

MAINE STATE LEGISLATURE

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UTILITIES AND ENERGY

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " A " to S.P. 439, L.D. 1276, Bill, "An Act Relating to Utilities and Affiliated Interests"

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 §713, as enacted by PL 1997, c. 237, §2, is amended to read:

§713. Unregulated business ventures of utilities

A utility may not charge its ratepayers for costs attributable to unregulated business ventures undertaken by the utility or an affiliated interest. The commission shall allocate, between a utility's shareholders and ratepayers, costs for facilities, services or intangibles, including good will or use of a brand name, that are shared between regulated and unregulated business activities. The commission shall also attempt to ensure that the utility or the affiliated interest does not have an undue unfair advantage in any competitive market as a result of its regulated status or its affiliation with a regulated utility.

Complaints by entities competing with a utility or an affiliated interest in an unregulated market, alleging that the utility or affiliated interest has an undue competitive advantage ~~as--a--result--of--any--relationship--with--the--parent--or--affiliated regulated--utility~~ must be adjudicated by the commission. The commission shall render a decision on any complaint filed under this section within 9 months of the date of the filing. The commission may dismiss without hearing any complaint that it concludes is clearly intended to harass or delay, is frivolous or is clearly without merit.

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2 A complaint filed under this section must specify, to the
3 extent possible, the nature and extent of the alleged undue
4 competitive advantage and the basis for the belief that a an
5 undue competitive advantage exists. The utility shall respond to
6 the complaint within 10 days of receiving notice from the
7 commission of the complaint. Within 10 days of receiving the
8 utility's response, the commission shall determine whether the
9 complaint is clearly intended to harass or delay, is frivolous or
10 is clearly without merit.

12 For the purposes of this section, the term "affiliated
13 interest" has the same meaning as in section 707, subsection 1,
14 paragraph A. For the purposes of this section, "undue
15 competitive advantage" means an advantage gained by a violation
16 of the requirements established by the commission by rule
17 pursuant to section 715.

18
19 **Sec. 2. 35-A MRSA §715**, as enacted by PL 1997, c. 237, §2, is
20 amended to read:

22 **§715. Rulemaking**

24 The commission shall adopt rules that prescribe the
25 allocation of costs for facilities, services or intangibles that
26 are shared between regulated and unregulated activities of a
27 utility or an affiliated interest as defined in section 707,
28 subsection 1, paragraph A. Rules adopted by the commission may
29 not establish a presumption with regard to the value of good will
30 used by an affiliated interest in those cases where the business
31 venture of the affiliated interest is regulated by the
32 commission. Rules adopted pursuant to this section are major
33 substantive rules as defined in Title 5, chapter 375, subchapter
34 II-A.

36 **Sec. 3. Major substantive rule revision.** The Public Utilities
37 Commission shall amend its major substantive rule, Chapter 820:
38 Requirements for Non-core Utility Activities and Transactions
39 Between Affiliates, to conform to that section of this Act that
40 amends the Maine Revised Statutes, Title 35-A, section 715. The
41 Public Utilities Commission is not required to hold hearings or
42 conduct other formal proceedings prior to amending its rule to
43 conform to that section of this Act that amends Title 35-A,
44 section 715. Notwithstanding Title 5, chapter 375, subchapter
45 II-A, amending the rule to conform to that section of this Act
46 that amends Title 35-A, section 715 does not require further
47 legislative approval.'

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49 Further amend the bill by inserting at the end before the
50 summary the following:

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FISCAL NOTE

The Public Utilities Commission will incur some minor additional costs to revise a substantive rule. These costs can be absorbed within the commission's existing budgeted resources.'

SUMMARY

This amendment replaces the bill. This amendment removes a presumption established in a major substantive rule adopted by the Public Utilities Commission that good will used by an affiliate of a public utility has value in those cases where the business venture of the affiliate is regulated by the commission. The commission remains directed to determine the value of good will used by such an affiliate, but it is not permitted to presume a value. The amendment requires the commission to amend its major substantive rule to conform to this change and exempts the conforming amendment from further legislative approval.

This amendment also modifies the provision of law that requires the Public Utilities Commission to settle complaints by competitors of a utility or affiliate concerning whether the utility affiliate has an undue competitive advantage in an unregulated business market. The amendment defines "undue competitive advantage" to mean an advantage gained by a violation of standards of conduct or cost allocation requirements established by the commission by rule.

The amendment also adds a fiscal note to the bill.