each plan  
45 submitted by each utility pursuant to section 3203;

46 3. Regional considerations. Whether there are regional  
47 considerations, such as access to and membership in the New  
48 England power pool, as defined in section 4103, subsection 4,  
49 that should be factored into the adoption of any divestiture plan;

2 4. Federal laws. The extent to which federal laws,  
4 particularly the Federal Power Act, the Public Utility Regulatory  
6 Policies Act of 1978 and the Energy Policy Act of 1992,  
8 implementing rules and interpretive case law, may affect the  
10 following:

12 A. Utility divestiture;

14 B. Utility access to power and power markets after  
16 divestiture; and

18 C. Limitations on commission jurisdiction after divestiture;  
20 and

22 5. Creation of power market. The measures needed to be  
24 taken to create an adequate electric power supply market after  
26 divestiture.

28 The commission shall evaluate options for addressing any  
30 issues raised by this analysis.

32 The commission shall complete its analysis by June 1, 1996.

34 **§3205. Rulemaking**

36 The commission may adopt any rules necessary to implement  
38 the provisions of this chapter. In adopting any rule that  
40 imposes additional requirements on utilities submitting plans  
42 under section 3203, the commission shall act in a timely fashion  
44 to ensure that utilities have ample opportunity to complete their  
46 plans by the deadline established in section 3203.

48 **§3206. Commission report and plans; committee reporting option**

50 1. Commission hearings. Prior to submitting a report under  
this section, the commission shall hold at least 5 hearings in  
various locations throughout the State to take testimony on  
utility plans for divestiture submitted pursuant to this chapter.

2. Report. By January 1, 1997 the commission shall submit  
to the Legislature a report containing a summary of its findings  
under section 3204 and its recommended plan or plans for  
divestiture in accordance with the following.

A. The report must include a primary plan that will result  
in complete divestiture for each affected electric utility  
on or before January 1, 2000.

B. The report may contain alternate plans to achieve  
divestiture later than January 1, 2000 provided the report

2 includes a detailed discussion of why complete divestiture  
4 by that date is imprudent or otherwise unadvisable. The  
6 alternate plan or plans may provide for partial divestiture  
8 by January 1, 2000, no divestiture until some later date or  
no divestiture of certain generation assets or may include  
any other provisions or suggestions, provided that every  
deviation from the primary plan, offered pursuant to  
paragraph A, is identified and justified.

10 C. The report must include all draft legislation necessary  
12 to implement the plan or plans offered pursuant to  
paragraphs A and B.

14 D. The report must include any other information of which  
16 the commission believes the Legislature should be informed.

18 3. Utilities committee reporting option. The joint  
20 standing committee of the Legislature having jurisdiction over  
22 utility matters shall review the report submitted by the  
commission under this section and is authorized to report out a  
bill to the First Regular Session of the 118th Legislature to  
implement a plan or plans that will achieve the purposes of this  
chapter and result in divestiture.

## 26 STATEMENT OF FACT

28  
30 This bill establishes a process that is designed to result  
in divestiture by electric utility companies of generation assets.

32 Under this bill:

34 1. Electric utilities must submit to the Public Utilities  
36 Commission by June 1, 1995 a detailed plan for divestiture;

38 2. The commission must complete a review of the plans by  
June 1, 1996;

40 3. By January 1, 1997, the commission must have held  
42 hearings on the plans and must submit to the Legislature its  
44 report on divestiture. The report must include a plan for  
complete divestiture by January 1, 2000. The report may include  
alternate plans if the commission finds that complete divestiture  
by the year 2000 is imprudent; and

2           4. The Joint Standing Committee on Utilities is authorized  
4 to report out a bill to the First Regular Session of the 118th  
Legislature in 1997 to achieve divestiture.

6

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10           This document has not yet been reviewed to determine the  
12 need for cross-reference, stylistic and other technical  
amendments to conform existing law to current drafting standards.