

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

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Legislative Document

No. 2002

S.P. 796

December 18, 2007

An Act To Protect Electricity Consumers of Northern Maine

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 18, 2007. Referred to the Committee on Utilities and Energy pursuant to Joint Rule 308.2 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 MARTIN of Aroostook.
Cosponsored by Representative JACKSON of Allagash and Representative: THERIAULT of Madawaska.

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

2 **Sec. 1. 35-A MRSA §3132, sub-§2**, as amended by PL 2007, c. 148, §3, is
3 further amended to read:

4 **2. Construction of transmission line.** Except as otherwise provided in subsection
5 3-A, whenever any person proposes to erect within this State a transmission line capable
6 of operating at 100 kilovolts; or more; or a transmission line capable of operating at 69
7 kilovolts or more ~~that is proposed to be financed, permitted, constructed, owned in whole~~
8 ~~or in part or operated by the Northern Maine Transmission Corporation pursuant to Title~~
9 ~~10, chapter 1003 or financed by the Finance Authority of Maine pursuant to Title 10,~~
10 ~~section 1053, subsection 6, paragraph F~~, that person shall file a petition for the approval
11 of the proposed line. The petition for approval of the proposed transmission line must
12 contain such information as the commission by rule prescribes. The petition for approval
13 must be set down for public hearing. The commission shall issue its order within 6
14 months after the petition is filed unless this period is extended either by agreement of all
15 the parties or by the commission upon its determination that the party seeking the
16 extension would, because of circumstances beyond that party's control, be unreasonably
17 disadvantaged unless the extension were granted, provided that the party to that time had
18 prosecuted its case in good faith and with due diligence.

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

22 **Sec. 2. 35-A MRSA §3132, sub-§2-A**, as enacted by PL 2003, c. 506, §13, is
23 amended to read:

24 **2-A. Other projects requiring approval.** The commission shall by rule or order
25 adopt standards and procedures for processing an application from an applicant that is not
26 a transmission and distribution utility for a certificate of public convenience and necessity
27 under this section for a transmission line capable of operating at 69 kilovolts or more ~~that~~
28 ~~is proposed to be financed, permitted, constructed, owned in whole or in part or operated~~
29 ~~by the Northern Maine Transmission Corporation pursuant to Title 10, chapter 1003 or~~
30 ~~financed by the Finance Authority of Maine pursuant to Title 10, section 1053, subsection~~
31 ~~6, paragraph F~~. Except as the commission determines otherwise appropriate, the
32 standards and procedures must conform as far as possible with those that would apply to
33 an application from a transmission and distribution utility. Rules adopted pursuant to this
34 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

35 **Sec. 3. 35-A MRSA §3132, sub-§2-B**, as enacted by PL 2003, c. 506, §13, is
36 amended to read:

37 **2-B. Standards for certain projects.** The commission ~~may~~ shall deny a certificate
38 of public convenience and necessity for a transmission line capable of operating at ~~69~~ 115
39 kilovolts or more that is proposed to be financed, permitted, constructed, owned in whole
40 or in part or operated by ~~the Northern Maine Transmission Corporation pursuant to Title~~
41 ~~10, chapter 1003 or financed by the Finance Authority of Maine pursuant to Title 10,~~
42 ~~section 1053, subsection 6, paragraph F~~ a person or involves the purchase of transmission

1 capacity or the execution of any significant agreement or contract as defined in section
2 3133-A, subsection 2 upon a finding that the line is reasonably likely to adversely affect
3 any transmission and distribution utility or its customers.

4 **Sec. 4. 35-A MRSA §3132, sub-§6**, as amended by PL 2007, c. 148, §5, is
5 further amended to read:

6 **6. Commission order; certificate of public convenience.** In its order, the
7 commission shall make specific findings with regard to the need for the proposed
8 transmission line. If the commission finds that a need exists, it shall issue a certificate of
9 public convenience and necessity for the transmission line. If the commission finds that
10 rates of consumers in a utility service territory will increase as a foreseeable direct
11 consequence of the operation of the transmission line, the commission may not issue a
12 certificate. If the commission orders or allows the erection of the transmission line, the
13 order is subject to all other provisions of law and the right of any other agency to approve
14 the transmission line. A person may submit a petition for and obtain approval of a
15 proposed transmission line under this section before applying for approval under
16 municipal ordinances adopted pursuant to Title 30-A, Part 2, Subpart 6-A; and Title 38,
17 section 438-A and, except as provided in subsection 4, before identifying a specific route
18 or route options for the proposed transmission line. Except as provided in subsection 4,
19 the commission may not consider the petition insufficient for failure to provide
20 identification of a route or route options for the proposed transmission line. ~~The issuance~~
21 ~~of a certificate of public convenience and necessity establishes that, as of the date of~~
22 ~~issuance of the certificate, the decision by the person to erect or construct was prudent.~~
23 At the time of its issuance of a certificate of public convenience and necessity, the
24 commission shall send to each municipality through which a proposed corridor or
25 corridors for a transmission line extends a separate notice that the issuance of the
26 certificate does not override, supersede or otherwise affect municipal authority to regulate
27 the siting of the proposed transmission line.

28 **Sec. 5. 35-A MRSA §3136, sub-§2**, as amended by PL 2001, c. 608, §2, is
29 further amended to read:

30 **2. Right of eminent domain not applicable.** The right of eminent domain granted
31 in subsection 1 does not apply to:

- 32 A. Lands or easements located within 300 feet of an inhabited dwelling;
- 33 B. Lands or easements on or adjacent to any developed or undeveloped water
34 power;
- 35 C. Lands or easements so closely paralleling existing wire lines of other utilities
36 that the proposed transmission lines would substantially interfere with service
37 rendered over the existing lines, except with the consent of the owners;
- 38 D. Lands or easements owned or used by railroad corporations, except as
39 authorized pursuant to section 2311; and
- 40 E. Lands or easements owned by the State; and

1 F. Lands or easements associated with the siting, permitting, construction or
2 operation of any transmission infrastructure that would adversely affect the
3 transmission and distribution utility's ratepayers.

4 **Sec. 6. 35-A MRSA §3137, sub-§1**, as amended by PL 1999, c. 398, Pt. A, §52
5 and affected by §§104 and 105, is repealed and the following enacted in its place:

6 **1. Domestic transmission and distribution utility may transmit electricity inside**
7 **or outside this State.** Notwithstanding any limitation imposed by its charter, each
8 **domestic transmission and distribution utility may transmit electricity and acquire and**
9 **operate anywhere inside or outside this State utility facilities or interests in utility**
10 **facilities of any nature or form used or required to be used in its service to the public,**
11 **except that nothing in this section authorizes a utility to distribute electricity in this State:**

12 **A. In a way that adversely affects the utility's ratepayers; or**

13 **B. To any person or within any area, except as otherwise authorized by its charter or**
14 **the laws of this State.**

15 **Sec. 7. Northern Maine Long-term Standard Offer.**

16 **1. Creation of Northern Maine Long-term Standard Offer.** To ensure
17 achievement of improved reliability and wholesale and retail competition for northern
18 Maine, the Public Utilities Commission, referred to in this section as "the commission,"
19 shall facilitate the enhancement and reliability of the energy generation infrastructure of
20 northern Maine. The commission shall solicit long-term proposals in connection with the
21 Maine Public Service Company's long-term standard offer for the years 2009 to 2019, to
22 be known as the Northern Maine Long-term Standard Offer, referred to in this section as
23 "the standard offer."

24 **2. Bids.** The commission shall solicit long-term standard offer bids in an effort to
25 mitigate high energy prices, improve wholesale competition, improve retail competition
26 and improve reliability. A person who bids for any part of the standard offer shall
27 demonstrate that its proposal addresses the following aspects of energy security in
28 northern Maine:

29 **A.** The mitigation of high prices, including a demonstration that the performance of
30 its long-term standard offer proposal is likely to be more advantageous to consumers
31 than reasonable alternatives, such as a series of shorter standard offers;

32 **B.** The lack of competition, including a demonstration that the performance of its
33 long-term standard offer proposal is likely to improve wholesale and retail
34 competition in northern Maine;

35 **C.** Grid and energy supply reliability, including a demonstration that the
36 performance of its long-term standard offer proposal would add to the Northern
37 Maine Independent System Administrator, Inc.'s system reliability and mitigate any
38 known or anticipated reliability issues in northern Maine; and

39 **D.** Regional market development, including the maintenance of existing energy
40 generation as well as the incitement of investment in new in-region generation.
41 Seventy percent of the energy to be provided by any bidder in supplying standard

1 offer load must be supplied by in-region generation to ensure generation remains in
2 the Northern Maine Independent System Administrator, Inc. region for long-term
3 reliability.

4 **3. Procedure.** The commission shall employ the following procedure with regard to
5 soliciting proposals for the standard offer.

6 A. In addition to the other standard offer bid options that the commission elects to
7 solicit, the commission shall solicit long-term standard offers for northern Maine in 3
8 separate parts.

9 (1) Part one must be conducted no later than January 1, 2009 and must
10 secure energy and capacity in the amounts specified in paragraph B for
11 the period March 1, 2009 to February 28, 2019.

12 (2) Part two must be conducted no later than January 1, 2009 and must
13 secure additional capacity and energy for the period March 1, 2009 to
14 February 28, 2014 in amounts as specified in paragraph C.

15 (3) Part three must be conducted in 2012 and must secure additional
16 energy and capacity for the period March 1, 2014 to February 28, 2019 in
17 amounts as specified in paragraph C.

18 B. Currently, the standard offer load has a base load requirement of approximately
19 36 megawatts, an intermediate or dispatchable requirement of approximately 22
20 megawatts and a load-following requirement of approximately 16 megawatts. Part
21 one seeks bids for 2/3 of these 3 separate trenches of energy and capacity as:

22 (1) A 20 megawatts base load requirement, 8,760 hours;

23 (2) A dispatchable load requirement of all loads above 20 megawatts and
24 below 40 megawatts; and

25 (3) A load-following requirement of all load at or above 40 megawatts.

26 C. Part 2 and part 3 bidders must bid on the remaining 1/3 of the standard offer load
27 identified in paragraph B. Part two and part three bidders must address the same
28 criteria, which may be modified by the commission to meet additional public needs.
29 Subject to the exception for utility bids in subsection 4, paragraph A, bidders must
30 have the qualifications required by state law that are in effect at the time the bid is
31 submitted.

32 D. The same person may bid on parts one, two and three and trenches 1, 2 and 3
33 within each part, but the commission may elect to choose only one or 2 of the parts
34 and one or 2 of the trenches within each of the 3 parts. Bidders may condition a bid
35 on one part upon acceptance of their bid on one or more other parts or trenches.

36 E. A bidder must demonstrate that the project sponsor of any new generating
37 capacity relied upon to supply the part one, two or three load has the relevant
38 property rights, permits and authorizations and construction capability and may
39 reasonably obtain financial arrangements to be able to produce electrical energy and
40 capacity when needed to supply the products required for part one, two or three.

1 F. The commission shall favor proposals that maintain and enhance the reliability of
2 existing generation while directly or indirectly enhancing the development of new
3 reliable in-region generating capacity. In evaluating standard offer bids and other
4 proposals and in comparing such bids to other standard offer bids, the commission
5 shall also consider the extent to which standard offer proposals will directly or
6 indirectly enhance the development of new transmission capacity interconnecting
7 northern Maine with the Independent System Operation-New England grid.

8 **4. Requirement for bidders for standard offer.** The commission shall ensure that
9 a bidder for the standard offer:

10 A. Be an entity, including a utility affiliate, authorized under Maine law to supply
11 standard offer service, except that a transmission and distribution utility may submit
12 bids in its own name, contingent on the contract and performance becoming the
13 obligation of its competitive energy provider affiliate in the event that the utility wins
14 one or more of the bids. All costs incurred by a transmission and distribution utility
15 in preparing and submitting long-term standard offer bids must be borne by the utility
16 and not its ratepayers. The commission shall reject as nonconforming any bid that
17 contemplates imposing any generation-related obligation on the utility;

18 B. Assume full migration risk;

19 C. Bid for any trench and any of parts one, two and three under section 3. Any such
20 bid may be provided on the basis of either:

21 (1) Fixed cost \$/Kw-month, plus a \$/MWh adder for marginal priced
22 energy;

23 (2) Fixed cost \$/Kw-month, plus a \$/MWh adder for energy deliveries
24 priced at a generally recognized market index, fuel price index or spot
25 market price; or

26 (3) Fixed cost \$/Kw-month, plus a floor and ceiling price for energy
27 priced at a generally recognized market index. Any pricing mechanism,
28 including marginal, unit specific or index, used in the proposal must be
29 acceptable to the commission in its sole discretion. To the extent that a
30 bidder for part two and three provides a proposal on the basis of any
31 option, the part two and three bidder must also provide a fixed price bid
32 and the commission may select either bid; and

33 D. Satisfy state laws and rules.

34 **Sec. 8. P&SL 1911, c. 288, §8** is enacted to read:

35 **Sec. 8. Transmission infrastructure.** Notwithstanding any provisions of this
36 charter, Central Maine Power Company may not:

37 A. Affiliate with any person who owns or operates any transmission infrastructure
38 that adversely affects the interests of Central Maine Power Company's ratepayers;

39 B. Participate in the planning, permitting, construction or operation of any
40 transmission infrastructure that adversely affects the interests of the Central Maine
41 Power Company's ratepayers; or

1 C. Participate or maintain membership in any organization whose practices,
2 procedures or rules adversely affect the interests of Central Maine Power Company's
3 ratepayers.

4 **Sec. 9. P&SL 1917, c. 203, §10** is enacted to read:

5 **Sec. 10. Transmission infrastructure.** Notwithstanding any provisions of this
6 charter, Maine Public Service Company may not:

7 A. Affiliate with any person who owns or operates any transmission infrastructure
8 that adversely affects the interests of Maine Public Service Company's ratepayers;

9 B. Participate in the planning, permitting, construction or operation of any
10 transmission infrastructure that adversely affects the interests of Maine Public
11 Service Company's ratepayers; or

12 C. Participate or maintain membership in any organization whose practices,
13 procedures or rules adversely affect the interests of Maine Public Service Company's
14 ratepayers.

15 **Sec. 10. P&SL 1959, c. 222, §5** is enacted to read:

16 **Sec. 5. Transmission infrastructure.** Notwithstanding any provisions of this
17 charter, Bangor Hydro-Electric Company may not:

18 A. Affiliate with any person who owns or operates any transmission infrastructure
19 that adversely affects the interests of Bangor Hydro-Electric Company's ratepayers;

20 B. Participate in the planning, permitting, construction or operation of any
21 transmission infrastructure that adversely affects the interests of Bangor Hydro-
22 Electric Company's ratepayers; or

23 C. Participate or maintain membership in any organization whose practices,
24 procedures or rules adversely affect the interests of Bangor Hydro-Electric
25 Company's ratepayers.

26 **SUMMARY**

27 This bill changes Maine law to clarify and add requirements for approval of siting
28 transmission lines in order to protect ratepayers. It removes the state-granted right of
29 eminent domain for transmission lines that adversely affect the interests of utility
30 ratepayers. It amends private and special laws of the State to make clear that transmission
31 and distribution utilities chartered in the State may not engage in activities that are
32 adverse to the interests of ratepayers. The bill also attempts to restore the competitive
33 market in northern Maine by granting authority and establishing procedures for a northern
34 Maine long-term standard offer.