

# MAINE STATE LEGISLATURE

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L.D. 1268

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DATE: June 12, 1995 (Filing No. S-250 )

**UTILITIES AND ENERGY**

Reported by: Senator CARPENTER OF York for the Committee.

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**STATE OF MAINE  
SENATE  
117TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 472, L.D. 1268, Bill, "An Act Relating to Procedures before the Public Utilities Commission"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

**Sec. 1. 35-A MRSA §1101, sub-§4** is enacted to read:

4. Exempt transactions. Transactions involving utility property that do not materially affect the ability of a utility to perform its duties to the public do not require commission authorization under this section. The commission may certify transactions as not requiring authorization, either by rule or order.

**Sec. 2. 35-A MRSA §1304, sub-§6** is enacted to read:

6. Commission authorized to waive public hearing. Unless one or more parties request a public hearing, the commission may waive the requirement for a public hearing under any provision of this Title.

**Sec. 3. 35-A MRSA §3133, sub-§1**, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

**1. Commission approval required for purchases and conversions.** No An electric utility may not purchase any

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2 generating capacity, transmission capacity or energy or carry out  
3 a fuel conversion as defined in section 3131, unless the  
4 commission has issued a certificate of public convenience and  
5 necessity approving the purchase or conversion or has waived the  
6 approval requirements pursuant to subsection 11.

7 **Sec. 4. 35-A MRSA §3133, sub-§10-A**, as enacted by PL 1993, c.  
8 91, §5, is amended to read:

9 **10-A. Renewal of contracts for purchase or conversion**  
10 **originally subject to commission approval.** This ~~The~~ requirements  
11 of this section applies apply to any amendment, extension or  
12 renewal of any contract between the utility and other parties  
13 governing the terms of their participation in a purchase or  
14 conversion subject to this section, if the original contract was  
15 subject to approval by the commission. ~~The commission may waive~~  
16 ~~the approval requirements of this section with respect to a~~  
17 ~~particular amendment, extension or renewal or a group of~~  
18 ~~amendments, extensions or renewals upon request by the utility.~~  
19 ~~The commission may also waive the 2-month notice required in~~  
20 ~~subsection 2. If the commission does not respond to a request~~  
21 ~~for waiver within 30 days, the request is deemed to have been~~  
22 ~~granted. The commission shall prescribe by rule the content of a~~  
23 ~~request for waiver and procedures for the expeditious processing~~  
24 ~~of the request in certain circumstances.~~

25 **Sec. 5. 35-A MRSA §3133, sub-§11** is enacted to read:

26 **11. Waiver of approval requirements.** The commission may  
27 wave the notice and approval requirements of this section on its  
28 own motion or upon request of any party except that the  
29 commission may not waive the approval requirements if the  
30 purchase or fuel conversion involves generating capacity that  
31 exceeds either 5% of the installed capacity of the utility or 30  
32 megawatts of capacity. The commission shall rule on a request  
33 for a waiver within 60 days. Prior to considering a waiver, the  
34 commission shall ensure that notice by mail has been sent, and an  
35 opportunity to be heard permitted, to persons who commonly  
36 participate in commission proceedings and persons whose contracts  
37 the commission determines may be affected by the agreement. The  
38 commission may prescribe by rule the content of a request for  
39 waiver and procedures for the expeditious processing of the  
40 request in certain circumstances.

41 **Sec. 6. 35-A MRSA §3133-A, sub-§1**, as amended by PL 1993, c.  
42 119, §1, is further amended to read:

43 **1. Certificate of public convenience and necessity.** Except  
44 as provided in subsection 3, no an electric utility may not enter  
45 into any significant agreement or contract, as defined in  
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2 subsection 2, unless the commission has issued a certificate of  
public convenience and necessity approving the proposed agreement  
or contract or has waived the approval requirements pursuant to  
4 subsection 6. The utility must file a notice with the commission  
no less than 2 months in advance of submitting its petition for a  
6 certificate of public convenience and necessity for the proposed  
agreement or contract. ~~The commission may waive the requirement~~  
8 ~~that at least 2 months' advance notice be given. The commission~~  
~~shall rule on any request for waiver within 60 days.~~ The  
10 commission may require the petitioner to make available such  
additional information as it determines necessary. The petition  
12 must contain such information as the commission may by rule  
prescribe. The petition must be set down for public hearing.  
14 The commission shall issue its order within 12 months after the  
complete petition is filed. If there is then outstanding a  
16 long-range plan for the utility pursuant to section 3134 that  
includes the agreement or contract, the utility need not provide  
18 advance notice of its intent to file the petition and the  
commission shall issue its order within 9 months after the  
20 complete petition is filed.

22 In its order, the commission shall make specific findings with  
regard to the agreement or contract. If the commission finds  
24 that a need for it exists and it is reasonable and consistent  
with the public interest, the commission shall issue the  
26 certificate of public convenience and necessity.

28 The issuance of a certificate of public convenience and necessity  
establishes that, as of the date of issuance, the decision by the  
30 utility to enter into the agreement or contract was prudent.

32 **Sec. 7. 35-A MRSA §3133-A, sub-§2, ¶A,** as enacted by PL 1987,  
c. 387, §4, is amended to read:

34 A. "Significant agreement or contract" means a contract or  
36 other agreement enforceable as a contract ~~which~~ that binds  
the utility to a future course of action with respect to  
38 supplying, purchasing, dispatching or exchanging generating  
capacity, energy or transmission capacity or any renewal,  
40 amendment or extension of any contract or agreement ~~which~~  
that is for a period of longer than 3 years ~~or more~~ and  
42 involves one of the following, whichever is less:

44 (1) ~~One-thousand~~ More than 5,000 kilowatts ~~or more~~ of  
electrical generating capacity, or ~~10,000,000~~  
46 50,000,000 kilowatt hours or more of energy per year,  
flowing over a transmission line with a capacity  
48 greater than 100 kilovolts; ~~or~~

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(2) More than 10% of the generating capacity, transmission capacity or energy generation of the utility, ~~whichever is less;~~ or

(3) More than 1.0% of the total annual kilowatt hour sales of the utility.

Sec. 8. 35-A MRSA §3133-A, sub-§5-A, as enacted by PL 1993, c. 91, §7, is amended to read:

~~5-A. Amendments, extensions and renewals. This~~ The requirements of this section applies apply to any amendment, extension or renewal of any significant agreement or contract subject to this section, if the original contract was subject to approval by the commission. ~~The commission may waive the approval requirements of this section with respect to a particular agreement or group of agreements upon request by the utility. The commission may also waive the 2-month notice requirement in subsection 1. If the commission does not respond to a request for waiver within 30 days, the request is deemed to have been granted. The commission shall prescribe by rule the content of a request for waiver in certain circumstances.~~

Sec. 9. 35-A MRSA §3133-A, sub-§6 is enacted to read:

6. Waiver of approval requirements. The commission may waive the notice and approval requirements of this section upon its own motion or upon the request of any party, except that the commission may not waive the approval requirements if the agreement involves generating capacity that exceeds the larger of 5% of the installed capacity of the utility or 50 megawatts of capacity. The commission shall rule on a request for a waiver within 60 days. Prior to considering a waiver, the commission shall ensure that notice by mail has been sent, and an opportunity to be heard permitted, to persons who commonly participate in commission proceedings and persons whose contracts the commission determines may be affected by the agreement. The commission may prescribe by rule the content of a request for waiver and procedures for expeditious processing of the request in certain circumstances.

Sec. 10. 35-A MRSA §3134-A, as enacted by PL 1987, c. 490, Pt. B, §5, is repealed.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

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2 The Public Utilities Commission will incur some minor  
3 additional costs to administer requirements pertaining to certain  
4 waivers of approval. These costs can be absorbed within the  
5 commission's existing budgeted resources.'

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**STATEMENT OF FACT**

This amendment does the following:

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1. It adds a provision that exempts from the approval requirements of the Maine Revised Statutes, Title 35-A, section 1101 public utility transactions that do not materially affect the ability of the utility to perform its duties;

2. It adds a provision that allows the Public Utilities Commission to waive any public hearing requirement of Title 35-A unless a party requests a hearing;

3. It repeals a law requiring periodic review of electric utility membership in the New England Electric Power Pool Agreement or NEPOOL. The commission retains authority under other law to investigate utility membership in NEPOOL;

4. It modifies provisions of the bill regarding commission waiver of notice and approval requirements under Title 35-A, sections 3133 and 3133-A relating to electric utility transactions involving certain kinds of utility purchases and significant agreements and contracts. Under this amendment:

A. The commission may waive notice and approval requirements only if the utility purchase, fuel conversion or agreement does not involve generating capacity exceeding certain threshold sizes;

B. The commission must rule on a request for waiver within 60 days; and

C. The threshold for "significant agreements of contracts" that require commission approval is changed; and

5. It adds a fiscal note to the bill.