

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1732

S.P. 576

In Senate, April 2, 1997

**An Act to Provide Choice to Maine's Electricity Customers.**

(EMERGENCY)

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Reference to the Committee on Utilities and Energy 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 CAREY of Kennebec.

2       **Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

4               **Whereas,** competition in the electric industry will affect  
6 every resident and business in the State; and

8               **Whereas,** competition may occur in the State in less than 3  
years; and

10               **Whereas,** the transition to competition will entail much  
12 planning and preparation for consumers and providers alike; and

14               **Whereas,** consumer education is crucial for electricity  
consumers to make wise choices in a competitive environment; and

16               **Whereas,** some consumers are making choices today that will  
18 affect their energy choices and energy consumption in the future;  
and

20               **Whereas,** state consumers should know as soon as possible how  
22 electric industry restructuring may affect those choices; and

24               **Whereas,** in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
26 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
28 safety; now, therefore,

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

32               **Sec. 1. 5 MRSA §206, sub-§3,** as enacted by PL 1969, c. 577,  
§1, is amended to read:

34               **3. Trade and commerce.** "Trade" and "commerce" shall include  
36 the advertising, offering for sale, sale or distribution of any  
services and any property, tangible or intangible, real, personal  
38 or mixed, and any other article, commodity or thing of value  
wherever situate, and shall include any trade or commerce  
40 directly or indirectly affecting the people of this State.  
"Trade" also includes the sale of electricity at retail.

42               **Sec. 2. 5 MRSA §207, sub-§3** is enacted to read:

44               **3. Sale of electricity.** Any person aggrieved by an unfair  
46 or deceptive act or practice in the retail sale of electricity  
may apply to the Public Utilities Commission for relief under  
48 this section. The commission may order a party found to have  
engaged in an unfair or deceptive act or practice to make  
50 restitution to a person or persons aggrieved by that act or

2 practice, and to revoke or condition the license of such party as  
3 necessary to ensure such restitution or to prevent further unfair  
4 or deceptive acts or practices. Remedies under this section are  
5 in addition to any other remedies available under law to any  
6 person.

7 **Sec. 3. 10 MRSA §963-A, sub-§9**, as enacted by PL 1985, c. 344,  
8 §7, is amended to read:

9 **9. Eligible enterprise.** "Eligible enterprise" means an  
10 agricultural enterprise, ~~fishing---~~enterprise, industrial  
11 enterprise, manufacturing enterprise ~~or~~, recreational enterprise  
12 or energy efficiency enterprise.

13 **Sec. 4. 10 MRSA §963-A, sub-§12-A** is enacted to read:

14 **12-A. Energy efficiency enterprise.** "Energy efficiency  
15 enterprise" means an enterprise engaged in the business of  
16 designing, recommending, installing or selling devices or  
17 techniques to enhance the efficiency with which energy is used by  
18 energy customers.

19 **Sec. 5. 11 MRSA §9-104, sub-§(11)**, as amended by PL 1977, c.  
20 526, §11, is further amended to read:

21 (11) To a transfer in whole or in part of any of the  
22 following: Any claim arising out of tort; ~~or~~

23 **Sec. 6. 11 MRSA §9-104, sub-§(12)**, as enacted by PL 1977, c.  
24 526, §12, is repealed and the following enacted in its place:

25 (12) To a transfer of an interest in any deposit account  
26 except as provided with respect to proceeds and priorities in  
27 proceeds; or

28 **Sec. 7. 11 MRSA §9-104, sub-§(14)** is enacted to read:

29 (14) To intangible transition property as defined in Title  
30 35-A, chapter 32.

31 **Sec. 8. 13-A MRSA §720, sub-§4, ¶¶A and B**, as enacted by PL  
32 1971, c. 439, §1, are amended to read:

33 A. He The director relied and acted reasonably and in good  
34 faith upon financial statements of the corporation which  
35 that were either certified in writing by an independent  
36 public or certified public accountant or firm of such  
37 accountants fairly to reflect the corporation's financial  
38 condition, or reported to ~~him~~ the director to be correct by

2 the president or by the officer of the corporation having  
charge of its books of accounts; ~~ex-if~~

4 B. ~~He~~ The director considered reasonably and in good faith  
that the assets were of their book value, in determining the  
6 amount available for any such dividend, purchase, redemption  
or distribution; ~~or~~

8 **Sec. 9. 13-A MRSA §720, sub-§4, ¶C** is enacted to read:

10 C. The director relied on an order approving a legal  
12 separation under Title 35-A, section 3215.

14 **Sec. 10. 35-A MRSA §102, sub-§6**, as amended by PL 1987, c.  
613, §1, is repealed and the following enacted in its place:

16 **6. Electric plant.** "Electric plant" includes all real  
18 estate, fixtures and personal property owned, controlled,  
operated or managed in connection with or to facilitate the  
20 transmission or delivery of electricity for light, heat or power,  
for public use, and all conduits, ducts or other devices,  
22 materials, apparatus, property for containing, holding or  
carrying conductors used or to be used for the transmission of  
24 electricity for light, heat or power for public use. "Electric  
plant" does not include real estate, fixtures and personal  
26 property owned, controlled, operated or managed in connection  
with or to facilitate the production or generation of electricity  
28 for light, heat or power.

30 **Sec. 11. 35-A MRSA §102, sub-§6-A** is enacted to read:

32 **6-A. Energy services.** "Energy services" means services  
provided to a seller or user of energy, relating to such energy  
34 sale or use, but not including the generation, transmission or  
distribution of electricity. "Energy services" are not services  
36 within the meaning of chapter 3. "Energy services" include,  
without limitation, design and construction of electrical  
38 facilities, provision of energy management services, wholesale  
and retail power marketing, load aggregation and consulting  
40 services with respect to any of the former.

42 **Sec. 12. 35-A MRSA §704, sub-§6** is enacted to read:

44 **6. Rules regarding disconnect.** The commission shall adopt  
reasonable rules establishing the conditions under which an  
46 electric utility may disconnect a customer for nonpayment of  
amounts owed to an electricity supplier.

48 **Sec. 13. 35-A MRSA §3101**, as amended by PL 1987, c. 671, §1,  
50 is repealed.

2           **Sec. 14. 35-A MRSA §3102**, as amended by PL 1987, c. 490, Pt.  
A, §4, is repealed.

4           **Sec. 15. 35-A MRSA §3103**, as enacted by PL 1987, c. 141, Pt.  
6           A, §6, is repealed.

8           **Sec. 16. 35-A MRSA §3131, sub-§§2, 3-A and 4**, as enacted by PL  
1987, c. 141, Pt. A, §6, are repealed.

10           **Sec. 17. 35-A MRSA §3132**, as amended by PL 1995, c. 254, §6,  
12           is further amended by repealing and replacing the headnote to  
14           read:

16           **§3132. Construction of transmission lines prohibited without  
18           prior order of the commission**

20           **Sec. 18. 35-A MRSA §3132, sub-§1**, as amended by PL 1991, c.  
22           640, §2, is further amended to read:

24           **1. Construction of generating facility and resulting line.**

26           Whenever any electric utility or utilities proposes to erect  
28           within this State a permanently installed generating facility of  
30           more than 1,000 kilowatts or any transmission line capable of  
32           operating at 100 kilovolts or more, the construction of which is  
34           required to carry the capacity ~~ex--energy~~ produced by the  
36           generating facility, the following provisions apply.

38           A. The utility or utilities shall file with the commission,  
40           no less than 3 months in advance of submitting its petition  
42           for approval of the proposed facility or lines, a notice of  
44           its intent to file the petition.

46           The notice of intent to file shall must inform the  
48           commission of the location, size, type of facility,  
50           estimated cost and proposed construction schedule of the  
              generating facility or lines, together with such other facts  
              and details concerning the proposed facility or lines as the  
              commission by rule prescribes.

              B. The petition for approval of the proposed generating  
              facility or lines shall must contain such information as the  
              commission by rule prescribes.

              C. The petition for approval shall must be set down for  
              public hearing.

              D. The commission shall issue its order within 15 months  
              after the petition is filed with the commission unless the  
              period is either extended by agreement of all the parties or

2 by the commission upon its determination that the party  
3 seeking the extension would, because of circumstances beyond  
4 that party's control for which it has no reasonable  
5 substitute, be unreasonably disadvantaged unless the  
6 extension were granted, provided that the party to that time  
7 had prosecuted its case in good faith and with due diligence.

8 E. The utility or utilities shall send the municipalities in  
9 which any part of the proposed transmission line is to be  
10 located a copy of the application, including a copy of the  
11 proposed corridor or corridors. Any municipality through  
12 which any part of the proposed transmission line is to be  
13 located that requests to be an intervenor becomes an  
14 intervenor to the proceeding.

15 **Sec. 19. 35-A MRSA §3132, sub-§1-A**, as enacted by PL 1989, c.  
16 60, §2, is amended to read:

17 **1-A. Purchase of capacity and resulting line.** Whenever any  
18 electric utility or utilities propose to purchase any ~~generating~~  
19 ~~capacity~~, transmission capacity ~~or energy~~ as defined in section  
20 3131 and erect any transmission line capable of operating at 100  
21 kilovolts or more, the construction of which is required to carry  
22 the capacity ~~or energy~~ purchased, the following provisions shall  
23 apply.

24 A. The purchase of the ~~generating capacity~~, transmission  
25 capacity ~~or energy shall be~~ is subject to section 3133.

26 B. The construction of the resulting transmission line  
27 ~~shall be~~ is subject to this section, except that the notice  
28 of intent must be filed no less than 2 months in advance of  
29 submitting the petition for approval and the commission  
30 shall issue its order within 12 months after the petition is  
31 filed.

32 **Sec. 20. 35-A MRSA §3132, sub-§2**, as amended by PL 1989, c.  
33 796, §1, is further amended to read:

34 **2. Line not resulting from construction or purchase.**  
35 Except as otherwise provided in subsection 3-A, whenever any  
36 electric utility or utilities propose to erect within this State  
37 a transmission line capable of operating at 100 kilovolts, or  
38 more, and the transmission line does not result from the  
39 construction of a generating facility pursuant to this section or  
40 the purchase of ~~generating capacity~~, transmission capacity ~~or~~  
41 energy, the utility or utilities shall file a petition for the  
42 approval of the proposed line. The petition is subject to the  
43 requirements of subsection 1, paragraphs B and C. The commission  
44 shall issue its order within 6 months after the petition is filed  
45

1 unless this period is extended as provided in subsection 1,  
2 paragraph D.

4 At the time of filing of a petition for approval of a proposed  
6 line under this section, the utility shall send a copy of the  
8 petition by certified mail to the municipal officers of the  
municipality or municipalities in which the line is to be located.

10 **Sec. 21. 35-A MRSA §3133**, as amended by PL 1995, c. 357, §§3  
12 to 5, is further amended by repealing and replacing the headnote  
14 to read:

16 **§3133. Purchase of transmission capacity of generating facilities**  
18 **prohibited without prior order of the commission**

20 **Sec. 22. 35-A MRSA §3133, sub-§1**, as amended by PL 1995, c.  
22 357, §3, is further amended to read:

24 **1. Commission approval required for purchases and**  
26 **conversions.** An electric utility may not purchase any ~~generating~~  
28 ~~capacity,~~ transmission capacity ~~or energy or carry out a fuel~~  
30 ~~conversion as defined in section 3131,~~ unless the commission has  
32 issued a certificate of public convenience and necessity  
34 approving the purchase ~~or conversion~~ or has waived the approval  
36 requirements pursuant to subsection 11.

38 **Sec. 23. 35-A MRSA §3133, sub-§2**, as enacted by PL 1987, c.  
40 141, Pt. A, §6, is amended to read:

42 **2. Notice of intent to file.** The utility or utilities  
44 shall file with the commission, no less than 2 months in advance  
46 of submitting its petition for a certificate of public  
48 convenience and necessity for the proposed purchase ~~or~~  
conversion, a notice of its intent to file the petition. The  
notice shall must inform the commission of the terms of the  
proposed purchase ~~or conversion~~ and, after receiving the notice,  
the commission may, by rule or otherwise, require the petitioner  
to make available such additional information as it determines  
necessary. The commission may waive the requirement that at  
least 2 ~~months~~ months' advance notice be given. The commission  
shall rule on any request for waiver within 60 days. If there is  
then outstanding for the utility a long-range plan approved  
pursuant to section 3134, the utility need not provide an advance  
notice of its intent to file the petition.

50 **Sec. 24. 35-A MRSA §3133, sub-§6, ¶A**, as enacted by PL 1987,  
c. 141, Pt. A, §6, is amended to read:

A. In its order, the commission shall make specific  
findings with regard to the need for the purchase ~~or~~



2 conversion and, if the commission finds that a need exists,  
it shall issue a certificate of public convenience and  
necessity for the purchase or conversion.

4  
6 **Sec. 25. 35-A MRSA §3133, sub-§6, ¶B,** as enacted by PL 1987,  
c. 141, Pt. A, §6, is repealed.

8 **Sec. 26. 35-A MRSA §3133, sub-§9,** as repealed and replaced by  
PL 1987, c. 769, Pt. A, §138, is repealed.

10  
12 **Sec. 27. 35-A MRSA §3133, sub-§11,** as enacted by PL 1995, c.  
357, §5, is amended to read:

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

30 **Sec. 28. 35-A MRSA §3133-A,** as amended by PL 1995, c. 357,  
§§6 to 9, is further amended by repealing and replacing the  
32 headnote to read:

34 **§3133-A. Significant agreements and contracts relating to**  
**transmission capacity prohibited without prior order of**  
36 **the commission**

38 **Sec. 29. 35-A MRSA §3133-A, sub-§2, ¶A,** as amended by PL 1995,  
c. 357, §7, is further amended to read:

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

2                   (1) ~~Mere than 5,000 kilowatts of electrical generating~~  
3 ~~capacity, or~~ 50,000,000 kilowatt hours or more of  
4 energy per year, flowing over a transmission line with  
5 a capacity greater than 100 kilovolts;

6                   (2) More than 10% of the ~~generating~~ capacity,  
7 transmission capacity ~~or~~ energy generation of the  
8 utility; or

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

11                   **Sec. 30. 35-A MRSA §3133-A, sub-§6**, as enacted by PL 1995, c.  
12 357, §9, is amended to read:

13                   **6. Waiver of approval requirements.** The commission may  
14 waive the notice and approval requirements of this section upon  
15 its own motion or upon the request of any party, ~~except that the~~  
16 ~~commission may not waive the approval requirements if the~~  
17 ~~agreement involves generating capacity that exceeds the larger of~~  
18 ~~5% of the installed capacity of the utility or 50 megawatts of~~  
19 ~~capacity.~~ The commission shall rule on a request for a waiver  
20 within 60 days. Prior to considering a waiver, the commission  
21 shall ensure that notice by mail has been sent, and an  
22 opportunity to be heard permitted, to persons who commonly  
23 participate in commission proceedings and persons whose contracts  
24 the commission determines may be affected by the agreement. The  
25 commission may prescribe by rule the content of a request for  
26 waiver and procedures for expeditious processing of the request  
27 in certain circumstances.

28                   **Sec. 31. 35-A MRSA §3151**, as enacted by PL 1987, c. 141, Pt.  
29 A, §6, is repealed.

30                   **Sec. 32. 35-A MRSA §3152**, as amended by PL 1993, c. 402, §1,  
31 is repealed.

32                   **Sec. 33. 35-A MRSA §3153-A**, as amended by PL 1993, c. 402,  
33 §2, is repealed.

34                   **Sec. 34. 35-A MRSA §3154**, as amended by PL 1993, c. 262, §1,  
35 is repealed.

36                   **Sec. 35. 35-A MRSA §3156, sub-§4**, as enacted by PL 1993, c.  
37 712, §6, is repealed.

38                   **Sec. 36. 35-A MRSA §3156, next to the last ¶**, as enacted by PL  
39 1993, c. 712, §6, is amended to read:

2 ~~For purposes of this section, the term "qualifying facility"~~  
has the same meaning as in section 3303. For purposes of this  
4 section, the term "electric rate stabilization agreement" means  
any agreement by an electric utility with a qualifying facility  
6 that will result in the reduction of costs to the electric  
utility and includes, but is not limited to, agreements proposed  
8 to be supported with financing made available under Title 10,  
chapter 110, subchapter III.

10 **Sec. 37. 35-A MRSA §3191**, as amended by PL 1991, c. 769, §2,  
is repealed.

12 **Sec. 38. 35-A MRSA c. 32** is enacted to read:

14 **CHAPTER 32**

16 **MAINE ELECTRIC CUSTOMER CHOICE ACT**

18 **§3201. Definitions**

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

24 1. **Aggregator or market aggregator.** "Aggregator or market  
26 aggregator" means an entity, licensed by the commission under  
this chapter, that purchases electric energy and takes title to  
electric energy as an intermediary for sale to retail customers.

28 2. **Assignee.** "Assignee" means any entity including a  
30 trust, corporation, public authority or financing vehicle to  
32 which an electric utility assigns, sells or transfers other than  
34 as security all or a portion of its interest in or right to  
36 intangible transition property, or any of those entities to which  
an assignee of an electric utility subsequently assigns, sells or  
transfers other than as security its interest in or right to  
intangible transition property.

38 3. **Broker.** "Broker" means an entity, licensed by the  
40 commission under this chapter, that acts as an agent or  
intermediary in the sale and purchase of electric energy but does  
not take title to electric energy.

42 4. **Competitive transition charge.** "Competitive transition  
44 charge" means a nonbypassable charge applied to the bill of every  
46 customer accessing the transmission or distribution network in  
order to recover an electric utility's transition or stranded  
costs under section 3206.

48 5. **Customer.** "Customer" means a retail electric customer.  
50

2           **6. Direct access.** "Direct access" means the right of  
3 electric suppliers and retail customers to utilize and  
4 interconnect with an electric distribution company's transmission  
5 and distribution system on a nondiscriminatory basis at rates,  
6 terms and conditions of service comparable to the distribution  
7 company's own use of its system to transport electricity from any  
8 generator of electricity to any end-use customer.

9           **7. Electric distribution company.** "Electric distribution  
10 company" means an electric utility providing facilities for the  
11 transmission and distribution of electricity to retail  
12 customers. "Electric distribution company" excludes a building  
13 or facility owner or operator that manages the internal  
14 distribution system serving a building or facility and that  
15 supplies electric power and other related electric power services  
16 only to occupants of the building or facility.

17           **8. Electric supplier.** "Electric supplier" means a person  
18 or corporation, broker, aggregator or any other entity that sells  
19 to end-use customers electricity or related services utilizing  
20 the transmission or distribution facilities of an electric  
21 distribution company or that purchases, brokers, arranges or  
22 markets electricity or related services for sale to retail  
23 customers utilizing the transmission and distribution facilities  
24 of an electric distribution company. "Electric supplier"  
25 excludes a building or facility owner or operator that manages  
26 the internal distribution system serving a building or facility  
27 and supplies electric power and other related power services to  
28 occupants of the building or facility.

29           **9. Electric utility.** "Electric utility" has the same  
30 meaning as set forth in section 102, subsection 5 and, for the  
31 purposes of this chapter, also means any electric distribution  
32 company that is a successor to that electric utility.

33           **10. Financing party.** "Financing party" means a holder of  
34 transition bonds including trustees, collateral agents and other  
35 entities acting for the benefit of such a holder.

36           **11. Intangible transition charge.** "Intangible transition  
37 charge" means a nonbypassable charge applied to the bill of every  
38 customer accessing the transmission and distribution network in  
39 order to recover qualified transition expenses pursuant to a  
40 qualified rate order issued under section 3208.

41           **12. Intangible transition property.** "Intangible transition  
42 property" means the property right created under section 3208,  
43 representing the irrevocable right of the electric utility or an  
44 assignee to receive through intangible transition charges amounts  
45 sufficient to recover all of its qualified transition expenses.

2 "Intangible transition property" includes the right, title and  
4 interest of the electric utility or assignee in the qualified  
6 rate order and in all revenues, collections, claims, payments,  
8 money or proceeds of or arising from intangible transition  
10 charges pursuant to a qualified rate order.

12 **13. Nonutility generator.** "Nonutility generator" means any  
14 person owning or operating an electric generating facility the  
16 output of which is, on the effective date of this chapter, sold  
18 in whole or in part to an electric utility pursuant to 16 United  
20 States Code, Section 824a.

22 **14. Qualified rate order.** "Qualified rate order" means an  
24 order of the commission adopted in accordance with section 3208  
26 authorizing the imposition and collection of intangible  
28 transition charges.

30 **15. Qualified transition expenses.** "Qualified transition  
32 expenses" means the portion of the transition or stranded costs  
34 of an electric utility allowed under section 3206 and approved by  
36 the commission for recovery under section 3208, including without  
38 limitation:

40 A. The costs related to power purchase contracts with  
42 nonutility generators and others;

44 B. The costs of retiring existing debt or equity capital of  
46 the electric utility, including accrued interest and  
48 acquisition or redemption premium, costs of defeasance and  
50 other related fees, costs and charges, through the issuance  
of transition bonds or the assignment, sale or other  
transfer of intangible transition property; and

C. The costs, charges and other related fees incurred to  
issue, service or refinance transition bonds, including  
accrued interest acquisition or redemption premium, or to  
assign, sell or otherwise transfer intangible transition  
property.

**16. Regulatory assets and other deferred charges.** "Regulatory assets and other deferred charges" means any asset or  
other deferred charge established pursuant to policies and  
practices governing rate-regulated utilities, such as costs  
associated with:

A. Buyouts, buydowns or renegotiations of purchased power  
contracts;

B. Demand-side management;

2           C. Postretirement benefit obligations;

4           D. Loss on reacquired debt and unamortized debt expense;

6           E. Canceled generating plants;

8           F. Deferred taxes;

10          G. Low-income programs; and

12          H. Environmental clean-up costs.

14          17. Renewable energy resource. "Renewable energy resource"  
16          means solar photovoltaic energy, solar thermal energy, wind  
18          power, hydropower, geothermal energy, energy from landfill and  
20          mine-based methane gas, energy from waste and sustainable biomass  
energy or any other resources that are capable of being  
reproduced, replenished or restored following their use or are  
inexhaustible.

22          18. Transition bonds. "Transition bonds" means bonds,  
24          debentures, notes, certificates of participation or of beneficial  
interest or other evidences of indebtedness or ownership that:

26          A. Are issued by or on behalf of the electric utility or  
assignee pursuant to a qualified rate order; and

28          B. Are secured by or payable from intangible transition  
property.

30          19. Transition or stranded costs. "Transition or stranded  
32          costs" means an electric utility's uneconomic assets and costs  
34          recoverable under section 3206 if the market were regulated,  
including costs allowed by the Federal Energy Regulatory  
Commission for recovery in wholesale rates and traditionally  
36          recoverable in retail rates of the purchasing electric utility  
that may not be recoverable in a competitive electric market, and  
38          include:

40          A. Obligations arising out of power purchase contracts with  
nonutility generators, including without limitation:

42                  (1) Costs related to buyout, buydown, restructuring or  
44                  renegotiation of those contracts; and

46                  (2) Ongoing purchase obligations under those contracts;

48          B. Regulatory assets and other deferred charges;

2 C. Net plant investments and costs attributable to the  
3 electric utility's existing generation plants and  
4 facilities, whether directly or indirectly owned;

6 D. Long-term power purchase commitments other than the  
7 costs defined in paragraph A;

8 E. Retirement costs attributable to the electric utility's  
9 existing generating plants, whether owned directly or  
10 indirectly;

12 F. Unfunded projected nuclear generating plant  
13 decommissioning costs related to a nuclear generating plant  
14 owned directly or indirectly by the electric utility;

16 G. Disposal of spent nuclear fuel and other low-level and  
17 high-level nuclear waste from a nuclear generating plant  
18 owned directly or indirectly by the electric utility;

20 H. Other transition costs of the electric utility,  
21 including costs of corporate unbundling, divestiture,  
22 reorganization and restructuring;

24 I. Costs of employee severance, retraining, early  
25 retirement, outplacements and related expenses at reasonable  
26 levels, for employees who are affected by changes that occur  
27 as a result of the restructuring of the electric industry  
28 provided for in this chapter; and

30 J. Costs attributable to physical plant, whether owned  
31 directly or indirectly, no longer used and useful because of  
32 the transition to retail competition.

34 Costs previously disallowed by the commission as imprudently  
35 incurred are not included in this definition.

36 **20. Transmission and distribution costs.** "Transmission and  
38 distribution costs" means all costs directly or indirectly  
39 incurred to provide transmission and distribution services to  
40 customers and includes the return of and return on facilities and  
41 other capital investments necessary to provide transmission and  
42 distribution services and associated operating expenses,  
43 including applicable taxes.

44 **§3202. Customer choice; aggregation; unbundling of customer bills**

46 **1. Customer choice.** Effective January 1, 2000, every  
48 retail customer of electricity connected to an electric utility's  
49 system has the right to purchase electricity from any electricity  
50 supplier who has received authority from the commission to supply

2 electricity within the State under section 3216. Except as  
4 provided in sections 3210 and 3211, rates and other terms and  
6 conditions for the sale of electricity to a customer exercising  
8 that customer's right under this section are exempt from  
10 regulation by the commission. Legal franchises or rights to  
12 provide service to particular customers in particular areas  
14 existing on the effective date of this chapter, whether based on  
16 charter rights or general statutory law, continue in effect for  
18 purposes of defining the areas in which electric distribution  
20 companies have rights to deliver electricity.

22 **2. Aggregation.** Aggregation of customer electric loads is  
24 permitted for all customer classes, including, but not limited  
26 to, small commercial or residential customers. Aggregation may  
28 be accomplished by private market aggregators, cities, counties  
30 or special districts or on any other basis made available by  
32 market.

34 **3. Public agency aggregator.** If a public agency seeks to  
36 serve as an aggregator on behalf of residential customers in a  
38 particular community, the agency is obligated to offer the  
40 opportunity to purchase electricity to all residential customers  
42 within its jurisdiction and may not require customers of  
44 electricity within its jurisdiction to purchase generation  
46 services from that agency.

48 **4. Unbundled bills.** No later than January 1, 1999, every  
50 electric utility providing retail electric service shall issue  
customer bills that, to the extent practicable, state the cost of  
electric capacity and energy separately from other charges.

**5. Choosing electric suppliers.** No later than July 1,  
1999, the commission shall establish rules and procedures for  
choosing electric suppliers of customer electric loads, including  
the rules and procedures to prevent suppliers from engaging in  
unfair or deceptive marketing practices.

**6. Market power report.** On or before December 2, 1998, the  
commission shall submit a report to the joint standing committee  
of the Legislature having jurisdiction over utilities and energy  
matters, on whether market power exists or is likely to arise in  
the generation market in New England.

44 **§3203. Standard offer service**

46 At the time retail access begins, the commission shall  
48 ensure that standard offer service is available to all consumers  
50 of electricity, except that the commission may establish  
eligibility requirements that exclude customers of electricity  
with demands above a specified amount if the commission finds  
that these customers do not need standard offer service and their



2 eligibility for the service would increase its costs. The  
3 commission's rules must allow all electric suppliers, including  
4 electric distribution companies and affiliates of electric  
5 distribution companies, to compete to provide standard offer  
6 service. The commission shall establish terms and conditions for  
7 standard offer service. Standard offer service must be available  
8 until January 1, 2005 and may be continued after that date if the  
9 commission finds it necessary. This section does not preclude  
10 the commission from permitting or requiring different terms and  
11 conditions for standard offer service in different utility  
12 service territories and for different customer classes.

#### 13 **§3204. Regulation of distribution service**

14  
15 1. Rates. This chapter does not limit the authority of the  
16 commission to regulate rates for electric distribution service  
17 and to ensure that all customers have the right to transmission  
18 and distribution service at just and reasonable rates, so that  
19 the electric distribution company is afforded a fair opportunity  
20 to recover transmission and distribution costs on reasonable  
21 terms and conditions. In determining the justness and  
22 reasonableness of such rates, the commission may continue to  
23 employ methods permitted under section 3195. The commission  
24 shall ensure full recovery of all costs resulting from legal or  
25 regulatory requirements, including, but not limited to,  
26 regulatory assessments, conservation and load management and  
27 low-income programs.

28  
29 2. Nondiscrimination. The commission may not approve rates  
30 for distribution service that discriminate among customers or  
31 groups of customers based on the location of the customers or  
32 groups of customers or other factors creating differences in the  
33 cost of providing such distribution service, other than  
34 differences in cost relating to the customers' amount of  
35 electrical consumption, service voltage or differences reflected  
36 in line-extension policies of utilities in effect as of January  
37 1, 1997.

38  
39 3. Transition or stranded costs. The commission shall  
40 provide an electric distribution and transmission company with  
41 rates that allow that company to bill and recover transition or  
42 stranded costs from all electric distribution and transmission  
43 customers, as provided in sections 3206 and 3207. The design of  
44 such rates may not materially shift cost responsibility for the  
45 recovery of those costs from that cost responsibility that  
46 existed before the effective date of this chapter. The design  
47 and level of any rate or tariff to recover transition or stranded  
48 costs must be established and revised as required to fulfill all  
49 requirements associated with the financing, assignment, sale or

2 other transfer of transition or stranded costs pursuant to  
3 qualified rate order under section 3208.

4 4. Nonlimitation. This chapter does not limit the ability  
5 of an affiliate of an electric utility or electric distribution  
6 company from acting as an aggregator or broker or from  
7 purchasing, arranging or marketing electricity or related  
8 services to retail customers. This ability continues after  
9 January 1, 2006, except that the commission, after determining  
10 that such affiliates have an unfair competitive advantage in  
11 those activities as a result of their affiliation with an  
12 electric utility or electric distribution company, may adopt  
13 reasonable rules regarding the market conduct of such affiliates  
14 that minimize unfair competitive advantage. An affiliate of an  
15 electric distribution company may not be prohibited from engaging  
16 in those activities outside the electric distribution company's  
17 service territory.

18 **§3205. Recommendation for low-income program**

19  
20 On or before January 1, 1998, the commission and the State  
21 Planning Office shall submit their recommendations and any  
22 implementing legislation that would fund assistance to low-income  
23 customers of electricity through the General Fund or through tax  
24 on all energy sources in the State to the joint standing  
25 committees of the Legislature having jurisdiction over utilities  
26 and energy, appropriations and financial affairs and taxation and  
27 to any other committees of relevant jurisdiction.

28  
29 **§3206. Determination and recovery of transition or stranded costs**

30  
31 1. Recovery of previously allowed transition or stranded  
32 costs. An electric utility's transition and stranded costs  
33 include all regulatory assets and other deferred charges, whose  
34 collection in rates has previously been approved by the  
35 commission as of December 31, 1996. The electric utility's  
36 transition and stranded costs also include all costs, the  
37 recovery of which is approved by the commission, in any  
38 ratemaking or rate design case initiated after December 31, 1996,  
39 as regulatory assets or other deferred charges. Upon application  
40 by an electric utility or within 15 days of such application, the  
41 commission shall certify all such regulatory assets or other  
42 deferred charges.

43  
44 2. Commission determination of amounts of other transition  
45 or stranded costs. The commission shall determine the amounts of  
46 other transition or stranded costs in accordance with the  
47 following.  
48

2 A. Upon application by an electric utility, the commission  
3 shall determine the amount of all other transition or  
4 stranded costs. The amount must be based on a calculation  
5 method that adds the negative value of all above-market  
6 assets and obligations, including all nonutility  
7 generator-related and other power purchase obligations, to  
8 the positive value of all below-market assets and  
9 obligations, including all nonutility generator-related and  
10 other power purchase obligations. In making this  
11 determination, the commission shall rely on, to the greatest  
12 extent possible, market information, including, without  
13 limitation, market valuations that become known as plants  
14 and the rights to power from nonutility generating contracts  
15 as they are sold and current and likely future regional  
16 market prices for power and stranded cost determinations in  
17 other New England states. The commission shall initially  
18 determine and apply this calculation method in a proceeding  
19 with a public hearing to conclude no later than December 31,  
20 1999.

21 B. For all nonutility generator-related and other power  
22 purchase obligations and for other assets that continue to  
23 be owned and obligations that continue to be owed by an  
24 electric utility, approved by the commission as transition  
25 or stranded costs under paragraph A, the commission shall  
26 recalculate those costs at least than once every 2 years,  
27 except to the extent that those assets or obligations have  
28 been the subject of a qualified rate order under section  
29 3208 and, in reliance on such an order, transition bonds  
30 have been issued or that those assets or obligations  
31 represent regulatory assets or other deferred charges that  
32 are fixed pursuant to subsection 1.

33 C. Valuations resulting from auctioning rights to energy  
34 and capacity under section 3215, subsection 4 are conclusive  
35 evidence of the amounts of transition or stranded costs  
36 associated with nonutility generator contracts for purposes  
37 of paragraphs A and B.

38 3. Recovery of transition or stranded costs. An electric  
39 utility is entitled to recover all transition or stranded costs  
40 referred to in subsection 1 and all transition or stranded cost  
41 amounts determined by the commission under subsection 2 from  
42 customers on a nonbypassable basis through competitive transition  
43 charges, the terms of which must be established by the commission  
44 pursuant to section 3207, through intangible transition charges,  
45 the terms of which must be established by the commission pursuant  
46 to a qualified rate order under section 3208, or both.

2 4. Mitigation. Electric utilities have a continuing duty  
3 to make reasonable efforts to mitigate their transition or  
4 stranded costs, except with respect to assets or obligations for  
5 which transition bonds have been issued or intangible transition  
6 property has been assigned, sold or transferred pursuant to a  
7 qualified rate order under section 3208.

8 A. To achieve mitigation, electric utilities may:

10 (1) Issue, or cause to be issued, transition bonds or  
11 assign, sell or transfer intangible transition property  
12 pursuant to section 3208;

14 (2) Assign, sell or transfer intangible transition  
15 property related to power purchase obligations with  
16 nonutility generators and others;

18 (3) Reduce the costs of power purchase obligations  
19 from nonutility generators through buyouts, buydowns,  
20 restructurings or renegotiations of the power purchase  
21 contracts from the proceeds of transition bonds;

22 (4) Accelerate depreciation and amortization of  
23 existing assets;

26 (5) Reduce book assets by application of new proceeds  
27 of any sale of idle or under-utilized existing assets;

28 (6) Maximize market revenues from existing assets; and

30 (7) Minimize new capital spending for existing  
31 rate-base generation assets and investments.

34 B. In determining the amounts of transition or stranded  
35 costs to be recovered under this section, the commission  
36 shall consider the overall reasonableness of the electric  
37 utility's cost mitigation efforts referred to in paragraph  
38 A. The commission shall continue in effect mechanisms to  
39 reward electric utilities for actions that result in net  
40 reductions in power purchase agreement costs by allowing the  
41 utilities to retain a portion of the net savings in those  
42 costs. Mitigation resulting from the sale or other  
43 disposition of an asset or obligation approved by the  
44 commission is presumed reasonable in any subsequent  
45 proceeding. In addition to any mitigation efforts  
46 considered under this subsection, the commission shall  
47 equally consider efforts undertaken by an electric utility  
48 over time, prior to the effective date of this section, to  
49 reduce or moderate customer rate levels while maintaining  
50 safe and efficient operations. This chapter may not be

2 construed as requiring an electric utility or a nonutility  
3 generator to enter into an arrangement to buyout, buydown,  
4 restructure or renegotiate a power purchase agreement or  
5 authorizing the commission to require an electric utility to  
6 pursue such an arrangement with a nonutility generator, and  
7 an electric utility that does not enter into those  
8 arrangements may not be considered for that reason not to  
9 have made reasonable efforts to mitigate the costs of the  
10 agreements.

11 **§3207. Competitive transition charges**

12  
13 **1. General rule.** Each electric utility entitled to recover  
14 transition or stranded costs under section 3206 shall recover  
15 those costs through competitive transition charges allocated to  
16 and collected from its customers. An electric utility's revenue  
17 requirements for electric service must be reduced by an amount  
18 equal to any competitive transition charge collected from its  
19 customers. All competitive transition charges must be:

20  
21 **A.** Amortized over a reasonable time period not in excess of  
22 15 years, except that nonutility generator and other power  
23 purchase contract obligations continue for the duration of  
24 the contract and costs associated with any buyout, buy down  
25 or renegotiation of the contracts continue to be collected  
26 over the contract term remaining at the time of the buyout,  
27 buy down or renegotiation, and costs of decommissioning  
28 nuclear facilities continue until fully collected. In  
29 establishing the length of the period for collection of the  
30 competitive transition charge, the commission shall consider  
31 the effect on the financial health of electric utilities,  
32 the life of the asset or obligation giving rise to the  
33 transition or stranded cost on the ability of the State to  
34 compete in attracting industry and jobs and other relevant  
35 factors;

36  
37 **B.** Allocated among the various classes of customers, rate  
38 schedules and tariff options through the regulated retail  
39 rates of the relevant electric utility in a manner that  
40 maintains consistency with the allocation methodology  
41 determined by the commission in the last rate or rate design  
42 proceeding completed before the commencement of direct  
43 access by retail customers as provided in section 3202;

44  
45 **C.** Allocated in such a manner that a substantial portion  
46 will be recovered without reference to a customer's usage of  
47 electricity; and

48  
49 **D.** Allocated to any customer that, subsequent to December  
50 31, 1996, installs electric self-generation or uses electric

2 self-generation existing as of December 31, 1996, for which  
4 the output or any significant portion of the output has not  
6 previously been used to supply that customer's own energy  
8 needs, capable of producing 200 kilowatts, the output of  
10 which is used to significantly reduce the customer's  
12 purchases of electricity through the transmission and  
14 distribution network. The customer's fully-allocated share  
16 of transition or stranded costs must be recovered from the  
18 customer through a termination charge. Only loads of 200  
20 kilowatts or more existing on or before December 31, 1996  
22 are subject to a termination charge relating to  
24 self-generation of electricity under this paragraph. In the  
26 event a customer chooses to self-generate for an existing  
28 load in excess of 200 kilowatts and the commission has not  
30 yet completed a proceeding under section 3206, subsection 2,  
32 the commission shall make an interim determination of those  
34 costs for the self-generating customer.

36 **2. Exception.** Notwithstanding subsection 1, any customer  
38 that is under a buy-sell arrangement with an electric utility is  
40 not subject to a transition charge during the term of the  
42 buy-sell arrangement as long as the customer continues to buy, at  
44 the 1999 retail rate or contract rate if applicable, its electric  
46 requirements from the entity to which it sells its  
48 self-generation output. The application of any transition charge  
50 to customers under buy-sell arrangements discontinues upon  
expiration or termination of the buy-sell agreement.

### 32 **§3208. Qualified rate orders**

34 Notwithstanding any other provision of law, the commission  
36 may issue qualified rate orders in accordance with this section  
38 to facilitate the recovery or financing of qualified transition  
40 expenses, including those relating to power purchase contracts  
42 with nonutility generators and others, of an electric utility or  
44 assignee. A qualified rate order may be adopted by the  
46 commission only upon the application of an electric utility and  
48 becomes effective in accordance with its terms. After the  
50 issuance of a qualified rate order, the electric utility retains  
sole discretion regarding whether to assign, sell or otherwise  
transfer intangible transition property or to cause the  
transition bonds to be issued, including the right to defer or  
postpone the assignment, sale, transfer or issuance. An electric  
utility may apply at any time for a qualified rate order pursuant  
to the following procedures.

52 **1. Accounting.** Each application for a qualified rate order  
54 must contain an accounting of the electric utility's transition  
56 or stranded costs for which a qualified rate order is being  
requested, detailed information regarding the electric utility's

2 proposal for the assignment, sale or transfer of intangible  
3 transition property or the issuance of transition bonds and  
4 information regarding the electric utility's planned assignment,  
5 sale or transfer or, with respect to the issuance of transition  
6 bonds, the planned use of proceeds of the bonds.

7 2. Issuance of final qualified rate order. After public  
8 hearing, the commission shall issue a final qualified rate order  
9 for the amount of transition or stranded costs that it finds to  
10 be in the public interest to be recovered through intangible  
11 transition charges and for the issuance of transition bonds or  
12 the assignment, sale or transfer of intangible transition  
13 property. The commission shall complete its review of the  
14 application and issue its final determination within 120 days  
15 from the filing.

16 **§3209. Contents; periodic adjustments; irrevocability**

17 1. Issuance or assignment of transition bonds. Intangible  
18 transition charges must be calculated according to the guidelines  
19 set forth in section 3207, subsection 1 relating to competitive  
20 transition charges. If transition bonds approved by a qualified  
21 rate order are issued or an assignment, sale or transfer of  
22 intangible transition property approved by a qualified rate order  
23 is effected:

24 A. An electric utility must impose and collect, through its  
25 customer bills, the intangible transition charges approved  
26 by that qualified rate order;

27 B. Simultaneously, the electric utility's rates for  
28 electric service or the electric utility's competitive  
29 transition charges must be reduced by an amount equal to the  
30 intangible transition charges, including those related to  
31 nonutility generator and other power purchase contracts, for  
32 which transition bonds have been issued, or the assignment,  
33 sale, or transfer has been effected; and

34 C. If the revenue requirements avoided through the  
35 elimination of transition or stranded costs resulting from  
36 the sale of transition bonds or the assignment, sale or  
37 transfer of intangible transition property are greater than  
38 the resulting intangible transition charges, including those  
39 related to nonutility generator and other power purchase  
40 contracts, the excess must be applied as follows:

41 (1) Differences occurring before the commencement of  
42 full retail access as provided in section 3202 must be  
43 applied to reduce other transition or stranded costs  
44 through acceleration of depreciation or amortization of  
45 the property.

2 these costs, with the full benefits of this reduction  
4 passed on to residential and small business customers  
no later than the commencement of the full retail  
access; and

6 (2) Differences occurring after the commencement of  
8 full retail access as provided in section 3202 must be  
10 applied as a further reduction in the competitive  
transition charges or retail rates to residential and  
small business customers.

12 **2. Reduction of transition or stranded costs.** The  
14 qualified rate order must require that the assignment, sale or  
transfer or other financing of intangible transition property be  
16 used principally to reduce the electric utility's transition or  
stranded costs and, to the extent proceeds are raised from the  
18 issuance of transition bonds, to reduce its related  
capitalization, pursuant to a plan submitted by the electric  
20 utility in its application for a qualified rate order and  
approved by the commission.

22 **3. Irrevocability.** Notwithstanding any other provision of  
24 law, a qualified rate order is irrevocable. Neither the order  
nor the intangible transition charges authorized to be imposed  
26 and collected under the order is subject to reduction,  
postponement, impairment or termination by any subsequent action  
28 of the commission, except for periodic adjustments authorized by  
subsection 4. This subsection does not supersede the right of  
30 any party to judicial review of the qualified rate order.

32 **4. Periodic adjustments.** The commission shall provide in  
any qualified rate order for a procedure for the expeditious  
34 approval by the commission of periodic adjustments to the  
intangible transition charges that are the subject of the  
36 pertinent qualified rate order. Such adjustments must ensure, to  
the maximum extent feasible, the full and timely recovery of all  
38 qualified transition expenses, including those related to power  
purchase contracts with nonutility generators and others, and the  
40 recovery of the full annual amortization amount and revenues  
sufficient to provide for the payment of principal and interest  
42 in respect of transition bonds approved by the commission as part  
of or in conjunction with a qualified rate order. The adjustment  
44 must reconcile the annual collections from the intangible  
transition charge with the annual portion of qualified transition  
46 expenses approved in the qualified rate order. The commission  
shall adjust the intangible transition charge so as to collect  
48 any under-recovery of the annual portion of qualified transition  
expense, in addition to the recovery of qualified transition  
50 expenses in the subsequent year. Any over-recovery must be  
applied to reduce the intangible transition charge for the



2 subsequent year. The commission shall determine the amount of  
4 all adjustments that are required on each anniversary of the  
6 issuance of the qualified rate order and at the additional  
8 intervals as may be provided for in the qualified rate order.  
10 The adjustments, if required, must be approved within 90 days of  
12 each anniversary of the issuance of the qualified rate order or  
14 of each additional interval provided for in the qualified rate  
16 order.

18 **5. Assignment, transfer or pledge of interest in intangible**  
20 **transition property.** Notwithstanding any other provision of law  
22 and on such conditions as the commission may approve, all or  
24 portions of the interest of an electric utility in intangible  
26 transition property may be assigned, sold or transferred to an  
28 assignee and may be pledged or assigned as security by an  
30 electric utility or assignee to or for the benefit of a financing  
32 party. To the extent that an interest is assigned, sold or  
34 transferred or is pledged or assigned as security, the commission  
36 shall authorize the electric utility to contract with the  
38 assignee or financing party that the electric utility will  
40 continue to operate its system to provide service to its  
42 customers, will impose and collect the applicable intangible  
44 transition charges for the benefit and account of the assignee or  
46 financing party and will account for and remit the applicable  
48 intangible transition charge to or for the account of the  
50 assignee or financing party. The obligations of the electric  
utility under a qualified rate order:

A. Are binding upon the electric utility, its successors  
and assigns; and

B. Must be undertaken and performed by the electric utility  
and any other entity that provides electric service to a  
person that was a customer of an electric utility located  
within the territory of the electric utility on the  
effective date of this section or that became a customer of  
the electric utility within that territory after the  
effective date of this section and is still located within  
that territory as a condition to the provision of service to  
the customer by the electric utility or other entity, unless  
the customer has paid a termination charge in the manner and  
on the basis specified in the qualified rate order.

**6. Lapse or termination of irrevocable status.** The  
irrevocable status of any qualified rate order lapses and  
terminates to the extent that an assignment, sale or transfer of  
the intangible transition property resulting from the qualified  
rate order or the issuance of the related transition bonds is not  
effected within the period specified in the qualified rate order.

2 7. Subsequent refinancing. The effect of any subsequent  
4 refinancing of transition bonds upon the rates authorized in a  
qualified rate order is as provided in the order.

6 8. Flexibility of terms and conditions. In its qualified  
8 rate order, the commission shall afford flexibility in  
10 establishing the terms and conditions of the transition bonds,  
including repayment schedules, interest rates and other financing  
costs. The electric utility shall file the final terms of  
issuance with the commission.

12 9. Satisfaction of requirements. Transition bonds issued  
14 pursuant to a qualified rate order are deemed to satisfy any  
requirements under chapter 9.

16 10. Financing orders. Financing orders issued under this  
18 chapter do not constitute a debt, liability or moral obligation  
of the State or of any political subdivision of the State, other  
20 than the financing entity, and do not constitute a pledge of the  
full faith and credit of the State or any of its political  
22 subdivisions, other than the financing entity, but are payable  
solely from the funds provided for under this section. This  
24 subsection in no way precludes bond guarantees or enhancements  
pursuant to this chapter. All the bonds must contain on the face  
of the bond a statement to the following effect: "Neither the  
26 full faith and credit nor the taxing power of the State of Maine  
is pledged to the payment of the principal of, or interest on,  
28 this bond."

30 11. No obligation on part of State. The issuance of bonds  
32 under this chapter does not directly, indirectly or contingently  
obligate the State or any political subdivision of the State to  
34 levy or to pledge any form of taxation for the issuance of bonds  
or to make any appropriation for payment.

36 **§3210. Appeals of qualified rate orders**

38 In order to preserve the customer rate savings expected to  
40 result from a qualified rate order, which may be time sensitive  
to financial market conditions affecting the feasibility and  
42 terms of transition bonds approved, any appeal to the Law Court  
of a qualified rate order must be expedited pursuant to the  
following procedure.

44 1. Appellate review. Any party to the proceedings  
46 resulting in the qualified rate order who is aggrieved by the  
order may obtain review of that order only in an appeal to the  
48 Law Court pursuant to section 1320 and the Rules of Civil  
Procedure as modified.

50

2 2. Filing of notice. Any notice of appeal of a qualified  
rate order must be filed within 14 days from the entry of the  
order.

4  
6 3. Filing record of proceedings. Upon the filing of a  
notice of appeal, the commission shall within 7 days file with  
the Law Court the record of the proceedings before the  
8 proceedings result in the qualified rate order.

10 4. Filing of briefs. The appellant shall file the  
appellant's brief within 14 days after the date on which the  
12 record is filed in the Law Court; the appellee shall file the  
appellee's brief within 14 days after service of the brief of the  
14 appellant; and the appellant may file a reply brief within 7 days  
after service of the brief of the appellee.

16  
18 5. Expeditious. All appeals must be heard and determined  
by the Law Court as expeditiously as possible, recognizing that  
20 prompt financing pursuant to the qualified rate order may be  
essential to the customer rate savings and other effects that are  
22 expected and intended to be achieved by the qualified rate order.

24 6. Scope of judicial review. The grounds for and scope of  
judicial review of a qualified rate order is limited to  
determining whether:

26  
28 A. The order is in conformity with the Constitution of  
Maine and the laws of the State and the United States;

30  
32 B. The order is within the commission's statutory  
jurisdiction or authority and any rule adopted by the  
commission under this chapter; and

34 C. There is a rational basis for the commission's decision.

36 **§3211. Intangible transition property**

38 1. Utilities right in intangible transition property. Any  
right that an electric utility has in the intangible transition  
40 property before its sale or transfer or any other right created  
under this section or created in the qualified rate order and  
42 assignable under this section or assignable pursuant to a  
qualified rate order is only a contract right.

44  
46 2. No limit or impairment by State. The State pledges to  
and agrees with the holder of any transition bond issued under  
48 this chapter and with any assignee or financing party who may  
enter into a contract with an electric utility under this chapter  
50 that the State will not limit or alter or in any way, impair or  
reduce the value of intangible transition property or intangible

2 transition charges approved by a qualified rate order until the  
3 principal amount of and interest on the transition bonds are paid  
4 in full and discharged or the contracts are fully performed on  
5 the part of the electric utility. Subject to other requirements  
6 of law, this subsection does not preclude limitation or  
7 alteration if adequate compensation is made by law for the full  
8 protection of the intangible transition charges collected  
9 pursuant to a qualified rate order and of the holder of the  
10 transition bond and any assignee or financing party entering into  
11 the contract with the electric utility.

12 **§3212. Security interests in intangible transition property**

14 **1. Intangible transition property not account or general**  
15 **intangible.** Neither intangible transition property nor any  
16 right, title or interest of an electric utility or assignee,  
17 whether before or after the issuance of the qualified rate order,  
18 constitutes an "account" or "general intangibles" defined in  
19 Title 11, section 9-106; such a right, title or interest  
20 pertaining to a qualified rate order, including the associated  
21 intangible transition property and any revenues, collections,  
22 claims, payments, money or proceeds of or arising from intangible  
23 transition charges pursuant to that order, may not be considered  
24 proceeds of any right or interest other than in the order and the  
25 intangible transition property arising from the order.

26 **2. Security interest governed by chapter.** The granting,  
27 perfection, priority and enforcement of security interests in  
28 intangible transition property to secure transition bonds are  
29 governed by this chapter rather than by Title 11.

30 **3. Attachment of enforceable security interest.** A valid  
31 and enforceable security interest in intangible transition  
32 property attaches when the electric utility or an assignee has  
33 signed a security agreement and the secured party has given value  
34 and may be perfected only by means of a separate filing with the  
35 commission.

36 **A.** If the transition bonds are issued to finance any  
37 qualified transition expenses, as specified in the  
38 applicable qualified rate order, the lien of the transition  
39 bonds attaches automatically to the intangible transition  
40 property relating to the expenses from the time of issuance  
41 of the transition bonds.

42 **B.** The lien under paragraph A is deemed a valid and  
43 enforceable security interest in the intangible transition  
44 property securing the transition bonds and is continuously  
45 perfected if, before the date of issuance of the transition  
46 bonds or within no more than 10 days after the date, a  
47 qualified rate order is issued.

2 filing has been made by or on behalf of the financing party  
3 to protect that security interest in accordance with the  
4 procedures prescribed by the commission under this  
5 subsection. A filing in respect to the transition bonds  
6 takes precedence over any other filing.

7  
8 C. The lien under paragraph A is enforceable against the  
9 assignee and all 3rd parties, including judicial and  
10 statutory lien creditors, subject only to the rights of any  
11 3rd parties holding security interests in the intangible  
12 transition property previously perfected in the manner  
13 described in this subsection if value has been given by the  
14 purchasers of transition bonds. A perfected lien in  
15 intangible transition property is a continuously perfected  
16 security interest in all revenues and proceeds arising with  
17 respect to the associated intangible transition property,  
18 whether or not revenues have accrued. Intangible transition  
19 property constitutes property for the purposes of contracts  
20 securing transition bonds, whether or not the related  
21 revenues have accrued. The lien created under this  
22 subsection is perfected and ranks prior to any other lien,  
23 including any judicial lien, that subsequently attaches to  
24 the intangible transition property, the intangible  
25 transition charges or the qualified rate order and any  
26 rights created by the order or any proceeds of the order.  
27 The relative priority of a lien created under this  
28 subsection is not defeated or adversely affected by changes  
29 to the qualified rate order or to the intangible transition  
30 charges payable by any customer.

31  
32 D. The validity of the interest of an assignee or secured  
33 party in intangible transition property, and in all revenues  
34 or other proceeds arising in respect of that property  
35 whenever realized, and the relative priority of a lien  
36 created under this subsection is not defeated or adversely  
37 affected by the commingling of revenues arising with respect  
38 to intangible transition property with funds of the electric  
39 utility or other funds of the assignee, a successor to  
40 either party, another electric distribution company or  
41 electricity supplier or a party performing collection  
42 functions on behalf of any of the foregoing, or by the  
43 existence of any security interest in a deposit account of  
44 any such collection party perfected under Title 11, article  
45 9 or under Title 9-B in which those revenues or other  
46 proceeds may have been deposited. When money of an assignee  
47 of intangible transition property is at any time held in a  
48 deposit or other account of a collection party, that money  
49 is considered to be held in trust for the benefit of the  
50 assignee.

2           (1) An assignee of intangible transition property  
3           arising under a qualified rate order has a perfected  
4           security interest, and the holders of a perfected  
5           security interest in intangible transition property of  
6           an electric utility or assignee arising under that  
7           order have a perfected security interest, in all cash  
8           and deposit accounts of any collection party in which  
9           amounts collected, recovered or received in respect of  
10           intangible transition charges pursuant to such an order  
11           have been deposited and commingled with other funds,  
12           except that any such perfected security interest in  
13           deposit accounts of the electric utility or assignee or  
14           a successor of the electric utility or assignee, if  
15           that party is the debtor of the party holding the  
16           perfected security interest, is subject to any  
17           applicable right of setoff. If the electric utility or  
18           assignee or a successor of the electric utility or  
19           assignee becomes insolvent, the perfected security  
20           interest in intangible transition property of the  
21           insolvent party and any revenues or other proceeds  
22           arising in respect to that property is limited to an  
23           amount not greater than the amounts collected or  
24           recovered by that party in respect of intangible  
25           transition charges, whether or not actually deposited  
26           in the deposit accounts of the insolvent party, within  
27           the 10 days preceding the commencement of insolvency  
28           proceedings, less the sum of the amounts paid to or for  
29           the account of the holders of the security interest in  
30           intangible transition property or transferred to a  
31           segregated account held solely for their benefit during  
32           that 10-day period.

33           (2) When the proceeds of intangible transition  
34           property that have been recovered, collected or  
35           otherwise received by a collection party have been  
36           transferred by that collection party from a commingled  
37           account that includes other funds to a segregated  
38           account identified as held solely for the benefit of  
39           the holders of transition bonds, which bonds are  
40           secured by a security interest, perfected in accordance  
41           with the rules of the commission, in the intangible  
42           transition property and all revenues and other proceeds  
43           arising in respect of such property, the security  
44           interest of the holders of the transition bonds applies  
45           to any such segregated account and has priority over  
46           any other interest or security interest in that  
47           segregated account and over the lien of any judgment  
48           lien creditor or other lien creditor to which the  
49           security interest of the transition bonds is senior, in  
50           accordance with paragraph C.

2           E. If an event of default occurs under approved transition  
4           bonds, the holders of transition bonds or their authorized  
6           representatives, as secured parties, may foreclose or  
8           otherwise enforce the lien in the intangible transition  
10           property securing the transition bonds, subject to the  
12           rights of any 3rd parties holding prior security interests  
14           in the intangible transition property perfected as provided  
16           in this subsection. Upon application by the holders or their  
18           representatives, without limiting their other remedies, the  
          commission shall order the sequestration and payment to the  
          holders or their representatives of revenues arising with  
          respect to the intangible transition property pledged to the  
          holders. An order under this paragraph remains in full  
          force and effect notwithstanding any bankruptcy,  
          reorganization or other insolvency proceedings with respect  
          to the electric utility or assignee.

4. Records of filings. The commission shall establish and  
          maintain a separate system of records to reflect the date and  
          time of receipt of all filings made under this section and may  
          provide that transfers of intangible transition property to an  
          assignee be filed in that system of records.

24           §3213. True sale

26           A transfer of intangible transition property by an electric  
28           utility to an assignee, which the parties have in the governing  
30           documentation expressly stated to be a sale or other absolute  
32           transfer in a transaction approved in a qualified rate order,  
34           must be treated as an absolute transfer of all of the  
36           transferor's right, title and interest, as in a true sale and not  
38           as a pledge or other financing of the intangible transition  
40           property, other than for federal and state income, sales, use and  
42           franchise tax purposes. Granting to holders of transition bonds  
44           a preferred right to the intangible transition property or the  
          provision by the electric utility of any credit enhancement with  
          respect to transition bonds does not impair or negate the  
          characterization of any transfer as a true sale, other than for  
          federal and state income, sales, use and franchise tax purposes.  
          A transfer of intangible transition property is deemed perfected  
          as against 3rd persons, including any judicial lien creditors,  
          when the following has taken place:

46           1. Issuance of qualified rate order. The commission has  
48           issued the qualified rate order creating intangible transition  
          property; and

2           2. Delivered to assignee. A sale or transfer of the  
3           intangible transition property in writing has been executed and  
4           delivered to the assignee.

6           **§3214. Actions with respect to intangible transition charges**

8           This chapter does not entitle any person to bring an action  
9           against a customer for nonpayment of intangible transition  
10           charges, other than the electric utility, its successor or an  
11           assignee of intangible transition property or any other entity  
12           that provides electric service to a person that was a customer of  
13           an electric utility located within the territory of the electric  
14           utility on the effective date of this chapter or that became a  
15           customer of an electric utility within the territory after the  
16           effective date of this chapter and is still located within that  
17           territory.

18           The commission has exclusive jurisdiction over any dispute  
19           arising out of the obligations to impose and collect intangible  
20           transition charges of an electric utility, its successor or any  
21           other entity that provides electric service to a person that was  
22           a customer of an electric utility located within the territory of  
23           the electric utility on the effective date of this chapter or  
24           that became a customer of an electric utility within the  
25           territory after the effective date of this chapter and is still  
26           located within that territory.

28           **§3215. Structural and legal separation of electric utilities**

30           1. Structural separation. No later than January 1, 1999,  
31           every investor-owned electric utility owning electric generation,  
32           which provides retail electric service to more than 50,000  
33           customers, shall submit to the commission a plan to revise its  
34           internal organizational structure and procedures to ensure, to  
35           the extent reasonably practicable, that the management and  
36           operation of generation assets, other than distributed generation  
37           necessary for local system stability, and associated obligations  
38           are separated from the management and operation of transmission  
39           and distribution assets. The plan must have an effective date no  
40           later than January 1, 2000. The commission shall complete its  
41           review of a plan under this section within 180 days. An electric  
42           utility may, but is not required to, satisfy the requirement for  
43           structural separation of electric generation from other  
44           activities by the creation of one or more subsidiaries and  
45           distribution of the stock of those subsidiaries.

46           2. Legal separation. No later than January 1, 2004, every  
47           investor-owned electric utility owning electric generation to be  
48           used for sales within its service territory after January 1, 2006  
49           and providing retail electric service to at least 50,000  
50           customers shall submit to the commission a plan to revise its



2 customers within the State shall submit to the commission a plan  
3 for the legal separation of ownership of its nonnuclear  
4 generation assets, other than distributed electric generation  
5 necessary for local system stability, and contractual commitments  
6 from the ownership of its transmission and distribution assets to  
7 be implemented no later than January 1, 2006. Notwithstanding  
8 any other provision of this Title, upon application of an  
9 electric utility under this section, the commission shall approve  
10 the legal separation upon a finding that the proposed means of  
11 effecting the separation are just and reasonable. The commission  
12 shall rule upon an application under this section within 270 days  
13 of the filing of the application.

14 **3. Continued separation.** Except as may be provided in  
15 section 3203, an electric distribution company may not acquire an  
16 ownership interest in, contract for electric generation with or  
17 affiliate with an entity that owns electric generation to be used  
18 for retail sales within the distribution company's service  
19 territory after December 31, 2005. This section does not  
20 prohibit an affiliate of an electric distribution company, which  
21 affiliate does not own or operate transmission or distribution  
22 facilities within the State, or an electric distribution company  
23 that agrees to submit to regulation by the commission of all  
24 earnings derived from sales within its service territory, from  
25 owning electric generation or contracting to buy or sell  
26 electricity as a broker or aggregator. Any electric utility  
27 affiliated with a broker or aggregator shall make reasonably  
28 available to competing sellers of electricity any history of  
29 electric usage of customers that it makes available to its  
30 affiliate.

32 **4. Auction of power from nonutility generators.** An entity  
33 to which electric generation assets and contractual commitments  
34 have been transferred under subsection 2 shall auction off its  
35 entitlement to capacity and energy under contracts with  
36 nonutility generators not less than once every 3 years.

38 **5. Effects of legal separation.** An order approving a  
39 separation under subsection 2 renders an electric utility and its  
40 directors, officers and shareholders exempt from Title 13-A,  
41 sections 514, 517, 624 and 720 and from the Uniform Fraudulent  
42 Transfer Act, Title 14, chapter 504 for the matters addressed by  
43 the separation. A separation approved under subsection 2 does  
44 not constitute a sale of all or substantially all of the assets  
45 of a corporation within the meaning of Title 13-A, chapter 10.  
46 An order under this section may not relieve an entity of  
47 obligations that entity would have had, but for that order, for  
48 the decommissioning of a nuclear plant.

2           6. Voluntary separation. Any electric utility not required  
4           to effect legal separation under subsection 2 may submit to the  
6           commission a plan for the legal separation of its ownership of  
8           all or any part of its electric generation assets and contractual  
          commitments from the ownership of its transmission and  
          distribution assets. The filing and approval of any voluntary  
          plan of legal separation is subject to all provisions of this  
          section.

10           §3216. Certification of eligible suppliers

12           Within 120 days of the effective date of this chapter, the  
14           commission shall adopt rules for the expeditious certification of  
          financially responsible suppliers to sell electricity at retail  
          within the State.

16           §3217. Minimum renewable supply requirement

18           1. Issuance of renewable energy credits. Renewable energy  
20           credits may be issued in accordance with this subsection.

22           A. No later than January 1, 1999, the commission shall  
24           establish by rule, after notice and opportunity for hearing,  
26           a program to issue renewable energy credits to electric  
          generators. Renewable energy credits must be identified by  
          type of generation and facility location. Under this  
28           program, the commission shall issue renewable energy credits  
          to any person who generates in any year after the calendar  
          year after the effective date for retail choice of electric  
30           energy through the use of a renewal energy resource.

32           B. The commission shall impose on and collect from  
34           recipients of renewable energy credits a fee in an amount  
36           equal to the costs of issuing, recording, monitoring the  
          sale or exchange and tracking of those credits. Any person  
          that fails or refuses to pay the fee is subject to a civil  
38           penalty equal to 2 1/2 times the amount of the unpaid fees.  
          The Attorney General may bring an action in the Superior  
40           Court to collect any unpaid fees and to impose a civil  
          penalty on any person who fails or refuses to pay the fee  
          imposed under this section.

42           C. When renewable energy sold by an electric generator  
44           under a contract, including, but not limited to, a contract  
46           entered into before the effective date of this chapter, that  
          is subject to the federal Public Utility Regulatory Policies  
48           Act of 1978, Section 210 for the duration of the contract,  
          the holder of the contract must be treated for purposes of  
          this section as the generator of the energy unless the  
50           electric generator and contract holder agree to terminate

2           the contract before the expiration date set forth in the  
3           contract.

4           2. Minimum amounts. For calendar years after the effective  
5           date of retail choice under section 3202, each electric supplier  
6           shall submit to the commission renewable energy credits in  
7           amounts to be determined by the commission.

8           3. Satisfaction of requirements. An electric generator may  
9           satisfy the requirements of subsection 1 through the submission  
10           of:

11           A. Renewable energy credits issued by the commission under  
12           this section for renewable energy generated by an electric  
13           generator in a calendar year;

14           B. Renewable energy credits issued by the commission under  
15           this section to any other electric generator for renewable  
16           energy generated in a calendar year by any other generator  
17           and acquired by an electric generator; or

18           C. Any combination of paragraphs A and B.

19           A renewable energy credit that is submitted to the commission for  
20           any year may not be used for any purposes after that year.

21           **§3218. Conservation and load management**

22           1. Minimum levels. No later than December 31, 1999, the  
23           commission shall establish levels of funding to be maintained by  
24           electric utilities beginning January 1, 2000 for conservation and  
25           load management programs. Those levels must be comparable to  
26           amounts in rates of electric utilities in calendar year 1999.

27           2. Rates. Funds for conservation and load management  
28           programs must be recovered in rates for electric distribution  
29           service.

30           3. Selection of providers. Electric utilities shall select  
31           conservation and load management providers on the basis of  
32           periodic competitive bidding. Affiliates of electric utilities  
33           are permitted to participate in the bidding. The commission may  
34           prescribe rules to ensure the fairness of bidding procedures.

35           Sec. 39. 35-A MRSA c. 33, as amended, is repealed.

36           Emergency clause. In view of the emergency cited in the  
37           preamble, this Act takes effect when approved.

38

## SUMMARY

2

This bill introduces competition to the electric industry by giving consumers the right to choose their energy supplier.

4

6

This bill:

8

1. Introduces retail competition for all consumers on January 1, 2000;

10

12

2. Allows consumers to aggregate to increase purchasing power;

14

3. Provides for a standard service offer for consumers who do not opt to choose or are unable to choose their own provider;

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18

4. Continues regulation of transmission and distribution companies;

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5. Provides consumer protections in dealings with both regulated and unregulated electric companies;

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24

6. Honors past public policy commitments;

26

7. Provides rate reductions to small business and residential consumers;

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8. Requires utilities to separate their generation facilities from their transmission and distribution facilities;

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32

9. Allows consumers to choose to buy power from a utility affiliate;

34

10. Provides assistance in paying all energy bills of low-income customers;

36

38

11. Continues electricity conservation programs;

40

12. Provides environmental protection by requiring all energy providers to have renewable energy sources or buy renewable energy credits; and

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44

13. Provides a mechanism for reducing and recovering utilities' stranded costs without impacting the credit or credit rating of the State.