

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2050

H.P. 1434

House of Representatives, December 21, 2007

An Act To Protect Maine Consumers of Electricity

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

Received by the Clerk of the House on December 19, 2007. Referred to the Committee on Utilities and Energy pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PINGREE of North Haven.
Cosponsored by Senator BARTLETT of Cumberland and
Representatives: BERRY of Bowdoinham, BRAUTIGAM of Falmouth, Speaker CUMMINGS
of Portland, HINCK of Portland, MILLS of Farmington, Senators: President EDMONDS of
Cumberland, HOBBS of York, MARTIN of Aroostook.

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

2 **Sec. 1. 35-A MRSA §102, sub-§2-B** is enacted to read:

3 **2-B. Compliant transmission and distribution utility.** “Compliant transmission
4 and distribution utility” means a transmission and distribution utility that has been found
5 to be compliant with all directives of the commission to the extent that it has taken all
6 reasonable and necessary steps within its control to achieve compliance.

7 A transmission and distribution utility is compliant with regard to discontinuing
8 participation in ISO New England if it has made a filing with the Federal Energy
9 Regulatory Commission requesting termination of membership in ISO New England.

10 **Sec. 2. 35-A MRSA §102, sub-§10-A** is enacted to read:

11 **10-A. Noncompliant transmission and distribution utility.** “Noncompliant
12 transmission and distribution utility” means a transmission and distribution utility that has
13 not been found to be compliant with all directives of the commission to the extent that it
14 has taken all reasonable and necessary steps within its control to achieve compliance.

15 **Sec. 3. 35-A MRSA §302, sub-§2** is enacted to read:

16 **2. Costs of noncompliance.** All costs incurred by a noncompliant transmission and
17 distribution utility for participation in ISO New England, including, but not limited to,
18 travel expenses, prorated salaries and ISO New England fees.

19 **Sec. 4. 35-A MRSA §312, first ¶,** as enacted by PL 1987, c. 141, Pt. A, §6, is
20 amended to read:

21 During any proceeding initiated by a public utility by a filing pursuant to section 307
22 or 1302, the commission may temporarily approve any undisputed amounts of a
23 requested rate increase or rate decrease. If the parties are unable to agree on an
24 undisputed amount, any party, at any time after the cross-examination of the utility's
25 direct case has been conducted and all parties have filed their direct cases, may request
26 the commission to require the parties to provide a written statement of those issues that
27 are being contested and an estimated dollar value of the extent of the disagreement
28 between the utility and the other party on that issue. The commission, after examining
29 the statements of issues presented, may determine an amount which that is undisputed.
30 The commission may include in the undisputed amount the amount put in question by any
31 party other than the utility, if the commission determines that that party has no possibility
32 of ultimately prevailing on that issue. The amounts temporarily approved shall must be
33 filed by the utility as a temporary schedule which shall be that is effective from the date
34 of approval of the temporary schedule until the issuance of the final order in a section 307
35 proceeding. Temporary rates may not be granted under any circumstances to a
36 noncompliant transmission and distribution utility.

37 **Sec. 5. 35-A MRSA §2102, sub-§2,** as amended by PL 1999, c. 398, Pt. A, §30
38 and affected by §§104 and 105, is further amended to read:

1 **2. Approval not required.** Except as provided in section 2104, the commission's
2 approval is not required for a public utility to furnish service in any municipality in which
3 that public utility is furnishing service on October 8, 1967. Approval is not required for
4 the operation of a radio paging service or mobile telecommunications services. Approval
5 is not required for a transmission and distribution utility to distribute electricity to any
6 other transmission and distribution utility. Approval is not required for a person seeking
7 to provide service within the service territory of a noncompliant transmission and
8 distribution utility. The commission shall develop an expedited process for ensuring that
9 such a person's new service meets the commission's guidelines and requirements.

10 **Sec. 6. 35-A MRSA §2103, sub-§2,** as enacted by PL 1987, c. 141, Pt. A, §6, is
11 amended to read:

12 **2. Filing objections.** If, after notice, the other cooperative or utility opposes the
13 bringing of electrical service to the new service location, within 7 days of receipt of the
14 notice of proposed service, it shall:

- 15 A. File objections to the bringing of the electrical service with the commission; and
16 B. Send a copy of its objections to the utility or cooperative and to the party
17 requesting electrical service.

18 A noncompliant transmission and distribution utility may not object to any extension of
19 service within its service territory. The commission shall consider only the objections of
20 a compliant transmission and distribution utility. With regard to any proposed extension
21 of service by a noncompliant transmission and distribution utility, the commission shall
22 assume that the extension is adverse to the interests of the State's ratepayers.

23 **Sec. 7. 35-A MRSA §2105, sub-§2,** as enacted by PL 1987, c. 141, Pt. A, §6, is
24 amended to read:

25 **2. Declaration without hearing.** The commission, may make a declaration without
26 public hearing, if it appears that the utility serving or authorized to serve, the utility
27 seeking approval from the commission to provide service and any customer or customers
28 to receive service agree that the utility seeking approval to serve should provide service.
29 When the utility serving or authorized to serve is a noncompliant transmission and
30 distribution utility, the commission shall make a declaration without public hearing
31 whenever the customer or customers to receive service and the utility seeking approval
32 from the commission to provide service agree that the utility seeking approval to serve
33 should provide service.

34 **Sec. 8. 35-A MRSA §2110, sub-§1,** as enacted by PL 1987, c. 141, Pt. A, §6, is
35 amended to read:

36 **1. Commission authorization.** The commission may authorize a public utility
37 organized by private and special act of the Legislature to furnish or extend its service in,
38 to or through a city or town notwithstanding any territorial limitations, express or
39 implied, in the private and special act of the Legislature by which it was organized or
40 under which it is enfranchised. The commission may not authorize any extension of
41 service by a noncompliant transmission and distribution utility. Within 20 days after the

1 commission's final authorization, the public utility shall file a certificate that shows the
2 authorization with and pay \$20 to the Secretary of State. When the certificate is filed, the
3 public utility's power to extend its service becomes effective.

4 **Sec. 9. 35-A MRSA §2305-B, sub-§2, ¶D**, as enacted by PL 2001, c. 110, §2, is
5 amended to read:

6 D. If a public utility objects to the line on the basis that it may constitute a
7 duplication of existing transmission or distribution facilities or may interfere with the
8 adequate and safe delivery of electricity to others, the commission issues a finding
9 that the line is not a duplication of existing transmission or distribution facilities and
10 does not interfere with the adequate and safe delivery of electricity to others. A
11 finding is not required under this paragraph unless a public utility has objected in
12 writing to the applicable licensing authority. A noncompliant transmission and
13 distribution utility may not make such an objection. A noncompliant transmission
14 and distribution utility does not have standing to intervene in any proceeding under
15 this section.

16 **Sec. 10. 35-A MRSA §2306**, as amended by PL 1999, c. 398, Pt. A, §36 and
17 affected by §§104 and 105, is further amended to read:

18 **§2306. No taking property without consent**

19 A public utility organized under section 2101 and former section 2109 may not take,
20 appropriate or use the location, pipes, lines, land or other property of any other person
21 doing or authorized to do a similar business, without consent of the other person, except
22 by Private and Special Act of the Legislature. The commission may authorize a public
23 utility to use the property of a noncompliant transmission and distribution utility after
24 providing the noncompliant transmission and distribution utility with an opportunity for
25 comment and a hearing, if requested, to determine the appropriate terms and conditions of
26 such authorized use.

27 **Sec. 11. 35-A MRSA §3132, sub-§5**, as enacted by PL 1987, c. 141, Pt. A, §6, is
28 amended to read:

29 **5. Commission approval of a proposed line.** The commission may approve or
30 disapprove all or portions of a proposed transmission line and shall make such orders
31 regarding its character, size, installation and maintenance as are necessary, having regard
32 for any increased costs caused by the orders. The commission may not approve any
33 project that causes an increase in the prices paid by ratepayers for capacity and energy
34 unless the commission finds that the project is necessary to preserve the reliability of
35 service to the ratepayers of the public utility.

36 **Sec. 12. 35-A MRSA §3132, sub-§9**, as amended by PL 2007, c. 148, §8, is
37 further amended to read:

38 **9. Filing fee; waiver of fee.** When a petition is filed under this section, the person or
39 persons involved shall pay to the commission an amount equal to 2/100 of 1% of the
40 estimated cost to erect, rebuild or relocate the transmission line ~~provided~~ except that, in

1 the case of a petition filed under subsection 2, the fee is 4/100 of 1%. The person may, at
2 the time of the filing of notice of its intent to file the petition, or, in the case of lines
3 subject to subsection 2, at the time of the filing of the petition, request the commission to
4 waive all or a portion of the filing fee. The commission shall rule on the request for
5 waiver within 30 days. The fee for a petition filed by a noncompliant transmission and
6 distribution utility is 1/20 of 1% of the estimated cost. No fee waivers may be granted to
7 a noncompliant transmission and distribution utility.

8 Filing fees paid as required under this subsection must be segregated, apportioned and
9 expended by the commission for the purposes of this section. Any portion of the filing fee
10 that is received from any person and is not expended by the commission to process the
11 petition for a certificate of public convenience and necessity must be returned to the
12 person.

13 **Sec. 13. 35-A MRSA §3136, sub-§1**, as amended by PL 2007, c. 148, §12, is
14 further amended to read:

15 **1. Land necessary for location of transmission lines carrying 5,000 volts.**
16 Subject to approval by the commission under subsection 4, a transmission and
17 distribution utility may take and hold by right of eminent domain lands and easements
18 necessary for the proper location of its transmission lines that are designed to carry
19 voltages of 5,000 volts or more and of necessary appurtenances, located within the
20 territory in which the utility is authorized to do public utility business, in the same
21 manner and under the same conditions as set forth in chapter 65. A noncompliant
22 transmission and distribution utility is not granted the power of eminent domain. Once a
23 noncompliant transmission and distribution utility has been determined to be a compliant
24 transmission and distribution utility, it may exercise the power of eminent domain
25 pursuant to this subsection.

26 **Sec. 14. 35-A MRSA §3136, sub-§3**, as amended by PL 2007, c. 148, §13, is
27 further amended to read:

28 **3. Prior right to locate distribution lines and appurtenances in right-of-way**
29 **limits of public way.** Subject to approval by the commission under subsection 4,
30 transmission and distribution utilities may take and hold by right of eminent domain land
31 or easements necessary for the proper location of their distribution lines and the necessary
32 appurtenances, but only where the transmission and distribution utilities had a prior right
33 to locate their distribution lines and necessary appurtenances in the right-of-way limits of
34 a public way and the body having jurisdiction over the public way has caused the utility
35 to remove its distribution lines and appurtenant structures outside the right-of-way limits
36 of the public way. This right does not apply to lands or easements as specified in
37 subsection 2, paragraphs B, C, D and E. A noncompliant transmission and distribution
38 utility is not granted the power of eminent domain. Once a noncompliant transmission
39 and distribution utility has been determined to be a compliant transmission and
40 distribution utility, it may exercise the power of eminent domain pursuant to this
41 subsection.

42 **Sec. 15. 35-A MRSA §3154, sub-§9** is enacted to read:

1 **9. Demand-side management program.** The commission shall use the full extent
2 of the powers and authority granted under this Title, including the right to participate in
3 proceedings and activities before a federal agency, including but not limited to the
4 Federal Energy Regulatory Commission and the United States Department of Energy, a
5 regional transmission organization or independent system operator in which a
6 transmission and distribution utility subject to its jurisdiction is a member and a state
7 regulatory agency or organization, to advocate for and, if possible, to require the
8 development, adoption and implementation of a demand-side management program that
9 compensates participants for reductions in local or increased output of on-site generation
10 coincident with annual or monthly system peak load on the transmission and distribution
11 system.

12 **Sec. 16. 35-A MRSA §3195, sub-§1,** as amended by PL 1999, c. 398, Pt. A, §71
13 and affected by §§104 and 105, is further amended to read:

14 **1. Rate-adjustment mechanisms.** This Title may not be construed to prohibit the
15 commission from or to restrict the commission in establishing or authorizing any
16 reasonable rate-adjustment mechanisms to promote efficiency in transmission and
17 distribution utility operations and least-cost planning. Rate-adjustment mechanisms for a
18 compliant transmission and distribution utility may include, but are not limited to:

- 19 A. Decoupling of utility profits from utility sales through revenue reconciliation;
20 B. Reconciliation of actual revenues or costs with projected revenues or costs, either
21 on a total or per customer basis;
22 C. Adjustment of revenues based on reconciled, indexed or forecasted costs; and
23 D. Positive or negative financial incentives for efficient operations.

24 **Sec. 17. 35-A MRSA §3195, sub-§7** is enacted to read:

25 **7. Noncompliant transmission and distribution utility.** Notwithstanding any other
26 provision of law, the commission may not establish a rate-adjustment mechanism for a
27 noncompliant transmission and distribution utility. The commission shall immediately
28 remove any rate-adjustment mechanism in place for a transmission and distribution utility
29 that is found to be a noncompliant transmission and distribution utility on or after the
30 effective date of this subsection. Once a noncompliant transmission and distribution
31 utility has submitted proof of its being a compliant transmission and distribution utility,
32 the commission may grant or authorize a rate-adjustment mechanism as the commission
33 finds appropriate under this section.

34 **Sec. 18. Time-of-use metering program for new construction.** The Public
35 Utilities Commission shall develop a proposal for a program requiring all new
36 commercial and residential construction to have time-of-use electric meters installed.
37 The commission shall submit the proposal together with a recommendation concerning its
38 implementation to the joint standing committee of the Legislature having jurisdiction
39 over utilities and energy matters by March 15, 2009. The joint standing committee of the
40 Legislature having jurisdiction over utilities and energy matters may submit legislation

1 concerning time-of-use metering and the proposed program to the First Regular Session
2 of the 124th Legislature.

3 **Sec. 19. Working group.** The Governor's Office of Energy Independence and
4 Security shall convene a working group to examine barriers to and the creation of
5 incentives for installation of systems in residential, commercial and industrial buildings
6 that conserve energy through reuse of waste heat. The working group must consist of
7 both public and private energy efficiency experts representing design, construction,
8 installation and operations expertise. The working group shall examine technical and
9 policy issues in its work, including but not limited to the creation of tax incentives or
10 other programs to encourage such systems. The office shall also work with the
11 Department of Administrative and Financial Services to develop a plan that decreases
12 wasteful peak load energy consumption in existing and new state buildings. The office
13 shall provide a report of the working group and the state building plan to the joint
14 standing committee of the Legislature having jurisdiction over utilities and energy
15 matters by December 1, 2009. The joint standing committee of the Legislature having
16 jurisdiction over utilities and energy matters is authorized to submit legislation on the
17 reuse of waste heat during the Second Regular Session of the 124th Legislature.

18 **SUMMARY**

19 This bill defines "compliant transmission and distribution utility" and "noncompliant
20 transmission and distribution utility."

21 It clarifies that the Public Utilities Commission is not allowed to grant temporary
22 rates to a noncompliant transmission and distribution utility.

23 It requires the Public Utilities Commission to develop an expedited process to ensure
24 that the new service of a person seeking to provide service within the service territory of a
25 noncompliant transmission and distribution utility meets the commission's guidelines and
26 requirements.

27 It describes what a noncompliant transmission and distribution utility must do to
28 regain certain powers lost due to the utility's being a noncompliant transmission and
29 distribution utility. It also clarifies what a noncompliant transmission and distribution
30 utility may not do.