

MAINE STATE LEGISLATURE

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MAJORITY
UTILITIES AND ENERGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1274, L.D. 1804, Bill, "An Act to Restructure the State's Electric Industry"

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

Sec. 1. 35-A MRSA §3139, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. 2. 35-A MRSA §3140, sub-§§1, 3 and 4, as enacted by PL 1987, c. 141, Pt. A, §6, are amended to read:

1. Foreign electric utility to notify commission before acting within this State. A foreign electric utility acting under ~~section 3139~~ shall, before constructing, purchasing, owning, controlling, operating, managing or otherwise participating in a joint or common interest in a utility facility within this State:

A. Notify the commission in writing of the action to be taken by the utility; and

B. Provide any information reasonably required by the commission under section 3132.

3. Registered office and agent; service of process. A foreign electric utility ~~acting under section 3139 shall:~~

A. ~~Designate~~ Shall designate and continuously maintain in this State a registered office and a registered agent in accordance with Title 13-A, section 1212; and

COMMITTEE AMENDMENT

2 B. Be is subject to service of process, notice or demand as
4 provided in Title 13-A, section 1212.

6 **4. Certificate of agency with regulatory jurisdiction over
foreign electric utility.** Upon the filing with the commission of
8 a certificate of the appropriate regulatory agency of the state
10 of domicile or principal locus of a foreign electric utility, or
12 of the United States, stating either that the agency has
14 regulatory jurisdiction over the issuance of stocks, bonds or
16 other evidences of indebtedness payable more than 12 months from
18 date of issue by that foreign electric utility to finance a
utility facility in this State or that the agency has general
supervision of that foreign electric utility in the conduct of
its electric utility business, that foreign electric utility
shall may not be deemed an "electric utility" as defined in
section 102, subsection 5, merely by reason of the exercise by it
of the authority granted in former section 3139.

20 **Sec. 3. 35-A MRSA c. 32** is enacted to read:

22 **CHAPTER 32**

24 **ELECTRIC INDUSTRY RESTRUCTURING**

26 **§3201. Definitions**

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

32 **1. Affiliated interest.** "Affiliated interest" has the same
34 meaning as provided in section 707, subsection 1, paragraph A.

36 **2. Aggregate.** "Aggregate" means to organize individual
38 electricity consumers into a group or entity for the purpose of
purchasing electricity on a group basis.

40 **3. Aggregator.** "Aggregator" means an entity that gathers
42 individual customers together for the purpose of purchasing
electricity.

44 **4. Broker.** "Broker" means an entity that acts as an agent
46 or intermediary in the sale and purchase of electricity but that
does not take title to electricity.

48 **5. Competitive electricity provider.** "Competitive
50 electricity provider" means a marketer, broker, aggregator or any
other entity selling electricity to the public at retail.

2 6. Consumer-owned transmission and distribution utility.
3 "Consumer-owned transmission and distribution utility" means any
4 transmission and distribution utility wholly owned by its
5 consumers, including, but not limited to:

6 A. The transmission and distribution portion of a rural
7 electrification cooperative organized under chapter 37;

8 B. The transmission and distribution portion of an
9 electrification cooperative organized on a cooperative plan
10 under the laws of the State;

11 C. A municipal or quasi-municipal transmission and
12 distribution utility;

13 D. The transmission and distribution portion of a municipal
14 or quasi-municipal entity providing generation and other
15 services; and

16 E. A transmission and distribution utility wholly owned by
17 a municipality.

18 7. Divest. "Divest" means to legally transfer ownership
19 and control to an entity that is not an affiliated interest.

20 8. Electric billing and metering services. "Electric
21 billing and metering services" means the following services:

22 A. Billing and collection;

23 B. Provision of a meter;

24 C. Meter maintenance and testing; and

25 D. Meter reading.

26 9. Entity. "Entity" means a person or organization,
27 including but not limited to any political, governmental,
28 quasi-governmental, corporate, business, professional, trade,
29 agricultural, cooperative, for-profit or nonprofit organization.

30 10. Generation assets. "Generation assets" includes all
31 real estate, fixtures and personal property owned, controlled,
32 operated or managed in connection with, or to facilitate, the
33 generation of electric power.

34 11. Generation service. "Generation service" means the
35 provision of electric power to a consumer through a transmission
36 and distribution utility but does not encompass any activity
37 related to the transmission or distribution of that power.

2 12. Large, investor-owned transmission and distribution
3 utility. "Large, investor-owned transmission and distribution
4 utility" means an investor-owned transmission and distribution
5 utility serving more than 50,000 retail customers.

6 13. Marketer. "Marketer" means an entity that as an
7 intermediary purchases electricity and takes title to electricity
8 for sale to retail customers.

9 14. Public entity. "Public entity" includes the State, any
10 political subdivision of the State, a municipality and any
11 quasi-municipal entity.

12 15. Qualifying facility. "Qualifying facility" has the
13 same meaning as provided in section 3303.

14 16. Small, investor-owned transmission and distribution
15 utility. "Small, investor-owned transmission and distribution
16 utility" means an investor-owned transmission and distribution
17 utility serving 50,000 or fewer retail customers.

18 17. Retail access. "Retail access" means the right of a
19 retail consumer of electricity to purchase generation service
20 from a competitive electricity provider.

21 18. Transmission and distribution plant. "Transmission and
22 distribution plant" means all real estate, fixtures and personal
23 property owned, controlled, operated or managed in connection
24 with, or to facilitate, the transmission, distribution or
25 delivery of electricity for light, heat or power for public use
26 and includes all conduits, ducts or other devices, materials,
27 apparatus or property for containing, holding or carrying
28 conductors used, or to be used, for the transmission or
29 distribution of electricity for light, heat or power for public
30 use.

31 19. Transmission and distribution utility. "Transmission
32 and distribution utility" means a person, its lessees, trustees,
33 receivers or trustees appointed by a court, owning, controlling,
34 operating or managing a transmission and distribution plant for
35 compensation within the State.

36 §3202. Retail access; deregulation

37 1. Right to purchase generation. Beginning on March 1,
38 2000, all consumers of electricity have the right to purchase
39 generation services directly from competitive electricity
40 providers.

2 2. Deregulation of generation services. Except as otherwise
3 provided in this chapter, competitive electricity providers are
4 not subject to regulation under this Title on or after March 1,
5 2000.

6 3. Aggregation permitted; limitation. When retail access
7 begins, consumers of electricity may aggregate their purchases of
8 generation service in any manner they choose. If a public entity
9 serves as an aggregator, it may not require consumers of
10 electricity within its jurisdiction to purchase generation
11 service from that entity.

12 4. Electric billing and metering services. Beginning March
13 1, 2002, pursuant to rules adopted by the commission, the
14 provision of electric billing and metering services is subject to
15 competition. The commission by rule may establish an earlier
16 date for the beginning of competition for the provision of
17 billing or metering services, except that the commission may not
18 set a beginning date that is prior to March 1, 2000.

19 The commission by rule shall establish minimum standards
20 necessary to protect consumers of these services and codes of
21 conduct governing the relationship among transmission and
22 distribution utilities providing electric billing and metering
23 services, any affiliates of transmission and distribution
24 utilities providing such services and providers of such services
25 that are not affiliated with a transmission and distribution
26 utility. The commission shall determine each transmission and
27 distribution utility's costs of providing electric billing and
28 metering services that are reflected in consumer rates, including
29 capital costs, depreciation, operating expenses and taxes, and
30 shall separate this portion of the consumer rate into a separate
31 charge.

32 Rules adopted under this subsection are major substantive rules
33 as defined in Title 5, chapter 375, subchapter II-A and must be
34 provisionally adopted by March 1, 1999.

35 §3203. Licensing of competitive electricity providers; consumer
36 protections; enforcement

37 1. Authority. In order to provide effective competition in
38 the market for the generation and sale of electricity in the
39 State and to provide an orderly transition from the current form
40 of regulation to retail access, the commission shall license
41 competitive electricity providers in accordance with this section.

42 2. Requirements. A competitive electricity provider may
43 not undertake the sale of electricity at retail in this State
44 without first receiving a license from the commission. Before
45 the commission issues a license, the applicant shall file with the
46 commission a plan of service to be provided to the public.

2 approving a license application, the commission must receive from
3 the applicant:

4 A. Evidence of financial capability sufficient to refund
5 deposits to retail customers in the case of bankruptcy or
6 nonperformance or for any other reason;

8 B. Evidence of the ability to enter into binding
9 interconnection arrangements with transmission and
10 distribution utilities;

12 C. Disclosure of all pending legal actions and customer
13 complaints filed against the competitive electricity
14 provider at a regulatory body other than the commission in
15 the 12 months prior to the date of license application;

16 D. Evidence of the ability to satisfy the renewable
17 resource portfolio requirement established under section
18 3210; and

19 E. Disclosure of the names and corporate addresses of all
20 affiliates of the applicant.

22
23
24 The commission shall consider the need for requiring and, if it
25 determines there is a need, may require a competitive electricity
26 provider to file a bond with the commission as evidence of
27 financial ability to withstand market disturbances or other
28 events that may increase the cost of providing service or to
29 provide for uninterrupted service to its customers if a
30 competitive electricity provider stops service.

31
32 3. Informational filings; public information. The
33 commission shall establish by rule information disclosure and
34 filing requirements for competitive electricity providers. The
35 rules must require generation providers to file their generally
36 available rates, terms and conditions with the commission. The
37 commission, subject to appropriate protective orders, may require
38 the submission of individual service contracts or any other
39 confidential information from a competitive electricity provider.

40
41 The commission by rule shall establish standards for publishing
42 and disseminating, through any means considered appropriate,
43 information that enhances consumers' ability to effectively make
44 choices in a competitive electricity market.

45 Rules adopted under this subsection are major substantive rules
46 as defined in Title 5, chapter 375, subchapter II-A and must be
47 provisionally adopted by March 1, 1999.
48

2 4. Standard consumer protection provisions. As a condition
3 of licensing, a competitive electricity provider that provides or
4 proposes to provide generation service to a customer, wherever
5 located, with a demand of 100 kilowatts or less:

6 A. May not terminate generation service without at least 30
7 day prior notice to the customer;

8 B. Must offer service to the customer for a minimum period
9 of 30 days;

10 C. Must allow the customer to rescind selection of the
11 competitive electricity provider orally or in writing within
12 5 days of initial selection;

13 D. May not telemarket services to the customer if the
14 customer has filed with the commission a written request not
15 to receive telemarketing from competitive electricity
16 providers;

17 E. Must provide to the customer within 30 days of
18 contracting for retail service a disclosure of information
19 provided to the commission pursuant to rules adopted under
20 subsection 3 in a standard written format established by the
21 commission; and

22 F. Must comply with any other provisions adopted by the
23 commission by rule or order.

24 5. Licensing renewals and revocations. Consistent with all
25 applicable requirements of Title 5, chapter 375, the commission
26 may limit the duration and effectiveness of a license to a
27 specified term, may conduct proceedings for the renewal of
28 licenses and may conduct proceedings for the revocation of a
29 license when a requirement of this section has not been complied
30 with by a competitive electricity provider. The commission shall
31 adopt rules governing the procedures for issuing or revoking a
32 license under this section and related matters.

33 6. Consumer protection standards; rules. The commission
34 shall establish by rule consumer protection standards and
35 standards to protect and promote market competition in order to
36 protect retail consumers of electricity from fraud and other
37 unfair and deceptive business practices.

38 7. Penalties. In an adjudicatory proceeding, the
39 commission may impose a penalty of up to \$5,000 for each
40 violation of this section or any consumer protection rule adopted
41 under this section. Each day a violation continues constitutes a
42 separate offense. Penalties collected by the commission under

2 this section must be deposited in the Public Utilities Commission
3 Reimbursement Fund under section 117.

4 8. Dispute resolution. The commission shall resolve
5 disputes between competitive electricity providers and retail
6 consumers of electricity concerning standards established
7 pursuant to subsection 6.

8
9 9. Additional actions. The commission may impose by rule
10 any additional requirements necessary to carry out the purposes
11 of this chapter, except that this section may not be construed to
12 permit the commission to regulate the rates of any competitive
13 electricity provider.

14
15 10. Cease and desist orders. The commission may issue a
16 cease and desist order:

17 A. Following an adjudicatory hearing held in conformance
18 with Title 5, chapter 375, subchapter IV, if the commission
19 finds that any competitive electricity provider or
20 transmission and distribution utility has engaged or is
21 engaging in any act or practice in violation of any law or
22 rule administered or enforced by the commission or any
23 lawful order issued by the commission. A cease and desist
24 order is effective when issued unless the order specifies a
25 later effective date or is stayed pursuant to Title 5,
26 section 11004; or

27
28 B. In an emergency, without hearing or notice, if the
29 commission receives a written, verified complaint or
30 affidavit showing that a competitive electricity provider or
31 a transmission and distribution utility is selling
32 electricity to retail consumers without being duly licensed
33 or is engaging in conduct that creates an immediate danger
34 to the public safety or is reasonably expected to cause
35 significant, imminent and irreparable public injury. An
36 emergency cease and desist order is effective immediately
37 and continues in force and effect until further order of the
38 commission or until stayed by a court of competent
39 jurisdiction. In a subsequent hearing the commission shall
40 in a final order affirm, modify or set aside the emergency
41 cease and desist order and may employ simultaneously or
42 separately any other enforcement or penalty provisions
43 available to the commission.

44
45 11. Restitution. The commission may order restitution for
46 any party injured by a violation for which a penalty may be
47 assessed pursuant to this section.
48

12. Enforcement. The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it.

13. Notice to Attorney General. If the commission has reason to believe that any competitive electricity provider or transmission and distribution utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

14. Disconnection restricted. A transmission and distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under section 3212.

15. Standard billing. The commission shall consider requiring standard billing information on bills for electric power service. If standard billing information is required, the commission shall investigate the possibility of adopting standards consistent with other New England states. The commission may not prohibit transmission and distribution utilities from contracting with generation service providers to include both entities' charges on a single bill. The commission may not preclude the inclusion of other information on bills for electric power service.

16. Access to load data. Upon request from a competitive electricity provider, the commission shall provide load data on a class basis that is in the possession of a transmission and distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.

17. Rules. Except as otherwise provided in this section, rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

§3204. Divestiture of generation

1. Divestiture required; exceptions. Except as provided in subsection 3, on or before March 1, 2000, each investor-owned

electric utility shall divest all generation assets and generation-related business activities other than any:

A. Contract with a qualifying facility or with a demand-side management or conservation provider, broker or host;

B. Ownership interest in a nuclear power plant;

C. Ownership interest in a facility located outside the United States; or

D. Ownership interest in a generation asset that the commission determines is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

No later than January 1, 1999, each investor-owned electric utility shall submit to the commission a plan to accomplish the divestiture required under this subsection. In an adjudicatory proceeding, the commission shall review the plans for consistency with this chapter. By July 1, 1999, the commission shall issue an order approving the plan or modifying the plan to make it consistent with the requirements of this chapter. An investor-owned electric utility shall divest its generation assets in accordance with the commission's order.

2. Commission may require divestiture of Maine Yankee interests. Notwithstanding any other provision of this chapter, the commission, if necessary to achieve the purposes of this chapter, may, in an adjudicatory proceeding, require any investor-owned transmission and distribution utility to divest its ownership interests in the Maine Yankee Atomic Power Company on or after January 1, 2009. The commission may order divestiture under this subsection only after notice to all interested parties and an opportunity for those parties to be heard.

3. Extension; separation required. An investor-owned electric utility may apply to the commission for an extension to permit the utility to divest one or more generation assets after March 1, 2000. The commission shall grant an extension if the commission finds that an extension would be likely to improve the sale value of those assets on the market. If the commission grants an extension, the utility shall transfer to a distinct corporate entity by March 1, 2000 the generation assets to which the extension applies. Conduct of the utility and any affiliated corporate entity receiving the generation assets is governed by section 3205.

2 The commission by rule shall establish the procedure for granting
3 extensions. By March 1, 1999, the commission shall provisionally
4 adopt all rules required under this subsection. Rules adopted
5 under this subsection are major substantive rules pursuant to
6 Title 5, chapter 375, subchapter II-A.

7 4. Sale of capacity and energy required. The commission
8 by rule shall require each investor-owned electric utility after
9 February 28, 2000 to sell rights to capacity and energy from all
10 generation assets and generation-related business, including
11 purchased power contracts that are not divested pursuant to
12 subsection 1, except those rights to capacity and energy that the
13 commission determines are necessary for the utility to perform
14 its obligations as a transmission and distribution utility in an
15 efficient manner.

16 In the rules adopted under this subsection, the commission shall
17 establish procedures to promote the maximum market value for
18 these rights. Nothing in this subsection prohibits a utility
19 from re-negotiating, buying out or buying down a contract with a
20 qualifying facility in accordance with applicable laws. By March
21 1, 1999, the commission shall provisionally adopt all rules
22 required under this subsection. Rules adopted under this
23 subsection are major substantive rules pursuant to Title 5,
24 chapter 375, subchapter II-A.

25 5. Ownership of generation prohibited. Except as otherwise
26 permitted under this chapter, on or after March 1, 2000, an
27 investor-owned transmission and distribution utility may not own,
28 have a financial interest in or otherwise control generation or
29 generation-related assets.

30 6. Generation assets permitted. On or after March 1, 2000,
31 notwithstanding any other provision in this chapter, the
32 commission may allow an investor-owned transmission and
33 distribution utility to own, have a financial interest in or
34 otherwise control generation and generation-related assets to the
35 extent that the commission finds that ownership, interest or
36 control is necessary for the utility to perform its obligations
37 as a transmission and distribution utility in an efficient manner.

38 7. Corporate law; exemptions. An order of the commission
39 directing or approving divestiture renders an electric utility
40 and its directors, officers and shareholders exempt from Title
41 13-A, sections 514, 517, 624 and 720 and from the Uniform
42 Fraudulent Transfer Act, Title 14, chapter 504 for the matters
43 addressed by the order. A divestiture pursuant to a commission
44 order directing or approving the divestiture does not constitute
45 a sale of all or substantially all of the assets of a corporation
46 within the meaning of Title 13-A, chapter 10.

2 §3205. Marketing; large utilities

4 1. Definitions. As used in this section, unless the
6 context otherwise indicates, the following terms have the
8 following meanings.

10 A. "Affiliated competitive provider" means a competitive
12 electricity provider whose relationship with a large
14 investor-owned transmission and distribution utility
16 qualifies it as an affiliated interest.

18 B. "Distribution utility" means a large investor-owned
20 transmission and distribution utility that has an affiliated
22 competitive provider.

24 C. "Purchasing entity" means a person that purchases 10% or
26 more of the stock of a distribution utility on or after the
28 effective date of this section.

30 D. "Related entity" means:

32 (1) Any person who owns, directly, indirectly or
34 through a chain of successive ownership, 10% or more of
36 the voting securities of the purchasing entity;

38 (2) Any person 10% or more of whose voting securities
40 are owned, directly or indirectly, by an affiliated
42 interest as defined in subparagraph (1);

44 (3) Any person 10% or more of whose voting securities
46 are owned, directly or indirectly, by a purchasing
48 entity;

50 (4) Any person, or group of persons acting in concert,
which the commission may determine, after investigation
and hearing, exercises substantial influence over the
policies and actions of a purchasing entity, provided
that the person or group of persons beneficially owns
more than 3% of the purchasing entity's voting
securities; or

(5) Any purchasing entity of which any person defined
in subparagraphs (1) to (4) is an affiliated interest.

E. "Voting securities" means any security or any
proprietary or other interest presently entitling the owner
or holder of the security to vote in the direction or
management of the affairs of a company.

2 2. Marketing permitted. On and after the beginning of
3 retail access, a large investor-owned transmission and
4 distribution utility may not sell electric energy or capacity to
5 any retail consumer of electricity. Pursuant to the requirements
6 of this section, on and after the beginning of retail access, an
7 affiliated competitive provider may sell electric energy or
8 capacity to retail consumers of electricity:

9 A. Outside the service territory of the distribution utility
10 with which it is affiliated; and

11 B. Within the service territory of the distribution utility
12 with which it is affiliated, except that:

13 (1) The affiliated competitive provider may not sell or
14 contract to sell more than 33% of the total kilowatt
15 hours sold within the service territory of the
16 distribution utility, as determined by the commission
17 by rule; and

18 (2) In accordance with section 3212, the affiliated
19 competitive provider may not at any one time provide or
20 bid to provide standard-offer service for more than 20%
21 of electric load within the territory of the
22 transmission and distribution utility with which it is
23 affiliated.

24 No later than January 1, 2005, based on its evaluation of the
25 development of the competitive retail electric sales market, the
26 commission shall complete an evaluation of the need for the
27 market share limitation imposed under paragraph B, subparagraph
28 (1) and shall report its findings together with any
29 recommendations to the joint standing committee of the
30 legislature having jurisdiction over utility matters.

31 3. Standards of conduct. The following provisions govern the
32 conduct of a distribution utility and an affiliated competitive
33 provider.

34 A. A distribution utility may not, through a tariff
35 provision or otherwise, give its affiliated competitive
36 provider or customers of its affiliated competitive provider
37 preference over nonaffiliated competitive electricity
38 providers or customers of nonaffiliated competitive
39 electricity providers in matters relating to any regulated
40 product or service.

41 B. All regulated products and services offered by a
42 distribution utility, including any discount, rebate or fee
43 waiver, must be available to all customers and competitive
44 providers.

2 electricity providers simultaneously to the extent
3 technically possible and without undue or unreasonable
4 discrimination.

5
6 C. A distribution utility may not sell or otherwise provide
7 regulated products or services to its affiliated competitive
8 provider without either posting the offering electronically
9 on a well-known source or otherwise making a sufficient
10 offering to the market for that product or service.

11
12 D. A distribution utility shall process all similar
13 requests for a regulated product or service in the same
14 manner and within the same period of time.

15
16 E. A distribution utility may not condition or tie the
17 provision of any regulated product, service or rate
18 agreement by the distribution utility to the provision of
19 any product or service in which an affiliated competitive
20 provider is involved.

21
22 F. A distribution utility shall process all similar
23 requests for information in the same manner and within the
24 same period of time. A distribution utility may not provide
25 information to an affiliated competitive provider without a
26 request when information is made available to nonaffiliated
27 competitive electricity providers only upon request. A
28 distribution utility may not allow an affiliated competitive
29 provider preferential access to any nonpublic information
30 regarding the distribution system or customers taking
31 service from the distribution utility that is not made
32 available to nonaffiliated competitive electricity providers
33 upon request, and a distribution utility shall instruct all
34 of its employees not to provide affiliated competitive
35 providers or nonaffiliated competitive electricity providers
36 any preferential access to nonpublic information.

37
38 G. Employees of a distribution utility may not share with
39 any affiliated competitive provider or any nonaffiliated
40 competitive electricity provider:

41 (1) Any market information acquired from the affiliated
42 competitive provider or from any nonaffiliated
43 competitive electricity provider; or

44 (2) Any market information developed by the
45 distribution utility in the course of responding to
46 requests for distribution service.

47
48
49
50 H. A distribution utility shall keep a log of all requests
for information made by the affiliated competitive provider

2 and nonaffiliated competitive electricity providers and the
3 date of the response to such requests. The log is subject
4 to periodic review by the commission. The commission shall
5 establish categories of requests for information and shall
6 specify which categories, if any, are sufficiently trivial
7 to be exempt from the log requirements imposed under this
8 paragraph.

9
10 I. A distribution utility may not release any proprietary
11 customer information without the prior written authorization
12 of the customer.

13
14 J. A distribution utility shall refrain from giving any
15 appearance of speaking on behalf of its affiliated
16 competitive provider. Neither a distribution utility nor an
17 affiliated competitive provider may in any way represent
18 that any advantage accrues to customers or others in the use
19 of the distribution utility's services as a result of that
20 customer or others dealing with the affiliated competitive
21 provider. A distribution utility may not engage in joint
22 advertising or marketing programs of any sort with its
23 affiliated competitive provider, nor may the distribution
24 utility promote or market any product or service offered by
25 its affiliated competitive provider. The commission shall
26 maintain a current list of all competitive providers. If a
27 customer requests information about competitive electricity
28 providers, the distribution utility shall provide a copy of
29 a list on which competitive electricity providers appear in
30 random sequence and not in alphabetical order. The
31 distribution utility may not in any manner promote its
32 affiliated competitive provider.

33
34 K. Employees of a distribution utility may not state or
35 provide to any customer or potential customer any opinion
36 regarding the reliability, experience, qualifications,
37 financial capability, managerial capability, operations
38 capability, customer service record, consumer practices or
39 market share of any affiliated competitive provider or
40 nonaffiliated competitive electricity provider.

41
42 L. Employees of a distribution utility may not be shared
43 with, and must be physically separated from those of, an
44 affiliated competitive provider. The commission may approve
45 an exemption from these separation requirements upon a
46 finding by the commission that:

47 (1) Sharing employees or facilities would be in the
48 best interest of the public;

2 (2) Sharing employees or facilities would have no
 anticompetitive effect; and

4 (3) The costs of any shared employees or facilities can
6 be fully and accurately allocated between the
 distribution utility and the affiliated competitive
8 provider.

10 Any request for an exemption must be accompanied by a full
 and transparent allocation of costs for any shared
12 facilities or general and administrative support services.
 The commission shall allow a reasonable opportunity for
14 parties to submit comments regarding any request for an
 exemption. An exemption is valid until the commission
16 determines that modification or removal of the exemption is
 necessary.

18 M. A distribution utility and its affiliated competitive
 provider shall keep separate books of accounts and records,
20 which are subject to review by the commission.

22 N. A distribution utility shall establish and file with the
 commission a dispute resolution procedure to address
24 complaints alleging violations of this section or any rules
 adopted pursuant to this section. A dispute resolution
26 procedure must, at a minimum, designate a person to conduct
 an investigation of the complaint and communicate the
28 results of the investigation to the claimant in writing
 within 30 days after the complaint was received, including a
30 description of any action taken and the complainant's right
 to file a complaint with the commission if not satisfied
32 with the results of the investigation. The distribution
 utility shall maintain a log of all new, resolved and
34 pending complaints. The log is subject to annual review by
 the commission and must include, at a minimum, the written
36 statement of the complaint and the resolution of the
 complaint or the reason why the complaint is still pending.

38 O. A distribution utility shall maintain its books of
 account and records of its transmission and distribution
40 operations separately from those of its affiliated
 competitive provider, and the transmission and distribution
42 books of account and records must be available for
44 commission inspection.

46 P. A distribution utility shall maintain in a public place
 and file with the commission current written procedures
48 implementing the standards of conduct established by this
 section and rules adopted by the commission pursuant to this
50 section. Such written procedure must be in detail

2 sufficient to enable customers and the commission to
3 determine that the company is in compliance with the
4 requirements of this section.

6 4. Rules. The commission shall adopt rules implementing the
7 provisions of this section, including:

8 A. Rules governing the tracking of the amount of
9 kilowatt-hour sales by any affiliated competitive provider
10 compared to the total kilowatt-hour sales within the service
11 territory of the affiliated distribution utility;

12 B. Rules governing the procedure for divestiture; and

13 C. Rules establishing standards of conduct for distribution
14 utilities and affiliated competitive providers consistent
15 with the requirements of this section.

16 Beginning on the effective date of competition and annually
17 thereafter, copies of the rules adopted under this section must
18 be provided by distribution utilities to every employee of the
19 distribution utility and posted prominently in every employee
20 location.

21 Rules adopted under this subsection are major substantive rules
22 pursuant to Title 5, chapter 375, subchapter II-A and must be
23 provisionally adopted by March 1, 1999.

24 5. Penalties. The commission shall require the distribution
25 utility to divest the affiliated competitive provider if the
26 commission determines in an adjudicatory proceeding that:

27 A. The distribution utility or an affiliated competitive
28 provider has knowingly violated any provision of this
29 section or any rule adopted by the commission pursuant to
30 this section; and

31 B. The violation resulted or had the potential to result in
32 substantial injury to retail consumers of electric energy or
33 to the competitive retail market for electric energy.

34 The commission may impose administrative penalties of up to
35 \$10,000 for a violation of any provision of this section or any
36 rule adopted by the commission pursuant to this section. Each
37 day of a violation constitutes a separate offense. Penalties
38 collected by the commission under this section must be deposited
39 in the Public Utilities Commission Reimbursement Fund under
40 section 117.

2 6. Prohibition; divestiture. If, after the effective date
3 of this section, 10% or more of the stock of a distribution
4 utility is purchased by an entity:

5 A. The purchasing entity and any related entity may not
6 sell or offer for sale generation service to any retail
7 consumer of electric energy in this State; and

8 B. If, in an adjudicatory proceeding, the commission
9 determines that an affiliated competitive provider obtains
10 an unfair market advantage as a result of the purchase, the
11 commission shall order the distribution utility to divest
12 the affiliated competitive provider.

13 If the commission orders a divestiture pursuant to this
14 subsection, the distribution utility must complete the
15 divestiture within 12 months of the order to divest, unless the
16 commission grants an extension. Upon application by the
17 distribution utility, the commission may grant an extension for
18 the purpose of permitting the utility to complete a divestiture
19 that has been initiated in good faith but not finalized within
20 the 12-month period. The commission shall oversee and approve a
21 divestiture in accordance with rules adopted pursuant to
22 subsection 4.

23 7. Effect of divestiture. If the commission orders a
24 distribution utility to divest an affiliated competitive provider
25 pursuant to this section, the distribution utility may not have
26 an affiliated interest in a competitive electricity provider
27 after the divestiture.

28 §3206. Marketing; small utilities

29 1. Small utilities; limitations. Pursuant to the
30 requirements of this section, on and after the beginning of
31 retail access, an affiliated interest of a small investor-owned
32 transmission and distribution utility may sell retail generation
33 service to retail consumers of electricity located within or
34 outside the service territory of the small investor-owned
35 transmission and distribution utility with which it is affiliated.

36 2. Rules of conduct. By July 1, 1998, the commission shall
37 open a rule-making proceeding to determine the extent of
38 separation between a small investor-owned transmission and
39 distribution utility and an affiliated competitive electricity
40 provider necessary to avoid cross-subsidization and market power
41 abuses. By March 1, 1999, the commission shall provisionally
42 adopt all rules required under this subsection. Rules adopted
43 under this subsection are major substantive rules pursuant to
44 Title 5, chapter 375, subchapter II-A. In adopting rules under
45 Title 5, chapter 375, subchapter II-A.

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this subsection, the commission shall consider all relevant issues, including, but not limited to:

- A. Codes of conduct that may be required to ensure the effectiveness of the separation requirement;
- B. Restrictions on employee activities;
- C. Accounting standards; and
- D. Information and service comparability requirements.

3. Commission study. The commission shall conduct a study to determine the most effective and efficient means of ensuring that the portions of this State that are currently connected to the New England electric grid through transmission lines that pass through Canada are connected to the grid in a manner that ensures that customers in those portions of the State are able to take full advantage of retail access. By January 1, 1999, the commission shall complete its study and report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over utility matters.

§3207. Marketing; consumer-owned utilities

1. Consumer-owned utilities; limitations. Consumer-owned transmission and distribution utilities:

- A. May sell retail generation service only within their respective service territories; and
- B. May not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service.

2. Commission review of marketing within territory. Notwithstanding any other provision of this chapter, the commission by rule shall limit or prohibit sale of generation services by competitive providers within the service territory of a consumer-owned transmission and distribution utility if the commission determines that allowing such sales would cause the consumer-owned transmission and distribution utility to lose its tax-exempt status under federal or state law. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§3208. Stranded cost recovery

1. Stranded costs defined. For the purposes of this section, the term "stranded costs" means a utility's legitimate,

1 verifiable and unmitigable costs made unrecoverable as a result
2 of the restructuring of the electric industry required by this
3 chapter and determined by the commission as provided in this
4 subsection.

6 2. Calculation. For each electric utility, the commission
7 shall determine the sum of the following to the extent they
8 qualify as stranded costs pursuant to subsection 1:

10 A. The costs of a utility's regulatory assets related to
11 generation;

12 B. The difference between net plant investment associated
13 with a utility's generation assets and the market value of
14 the generation assets; and

15 C. The difference between future contract payments and the
16 market value of a utility's purchased power contracts.

17 When determining the market value of generation assets and
18 purchased power contracts, the commission shall rely to the
19 greatest extent possible on market information, including, but
20 not limited to, market valuations that become known as generation
21 assets and the rights to power under contracts with qualifying
22 facilities are sold.

23 3. Exclusions. Notwithstanding any other provision of this
24 chapter, the commission may not include any costs for obligations
25 incurred on or after April 1, 1995 in a utility's stranded costs,
26 except that the commission may include:

27 A. Regulatory assets created after April 1, 1995 and prior
28 to March 1, 2000 for:

29 (1) The amortization of costs associated with the
30 restructuring of a qualifying facility contract;

31 (2) Costs deferred pursuant to rate plans; or

32 (3) Energy conservation costs;

33 B. Obligations incurred by a utility after April 1, 1995
34 and prior to March 1, 2000 that are beyond the control of
35 the electric utility; and

36 C. Obligations incurred by an electric utility after April
37 1, 1995 to reduce potential stranded costs.

38 4. Mitigation. An electric utility shall pursue all
39 reasonable means to reduce its potential stranded costs and to
40 reduce its potential stranded costs and to

2 receive the highest possible value for generation assets and
3 contracts, including the exploration of all reasonable and lawful
4 opportunities to reduce the cost to ratepayers of contracts with
5 qualifying facilities. The commission shall consider a utility's
6 efforts to satisfy this requirement when determining the amount
7 of a utility's stranded costs.

8 **5. Stranded costs recoverable.** When retail access begins,
9 the commission shall provide a transmission and distribution
10 utility a reasonable opportunity to recover stranded costs
11 through the rates of the transmission and distribution utility,
12 as provided in this section. The opportunity must be comparable
13 to the utility's opportunity to recover stranded costs before the
14 implementation of retail access under this chapter. Nothing in
15 this chapter may be construed to give a transmission and
16 distribution utility a greater or lesser opportunity to recover
17 stranded costs than existed prior to the implementation of retail
18 access. The commission may reduce or increase the amount of
19 stranded costs that the commission allows a utility to recover
20 based on the efforts of the utility to mitigate its stranded
21 costs.

22 **6. Determination of stranded costs charges.** Before retail
23 access begins, the commission shall estimate the stranded costs
24 for each electric utility in the State. The commission shall use
25 these estimates as the basis for a stranded costs charge to be
26 charged by each transmission and distribution utility when retail
27 access begins. In 2003 and every 3 years thereafter until the
28 utility is no longer recovering adjustable stranded costs, the
29 commission shall correct any substantial inaccuracies in the
30 stranded costs estimates associated with adjustable stranded
31 costs and adjust the stranded costs charges to reflect any such
32 correction. The commission may correct adjustable stranded costs
33 estimates and adjust the stranded costs charges at any other
34 time. When correcting stranded costs estimates and adjusting
35 stranded costs charges, the commission shall make any change
36 effective only prospectively and may not reconcile past estimates
37 to reflect actual values.

38 For purposes of this subsection, "adjustable stranded costs"
39 means stranded costs other than stranded costs associated with
40 divested generation assets.

41 **7. Recovery of stranded costs.** The commission shall set an
42 amount of recoverable stranded costs after calculating the net
43 aggregate value of all divested assets that had proceeds
44 exceeding book costs against the aggregate value of all other
45 stranded electricity generation assets. The commission may not
46 shift cost recovery among customer classes in a manner
47 inconsistent with existing law, as applicable.

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8. Proceedings. The commission shall conduct separate adjudicatory proceedings to determine the stranded costs for each investor-owned utility and each consumer-owned utility. In the same proceedings, the commission shall establish the revenue requirements for each transmission and distribution utility and stranded costs charges to be charged by each transmission and distribution utility when retail access begins. The proceedings must be completed by July 1, 1999.

§3209. Rate design

The commission shall set charges and rates collected by transmission and distribution utilities in accordance with this section.

1. Applicable law. The design of rate recovery for the collection of transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter must be consistent with existing law, as applicable. The commission may continue to permit recovery, in transmission and distribution utility rates, of costs previously incurred by the utility when it was an integrated electric utility that are not included in the recovery of stranded costs pursuant to section 3208.

2. Proceeding. Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before October 1, 1999 for the design of cost recovery for transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter and for the design of rates for backup or standby service.

3. Exit fees. A customer who significantly reduces or eliminates consumption of electricity due to self-generation, conversion to an alternative fuel or demand-side management may not be assessed an exit or reentry fee in any form for the reduction or elimination of consumption or reestablishment of service with a transmission and distribution utility.

4. Decommissioning costs. As required by federal law, rule or order, the commission shall include in the rates of a transmission and distribution utility decommissioning expenses associated with a nuclear unit.

§3210. Renewable resources

1. Policy. In order to ensure an adequate and reliable supply of electricity for Maine residents and to encourage the use of renewable and indigenous resources, it is the policy of this State to encourage the generation of electricity from

renewable sources and to diversify electricity production on which residents of this State rely in a manner consistent with this section.

2. Definition. As used in this section, the term "renewable resource" means a source of electrical generation that generates power that can physically be delivered to the control region in which the New England Power Pool, or its successor as approved by the Federal Energy Regulatory Commission, has authority over transmission and that:

A. Qualifies as a qualifying small power production facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997;

B. Qualifies as a qualifying cogeneration facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997 and was constructed prior to January 1, 1997; or

C. Whose total power production capacity does not exceed 100 megawatts and that relies on one or more of the following:

(1) Fuel cells;

(2) Tidal power;

(3) Solar arrays and installations;

(4) Wind power installations;

(5) Geothermal installations;

(6) Hydroelectric generators;

(7) Biomass generators; or

(8) Generators fueled by municipal solid waste in conjunction with recycling.

3. Portfolio requirements. As a condition of licensing pursuant to section 3203, each competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that no less than 30% of its portfolio of supply sources for retail electricity sales in this State are accounted for by renewable resources. By January 1, 1999, the commission shall provisionally adopt rules establishing reasonable

2 procedures for implementing this requirement. Rules adopted
3 under this subsection are major substantive rules pursuant to
4 Title 5, chapter 375, subchapter II-A.

5 4. Report. In view of property tax benefits, developments
6 in other states and the development of a market for tradable
7 credits for satisfying renewable resource requirements, the
8 commission shall review the 30% portfolio requirement and make a
9 recommendation for any change to the joint standing committee of
10 the Legislature having jurisdiction over utilities and energy
11 matters no later than 5 years after the beginning of retail
12 competition.

13 5. Funding for research and development. The commission by
14 rule shall establish a program allowing retail consumers of
15 electricity to make voluntary contributions to fund renewable
16 resource research and development. The program must:

17 A. Include a mechanism for customers to indicate their
18 willingness to make contributions;

19 B. Provide that transmission and distribution utilities
20 collect and account for the contributions and forward them
21 to the commission; and

22 C. Provide for a distribution of the funds to the University
23 of Maine System, the Maine Maritime Academy or the Maine
24 Technical College System for renewable resource research and
25 development.

26 Rules adopted under this subsection are routine technical rules
27 pursuant to Title 5, chapter 375, subchapter II-A.

28 **§3211. Conservation programs**

29 The commission shall require transmission and distribution
30 utilities to implement energy conservation programs and include
31 the cost of any such programs in the rates of transmission and
32 distribution utilities. The commission shall require
33 transmission and distribution utilities to select energy
34 efficiency service providers through periodic competitive bidding
35 programs. The commission shall establish a reasonable level of
36 funding for those programs comparable to the amount expended for
37 similar programs in the year 1999 and regularly review the amount
38 of funding needed.

39 By July 1, 1998, the commission shall commence a rule-making
40 proceeding on energy conservation programs. By July 1, 1999, the
41 commission shall provisionally adopt rules establishing energy
42 conservation programs in compliance with this subsection. Rules
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adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

§3212. Standard offer

When retail access begins, the commission shall ensure that standard-offer service is available to all consumers of electricity.

1. Establishment of terms and conditions. The commission shall open a rule-making proceeding no later than October 1, 1997 to establish terms and conditions for standard-offer service that include, but are not limited to:

A. Entry and exit restrictions;

B. Protection against a standard-offer service provider's failure to provide service as contracted for;

C. Appropriate rate design issues;

D. Retaining averaged prices for all customers in the same class; and

E. Credit, collection and disconnection practices.

By February 15, 1998, the commission shall provisionally adopt rules establishing terms and conditions for standard-offer service. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

2. Selection of standard-offer service providers. After terms and conditions for standard-offer service have been established under subsection 1, the commission shall administer a bid process to select a standard-offer service provider for that transmission and distribution utility's service territory. By July 1, 1999, the commission shall review the bid submissions for each transmission and distribution utility and select the standard-offer service provider or providers for that utility's service territory.

A. The commission shall determine the general credit data and specific information from general load and usage data that transmission and distribution utilities must provide to potential standard-offer service bidders, including, but not limited to, monthly demand and energy consumption and the number of customers in each customer class. The commission shall ensure that individual customer confidentiality is preserved in this process and that a transmission and

2 distribution utility releases customer-specific data only
3 with the customer's permission. If the transmission and
4 distribution utility incurs additional costs to develop and
5 produce the required data, the commission shall permit that
6 utility to recover those costs through transmission and
7 distribution rates.

8 B. The commission shall establish the maximum duration of a
9 standard-offer service contract after considering all
10 relevant factors, including, but not limited to, market
11 risks and the need for price stability and contract
12 flexibility.

13 C. A competitive electricity provider that is an affiliate
14 of a large investor-owned transmission and distribution
15 utility may submit bids to provide standard-offer service
16 for up to 20% of the electric load within the service
17 territory of the large investor-owned transmission and
18 distribution utility with which it is affiliated. To
19 prevent the unfair use of information possessed by a large
20 investor-owned transmission and distribution utility, the
21 commission shall ensure that a utility seeking to bid on
22 standard-offer service has no greater access to relevant
23 information than is provided to other potential bidders.

24 D. A consumer-owned transmission and distribution utility
25 and a small investor-owned transmission and distribution
26 utility may submit bids to provide standard-offer service
27 for that utility's service territory. To prevent the unfair
28 use of information possessed by a consumer-owned
29 transmission and distribution utility or a small
30 investor-owned transmission and distribution utility, the
31 commission shall ensure that a utility seeking to bid on
32 standard-offer service has no greater access to relevant
33 information than is provided to other potential bidders.

34 By February 15, 1998, the commission shall provisionally adopt
35 rules establishing a methodology for structuring the bidding
36 process for standard-offer service in order to implement the
37 provisions of this subsection. In adopting rules, the commission
38 shall consider methods to ensure, to the extent possible, at
39 least 3 providers of standard-offer service in each transmission
40 and distribution utility service territory, as long as the method
41 does not result in any significant adverse impacts on rates paid
42 by consumers. Rules adopted under this subsection are major
43 substantive rules pursuant to Title 5, chapter 375, subchapter
44 II-A.

45 3. Price cap; investigation. If the qualifying bids under
46 subsection 2 for standard-offer service in any service territory,
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when combined with the regulated rates of transmission and distribution service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission shall investigate whether the implementation of retail access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place. Pursuant to section 3217, the commission shall notify the Legislature of the results of its investigation and its determination.

4. Implementation period. Standard-offer service must be available until March 1, 2005. By January 1, 2004, the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and in the public interest. The commission shall conclude the investigation by June 30, 2004 and report its results to the Legislature pursuant to section 3217.

5. Territorial and rate class application. Nothing in this section precludes the commission from permitting or requiring different terms and conditions for standard-offer service in different utility service territories or for different customer classes.

§3213. Bill unbundling; consumer education

1. Unbundled bills. Beginning January 1, 1999, electric utilities shall issue bills that state the current cost of electric capacity and energy separately from transmission and distribution charges and other charges for electric service. By January 31, 1998, each electric utility shall file with the commission a bill unbundling proposal. The commission shall complete its review of those proposals and adopt a rule establishing unbundled bill requirements by July 1, 1998. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

2. Consumer education advisory board; rules. The commission shall adopt rules implementing a consumer education program in compliance with this subsection.

A. The commission shall immediately organize a consumer education advisory board to investigate and recommend methods to educate the public about the implementation of retail access and its impact on consumers. The commission shall ensure broad representation of residential, industrial and commercial electric consumers, public agencies and the electric industry on the advisory board. Members of the board shall serve without compensation.

2 B. In its recommendations, the advisory board shall address:

4 (1) The level of funding necessary for adequate
6 educational efforts and the appropriate source of that
funding;

8 (2) The aspects of retail access on which consumers
10 need education;

12 (3) The most effective means of accomplishing the
education of consumers;

14 (4) The appropriate entities to conduct the education
16 effort; and

18 (5) Any other issue relevant to the education of
20 consumers regarding the implementation of retail access
and its impact on consumers.

22 C. The commission shall consider the recommendations of the
advisory board when adopting rules to implement a consumer
24 education program. Rules adopted under this subsection are
major substantive rules pursuant to Title 5, chapter 375,
26 subchapter II-A. The commission shall provide these rules
to the Legislature in accordance with Title 5, chapter 375,
28 subchapter II-A, no later than February 1, 1998.

30 §3214. Needs-based low-income assistance

32 1. Policy. In order to meet legitimate needs of
electricity consumers who are unable to pay their electricity
34 bills in full and who satisfy eligibility criteria for
assistance, and recognizing that electricity is a basic necessity
36 to which all residents of the State should have access, it is the
policy of the State to ensure adequate provision of financial
38 assistance.

40 2. Low-income assistance. In order to continue existing
levels of financial assistance for low-income households and to
42 meet future increases in need caused by economic exigencies, the
commission shall:

44 A. Receive funds collected by all transmission and
distribution utilities in the State at a rate set by the
46 commission in periodic rate cases; and

48 B. Set initial funding for programs based on an assessment
of aggregate customer need in periodic rate cases. The
50 funding formula may not result in assistance being counted

as income or as a resource in other means-tested assistance programs for low-income households. To the extent possible, assistance must be provided in a manner most likely to prevent the loss of other federal assistance.

3. Special rate. Nothing in this section may be construed to prohibit a transmission and distribution utility from offering any special rate or program for low-income customers that is not in effect as of the effective date of this chapter, subject to the approval of the commission.

4. Financial support. If the Legislature appropriates from the General Fund financial support for households and individuals receiving assistance under this section, the commission may not terminate the assistance provided by transmission and distribution utilities unless the General Fund source has completely replaced such assistance. The commission may adjust the assistance provided pursuant to this section based on the amount of any financial support from the General Fund and may reinstitute assistance subsequent to any termination of assistance if the commission finds that the General Fund source no longer completely replaces such assistance.

§3215. Commission authority and responsibility

1. Authority. Without limiting the commission's authority under any other provision of law, the commission may:

A. Intervene and participate in proceedings at the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the United States Department of Energy and other federal agencies and in proceedings conducted by Canadian or other authorities or agencies whenever the interests of competition, consumers of electricity or economic development in this State are affected; and

B. Monitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or to any federal agency regarding:

(1) The safety and economic effects or potential effects of market competition on nuclear units; and

(2) The effects or potential effects of market competition on Maine's air quality.

2. Findings; responsibility. The Legislature finds that, in order for retail competition in this State to function effectively, the governance of any independent system operator with responsibility for operations of the regional transmission

2 system must be fully independent of influence by market
3 participants. The commission shall use all means within its
4 authority and resources to advocate for and promote the interests
5 of Maine ratepayers in any proceeding at the Federal Energy
6 Regulatory Commission involving the development, governance,
7 operations or conduct of an independent system operator.

8 **§3216. Transition; utility employees**

10 **1. Definitions.** As used in this section, unless the
11 context otherwise indicates, the following terms have the
12 following meanings.

14 A. "Eligible employees" means all employees of an electric
15 utility:

16 (1) Who are not officers of the utility;

18 (2) Who are employed by the utility on January 1,
19 1998; and

22 (3) Who are laid off due to retail competition.

24 Absent other just cause, a layoff after March 1, 2000 is
25 deemed to have been due to retail competition. The
26 commission by rule shall establish a date after which a
27 layoff is deemed not to have been due to retail
28 competition. An employee is not an eligible employee by
29 reason of the transfer of the employee's job duties or
30 assignment within a company or within affiliated companies
31 at similar levels of compensation.

32 B. "Retail competition" means:

34 (1) Retail access; or

36 (2) The sale or merger of any generation asset that
37 occurs prior to March 1, 2000.

40 **2. Substantive plan.** Prior to the beginning of retail
41 access, each investor-owned electric utility shall prepare a plan
42 for providing transition services and benefits for eligible
43 employees. The plan must:

44 A. Include a program to assist eligible employees in
45 maintaining fringe benefits and obtaining employment that
46 makes use of their potential;

48 B. For 2 years after the beginning of retail access, provide
49 to eligible employees retraining services and out-placement
50 services.

services and benefits, including intensive vocational-interests-and-aptitude screening;

C. Provide full tuition for 2 years at the University of Maine or a vocational or technical school in the State or other reasonable retraining services of value equal to full in-state tuition for 2 years at the University of Maine, at the discretion of the eligible employee;

D. For 24 months or until permanent replacement coverage is obtained through reemployment, whichever comes first, provide continued health care insurance at the benefit and contribution levels existing during employment with the utility; and

E. Provide severance pay equal to 2 weeks of base pay for each year of full-time employment.

The plan may include provisions for providing early retirement benefits.

3. Procedural requirements. Each investor-owned utility shall file with the commission a plan for providing transition services and benefits for eligible employees that conforms to the requirements of subsection 2. A plan must be filed prior to the utility finalizing any transaction that would result in an eligible employee being laid off or at least 90 days prior to the start of retail access, whichever is first. Prior to filing the plan with the commission, the utility shall inform its employees and their certified representatives of the provisions of the proposed plan and, in accordance with applicable law, shall confer with those employees or their certified representatives regarding the impact of the proposed plan on those employees and measures to minimize any resulting hardships on those employees.

While a plan is in effect, an investor-owned utility shall file notice with the commission of any closure or relocation of facilities and any action or reorganization that will result in layoffs. The notice must include a description of the actions, the reasons for them and an assessment of their effects on the utility's employees.

4. Collective bargaining. If an investor-owned electric utility company or one or more of its subsidiary or parent companies is party to a collective bargaining agreement recognized by federal or state law, and if as a result of retail competition any of those companies creates, acquires or merges with any other entity, that entity shall continue to recognize and bargain with the union representing the employees of the company at the time of the creation, acquisition or merger and

2 shall refrain from making unilateral changes in the employees'
4 terms and conditions of employment. In addition, any successor
6 employer is bound to the terms of the collective bargaining
8 agreement to the extent permitted by federal law. Nothing in
10 this section prevents any company, corporation or other business
12 from entering into any collective agreement as allowed by state
14 or federal law.

16 5. Cost recovery. The commission shall allocate the
18 reasonable accrual increment cost of the services and benefits
20 required under this section to ratepayers through charges
22 collected by the transmission and distribution utility. All
24 charges collected must be transferred to a system benefits
26 administrator in the transmission and distribution utility and
28 used to provide services and benefits pursuant to the
30 requirements of this section.

32 6. Rules. The commission shall adopt rules necessary to
34 implement this section. Rules adopted under this section are
36 routine technical rules pursuant to Title 5, chapter 375,
38 subchapter II-A.

40 §3217. Reports

42 1. Annual restructuring report. On December 31st of each
44 calendar year, the commission shall submit to the joint standing
46 committee of the Legislature having jurisdiction over utility
48 matters a report describing the commission's activities in
50 carrying out the requirements of this chapter and the activities
relating to changes in the regulation of electric utilities in
other states.

In its report the commission shall provide an accounting of the
commission's actual and estimated future costs of enforcing and
implementing the provisions of this chapter governing the
relationship between a transmission and distribution utility and
an affiliated competitive electricity provider and the costs
incurred by transmission and distribution utilities in complying
with those provisions. The commission shall also provide an
assessment of the effects of imposing these costs on ratepayers
and the potential effects of assessing transmission and
distribution utilities for these costs and prohibiting the costs
from being passed through to ratepayers.

2. Proposed changes. If the commission determines, after
providing interested parties an opportunity to be heard, that any
provision in this chapter is not in the public interest, the
commission shall present a report to the joint standing committee
of the Legislature having jurisdiction over utility matters
stating the basis for the commission's conclusion and including

draft legislation designed to modify this chapter consistent with the public interest.

3. Independent system operator. The commission shall monitor events in the region pertaining to:

A. The development of an independent system operator with responsibility for transmission reliability;

B. The management of competitive access to the regional transmission system; and

C. Rights to negotiate potential contracts between sellers and buyers of electricity.

If the commission determines that there exists insufficient independence on the part of the independent system operator from any provider of wholesale transmission, competitive electricity provider or electric utility, or if it determines any other problem threatens regional transmission reliability, the commission shall provide a report to the joint standing committee of the Legislature having jurisdiction over utility matters with a recommendation as to what actions within the authority of the State are available to remedy this problem.

Sec. 4. Rules on filings by competitive electricity providers. In adopting by rule requirements for competitive electricity providers pursuant to the Maine Revised Statutes, Title 35-A, section 3203, subsection 3 the commission may consider any requirements that the commission believes appropriate and shall consider the following filing requirements:

1. A statement of average prices at representative levels of kilowatt-hour usage in the most recent 6-month period;

2. A description of the average duration of supply arrangements with retail customers in the most recent 6-month period;

3. An explanation addressing whether pricing arrangements are fixed or will vary over a specified time period;

4. A statement indicating percentages of electricity supply over the recent 6-month period under categories of generation, including, but not limited to, oil-fired, nuclear, hydroelectric, coal, biomass or other renewable resources and regional spot market purchases; and

5. A listing of expected air emissions and a comparison of those emissions to a regional average, as determined by the

commission, for nitrous oxide, sulfur dioxide, mercury, fine particulates, radionuclides and carbon dioxide, calculated for a competitive electricity provider's supply sources in the aggregate over the most recent 6-month period.

Sec. 5. Conservation and qualifying facility contracts. All existing contracts and agreements in effect as of March 1, 2000 between electric utilities and energy resource providers, including but not limited to qualifying facilities, continue in effect notwithstanding any other provision of this Act, and the rights of the parties to these contracts and agreements may not be abrogated or diminished as a result of implementing this Act.

All existing electric utilities shall provide each qualifying facility and each demand-side management or conservation provider, broker or host with whom it has contracts as of March 1, 2000 the option to have the contract or contracts:

1. Retained by the transmission and distribution utility if it is the same legal entity as the electric utility that entered into the contract or contracts; or

2. Assigned by the existing electric utility to the transmission and distribution utility if it exists as a distinct legal entity after implementation of the provisions of this Act.

If contracts with qualifying facilities in existence on March 1, 2000 contain provisions for the simultaneous purchase of energy, or energy and capacity, by an electric utility from a qualifying facility and by a qualifying facility from an electric utility, the transmission and distribution utility shall continue to sell at retail all transmission and distribution services to the qualifying facility, including the transmission of any energy, or energy and capacity, the qualifying facility may obtain in the competitive market. In the case of each such qualifying facility contract and each demand-side management or conservation contract assigned or retained as provided for in this section, any requirement pursuant to the contract that the qualifying facility or customer or host implementing demand-side management or conservation measures remain a customer of the electric utility that was an original party to the contract or any requirement pursuant to the contract to purchase a certain amount of electricity from that electric utility is deemed to be fully satisfied by the qualifying facility, customer, or host (a) remaining a customer of the transmission and distribution utility that has retained the contract, or to whom it has been assigned pursuant to the option provided for in this section, (b) receiving any such required amounts of electricity by making purchases in the competitive energy market, and (c) receiving such purchases over the facilities of the transmission and

2 distribution utility. The transmission and distribution utility
3 shall make payments required under any such demand-side
4 management or conservation contracts or this Act and is entitled
5 to collect those payments in rates and charges as provided for in
6 the Maine Revised Statutes, Title 35-A.

7 **Sec. 6. Qualifying facility contracts tied to retail tariffs.** Certain
8 contracts for the sale of energy, or energy and capacity, by
9 qualifying facilities contain terms that establish or adjust the
10 purchase rate based upon the retail tariff rate or changes to
11 that retail tariff rate paid by the qualifying facility to the
12 electric utility for its purchases of electricity or upon
13 reference to a particular retail tariff rate or changes in such
14 retail tariff rate. The Legislature finds that after the date of
15 retail access as provided for in this Act, a question may arise
16 as to whether there is a retail tariff rate that provides for a
17 comparable standard for sale of combined generation and
18 transmission or distribution services. Following the
19 implementation of retail access as provided for in this Act, the
20 Public Utilities Commission shall, at the request of any
21 qualifying facility, annually establish a rate using the same
22 terminology as may be found in the contract, such as "industrial
23 tariff" or "Principal Base Rate" or other reference term. Such
24 rate or reference term will then be used to establish or adjust
25 the rate for the purchase of energy, or energy and capacity,
26 under the contract. Any such rate or reference term will be
27 established by adjusting the applicable rate or reference term or
28 actual contract rate, as the case may be, as it stood as of the
29 date of implementation of deregulation, by the applicable annual
30 change in the average of the total price paid for electric
31 services by all retail customers in Maine taking service at the
32 same voltage level as the customer whose rate or reference term
33 is being established. The total price paid for electric services
34 for this purpose includes the price paid by customers for
35 transmission and distribution services, including any access
36 charges, for electric energy and capacity, for stranded costs
37 included in transmission and distribution company charges, for
38 metering services and for any special facilities or equipment
39 necessary for the customers to take service and any other fee,
40 levy, premium, license, surcharge or other charge imposed by or
41 pursuant to the act of any transmission and distribution utility,
42 any competitive electricity provider or any arm, agency or
43 institution of government collected from such customers as a
44 condition of obtaining those electric services. If the average
45 price can not be determined in any year due to the absence or
46 unavailability of data, then the commission shall use changes in
47 the federally established Gross Domestic Product Price Index to
48 determine the rate or reference term for that year. Solely for
49 purposes of establishing a purchase rate under the applicable
50 contract, the rate or reference term so established is deemed to

2 be the applicable retail tariff or other reference term used in
the contract for the qualifying facility's purchases of retail
4 electric services from the utility purchaser under the contract,
notwithstanding the actual price paid for such services
6 established in accordance with this Act.

8 **Sec. 7. Short term energy rate contracts.** After March 1, 2000, the
Public Utilities Commission, no less frequently than annually,
10 shall establish, for the 12-month period succeeding the annual
date of establishment of such rates, short-term-energy-only rates
12 for use in the purchase of energy by an electric utility where
such a short-term-energy-only rate is used in a contract between
a qualifying facility and an electric utility. The commission
14 shall amend chapter 36, section 3 of its rules to comply with
requirements of this section. The commission shall establish
16 short-term-energy-only rates for both on-peak and off-peak hours,
as defined by the commission by rule as of January 1, 1997, and,
18 at the request of an electric utility or a qualifying facility,
establish time-differentiated, peak and off-peak
20 short-term-energy-only rates for any other hours defined in the
applicable contract. After March 1, 2000, short-term-energy-only
22 rates are defined as the estimated cost for the wholesale
purchase of energy in Maine that includes fuel costs, start-up
24 costs and variable operating and maintenance costs expressed on a
cents-per-kilowatt-hour basis using the number of significant
26 digits as employed in the establishment of the
short-term-energy-only rate as of January 1, 1997 and adjusted to
28 reflect the line loss costs or savings for deliveries at the
various voltage levels for which the commission established
30 adjustments as of January 1, 1997. In making estimates of
short-term-energy-only rates, the commission shall be guided by
32 the average market price for purchases of short-term energy in
Maine during the 12 months previous to the period for which the
34 rates will be estimated. In determining this average market
price, the commission shall use, to the extent available,
36 generally accepted and publicly available indicators of the
market price or the components of market price as published or,
38 if unavailable, the market price elsewhere in New England that
the commission determines to represent a market price similar to
40 the market price that would exist in Maine given relevant market
conditions in the State at the time of the estimation.

42 **Sec. 8. Other contracts.** Consistent with this Act, the Public
44 Utilities Commission by rule shall establish methods for
establishing any rate, term, condition or other provision of any
46 contract between an electric utility and a qualifying facility
that may arguably be rendered impractical or impossible to
48 perform or implement as a result of the restructuring of the
electric industry pursuant to this Act, including but not limited
50 to a method for establishing terms related to long-term avoided

costs, as defined in chapter 36 of the commission's rules, as in effect on the effective date of this Act. By November 1, 1997, the commission shall commence a rulemaking establishing the method for establishing terms related to long-term avoided costs. The rules must establish methods that preserve the intent and purposes embodied in the contractual provisions. At the request of a party to a qualifying facility contract or pursuant to the terms of a contract, the commission shall employ the methodology established by the rules to address the impracticability or impossibility associated with provisions of the contract so as to preserve the intent and purposes embodied in the contract. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

Sec. 9. New contracts. Notwithstanding the Maine Revised Statutes, Title 35-A, chapter 33, an electric utility or transmission and distribution utility may not be required pursuant to Title 35-A, chapter 33 to enter into a contract to purchase power from a qualifying facility after the effective date of this Act. Nothing in this section abrogates existing law or rules that provide qualifying facilities with the right to sell energy to an electric utility prior to March 1, 2000 on an as-available basis at the utility's short-term-only rate or to sell capacity and energy to an electric utility at any time before or after March 1, 2000 on a basis voluntarily and mutually agreed to by the qualifying facility and the electric utility.

Sec. 10. Recommendation for low-income assistance program. On or before January 1, 1998, the Public Utilities Commission and the State Planning Office shall provide to the Joint Standing Committee on Utilities and Energy, the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on Taxation, and to any other committees of relevant jurisdiction, legislation that funds assistance to low-income consumers of electricity through the General Fund or through a tax on all energy sources in the State. The commission and the State Planning Office shall solicit public comment prior to the production of draft legislation and also solicit public comment before finalizing its legislative proposal.

Sec. 11. Conforming amendments. By December 31, 1998, the Public Utilities Commission shall identify and submit to the joint standing committee having jurisdiction over utilities and energy matters legislation proposing amendments required to conform other statutes to the provisions of this Act.

Sec. 12. Authority. The joint standing committee having jurisdiction over utilities and energy matters may report out legislation concerning electric industry restructuring to the

2 Second Regular Session of the 118th Legislature or to the First
Regular Session of the 119th Legislature or the Second Regular
Session of the 119th Legislature.'

4
6 Further amend the bill by inserting at the end before the
summary the following:

8
10 **FISCAL NOTE**

12 The Public Utilities Commission will incur some minor
additional costs to oversee the required restructuring of the
14 State's electric industry and to adopt certain rules necessary
for the restructuring effort. These costs can be absorbed within
the commission's existing budgeted resources.

16
18 The additional costs associated with working with the Public
Utilities Commission on legislation to fund assistance to
low-income consumers can be absorbed by the State Planning Office
20 utilizing existing budgeted resources.

22 This bill may increase the number of civil suits filed in
the court system. The additional workload and administrative
24 costs associated with the minimal number of new cases filed can
be absorbed within the budgeted resources of the Judicial
26 Department. The collection of additional filing fees may also
increase General Fund revenue by minor amounts.'

28
30 **SUMMARY**

32 The Legislature finds and by enactment of this legislation
intends that:

34
36 1. Where viable markets exist, market mechanisms should be
preferred over regulation, and the risk of business decisions
should fall on investors rather than consumers;

38
40 2. The needs and preferences of electricity consumers
should be met with the lowest costs;

42
44 3. All consumers should have a reasonable opportunity to
benefit from a restructured electric industry;

46
48 4. Electric industry restructuring should not compromise
energy efficiency or jeopardize energy security;

50
5. All consumers should have access to reliable, safe and
reasonably priced electric service;

2 6. Electric industry restructuring should not diminish
low-income assistance or other consumer protections;

4 7. The electric industry structure should be lawful,
understandable to the public, fair and perceived to be fair;

6 8. Electric industry restructuring should improve the
8 State's business climate;

10 9. Electric industry restructuring should improve the
State's overall environment and natural resources;

12 10. All customers should receive protection from unfair and
14 deceptive or fraudulent practices on the part of any seller of
electricity;

16 11. The Public Utilities Commission should continue to
18 regulate of transmission and distribution utilities in a manner
that protects consumer interests;

20 12. Customers should have access to accurate and unbiased
22 information about electricity suppliers;

24 13. Customer privacy should be protected;

26 14. Customers should have ease of movement from one
electricity supplier to another;

28 15. Customers who choose to self-generate or cease to
30 purchase electricity from an electric utility should not be
32 compelled to pay substantial charges to that utility solely for
reducing their consumption;

34 16. The State should prosecute anticompetitive practices
and seek to protect vigorous competition in all electricity
36 markets; and

38 17. Customers should have the right to seek redress for
inadequate electric service.

40 The purposes of this legislation are:

42 1. To promote efficient and effective competition in the
44 market for the generation and sale of electricity in the State;

46 2. To ensure that all consumers of electricity are able to
benefit from competition;

48 3. To provide an orderly transition from the current form
50 of regulation to retail competition for electricity;

2 4. To continue to provide the public with opportunities to
participate in decisions concerning electric restructuring; and

4
6 5. To ensure that the Public Utilities Commission has all
necessary authority to implement an electric restructuring plan
consistent with these findings and purposes.

8
10 This amendment, which is the majority report of the Joint
Standing Committee on Utilities and Energy, does the following:

12 1. Establishes retail competition for the purchase and sale
of electricity beginning March 1, 2000;

14
16 2. Requires Central Maine Power Company, Bangor
Hydro-Electric Company and Maine Public Service Company by March
1, 2000 to divest all generation-related assets and business
18 functions other than contracts with qualifying facilities and
conservation providers, nuclear assets, facilities located
20 outside the United States and assets the Public Utilities
Commission determines necessary for the utility to provide
22 efficient transmission and distribution services;

24 3. Allows the Public Utilities Commission to grant an
extension to the divestiture deadline if the extension will
26 likely improve the sale value of the assets;

28 4. Requires utilities to sell the rights to the energy and
capacity from the assets that are not divested;

30
32 5. Permits the Public Utilities Commission to require
Central Maine Power Company, Bangor Hydro-Electric Company and
Maine Public Service Company to divest their ownership interests
34 in Maine Yankee Atomic Power Company on or after January 1, 2009;

36 6. Allows Central Maine Power Company and Bangor
Hydro-Electric Company to market and sell electric power through
38 separate but affiliated corporate entities, provided certain
standards of conduct are met;

40
42 7. Caps the permissible market share acquired by marketing
affiliates of Central Maine Power Company and Bangor
Hydro-Electric Company within their respective transmission and
44 distribution service territories to 33%;

46 8. Prohibits any entity or affiliate of an entity that
purchases more than 10% of the stock of Central Maine Power
48 Company or Bangor Hydro-Electric Company from providing
competitive electric power service and provides that if the
50 Public Utilities Commission determines the purchase results in a

utility affiliate gaining unfair market advantage, the utility is required to divest its marketing affiliate;

9. Allows Maine Public Service Company to market and sell electricity through a separate, affiliated corporate entity in accordance with standards of conduct established by the Public Utilities Commission;

10. Requires the Public Utilities Commission to determine the most efficient means of ensuring that all portions of the State are connected to the New England grid so that all portions of the State can take full advantage of competition;

11. Allows consumer-owned utilities to market and sell power only within their service territories and requires the Public Utilities Commission to limit or prohibit sales by competitors in consumer-owned-utilities' service territories if allowing such sales would cause these utilities to lose their tax-exempt status;

12. Causes billing and metering services to be subject to competition beginning March 1, 2002 and permits the Public Utilities Commission to establish an earlier beginning date for competition for billing or metering provided that the beginning date is no earlier than March 1, 2000;

13. Preserves Public Utilities Commission regulation of transmission and distribution services;

14. Permits electric utilities a reasonable opportunity to recover legitimate, verifiable and unmitigable costs that are otherwise unrecoverable as a result of retail competition in the electric industry;

15. Prohibits entry and exit fees;

16. Establishes a standard-offer service to ensure access for all customers to reasonably priced electric power and prohibits affiliates of Central Maine Power Company and Bangor Hydro-Electric Company from providing standard offer service for more than 20% of the load within their respective service territories;

17. Establishes consumer protection standards and requires the Public Utilities Commission to establish by rule further standards to protect consumers in the competitive market;

18. Establishes licensing requirements for all competitive electricity providers;

2 19. Grants the Public Utilities Commission new enforcement
authority to protect consumers;

4 20. Prohibits disconnection of service to consumers who
6 fail to pay generation charges but permits disconnection of
customers who fail to pay the standard-offer service charge;

8 21. Establishes a 30% renewable resource portfolio
10 requirement for competitive electricity providers;

12 22. Establishes a program funded through voluntary
contributions for renewable resource research and development;

14 23. Requires the commission to establish a wires charge for
16 funding conservation programs at a level comparable to the
funding level in place in 1999;

18 24. Preserves low-income assistance programs funded through
20 transmission and distribution rates but directs that alternative
funding mechanisms be proposed;

22 25. Requires electric bill charges to be unbundled beginning
24 in 1999;

26 26. Requires the Public Utilities Commission to adopt rules
28 establishing a consumer education program and requires the
commission to organize an advisory board to guide the development
of the education program;

30 27. Requires the Public Utilities Commission to monitor the
32 development and conduct of the regional independent system
operator and to advocate for Maine rate-payer interests at the
34 Federal Energy Regulatory Commission with regard to issues
concerning the independent system operator;

36 28. Requires Central Maine Power Company, Bangor
38 Hydro-Electric Company and Maine Public Service Company to offer
certain transition services and benefits to employees displaced
40 by electric industry competition and funds the costs of these
services and benefits through a wires charge;

42 29. Requires the Public Utilities Commission to annually
44 report to the legislature on the implementation of retail access;
and

46 30. Establishes mechanisms to address contractual
48 difficulties created by the restructuring of the electric
industry.