

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

Statutes, Title 5, chapter 13, subchapter II for the purposes of retirement health insurance for the period from July 1, 1994 to March 1, 1998 must be paid by the council pursuant to an agreement between the council and the Department of Administrative and Financial Services.

Sec. 16. Retroactivity. That section of this Act that enacts the Maine Revised Statutes, Title 32, section 4167, subsection 5, paragraph A is retroactive to July 1, 1994. Those sections of this Act that require the transfer of retirement liabilities by March 1, 1998; that require contributions to the Maine State Retirement System by the Maine Sardine Council by March 1, 1998; and that require costs associated with coverage of employees and the council to be paid by the council are retroactive to March 1, 1998.

Sec. 17. Retroactivity; transition. That part of this Act that amends the Maine Revised Statutes, Title 36, section 4697 applies retroactively to January 1, 1998. The State Tax Assessor shall credit to a packer of sardines any amount of tax paid under Title 36, section 4697 that is in excess of the 15¢ tax per case on all sardines reported as packed between January 1, 1998 and the effective date of this Act. Any amount credited to a packer of sardines under this section must be applied to any future tax due from that packer of sardines pursuant to Title 36, section 4697.

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

Effective April 3, 1998.

CHAPTER 707

H.P. 1495 - L.D. 2094

An Act to Facilitate Local Distribution of Natural Gas

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

Whereas, the availability of natural gas utility service is of vital importance to the well-being of the State's citizens and economy; and

Whereas, the impending construction of new natural gas pipelines offers an opportunity for the expansion of natural gas utility service in the State; and

Whereas, proceedings are pending at the Public Utilities Commission that could result in the expanded availability of natural gas utility service that raise

issues requiring statutory amendments to address equitably; and

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

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

Sec. 1. 35-A MRSA §102, sub-§11, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

11. Person. "Person" includes a corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, trust, estate, any other legal entity or natural person.

Sec. 2. 35-A MRSA §2101, as amended by PL 1995, c. 225, §7, is further amended to read:

§2101. Organization of certain public utilities

~~Corporations~~ A public utility for the operation of telephones and for the purpose of making, generating, selling, distributing and supplying gas or electricity or for the operation of water utilities, ferries or public heating utilities in any municipality, or 2 or more adjoining municipalities, within the State, may be organized as a legal entity authorized under the general corporate law laws of the State, including Title 13-A.

Sec. 3. 35-A MRSA §2104, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§2104. Commission approval required for gas companies to furnish service

No gas utility ~~organized under Title 13-A~~ may furnish its service in or to any municipality within the State, without the approval of the commission, even if no other gas utility is furnishing or is authorized to furnish a similar service. ~~A gas utility providing service on January 1, 1982, shall have until January 1, 1983, to obtain the commission's approval to continue to furnish service.~~

Sec. 4. 35-A MRSA §§2302 and 2306, as enacted by PL 1987, c. 141, Pt. A, §6, are amended to read:

§2302. Pipelines for common carrier transportation

Every corporation organized under the general laws of the State and any public utility owning, controlling, operating or managing any pipeline within or through this State for the transportation as a

common carrier for hire of oil, gas, gasoline, petroleum or any other liquids or gases may lay its pipelines and construct and maintain them in, along and under the roads and streets in any municipality, subject to the conditions and under the restrictions provided in this chapter and chapter 25.

§2306. No taking property without consent

No ~~corporation~~ public utility organized under sections 2101 and 2109 may take, appropriate or use the location, pipes, lines, land or other property of any other person doing or authorized to do a similar business, without consent of the other person, except by ~~Private and Special Act~~ private and special act of the Legislature.

Sec. 5. 35-A MRSA §4703, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Cost of gas; related costs. Subject to the approval of the commission, each gas utility shall ~~include as part of its base rates a charge its customers~~ a cost-of-gas adjustment rate that includes reasonable cost costs for the gas which that it supplies to its firm sales customers who receive uninterrupted service on a year-round basis. The cost of gas shall include includes the cost of the gas purchased by the company for use in the State and may include costs directly related to the gas purchased and may include all or a portion of the cost of facilities used to produce and store gas, pursuant to rules promulgated adopted by the commission under this section. The amount to be included in a utility's base rates shall be determined at the time of general rate adjustment under section 307 or 1303 and shall be based upon the utility's reasonable costs of gas during the test year used for the rate adjustment.

Sec. 6. 35-A MRSA §4703, sub-§2, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. 7. 35-A MRSA §4703, sub-§§2-A and 2-B are enacted to read:

2-A. Cost-of-gas adjustment for firm sales customers. Subject to the conditions of this section, a gas utility shall periodically adjust its cost-of-gas adjustment clause charges to its firm sales customers to reflect increases and decreases in the cost of gas. For purposes of this section, a "firm sales customer" means a customer that receives uninterrupted gas supply and transportation service from the gas utility on a year-round basis. Subject to the approval of the commission, the cost-of-gas adjustment charge must be billed at a uniform rate per 100 therms or 100 cubic feet of gas for customers of the gas utility receiving service pursuant to the same rate schedule.

2-B. Cost-of-gas adjustment for nonfirm customers. The rates charged to nonfirm customers include a cost of gas determined by the commission. The total rate charged to nonfirm customers is subject to the approval of the commission.

Sec. 8. 35-A MRSA §4703, sub-§3, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

3. Scope of adjustment. ~~Changes in the cost of gas purchased by the gas utility for use in the State shall~~ The costs described in subsection 1 constitute the only items subject to adjustment, pursuant to rules promulgated adopted by the commission under this section, provided except that the commission may credit against the cost of gas any and all profits received by the gas utility from sales of gas to interruptible customers to the extent that the revenues exceed the actual costs of the interruptible sales.

Sec. 9. 35-A MRSA §4703, sub-§4, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. 10. 35-A MRSA §§4706 and 4707 are enacted to read:

§4706. Commission authority to adopt alternative rate-making mechanisms

1. Alternative rate-making mechanisms. This Title may not be construed to prohibit the commission from or to restrict the commission in establishing or authorizing any reasonable alternative rate-making mechanisms for gas utilities to promote efficiency in operations, create appropriate financial incentives, promote rate stability and promote equitable cost recovery. Alternative rate-making mechanisms may include, but are not limited to:

A. Multiyear rate-making plans that cap or otherwise establish mechanisms for future rate or revenue changes;

B. Reconciliation of actual revenues or costs with projected revenues or costs;

C. Adjustment of rates or revenues based on the use of any index, formula, forecast or projection;

D. Adjustment of rates or revenues based on an earnings-sharing, range-of-freedom or rate-stability plan;

E. Positive or negative financial incentives; and

F. Streamlined regulation or deregulation of services or entities when regulation is not required to protect the public interest.

In adopting an alternative rate-making mechanism, the commission may consider the costs of regulation, the

benefits of the rate plan to the utility and to ratepayers, the impact on economic development, the reallocation of risk between investors and ratepayers, the development of a competitive market for gas services that are not natural monopolies and any other factor relevant to the establishment or authorization of an alternative rate-making mechanism. Prior to adopting an alternative rate-making mechanism, the commission shall consider the need for a rate case in order to establish a base line for the alternative rate-making mechanism.

2. Adoption of rate-making mechanisms.

Upon the filing of an application for a rate plan by a gas utility, or upon the commission's own motion, the commission, in an adjudicatory proceeding, may adopt alternative rate-making mechanisms for any gas utility in the State. The alternative rate-making mechanisms need not conform with chapter 3 to the extent that the provisions of chapter 3 require the use of rate-base, rate-of-return or any other specific form of regulation of the rates of a gas utility or to the extent that the provisions of chapter 3 give any party, including the gas utility, the right to petition to change rates for gas services. This section may not be construed to limit the authority of the commission under section 1322.

3. Just and reasonable rates. In determining the reasonableness of any rate-adjustment mechanism established under this subchapter, the commission shall apply the standards of section 301 to ensure that the rates resulting from the implementation of a rate-adjustment mechanism are just and reasonable.

4. General safeguards. In adopting alternative rate-making mechanisms, the commission shall consider appropriate consumer and competitive safeguards.

5. Rate flexibility. Notwithstanding sections 307 and 703, the commission, in an adjudicatory proceeding, may authorize a gas utility to implement a program under which:

A. The utility may change its schedule of rates with limited notice to the commission; and

B. The utility may enter into contracts for the sale of gas, transmission and distribution services and related management services with limited or no prior approval by the commission.

The commission shall establish the terms and conditions under which a program is authorized under this subsection.

6. Amendment to multiyear rate plans. The commission may not amend or prematurely terminate the terms of a multiyear rate plan in a manner that prevents or threatens the utility's opportunity to

recover a reasonable rate of return over the entire term of the plan.

7. Authority. The authority granted to the commission under this section is in addition to the authority of the commission granted under other provisions of this Title and this section may not be construed to limit the authority of the commission under any other provision of this Title.

8. Cost-of-gas adjustment. As part of the implementation of alternative rate-making mechanisms pursuant to this section, the commission may waive or modify the requirements of section 4703 to the extent necessary to promote efficiency in operation, appropriate financial incentives, rate stability or equitable cost recovery.

9. Annual report. The commission shall submit to the joint standing committee of the Legislature having jurisdiction over utilities matters an annual report detailing any actions taken or proposed to be taken by the commission under this section. The report must be submitted by December 31st of each year.

§4707. Stranded costs; notice of risk

Notwithstanding any other provision of this Title, costs arising from obligations incurred by a gas utility after March 1, 1998, other than costs or obligations that are beyond the control of the gas utility, determined by the commission in an adjudicatory proceeding to be unrecoverable as a result of competition or deregulation are incurred at the risk of the shareholders of the gas utility and may not be borne by ratepayers of the gas utility. This section may not be interpreted as requiring that costs incurred prior to March 1, 1998 be recovered from ratepayers.

Sec. 11. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to all proceedings of the Public Utilities Commission pending at the time of its enactment.

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

Effective April 3, 1998.

CHAPTER 708

H.P. 1523 - L.D. 2145

**An Act Concerning the Taking of
Marine Resources by Members of
the Passamaquoddy Tribe**