

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1998

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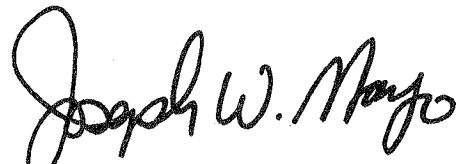
House of Representatives, March 23, 1998

**An Act Relating to Electric Industry Restructuring.**

(EMERGENCY)

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Reported by Representative JONES for the Joint Standing Committee on Utilities and Energy pursuant to Public Law 1997, chapter 316, section 12.

  
JOSEPH W. MAYO, Clerk

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

4  
6           **Whereas,** certain changes to the laws governing electric  
industry restructuring are immediately necessary in order to  
ensure a smooth and orderly transition to a competitive electric  
8 marketplace; and

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

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

18           **Sec. 1. 35-A MRSA §1305, sub-§5** is enacted to read:

20           5. Use of advisory staff. This subsection applies to the  
participation of advisory staff and consultants in commission  
22 proceedings.

24           A. If an advisory staff member or consultant relies upon  
facts not otherwise in the record or presents to the  
26 commission any independent financial or technical analysis  
not otherwise in the record, the staff member or consultant:

28                   (1) Shall place any such information into the record;

30                   (2) Is subject to discovery; and

32                   (3) Must be available to answer questions regarding  
34 those facts or analysis, in the same manner as  
witnesses in the proceeding, at a time sufficient to  
36 permit parties to respond.

38           This paragraph does not apply to reviews, evaluations or  
examinations of information, data, studies, analyses or  
40 computer modeling placed into the record by other parties or  
other aid or advice provided by advisory staff members or  
42 consultants. Compliance with this paragraph does not render  
the advisory staff member or consultant an advocate under  
44 the Maine Administrative Procedure Act.

46           B. On request of any party in a proceeding, the commission  
shall assign one or more staff members who are not advisors



2           A. The commission may issue protective orders to protect  
4           the interests of parties in confidential or proprietary  
6           information, trade secrets or similar matters as provided by  
8           the Maine Rules of Civil Procedure, Rule 26 (c). When  
10           issued, a protective order must be served on the party  
12           seeking the order. Service must be in accordance with the  
14           Maine Rules of Civil Procedure, Rule 5 (b). A requirement  
16           to disclose information pursuant to a protective order does  
18           not take effect until 24 hours after service of the  
20           protective order on the party seeking the protective order.

22           B. In granting protective orders, the commission shall  
24           balance the need to keep the information confidential with  
26           the policies of conducting its proceedings in an open and  
28           fair manner where all parties have the right and opportunity  
30           to participate effectively as provided under the Maine  
32           Administrative Procedure Act, the Maine Rules of Civil  
34           Procedure, the Maine Rules of Evidence and the Maine freedom  
36           of access laws.

38           C. The party requesting a protective order bears the burden  
40           of demonstrating the need for protection. The commission  
42           may partially and temporarily grant a request for a  
44           protective order, consistent with the provisions of  
46           paragraph D, to expedite the release of confidential  
48           information to certain parties, but the party seeking  
50           protection bears the burden of demonstrating that release of  
          the information to other parties should be restricted. The  
          commission may not issue a final order prohibiting or  
          restricting access to a party without notice and an  
          opportunity to be heard.

D. If the commission issues a protective order that denies  
          a party access to information, the commission shall provide  
          the information to the party's attorney, if any, subject  
          only to the restriction that the attorney use the  
          information solely for the purpose of the proceeding and not  
          disclose the information to others, except that:

          (1) The commission may deny an attorney access to  
          information relating to bids if the attorney represents  
          a party that made a competing bid; and

          (2) The commission may impose further limitations if  
          the commission finds that an attorney has a direct,  
          personal and substantial financial interest that could  
          be benefited by access to the information to the  
          detriment of the party that provided the information.

2 Unless the commission finds that the conditions of  
3 subparagraphs 1 or 2 are met, the obligations of attorneys  
4 under the ethical rules, including the obligation to decline  
5 representation in certain cases, the authority of the  
6 commission to discipline attorneys who appear before the  
7 commission, including the authority, under section 1502, to  
8 punish for contempt persons who fail to comply with a  
9 protective order, and the commission's ability to recommend  
10 sanctions by other bodies, including the discipline of  
11 attorneys by the courts and the Board of Overseers of the  
12 Bar, is sufficient security to permit the attorney to have  
13 access to information in order to represent a party before  
14 the commission.

15 E. The commission may prohibit or restrict the disclosure  
16 of information under protective order to a party's  
17 independent consultant only for compelling reasons and to  
18 the least extent necessary, except that the commission may  
19 require that the information be used only for the purposes  
20 of the proceeding in which it is disclosed and may prohibit  
21 disclosure of the information by the independent consultant  
22 to others.

23 F. Notwithstanding any other provision of this subsection:

24 (1) The commission may deny all parties, including the  
25 commission and its staff, access to information if the  
26 commission finds that the potential for harm from  
27 disclosure of the information outweighs its probative  
28 value in the proceeding; and

29 (2) The commission may deny an attorney access to  
30 information under protective order if the commission  
31 finds that the attorney's request for access to the  
32 information is not made in good faith or that the  
33 attorney will not respect the terms of the protective  
34 order.

35 2. Appeal. A party required to disclose information  
36 pursuant to a protective order issued by a hearing examiner in  
37 accordance with subsection 1 may appeal to the commissioners  
38 sitting as the commission in accordance with this subsection.

39 A. The basis for an appeal brought pursuant to this  
40 subsection is that the potential for damage resulting from  
41 the disclosure of the information in accordance with the  
42 protective order clearly exceeds the probative value of the  
43 information in the proceeding.

2 B. A party bringing an appeal pursuant to this subsection  
3 must file the appeal within 24 hours of service of the  
4 protective order.

5 C. If a party appeals in accordance with this subsection,  
6 the party is not required to disclose the information during  
7 the pendency of the appeal.

8 D. The commission shall render a decision on the appeal  
9 brought pursuant to this subsection within 7 business days  
10 of the filing of the appeal.

11 E. Notwithstanding subsection 1, the commission may impose  
12 limits on the disclosure of information beyond the limits  
13 imposed by the protective order issued in accordance with  
14 subsection 1 only if the commission finds that potential for  
15 damage resulting from disclosure of the information in  
16 accordance with the protective order clearly exceeds the  
17 probative value of the information in the proceeding.

18 For purposes of this subsection, the term "hearing examiner"  
19 means a commission staff person authorized to issue a protective  
20 order in a commission proceeding.

21 **Sec. 4. 35-A MRSA §3212, sub-§2, as enacted by PL 1997, c.**  
22 **316, §3, is amended by amending the first paragraph to read:**

23 **2. Selection of standard-offer service providers.** After  
24 terms and conditions for standard-offer service have been  
25 established under subsection 1, the commission shall administer a  
26 bid process to select a standard-offer service provider for that  
27 transmission and distribution utility's service territory. By  
28 July ~~December~~ 1, 1999, the commission shall review the bid  
29 submissions for each transmission and distribution utility and  
30 select the standard-offer service provider or providers for that  
31 utility's service territory.

32 **Sec. 5. 35-A MRSA §3212, sub-§2, as enacted by PL 1997, c.**  
33 **316, §3, is amended by adding at the end 2 new blocked paragraphs**  
34 **to read:**

35 Notwithstanding any other provision of this Title, the commission  
36 may, in the event of a default by a standard-offer service  
37 provider, require the transmission and distribution utility in  
38 whose service territory the provider was providing standard-offer  
39 service to arrange and to provide for default service. The  
40 arrangement and provision of such default service by a  
41 transmission and distribution utility does not constitute selling  
42 electric energy or capacity at retail for purposes of section  
43 3205, subsection 2.

2 Notwithstanding Title 5, section 1831, the commission is not  
3 subject to rules adopted by the State Purchasing Agent in  
4 conducting the competitive bidding process required under this  
5 section.

6

**Sec. 6. 35-A MRSA §3213, sub-§3 is enacted to read:**

8

9 3. Special assessment. Every electric utility and  
10 transmission and distribution utility subject to assessment under  
11 section 116 is subject to an additional assessment on its gross  
12 intrastate operating revenues for regulated services to produce:

14

A. No more than \$200,000 in the 1997-98 fiscal year;

16

B. No more than \$600,000 in the 1998-99 fiscal year;

18

C. No more than \$600,000 in the 1999-2000 fiscal year; and

20

D. No more than \$200,000 in the 2000-01 fiscal year.

22

All revenues derived from the assessments levied under this  
23 subsection must be deposited with the Treasurer of State in a  
24 separate account to be known as the Public Utilities Commission  
25 Consumer Education Fund, referred to in this subsection as "the  
26 fund." Revenues produced by the assessments may be used by the  
27 commission only for the purposes of designing and implementing  
28 the consumer education program established pursuant to subsection  
29 2. Funds in the fund not expended during any fiscal year may not  
30 lapse but must be carried forward. Any funds remaining in the  
31 fund at the conclusion of the consumer education program  
32 established pursuant to subsection 2 must be returned  
33 proportionally to utilities assessed under this subsection and  
34 passed through to ratepayers in an appropriate rate-setting  
35 proceeding.

36

37 **Sec. 7. Allocation of the Public Utilities Commission Consumer**  
38 **Education Fund.** The Public Utilities Commission Consumer  
39 Education Fund must be allocated as designated in the following  
40 schedule.

42

**1997-98**

**1998-99**

44

**PUBLIC UTILITIES COMMISSION**

46

**Consumer Education Fund**

48

All Other

\$200,000

\$600,000

50

Allocates funds to fund the



2 Public Utilities Commission  
3 consumer education program  
4 established pursuant to the  
5 Maine Revised Statutes, Title  
6 35-A, section 3213.

7 **Sec. 8. Application.** Notwithstanding the Maine Revised  
8 Statutes, Title 1, section 302, sections 1 to 3 of this Act apply  
9 to all proceedings pending on the effective date of this Act  
10 except that Title 35-A, section 1311-A, subsections 1 and 2 do  
11 not apply to pending or future Public Utilities Commission  
12 proceedings in which the commission reviews a proposed sale of  
13 generation assets divested by an investor-owned electric utility  
14 pursuant to Title 35-A, section 3204.

15 **Emergency clause.** In view of the emergency cited in the  
16 preamble, this Act takes effect when approved.  
17

#### 18 FISCAL NOTE

19		1997-98	1998-99
20			
21			
22	<b>APPROPRIATIONS/ALLOCATIONS</b>		
23			
24	Other Funds	\$200,000	\$600,000
25			
26			
27			
28	<b>REVENUES</b>		
29			
30	Other Funds	\$200,000	\$600,000
31			
32			

33 This bill includes Other Special Revenue allocations of  
34 \$200,000 and \$600,000 in fiscal years 1997-98 and 1998-99,  
35 respectively, for the Public Utilities Commission to establish a  
36 consumer education program.

37 Increasing the assessment on regulated utilities to cover  
38 the cost of the consumer education program will increase  
39 dedicated revenue collections. The estimated increases of  
40 dedicated revenue to the Public Utilities Commission are \$200,000  
41 and \$600,000 in fiscal years 1997-98 and 1998-99, respectively.  
42 The estimated future revenue increases in fiscal years 1999-2000  
43 and 2000-01 will be approximately \$600,000 and \$200,000,  
44 respectively. The commission has adequate room under its  
45 statutory assessment cap to collect the additional revenues.  
46

47  
48

## SUMMARY

2

This bill, which is reported by the Joint Standing Committee  
4 on Utilities and Energy pursuant to its authority under Public  
Law 1997, chapter 316, section 12, accomplishes the following.

6

1. It requires Public Utilities Commission advisory staff  
8 and consultants to be subject to cross examination and discovery;  
this provision applies to pending proceedings.

10

2. It requires the Public Utilities Commission, on the  
12 request of any party, to assign separate staff to rule on motions  
made by or directed to staff advisors; this provision applies to  
14 pending proceedings.

16

3. It establishes new standards for and limitations on the  
issuance of protective orders by the Public Utilities Commission;  
18 this provision applies to pending proceedings except that  
proceedings involving divestiture of generation assets by  
20 electric utilities are exempt from these new standards and  
limitations.

22

4. It extends the deadline by which the Public Utilities  
24 Commission must select a standard-offer service provider from  
July 1, 1999 to December 1, 1999.

26

5. It exempts the Public Utilities Commission from the  
28 provisions of the Maine Revised Statutes, Title 5, section 1831  
in conducting the competitive bidding process for choosing  
30 standard-offer service providers.

32

6. It authorizes the Public Utilities Commission to impose  
a special assessment on electric utilities to fund a consumer  
34 education program with respect to electric utility restructuring.