

MAINE STATE LEGISLATURE

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No. 1866

S.P. 679

April 24, 2007

An Act To Revise Maine's Utility Reorganization Laws

Reference to the Committee on Utilities and Energy suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator SULLIVAN of York.

Cosponsored by Senators: BARTLETT of Cumberland, BRANNIGAN of Cumberland, BRYANT of Oxford, President EDMONDS of Cumberland, MILLS of Somerset, SAVAGE of Knox, SCHNEIDER of Penobscot, STRIMLING of Cumberland, Representatives: ADAMS of Portland, BARSTOW of Gorham, BRAUTIGAM of Falmouth, CLARK of Millinocket, FINCH of Fairfield, HASKELL of Portland, JACKSON of Allagash, PATRICK of Rumford, PINGREE of North Haven, RICHARDSON of Carmel, WHEELER of Kittery.

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

2 **Sec. 1. 35-A MRSA §708, sub-§2, ¶A,** as enacted by PL 1987, c. 141, Pt. A, §6,
3 is repealed and the following enacted in its place:

4 A. Unless exempted by rule or order of the commission, reorganization may not take
5 place without the approval of the commission.

6 (1) Before authorizing a reorganization subject to this section, when a public
7 utility that is a party to the proposed transaction has gross annual Maine revenues
8 exceeding \$50,000,000, the commission must find that the proposal will:

9 (a) Advance the economic development and information access goals of the
10 State as set forth in section 7101, subsections 2 and 4 to the extent applicable
11 to the type of utility involved;

12 (b) Result in short-term and long-term economic benefits to ratepayers; and

13 (c) Be consistent with the interests of the utility's investors.

14 (2) With respect to the reorganization of a public utility other than a public
15 utility subject to subparagraph (1), a reorganization may not be approved by the
16 commission unless it is established by the applicant for approval that the
17 reorganization is consistent with the interests of the utility's ratepayers and
18 investors.

19 (3) The commission shall rule upon all requests for approval of a reorganization
20 within 60 days of the filing of the request for approval. If it determines that the
21 necessary investigation cannot be concluded within 60 days, the commission may
22 extend the period for a further period of no more than 120 days, except that these
23 time limits do not apply to a reorganization subject to subparagraph (1). In
24 granting its approval, the commission may impose such terms, conditions or
25 requirements as, in its judgment, are necessary to protect the interests of
26 ratepayers. These conditions may include provisions that ensure the following:

27 (a) That the commission has reasonable access to books, records, documents
28 and other information relating to the utility or any of its affiliates, except that
29 the commission may not have access to trade secrets unless it is essential to
30 the protection of the interests of ratepayers or investors. The commission
31 shall afford trade secrets and other information such protection from public
32 disclosure as is provided in the Maine Rules of Civil Procedure;

33 (b) That the commission has all reasonable powers to detect, identify, review
34 and approve or disapprove all transactions between affiliated interests;

35 (c) That the utility's ability to attract capital on reasonable terms, including
36 the maintenance of a reasonable capital structure, is not impaired;

37 (d) That the ability of the utility to provide safe, reasonable and adequate
38 service is not impaired;

39 (e) That the utility continues to be subject to applicable laws, principles and
40 rules governing the regulation of public utilities;

- 1 (f) That the utility's credit is not impaired or adversely affected;
- 2 (g) That reasonable limitations be imposed upon the total level of investment
- 3 in nonutility business, except that the commission may not approve or
- 4 disapprove the nature of the nonutility business;
- 5 (h) That the commission has reasonable remedial power, including, but not
- 6 limited to, the power, after notice to the utility and all affiliated entities of the
- 7 issues to be determined and the opportunity for an adjudicatory proceeding,
- 8 to order divestiture of or by the utility in the event that divestiture is
- 9 necessary to protect the interests of the utility, ratepayers or investors. A
- 10 divestiture order must provide a reasonable period within which the
- 11 divestiture must be completed; and
- 12 (i) That neither ratepayers nor investors are adversely affected by the
- 13 reorganization.

14 **Sec. 2. 35-A MRSA §708, sub-§4**, as enacted by PL 1987, c. 141, Pt. A, §6, is
15 amended to read:

16 **4. Filing fee.** Within 30 days after the application for approval of a reorganization is
17 filed pursuant to subsection 2, the commission may order the applicant to pay a filing fee
18 not to exceed \$50,000, if the commission determines that the application may involve
19 issues ~~which~~ that will necessitate significant additional costs to the commission, except
20 that in the case of any utility subject to subsection 2, paragraph A, subparagraph (1), the
21 commission may order the applicant to pay a filing fee not to exceed \$100,000. The
22 applicant may request the commission to waive all or a portion of the filing fee. The
23 commission shall rule on the request for waiver within 30 days. Notwithstanding any
24 other provision of law, filing fees paid as required in this subsection ~~shall~~ must be
25 segregated, apportioned and expended by the commission for the purposes of processing
26 the application. Any portion of the filing fee that is received from an applicant and is not
27 expended by the commission to process the application ~~shall~~ must be returned to the
28 applicant.

29 **Sec. 3. 35-A MRSA §1101, sub-§1-A** is enacted to read:

30 1-A. Standard of approval for sales, mergers and consolidations of large
31 utilities. Before authorizing a merger, consolidation, sale or other disposition of property
32 subject to subsection 1, when a public utility that is a party to the proposed transaction
33 has gross annual Maine revenues exceeding \$50,000,000, the commission must find that
34 the proposal will:

- 35 A. Advance the economic development and information access goals of the State as
- 36 set forth in section 7101, subsections 2 and 4 to the extent applicable to the type of
- 37 utility involved;
- 38 B. Result in short-term and long-term economic benefits to ratepayers; and
- 39 C. Be consistent with the interests of the utility's investors.

40 **Sec. 4. Application.** Notwithstanding the Maine Revised Statutes, Title 1, section
41 302, those sections of this Act that repeal and replace Title 35-A, section 708, subsection

1 2, paragraph A; amend Title 35-A, section 708, subsection 4; and enact Title 35-A,
2 section 1101, subsection 1-A apply to any decision made by the Public Utilities
3 Commission after the effective date of this Act, including decisions made involving
4 proceedings pending before the commission prior to the effective date of this Act.

5 **SUMMARY**

6 This bill requires the Public Utilities Commission to approve a merger, consolidation,
7 reorganization or sale involving a Maine public utility with revenues greater than
8 \$50,000,000 only if the commission is satisfied that the proposal will advance the
9 economic development and information access goals of the State, result in economic
10 benefits to ratepayers and be consistent with the interests of investors. In the case of a
11 utility with annual revenues totaling \$50,000,000 or less, the applicable standard for
12 approval is the same standard as is currently applicable.