

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ELECTRIC INDUSTRY RESTRUCTURING

LEGISLATORS' HANDBOOK



KF
2125
.Z99
M224
1998

ELECTRIC INDUSTRY RESTRUCTURING LEGISLATORS' HANDBOOK

December 1998

Author: Jon Clark, Legislative Counsel

Office of Policy and Legal Analysis
Maine State Legislature

Preface

Though electric industry restructuring is a fairly narrow and somewhat arcane area of public policy, it deals with matters that may affect every citizen of the state. The law that restructures the electric industry in Maine was passed in 1997. It is extensive, complex, and dense.

This handbook is designed to provide legislators with the basic information needed to understand Maine's restructuring law, its origins, the issues with which it deals, and its implementation by the Public Utilities Commission. Though certain portions of the handbook will gradually become dated as implementation of the law proceeds, it is hoped the handbook will prove to be a useful reference for policy makers attempting to understand the electric industry restructuring law and the issues of which it treats.

The author is a lawyer in the Office of Policy and Legal Analysis, a non-partisan staff office of the Maine Legislature. Since 1990 he has been legal counsel and, with the exception of the Second Regular Session of the 117th, legislative analyst for the Joint Standing Committee on Utilities and Energy, the committee with jurisdiction over electric industry restructuring.

Questions or comments about this handbook may be directed to the author at Office of Policy and Legal Analysis, Maine State Legislature, 13 State House Station, Augusta, ME 04333 or jon.clark@state.me.us.

ELECTRIC INDUSTRY RESTRUCTURING

TABLE OF CONTENTS

Introduction	1
A Summary of the Handbook	2
A Brief History	4
1997: The Year of Decision (LD 1804	11
Current Law; A Summary.....	12
The Issues: Status of an Evolving World	17
Deregulation of Generation	18
Divestiture	19
Stranded Costs	22
Marketing by T&Ds	24
1. CMP and BHE.....	24
2. MPS.....	25
3. COUs	26
Consumer Protections	27
1. Licensing competitive providers.....	27
2. Low income assistance	27
3. Residential consumer protections.....	28
4. Miscellaneous provisions	28
Aggregation	28
Informational filings; standard billing	29
Consumer protection rules	29
Penalties.....	29
Dispute Resolution.....	30
Access to load data.....	30
Standard Offer	31
Renewables/Conservation	34
Billing and Metering	36
Consumer Education	37
Employee Transition Benefits.....	38
Issues of the Grid (Northern Maine.....	41
Reports and Rules	42
Federal Matters.....	49

APPENDIX A Restructuring Law (as amended, including related enactments)

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

Introduction

From their inception over a hundred years ago, electric utilities have been regulated as monopolies under the theory that they are “natural monopolies,” that their product and services can most economically be produced and provided by a monopoly. This theory, as it applies to the provision of generation services to consumers, has been rethought and generally rejected in recent years.

Restructuring of the industry in order to remove the monopoly over retail generation services and to introduce competition is generally regarded as one of the most significant and perhaps one of most complex policy issues in the history of the regulation of the industry.

In 1997, after several years of discussion, study and debate, the Maine Legislature passed comprehensive legislation restructuring the electric industry. In 1998, the law was amended slightly and several other related provisions of law were enacted. The Maine Public Utilities Commission (PUC) is presently in the midst of implementing these laws; much of the PUC’s work, in the form of reports and major substantive rules, will be submitted to the 119th Legislature for review.

This handbook is designed to assist legislators’ understanding of this complex law and the implementation process now under way; it is hoped that this handbook will help legislators deal with the various restructuring issues which are likely to be presented to the 119th Legislature.

the 1990s, the number of people in the world who are under 15 years of age has increased by 1.2 billion (United Nations 1999). The number of children in the world is projected to increase to 2.5 billion by the year 2025 (United Nations 1999). The United Nations (1999) also predicts that the number of children in the world who are under 5 years of age will increase from 1.1 billion in 1990 to 1.5 billion in 2025.

There are a number of factors that are likely to contribute to the increase in the number of children in the world. One of the most important factors is the increase in life expectancy. As life expectancy increases, the number of children who survive to adulthood increases. This is because more children are surviving to the age of 5, and more children are surviving to the age of 15. This is also true for the number of children who survive to the age of 20.

Another factor that is likely to contribute to the increase in the number of children in the world is the increase in the number of children who are born. This is because the number of children who are born has increased in many countries. This is due to a number of factors, including the increase in the number of children who are born to women who are younger than 20 years of age.

The increase in the number of children in the world is a major concern for many people. This is because the increase in the number of children in the world is likely to lead to a number of problems, including the increase in the number of children who are poor, the increase in the number of children who are ill, and the increase in the number of children who are in need of education. This is why it is important to take steps to reduce the number of children in the world.

One of the most important steps that can be taken to reduce the number of children in the world is to reduce the number of children who are born. This can be done by providing women with access to family planning services. This is because family planning services can help women to control the number of children they have. This is important because the number of children who are born is a major factor in the increase in the number of children in the world.

Another important step that can be taken to reduce the number of children in the world is to reduce the number of children who are poor. This can be done by providing children with access to education. This is because education can help children to improve their lives. This is important because the number of children who are poor is a major factor in the increase in the number of children in the world.

There are a number of other steps that can be taken to reduce the number of children in the world. These steps include providing children with access to health care, providing children with access to clean water, and providing children with access to food. These steps are important because they can help to improve the lives of children. This is important because the number of children who are poor, ill, and in need of education is a major factor in the increase in the number of children in the world.

The increase in the number of children in the world is a major concern for many people. This is because the increase in the number of children in the world is likely to lead to a number of problems, including the increase in the number of children who are poor, the increase in the number of children who are ill, and the increase in the number of children who are in need of education. This is why it is important to take steps to reduce the number of children in the world.

One of the most important steps that can be taken to reduce the number of children in the world is to reduce the number of children who are born. This can be done by providing women with access to family planning services. This is because family planning services can help women to control the number of children they have. This is important because the number of children who are born is a major factor in the increase in the number of children in the world.

The first part of the paper discusses the importance of the research and the objectives of the study. It then presents a literature review of the existing research on the topic. The second part of the paper describes the methodology used in the study, including the data collection and analysis techniques. The third part of the paper presents the results of the study and discusses the implications of the findings. The final part of the paper concludes the study and provides recommendations for future research.

The research was conducted using a quantitative approach, with data collected from a survey of 100 participants. The data was analyzed using statistical software, and the results were presented in a series of tables and graphs. The findings of the study indicate that there is a significant relationship between the variables being studied, and the results have important implications for the field.

The study was limited by a number of factors, including the sample size and the potential for bias. However, the results are consistent with the findings of other studies in the field, and the study provides a valuable contribution to the understanding of the topic.

In conclusion, the study has shown that there is a significant relationship between the variables being studied, and the results have important implications for the field. The study provides a valuable contribution to the understanding of the topic, and the findings are consistent with the findings of other studies in the field.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

A Summary of the Handbook

This handbook is provides a basic summary of information related to the restructuring of the electric industry. It is designed to provide a reference for legislators who wish to place in some context legislative policy issues having to do with this area of law.

The first section, **A Brief History**, provides a summary of the history of the regulation of the electric industry and sketches the contours of the development of the policies that are culminating in the restructuring of the industry. While this history is not exhaustive of the subject, it should provide to legislators who are not intimately familiar with this area of the law a useful historical overview.

The second section, **1997: the Year of Decision**, briefly sketches the work of the Legislature in 1997 in developing the electric industry restructuring law. The development of the law was an extremely intense and complex undertaking. The sketch merely suggests the character of the undertaking; it may, however, provide to legislators who are not intimately familiar with the development of the law a rough idea of that process.

The third section, **Current Law: A Summary**, provides a compact summary of the major provisions of the restructuring law. It is spare of detail (it is the forest and not the trees) and is designed to provide a quick but accurate overview of the entire law.

The Fourth section, **The Issues: Status of an Evolving World**, covers the restructuring law in some detail, issue by issue: It provides both a summary of how the restructuring law deals with the issue and a summary of the status of PUC proceedings to implement the law. Those already generally familiar with the restructuring law may wish to proceed directly to this section. The easiest way in which to use this section will be to refer to the TABLE OF CONTENTS for the page number of the topic in which the reader is interested. The reader should note that many of the topics are covered in several pages; at the top of each page in this section the topic is noted; new topics always begin on a new page. At the beginning of each topic reference is made to Appendix A, where the relevant provisions of law may be found. Since restructuring is an on-going process, this section of the report will gradually become out-of-date as time passes. The information is current as of early December 1998.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

The fifth section, **Reports and Rules**, provides a summary of the reports and rules that are required by the restructuring law. This information repeats what is discussed in more detail in the previous section; it is summarized here for the reader's convenient reference. The information is provided in three formats: in summary list form, in table form and in calendar form. In the first two formats, references to the relevant sections of law, which may be found in Appendix A, are given.

The final section, **Federal Matters**, briefly discusses important recent federal activity related to electric industry restructuring in Maine.

Appendix A provides a copy of the restructuring law (including all unallocated provisions) as amended through the end of the 118th Legislature and including all related enactments. Throughout the text of the handbook, references to the law are made by reference to the pages of this appendix. The law is organized here in a manner that should facilitate easy location of desired sections; there is a TABLE OF CONTENTS at the beginning of the appendix to assist the reader.

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion.

At the same time, the number of people aged 65 and over is expected to increase from 250 million to 450 million.

These changes in the population structure of the world are expected to have a significant impact on the global economy.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

One of the main challenges facing the world in the 21st century is how to meet the needs of a growing population.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

A Brief History¹

A. The old days

The electric industry was born in 1882 with the opening of a central electric power station in New York City. During its infancy, the industry grew, but electric utilities remained small, discrete, local. They were regulated by local governments. Early in this century, utilities systems were expanding beyond municipal boundaries and state utility commissions were created and assumed the primary regulatory role. Systems continued to expand, growing into interstate grids. In 1920 the Federal Power Commission was created; in 1977, the FPC was reorganized into the Federal Energy Regulatory Commission or "FERC." FERC regulates the interstate transmission of electricity and wholesale electric transactions.

By the 1930s, electric utilities had grown very large; some companies controlled vast, geographically far-flung electric empires. These companies were impossible for individual state PUCs adequately to regulate; they were not adequately regulated at the federal level; there was widespread concern about fraud and mismanagement. In response, Congress enacted the Public Utility Holding Company Act of 1935 ("PUHCA"). PUHCA was designed to eliminate these large companies by restricting holding company activities to limited geographic regions.² The provisions of the PUHCA are implemented by the federal Securities and Exchange Commission.

From their inception, electric utilities have been regulated as monopolies under the theory they are "natural monopolies," that their product and services

¹ This is an edited and up-dated excerpt from, "Final Report of the Work Group on Electric Industry Restructuring," Office of Policy and Legal Analysis, 1995)

² The PUHCA created a new regulated entity called a registered holding company ("RHC"). A RHC is a holding company that does not qualify for an exemption from registration. A holding company is any company which owns at least 10% of the shares of or (under certain circumstances) which exercises a controlling influence over a public utility. A holding company is an exempt holding company if it meets any one of several conditions; in terms of Maine's utilities, the most significant exemption is a holding company "whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto." (15 USC sect. 79c(2)). A holding company which fails to fall into an exemption must register with the SEC. A RHC is subject to a wide array of burdensome and intrusive SEC regulation. None of Maine's retail electric utilities is a RHC; each Maine utility which qualifies as a holding company also qualifies for an exemption. Maine Yankee Atomic Power Company is partially owned by a subsidiary of several utilities owned by Northeast Utilities, a RHC. Northeast Utilities is also the parent company of Public Service of New Hampshire.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

can most economically be produced and provided by a monopoly.³ A fundamental assumption of restructuring is that a free market could provide greater efficiencies in some or all sectors of the electric industry.

As a monopoly, an electric utility is granted by law the exclusive authority to provide electric service in its franchise territory. It is also, by law, given the exclusive obligation to serve customers in that territory.

Historically, while no law required utilities to build their own generation units or forbid utilities from purchasing power from non-utility generators, the regulatory structure, established to regulate a natural monopoly, tended to provide no incentive for larger, investor-owned utilities to pursue outside generation resources.⁴ This changed during the oil crises of the 1970s and the passage of the federal Public Utility Regulatory Policies Act of 1978 or "PURPA".

B. PURPA and competitive generation

PURPA had as its primary goal the reduction of US energy dependence on foreign oil. PURPA encouraged state commissions to pursue cost-based rate making (so that utility customers would get price signals which would reflect their use of energy and thus encourage their efficient use of energy) and encouraged utilities to pursue demand-side management (methods by which utilities could promote efficient energy use by customers).

PURPA also encouraged the development of efficient electricity generation and renewable and indigenous resources by requiring utilities to purchase power at avoided cost from certain non-utility generators (NUGs).⁵ NUGs who meet PURPA qualifications are referred to as "qualifying facilities" or "QFs" and are of two types: the cogenerator (a facility that achieves efficiency by producing both electric energy and useful thermal energy) and the small power producer (a small facility that uses one or more specified non-fossil fuel sources as the primary or sole energy input). Under FERC rules implementing PURPA, a

³ The history of electric utilities is far more interesting than this statement might suggest. For instance, Bangor Hydro-electric Company started as a transportation company developing hydro-electric generation facilities at Veazie for the then revolutionary purpose of transmitting the power 5 miles or so to power the street car system in Bangor. The idea of a broader use of electricity came later and regulation as a monopoly came later yet.

⁴ Smaller, consumer-owned utilities did have incentives to purchase power and did in fact purchase power, absent PURPA directives.

⁵ "Avoided cost" is a term of art which refers to the cost the utility avoids by not having to acquire the power or equivalent conservation from elsewhere (e.g. building plant or buying the power from another source).

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

qualifying facility can require that the utility sign a long-term contract for power produced by the facility with the rate set up to the projected avoided costs over the term of the contract.

In response to PURPA, Maine enacted the Small Power Production Act.⁶ The Small Power Production Act essentially follows federal law on qualifying facilities.⁷

Perhaps the most important effect of these laws in terms of industry restructuring was the introduction of competition into the electric generation market: Utilities began to purchase power from NUGs. In 1995, approximately 32% of Maine's electric energy was generated by NUGs.

C. Movement Towards Restructuring; Stop-gap Measures

When utility rates are relatively high compared with other options available in the market there is an incentive for customers to explore other options for meeting their energy needs. Even under a monopoly structure, options do exist (though, for a variety of reasons, some customers may have more options than others), including fuel switching (e.g., from electricity to natural gas or oil or wood), moving from one utility service territory to another (particularly a move out of the state or the region) self-generation (installing a generator to supply one's needs) and reducing energy use through load shifting or efficiency improvements. In recent years, certain customers, most particularly customers with large energy needs, sought, in addition, fundamental changes in the industry structure in order to make available a broader range of options.

These forces have not been without effect on utilities. Lost customers (whether from customers leaving the service territory, switching fuels or self-generating) translates into lost revenues. Certain utility costs, incurred to serve projected energy demands of customers, do not follow a customer off the system; when a customer leaves the system, those costs are generally spread over fewer sales.⁸ The result: upward pressure on rates. This exacerbates the situation by encouraging other customers to leave the system, leaving the utility to spread

⁶ 35A MRSA c. 33.

⁷ It should be noted that PURPA's QF provisions are mandatory. Even in the absence of Maine law, utilities would still be bound by the obligations imposed by PURPA.

⁸ This description assumes that the utility seeks to spread, and regulators permit spreading, those costs over the remaining customers. There are other ways, of course, for the costs to be recovered, including from shareholders, departing customers and so forth.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

costs among still fewer customers. Obviously, this trend tends to create an unstable situation which can have further ramifications, including potential injury to the utility's credit rating; if the rating is downgraded, the utility's cost of capital increases, placing further upward pressure on rates.

In the early 1990s, the legislature responded to what it believed to be the beginning of such a trend by passing several laws permitting utilities to market their surplus power by offering discount or incentive rates.⁹ The rationale for these laws was that by allowing a utility to sell surplus power at discount, it would have a better chance of keeping customers who might otherwise leave the system. Retention of customers benefits all customers to the extent that it allows the utility's costs to be spread over more sales and thus avoids further across-the-board rate increases.

D. Energy Policy Act of 1992

Although perhaps not as significant as PURPA in spawning competition in the electric industry, the passage by Congress of the Energy Policy Act of 1992 ("EPACT") unleashed new competitive forces in the electric industry and set in motion forces which are reverberating throughout the electric industry. Perhaps the most significant provisions of the EPACT are those which create new legal entities called exempt wholesale generators ("EWGs") and those which relate to wholesale power transactions.

An EWG is an entity exclusively in the business of owning or operating a generation facility the power of which is exclusively sold at wholesale. EWGs are exempt from the burdensome provisions of PUHCA.¹⁰ The primary Congressional purpose for the creation of EWGs was to promote and facilitate greater competition in electric generation. Through EWGs entities may more freely compete in the wholesale power market.

The EPACT provisions on transmission relate to wholesale wheeling. Wholesale wheeling involves hiring utility transmission lines to transmit power from a generator to a reseller. An example of wholesale wheeling may be found in the relationship of Madison Electric Works ("MEW") (a consumer-owned electric utility), Central Maine Power Company ("CMP") and Northeast Utilities ("NU"). MEW has a contract to buy power from NU. CMP transmits or "wheels" the power from NU to MEW which MEW then sells to its customers.

⁹ 35A MRSA sections 3154 (8), 3195 (6) and 4401-4404.

¹⁰ "PUHCA" is the acronym for the federal Public Utility Holding Company Act of 1935.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

Under EPACT, the FERC was granted clear authority to order wholesale wheeling and to set wheeling rates.¹¹ The result: Competition became a reality at the wholesale level. Those who purchase electricity for resale can shop for power.

EPACT, however, does not reach to the retail level; the issue of whether and how much retail competition is appropriate has, so far, been left to the states.

E. Retail Competition.

Retail competition generally refers to a restructuring of the industry to allow retail customers to choose their electric energy supplier. Currently, with a very few exceptions, the only entity which can sell electric power to end-use customers in any particular geographic territory is a monopoly electric utility (be it consumer or investor owned) which is franchised to serve that territory. Conversely, the only entity from whom those end-users can purchase power is the monopoly electric utility.

In the last several years, most states have at least begun to consider the options for restructuring the electric industry in order to permit some form of retail competition. A number of states, including Maine, have passed restructuring legislation (e.g. California, New Hampshire, Pennsylvania, Massachusetts, Illinois); others are considering legislation. In several states, utility commissions have developed restructuring plans.

For several years, Congress has been examining a number of issues relating to restructuring, including whether to mandate retail access in all states. Congress has yet to enact any significant measures related to restructuring.

F. Maine: Prelude to the New Law

In the early 1990s, bills came before the Maine Legislature designed to address the problems associated with utility surplus power, high rates and the threat of customers leaving the system. A bill was enacted permitting utilities to offer their surplus power at discounted rates.¹² In 1994, the Legislature approved a law allowing the Public Utilities Commission to approve electric

¹¹ See FERC Order 888 and 889.

¹² 35A MRSA section 3154(8).

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

utility flexible pricing plans;¹³ the commission, in turn, has approved flexible pricing plans for all three of Maine's investor-owned electric utilities.¹⁴

The commission also approved a five-year price cap for Central Maine Power Company ("CMP")¹⁵ and a 49-month price cap for Maine Public Service Company ("MPS").¹⁶ Bangor Hydro-electric Company ("BHE") is not subject to a price cap.¹⁷

Beginning in 1993, legislation began to appear proposing a fundamental restructuring of the electric industry. In the First Regular Session of the 116th Legislature, legislation was introduced proposing a form of retail wheeling.¹⁸ Another bill proposed to deregulate consumer-owned electric utilities.¹⁹ In the Second Regular Session of the 116th, legislation was introduced proposing to establish a process at the Public Utilities Commission to cause the unbundling of utility generation from other utility services and assets.²⁰

Issues specifically related to the NUG contracts have accompanied and in many ways become inextricably intertwined with issues raised by restructuring. NUG costs have been identified by Maine's three investor-owned electric utilities (CMP, BHE and MPS) as a significant portion of the costs which will be "stranded" by restructuring. In the mid-1990s, several bills were introduced related to the NUG contracts. Legislation was passed in 1994 (and amended and expanded in subsequent years) to permit the Finance Authority of Maine to issue bonds backed by the moral obligation of the State to assist utilities in buying down or buying out NUG contracts.²¹ Pursuant to this program, Central Maine Power Company bought out one NUG contract and purchased the associated facility and Bangor Hydro-electric Company bought out two NUG contracts and has renegotiated a third. Other renegotiations have occurred without FAME financing.

In the First Regular Session of the 117th Legislature, restructuring became perhaps the single most discussed issue before the Utilities and Energy

¹³ 35A MRSA section 3195(6)

¹⁴ BHE: Docket 94-125 (order, Feb. 14, 1995); CMP: Docket 92-345(II) (order, Jan. 10, 1995); MPS: 95-052 (order, Nov. 30, 1995).

¹⁵ Docket 92-345(II) (order, Jan. 10, 1995).

¹⁶ Docket 95-052 (order, Nov. 30, 1995).

¹⁷ See Docket 94-125 (order, Feb. 14, 1995).

¹⁸ 116th Leg., 1st Reg. Sess., L.D. 1482. Bill was not enacted.

¹⁹ 116th Leg., 1st Reg. Sess., L.D. 1119. Bill was not enacted.

²⁰ 116th Leg., 2nd Reg. Sess., L.D. 1874. Bill was not enacted.

²¹ PL 1993, c. 712; PL 1995, c. 120; PL 1995, c. 698; PL 1997, c. 492; PL 1997, c. 781.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

Committee of the Maine Legislature. There were more than a half-dozen bills before the committee relating more or less to electric industry restructuring, ranging from a proposal to establish a limited form of retail wheeling to a proposal to require the PUC to conduct an investigation of restructuring.

In response to these various legislative proposals, the Utilities Committee established the Ad Hoc Committee on Restructuring to develop a consensus on a means of dealing with the issues raised by restructuring. The Ad Hoc Committee, composed of a subcommittee of the Utilities and Energy Committee and a number of interested persons and staffed by the Office of Policy and Legal Analysis, produced legislation which became Chapter 48 of the Resolves of 1995. This resolve established a 2-phase study of electric industry restructuring: Phase 1 was undertaken by a specially created Work Group on Electric Industry Restructuring; Phase 2 was undertaken by the PUC.

The Work Group, composed of 4 Legislators and 14 stakeholders and staffed by the Office of Policy and Legal Analysis, met during the interim between the First and Second Regular Sessions of the 117th Legislature (1995). The group produced its report in December 1995. The Work Group was unable to come to any agreement on how to restructure, but did develop common ground by identifying both the functional components that would most likely emerge in a competitive electricity market and how and where among those functional components a variety of functions that the various members believed needed to be provided might be provided.

The PUC produced its report one year later in December of 1996. As required by the Resolve, the PUC in its report proposed a plan for restructuring the electric industry in Maine.²² Included with the report was draft legislation to implement the plan. At the request of the chairs of the Utilities Committee, a revised and more fully-developed draft was produced early in the 1st Regular Session of the 118th. That draft became L.D. 1804, one of 5 restructuring proposals offered to the Legislature.

²²The Resolve actually required the PUC to produce 2 plans, however the PUC unanimously determined that the plan it developed fulfilled the purpose and met the spirit of the law and that it was unnecessary to produce 2 separate plans. The Legislature accepted the one plan.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

**1997: The Year of Decision
LD 1804**

Five bills (LDs 1804, 1732, 1794, 1785 and 1798) were introduced into the 118th Legislature proposing various ways of restructuring the electric utility industry. These bills were referred to the Joint Standing Committee on Utilities and Energy.

The committee employed an innovative approach to examining the many complex issues raised by restructuring: The committee held six all-day, highly structured forums in which stakeholders and experts from Maine and from around the country discussed and debated the various issues with the committee. After these forums and many subsequent work sessions, the committee produced new draft legislation which was reported (with one dissenting vote) to the full legislature in the form of an amendment to L.D. 1804. The committee amendment was approved without further amendment by both houses and on May 29, 1997 the Governor signed "An Act to Restructure the State's Electric Industry." The law was chaptered as Public Law 1997, Ch. 316 and is codified largely in Title 35-A of the Maine Revised Statutes as Chapter 32.²³

The Act establishes retail competition for the purchase and sale of electricity beginning March 1, 2000. The Act preserves Public Utilities Commission regulation of transmission and distribution services, which will remain monopoly services.

²³ Some provisions were unallocated law and are therefore not codified; some other provisions were codified in other portions of the Maine Revised Statutes.

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK

The Law: A Summary
(Current through end of 118th Legislature)

The following is a brief summary of the current restructuring law. A more detailed discussion of the law and the status of PUC proceedings to implement it follows in the next section of this handbook.

Italics indicate changes made by legislation enacted subsequent to LD 1804 (PL 97, Ch. 316). References to the Public Laws which made these changes are given in parentheses.

GENERALLY

- Establishes retail competition for the purchase and sale of electricity *and largely deregulates generation service* (PL 97, c. 710) beginning March 1, 2000;
- Preserves Public Utilities Commission regulation of transmission and distribution services;

DIVESTITURE

- Requires Central Maine Power Company, Bangor Hydro-Electric Company and Maine Public Service Company by March 1, 2000 to divest all generation-related assets and business functions, other than
 - contracts with qualifying facilities, *or others pursuant to re-negotiations of those contracts* (PL 97, c. 558), and contracts with conservation providers,
 - nuclear assets,
 - facilities located outside the United States, and
 - assets the Public Utilities Commission determines necessary for the utility to provide efficient transmission and distribution services;
- Allows the Public Utilities Commission to grant an extension to the divestiture deadline if the extension will likely improve the sale value of the assets;
- Requires utilities to sell the rights to the energy and capacity from the assets that are not divested;

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

- Permits the Public Utilities Commission to require Central Maine Power Company, Bangor Hydro-Electric Company and Maine Public Service Company to divest their ownership interests in Maine Yankee Atomic Power Company on or after January 1, 2009;
- *Grants limited authority to the utilities to sell generation assets they may have acquired from the State (e.g., water rights) (PL 97, c. 710);*

STRANDED COSTS

- Permits electric utilities a reasonable opportunity to recover legitimate, verifiable and unmitigable costs that are otherwise unrecoverable as a result of retail competition in the electric industry;

MARKETING BY T&D UTILITIES

- Allows Central Maine Power Company and Bangor Hydro-electric Company to market and sell electric power through separate but affiliated corporate entities, provided certain standards of conduct are met;
- Caps the permissible market share acquired by marketing affiliates of Central Maine Power Company and Bangor Hydro-Electric Company within their respective transmission and distribution service territories at 33%;
- Prohibits affiliates of Central Maine Power Company and Bangor Hydro-electric Company from providing standard offer service for more than 20% of the load within their respective service territories;
- Prohibits any entity or affiliate of an entity which purchases more than 10% of the stock of Central Maine Power Company or Bangor Hydro-Electric Company from providing competitive electric power service and provides that if the Public Utilities Commission determines the purchase results in a utility affiliate gaining unfair market advantage, the utility must divest its marketing affiliate;
- Allows Maine Public Service Company to market and sell electricity through a separate, affiliated corporate entity in accordance with standards of conduct established by the Public Utilities Commission;

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

- Allows consumer-owned utilities to market and sell power only within their service territories and requires the Public Utilities Commission to limit or prohibit sales by competitors in consumer-owned-utilities' service territories if allowing such sales would cause these utilities to lose their tax-exempt status;

BILLING AND METERING

- Causes billing and metering services to be subject to competition beginning March 1, 2002 and permits the Public Utilities Commission to establish an earlier beginning date for competition for billing or metering provided that the beginning date is no earlier than March 1, 2000;

CONSUMER PROTECTIONS

- Establishes a standard-offer service for consumers who do not seek or take power in the competitive marketplace (providers of the service are chosen by competitive bidding procedure conducted by the Public Utilities Commission, *except that consumer-owned utilities may conduct the competitive bidding procedure for their territories (PL 97, c. 638)*;
- Allows consumers to join together to aggregate their electric needs (load) for the purposes of buying power (and perhaps getting a better deal) in the market. Public entities such as municipalities may act as aggregators but may not require consumers within their jurisdiction to purchase power through them.
- Establishes (and requires the Public Utilities Commission to establish by major substantive rule) consumer protection standards, including specific protections for residential consumers (and other small consumers with demand less than 100 kilowatts) -- such as restrictions on telemarketing by competitive providers -- and information disclosure requirements for competitive providers;
- Establishes licensing requirements for all competitive electricity providers;
- Grants the Public Utilities Commission new enforcement authority to protect consumers;

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

- Prohibits disconnection of service to consumers who fail to pay generation charges but permits disconnection of customers who fail to pay the standard-offer service charge;
- Preserves low-income assistance programs funded through transmission and distribution rates but directs that alternative funding mechanisms be proposed;

RENEWABLES/CONSERVATION

- Establishes a 30% renewable resource portfolio requirement for competitive electricity providers;
- Establishes a program funded through voluntary contributions for renewable resource research and development;
- Requires the commission to establish a wires charge for funding conservation programs at a level comparable to the funding level in place in 1999;

EDUCATION

- Requires electric bill charges to be unbundled beginning in 1999;
- Requires the Public Utilities Commission to develop and implement a consumer education program and requires the commission to organize an advisory board to guide the development of the education program;
- *Authorizes the PUC to impose a special assessment on electric utilities to fund the consumer education program (PL 97, c. 961);*

OTHER

- Requires the Public Utilities Commission to determine the most efficient means of ensuring all portions of the state are connected to the New England grid so that all portions of the state can take full advantage of competition;
- Prohibits entry and exit fees;
- Requires the Public Utilities Commission to monitor the development and conduct of the regional independent system operator and to advocate for

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK

Maine rate-payer interests at the Federal Energy Regulatory Commission with regard to issues concerning the independent system operator;

- Requires Central Maine Power Company, Bangor Hydro-Electric Company and Maine Public Service Company to offer certain transition services and benefits to employees displaced by electric industry competition and funds the costs of these services and benefits through a wires charge;
- *Creates exemptions from certain professional licensing requirements for electric utility employees hired by the purchasers of divested generation facilities; exemptions are repealed March 1, 2000 (PL 97, c. 691);*
- Requires the Public Utilities Commission to annually report to the legislature on the implementation of retail access; and
- Establishes mechanisms to address certain contractual difficulties created by the restructuring of the electric industry.

PROCEDURAL NOTES

- Effective date of original law was September 19, 1997.
- Many PUC proceedings must be completed by March 1, 2000. These will fill in many of the details (e.g., determine the actual amount of recoverable stranded costs, establish particular standards for competitive providers, etc.). Many of these proceedings are major substantive rule-makings and so the results will not take effect until approved by the Legislature. *Two of these major substantive rules (concerning the standard offer and consumer education) have been completed (PUC rules Chapter 301 and 302) and approved with minor changes (Resolves 97, c. 100 and c. 99).*

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATORS' HANDBOOK**

**The Issues:
Status of an Evolving New World**

The following table describes the restructuring law in some detail, issue by issue: It provides both a summary of how the restructuring law deals with each issue and a summary of the status of PUC proceedings to implement the law.

The easiest way in which to use this section will be to refer to the TABLE OF CONTENTS at the beginning of this handbook for the page number of the topic in which the reader is interested. The reader should note that many of the topics are covered in several pages; at the top of each page in this section the topic is noted; new topics always begin on a new page. At the beginning of each topic discussion reference is made to Appendix A, where the relevant provisions of law may be found.

Since restructuring is an on-going process, this section of the report will gradually become out-of-date as time passes. The information is current as of early December 1998.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Deregulation of Generation

Current Law

35-A MRSA 102, sub-§6, sub-§6-A
(Appendix A, pp. 41-43)

The definition of "electric plant" (plant which is regulated by the PUC) has been modified to exclude, beginning March 1, 2000, generation assets, other than those retained by an electric utility. This means that owning and operating generation assets will no longer (beginning March 1, 2000) cause an entity to be regulated as an electric utility.

PUC Implementation

None required.

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Divestiture

Current law

35-A MRSA 3204.
(Appendix A, pp. 9-11)

- Generally

Except as discussed below and unless the PUC grants an extension, by March 1, 2000, CMP, BHE and MPS **must divest** all generation assets and generation-related business activities.

- Exceptions

- Contracts with QFs or conservation providers or for the purpose of restructuring QF or conservation contracts;
- Ownership interests in a nuclear power plant. (The commission may require CMP, BHE or MPS to divest its ownership interests in Maine Yankee on or after January 1, 2009.)
- Ownership interest in a facility located outside the United States (e.g., MPS's Tinker Dam); or
- Ownership interest in a generation asset necessary for the utility to perform its obligations as a T & D utility in an efficient manner.

PUC Implementation

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Divestiture

- Process

CMP, BHE and MPS must divest their generation assets in accordance with **plans** approved by July 1, 1999 by the PUC.

The commission may grant an **extension** in order to improve the sale value of assets. If an extension is granted, the utility must transfer the generation assets to a distinct corporate entity (an affiliate) by March 1, 2000. Conduct of the utility and any affiliated corporate entity receiving the generation assets is regulated. (See Marketing by T&Ds.)

- Docket 97-523

Description: **CMP's** general **plan** for divestiture.

Status: Approved January 14, 1998

- Docket 98-508

Description: **CMP's** proposed **sale** of assets to FPL

Status: Approved, November, 1998. *(On Nov. 16, FPL brought an action in federal court to be "excused" from the sale.)*

- Docket 98-114

Description: **BHE's** general **plan** for divestiture

Status: Approved June 17, 1998

- Docket 98-820

Description: **BHE's** proposed **sale** of assets to PPL

Status: Pending

- Docket 97-670

Description: **MPS's** general **plan** for divestiture

Status: Approved February 20, 1998

- Docket

Description: **MPS's** proposed **sale** of assets to WPS Power Development, Inc.

Status:

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Divestiture

The commission is required to adopt by March 1, 1999 **major substantive rules** establishing the procedure for granting extensions.

- Sale of capacity and energy required

The commission is required to adopt **major substantive rules** by March 1, 1999 that require CMP, BHE and MPS, after February 28, 2000, to sell rights to capacity and energy from all generation assets and generation-related business, including QFs, that are not divested.

- Ownership of generation prohibited

Except as otherwise permitted (see exceptions above and see Marketing by T&Ds below), on or after March 1, 2000, CMP, BHE and MPS may not own, have a financial interest in or otherwise control generation or generation-related assets.

- Authority to transfer certain title

Utility generation assets that are held as a result of a **State grant of right** (water rights, for instance) may (unless otherwise prohibited by law) be transferred (divested) by the utility. The PUC, however, must examine these transfers for consistency with the requirements of law.

- Docket 98-284

Description: **Rule** regarding procedures and standards for sale of rights to energy and capacity from generation assets not divested (QFs, DSM contracts, assets outside the U.S.) and for granting extensions for divesting assets after March 1, 2000.

Status: Pending. Major substantive rules must be adopted by March 1, 1999.

Description: The PUC is examining CMP transfers of certain hydro units held pursuant to state law in the context of the case dealing with the sale to FPL (Docket 98-508).

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Stranded Costs

Current law

PUC Implementation

35A MRSA 3208 and 3209
(Appendix A, pp. 19-22)

- Stranded costs defined

"Stranded costs" **means** a utility's legitimate, verifiable and unmitigable costs (utilities are required to pursue all reasonable means to reduce potential stranded costs) made unrecoverable as a result of the restructuring of the electric industry. **Types** of stranded costs: net investment in a generation asset that exceeds the market value of the asset; future contract payments to QFs that exceed the market value of the power purchased; regulatory assets (e.g., deferred taxes) related to generation. Stranded costs do **not include** costs for obligations incurred on or after April 1, 1995, (this is the date the PUC by order gave notice to utilities that restructuring was coming and that they would take the risk associated with new discretionary costs); however, stranded costs may include (if the PUC approves) certain regulatory assets or obligations beyond a utility's control created prior to March 1, 2000 or obligations incurred to reduce potential stranded costs. As required by federal law, the commission **must include** in the rates of a T&D utility decommissioning expenses associated with a nuclear unit (e.g., Maine Yankee).

- Recovery of stranded costs

Before March 1, 2000, the PUC must estimate the stranded costs for each utility; the PUC uses these estimates to **set stranded costs** charges which T&Ds may then levy on customers beginning March 1, 2000. Every 3 years (beginning in 2003) and until the utility is no longer recovering stranded costs, the commission must **correct** any substantial inaccuracies in the stranded costs estimates (other than stranded costs associated with divested generation assets) and may correct estimates at any other time. The commission must make **adjustments** in charges effective prospectively and may not retroactively correct past estimates. The commission is not permitted to shift cost recovery among customer classes in a manner inconsistent with current rate design law

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Stranded Costs

- Proceedings

The commission must conduct separate adjudicatory proceedings to **determine** stranded costs for each investor-owned and consumer-owned utility. The commission must also establish the revenue requirements for each T&D and stranded costs charges to be charged by each T&D. The proceedings must be completed by July 1, 1999.

The commission must complete an adjudicatory proceeding by October 1, 1999 setting the **design** of cost recovery (i.e., how the costs will be spread among the various rate classes) for T&D costs, stranded costs and other recoverable costs and for the design of rates for backup or standby service (when a customer is not actually taking the service but wants the service available).

- Exit and entry fees prohibited

A customer who significantly reduces or eliminates consumption of electricity due to self-generation, conversion to an alternative fuel or demand-side management may not be assessed an exit or reentry fee in any form for the reduction or elimination of consumption or re-establishment of service with a T&D utility.

- Docket 97-580

Description: To determine **CMP's** stranded costs and set stranded costs wires charge and revenue requirement for CMP as a T&D.

Status: Pending; must be completed by July 1, 1999.

- Docket 97-596

Description: To determine **BHE's** stranded costs and set stranded costs wires charge and revenue requirement for BHE as a T&D.

Status: Pending. Must be completed by Oct. 1, 1999.

- Docket 98-577

Description: To determine **MPS's** stranded costs and set stranded costs wires charge and revenue requirement for MPS as a T&D.

Status: Pending. Must be completed by Oct. 1, 1999.

- (Several dockets)

Description: To determine the **COUs'** stranded costs and set stranded costs wires charge and revenue requirement for COUs as T&Ds.

Status: Pending. Must be completed by Oct. 1, 1999

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Marketing by T&Ds

Current law

35A MRSA 3205-3207
(Appendix A, pp. 12-19)

1. CMP and BHE

- Marketing limitations

Beginning on the date of retail access, CMP and BHE may not sell electricity to consumers. However, CMP and BHE may create affiliates to sell electricity to consumers. The affiliate can

A. Sell electricity **outside the utility's T&D territory** without any market share limitation;

B. Sell electricity **within the utility's T&D territory**, but sales are **limited** as follows:

i. The affiliate may not sell more than **33%** of the total kilowatt hours sold within the T&D service territory; and

ii.. The affiliate may not provide standard-offer service to more than **20%** of electric load within T&D the territory.

By January 1, 2005, the commission must evaluate the need for the 33% limitation and report its findings and recommendations to the Utilities Committee.

- Standards of conduct

There are detailed standards of conduct established in law governing interaction between CMP and BHE and any affiliated energy providers (see pp. 13-17 of Appendix A).

PUC Implementation

- Docket 97-930

Description: Approval of creation of **CMP** subsidiary, MainePower, as an energy marketing affiliate

Status: Approved July 9, 1988

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Marketing by T&Ds

- Penalties; divestiture

CMP or BHE must **divest** its affiliated competitive provider if the commission determines in an adjudicatory proceeding that: **A.** CMP or BHE or an affiliated competitive provider knowingly violated any of the standards of conduct; and **B.** The violation resulted or had the potential to result in substantial injury to retail consumers of electric energy or to the competitive retail market for electric energy. The commission may impose administrative penalties of up to \$10,000 a day for a violation of any standards of conduct.

- Rules

The commission must adopt **major substantive rules**: **A.** Governing the tracking of kilowatt-hour sales by an affiliate of CMP or BHE (in order to enforce the market share limitation); **B.** Governing the procedure for a "poison pill" divestiture of a marketing affiliate; and **C.** Establishing any further standards of conduct needed to govern the interaction between CMP and BHE and affiliated competitive providers. These rules must be provisionally adopted by March 1, 1999.

2. MPS

Beginning on the date of retail access, MPS may not sell electricity to consumers. However, MPS may create an affiliated business which may sell electricity to consumers. There are **no market share limitations** imposed on an affiliate of MPS. By March 1, 1999, the commission must provisionally adopt a **major substantive rule** establishing the extent of separation between MPS and its affiliated electricity provider necessary to avoid cross-subsidization and market power abuses. In adopting rules, the commission must consider codes of conduct, restrictions on employee activities, accounting standards, and information and service comparability requirements.

- Docket 98-457

Description: **Rule** to establish standards of conduct for distribution utilities and affiliated providers.

Status: Rule provisionally adopted Nov. 30, 1998.

- Docket 98-457 (same as above)

Description: Same as above.

- Docket 98-138

Description: Approval of creation of **MPS** subsidiary, Energy Atlantic, LLC, an energy marketing affiliate.

Status: Approved September 2, 1998.

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Marketing by T&Ds

3. COUs

COUs may sell retail generation service **only within their respective service territories** and may not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service. The commission by ***routine technical rule*** must limit or prohibit retail competition within the service territory of a COU if allowing it would cause the COU to lose its tax-exempt status.

4. Market Power Study

The PUC and the AG must study market power issues raised by restructuring, including issues associated with vertical market power, horizontal market power, and the grid isolation (northern Maine). The final report is due to the Utilities Committee December 1, 1998. (See pp. 45-46, Appendix A for a full description of what the study must examine, at a minimum.)

- (Docket 98-457)

Description: Commission has decided that there is no evidence presently that **COU's** will lose **tax** exempt status if competition is allowed in their territories.

Status: No rules are proposed to be adopted on this matter.

Description: Interim report identifying issues but not making recommendations issued February 2, 1998. **Final report** issued Dec. 1, 1998.

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Consumer Protections

Current law

35A MRSA 3203 and 3214
(Appendix A, pp. 5-8, 29)

1. Licensing of competitive electricity providers

Competitive electricity providers must be licensed by the commission. The applicant must **(a)** be financial capable to undertake the business; **(b)** be able to enter into interconnection arrangements with T&D utilities; **(c)** disclose pending legal actions and customer complaints filed against it; **(d)** be able to satisfy the renewable resource portfolio requirement; and **(e)** disclosure all affiliates. The commission may limit the duration and effectiveness of a license to a specified term.

The commission must adopt ***routine technical rules*** governing the procedures for issuing and revoking a license.

2. Low-income assistance

Based on an assessment of aggregate customer need, the commission **must provide financial assistance** to low-income households with funds raised through T&D rates.

The commission may not terminate this assistance **unless General Fund funding completely replaces** the assistance. The commission may adjust assistance based on the amount of any financial support from the General Fund and may reinstitute assistance if the commission finds that the General Fund funding is no longer adequate.

T&Ds are free to offer additional special rates or programs for low-income customers, with the commission's approval.

PUC Implementation

- Docket 98-608

Description: **Rule** (Ch. 305) on licensing requirements for competitive providers and standard consumer protections.
Status: Pending routine technical rule.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Consumer Protections

3. Residential consumer protection provisions

A competitive electricity provider that provides service to a customer with a demand of 100 kilowatts or less (e.g., residential customers):

- A. May not terminate generation service without at least 30 day prior notice to the customer;
- B. Must offer service to the customer for a minimum period of 30 days;
- C. Must allow the customer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection;
- D. May not telemarket services to the customer if the customer has filed with the commission a written request not to receive telemarketing from competitive electricity providers;
- E. Must disclose to the customer within 30 days of contracting with the customer information required by the commission to be disclosed. (See Information filings, above.)

4. Miscellaneous provisions

- Aggregation

Consumers are permitted to join together to aggregate their electric needs (load) for the purpose of buying power (and perhaps getting a better deal) in the competitive market.

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Consumer Protections

- Informational filings; standard billing

The commission must establish by **major substantive rule** information disclosure and filing requirements for competitive electricity providers and standards for publishing and disseminating information for consumers. The rules must require generation providers to **file** their generally available rates, terms and conditions with the commission. The commission must “consider” requiring **standard billing** information on bills for electric power service and investigate the possibility of making this consistent with other New England states. The commission may not prohibit a T&D and a provider from agreeing to include both charges on a single bill. The commission may not prohibit information being placed on bills for power service. The rules must be provisionally adopted by March 1, 1999. (See page 34 of Appendix A for types of information disclosure the PUC must “consider”.)

- Consumer protection standards; rules

The commission must establish by **routine technical rule** consumer protection standards. The commission may not regulate the rates of any competitive electricity provider.

- Penalties

The commission may impose a penalty of up to \$5,000 a day for each violation of consumer protection requirements, issue cease and desist orders, and order restitution for any party injured by a violation. The commission through its own counsel or through the Attorney General may apply to the Superior Court to enforce any order made or action taken by the commission. The commission has a duty to notify the Attorney General if the PUC has reason to believe that a competitive electricity provider or T&D utility has violated any provision of law for which criminal prosecution is provided (e.g., antitrust laws).

- Docket 98-234

Description: **Rule** (Ch. 306) to establish uniform information disclosure requirements (e.g., standard billing) for competitive providers. This information disclosure may take the form of a label by which customers would be informed of certain basic information about a competitive provider.

Status: Pending; major substantive rule due March 1, 1999.

- Docket 98-608

Description: **Rule** (Ch. 305) on licensing requirements for competitive providers and standard consumer protections.

Status: Pending routine technical rule.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Consumer Protections

- Dispute resolution

The commission is required to resolve disputes between competitive electricity providers and retail consumers of electricity concerning consumer protection standards.

- Access to load data

The commission must provide to competitive providers, on request, load data on a class basis, but not on an individual customer basis, that is in the possession of a T&D utility (subject to reasonable protective orders to protect confidentiality).

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Standard Offer

Current law

35-A MRSA 3212
(Appendix A, pp. 24-27)

- Generally

Standard offer service is designed to provide a sort of safety net, at least during the early years of retail access, so that those who don't wish, for whatever reason, to choose their power supplier in the competitive market can take service from a provider selected by the PUC. The commission must ensure that standard-offer service is available to all consumers of electricity at least until March 1, 2005.

- PUC Rules

The commission must adopt **major substantive rules** establishing terms and conditions for standard-offer service.

PUC Implementation

- Docket 97-739

Description: **Rule** (Chapter 301) to establish terms and conditions that govern standard-offer service and the process of selection of SO provider.

Status: Rule finally adopted April 22, '98. (In accordance with Legislative approval and modification , Resolves 97, ch. 100)

- Docket 98-579

Description: **Amend the rule** to conform to amended law permitting COU's to choose the provider for their territories (PL 97, ch. 638, §2 -- see MPS and COUs, below).

Status: Pending (since it is an amendment of a major substantive rule, it requires legislative approval.)

- Docket 98-781

Description: Investigation of **rate design** for standard offer service.

Status: Pending. Proceeding being done in concert with implementation of bill unbundling rule (Ch. 309).

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Standard Offer

- Bid process

The commission must administer a bid process to select standard-offer service provider(s) for each T&D utility's service territory. By December 1, 1999, the commission must select the standard-offer service provider or providers for that territory. (See exceptions for COUs, below)

- 20% Market limitation; CMP and BHE

A competitive electricity provider that is an affiliate of CMP or BHE may submit bids to provide standard-offer service for up to 20% of the electric load within the service territory of the utility with which it is affiliated.

- MPS and COUs

MPS and any consumer-owned T&D utility may submit bids to provide standard-offer service for that utility's service territory. A COU may choose to pick the standard offer service provider(s) for its territory rather than have the PUC do so. The COU must conduct the competitive bidding process in accordance with the commission's rules establishing the criteria for approval of a standard-offer service provider.

- Default

The commission may, in the event of a default by a standard-offer service provider, require the T&D utility in whose service territory the provider was providing standard-offer service to arrange and to provide for default service.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Standard Offer

- Restructuring reconsidered if...

If the qualifying bids for standard-offer service in any service territory, when combined with the regulated rates of T&D service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission must investigate and report to the Legislature whether the implementation of retail access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place.

- Continuation of Standard Offer

By January 1, 2004, the commission must begin an investigation to determine whether the continued availability of standard-offer service after March 1, 2005 is necessary and in the public interest. The commission must make its report to the Legislature by June 30, 2004.

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Renewables/Conservation

Current law

35-A MRSA 3210 and 3211
(Appendix A, pp. 22-24)

- Definition

"Renewable resource" means a source of electrical generation that generates power that can physically be delivered to the NEPOOL grid and that meets certain specific fuel source and size requirements specified in law (see pp. 22-23 of Appendix A).

- Portfolio requirements

As a condition of licensing, each competitive electricity provider must demonstrate that no less than 30% of its portfolio of supply sources for retail electricity sales in this State are accounted for by renewable resources. The commission, by January 1, 1999, must provisionally adopt **major substantive rules** establishing reasonable procedures for implementing the portfolio requirement.

- PUC report

The commission must review the 30% portfolio requirement and make a recommendation for any change to the Utilities Committee no later than March 1, 2005.

- Funding for research and development

The commission by **routine technical rule** must establish a program allowing retail consumers of electricity to make voluntary contributions to fund renewable resource research and development. Funds must be distributed to the University of Maine System, the Maine Maritime Academy or the Maine Technical College System for renewable resource research and development.

PUC Implementation

- Docket 98-619

Description: **Rule** (Ch. 311) to implement renewable portfolio requirement

Status: Major substantive rule provisionally adopted 11/30/99

- Docket 98-620

Description: **Rule** (Ch. 312) establishing voluntary funding mechanism for renewable research and development fund

Status: Pending (no due date; routine technical rule)

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Renewables/Conservation

- Conservation programs

T&Ds must implement energy conservation programs; the costs of such programs may be recovered in the T&D rates. T&Ds must select conservation service providers through periodic competitive bidding programs. The funding for these programs must initially be comparable to the amount expended for similar programs in 1999 (the PUC must regularly review the amount of funding needed). By July 1, 1999, the commission must provisionally adopt **major substantive rules** implementing these energy conservation program requirements.

- Docket 97-591

Description: **Rule** (Ch. 380) to establish means of implementing conservation program requirements
Status: Pending; Major substantive rule due July 1, 1999.

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Billing and Metering

Current law

35A MRSA 3213, 3202 (4)
(Appendix A, pp. 28, 4)

- Bill unbundling

Beginning January 1, 1999, electric utilities must issue bills that separate ("unbundle") the cost of electric capacity and energy from T&D and other charges for electric service. The commission must adopt by July 1, 1998 a ***routine technical rule*** establishing unbundled bill requirements.

- Electric billing and metering services

By March 1, 2002, pursuant to ***major substantive rules*** that the PUC must adopt, the provision of electric billing and metering services will be subject to competition. The commission by rule may establish an earlier date, but no earlier than March 1, 2000. The commission must in its rules establish minimum standards to protect consumers and establish codes of conduct governing the relationship among T&Ds (providing billing and metering services), affiliates of T&Ds (providing such services) and other providers of these services. The commission must determine each T&D's costs of providing these services and must separate this into a separate consumer charge. Rules must be provisionally adopted by March 1, 1999.

PUC Implementation

- Docket 98-306

Description: **Rule** (Ch. 309) to require bill unbundling so that consumers can see the components of their electric bill prior to restructuring.

Status: Routine technical adopted June 30, 1998 (Ch 309)

- Docket 98-688

Description: **Inquiry** into competitive billing and metering issues.

Status: Pending (major substantive rule due March 1, 1999)

- Docket 98-482

Description: **Inquiry** into standards for transaction between T&Ds and competitive providers with regard to billing and metering before it is made competitive.

Status: Pending (this is separate from the major substantive rule, above)

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Consumer Education

Current law

35A MRSA 3213 (PL 97, ch. 691, §9)
(Appendix A, pp. 28, 40)

- Consumer education.

The commission must adopt **major substantive rules** implementing a consumer education program.

PUC Implementation

- Docket 97-583

Description: **Rules** (Ch 302) governing the implementation of a program for educating consumers about restructuring
Status: Major substantive rule finally adopted 4/22/98 in accordance with Legislative approval and modification (Resolve 1997, ch 99)

- Docket 98-565

Description: Approval of initial working **plan** of the independent contractor the PUC has hired to undertake the education program (NL Partners of Portland)
Status: Issued August 28, 1998

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Employee Transition Benefits

Current law

32 MRSA 2401-A, sub-§4-A and 15109, sub-§2, ¶A; 35-A MRSA 3216
(Appendix A, pp. 52, 31)

1. Exemptions

Electric utility employees are exempt from the licensing requirements that generally apply to persons who install and service oil and solid fuel burners and who operate boilers. Because of divestiture, these employees, when they go to work for the entity that buys the generation assets, will ultimately lose their exemptions from licensing. However, the law provides for a transition until March 1, 2000 during which the exemptions will continue; allowing the employees time to meet the licensing requirements.

2. Transition; utility employees

- Eligibility

"Eligible employees" means all employees of an electric utility (1) who are not officers of the utility; (2) who are employed by the utility on January 1, 1998; and (3) who are laid off due to retail competition. The commission by ***routine technical rule*** must establish a date after which a layoff is deemed not to have been due to retail competition.

- Substantive plan.

Prior to March 1, 2000, CMP, BHE and MPS must prepare a plan for providing transition services and benefits for eligible employees. The plan must offer certain specific benefits enumerated in the law (see pp. 31-32 of Appendix A)

PUC Implementation

- Docket 98-238

Description: **Rule** (Ch. 303) to implement employee transition benefits provisions

Status: Adopted July 1, 1998

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Employee Transition Benefits

- Process

CMP, BHE and MPS must file with the commission a plan for providing transition services and benefits for eligible employees. A plan must be filed prior to the utility finalizing any transaction that would result in an eligible employee being laid off or at least 90 days prior to March 1, 2000, whichever is first

- Cost recovery

T&D's are entitled to pass on to ratepayers the costs of providing these benefits.

- Rules

The commission must adopt ***routine technical rules*** necessary to implement the employee benefits requirements .

- Docket 98-050

Description: **CMP's** transition benefits plan

Status: Approved March 12, 1998

- Docket 98-700

Description: **BHE's** transition benefits plan

Status: Pending

- Docket 98-588

Description: **MPS's** transition benefits plan

Status: Approved September 28, 1998

- Docket 98-238

Description: **Rule** (Ch. 303) to implement employee transition benefits provisions

Status: Adopted July 1, 1998

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Employee Transition Benefits

- Collective bargaining units

If CMP, BHE or MPS or one or more of its subsidiary or parent companies is party to a collective bargaining agreement and if as a result of retail competition any of those companies creates, acquires or merges with any other entity, that entity must continue to recognize and bargain with the union representing the employees and must “refrain” from making unilateral changes in the employees' terms and conditions of employment. The successor employer is bound to the terms of the collective bargaining agreement to the extent permitted by federal law.

ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK

Issues of the Grid (Northern Maine)

Current law

35-A MRSA 3206 (2)
(Appendix A, p. 19)

- Commission study

The commission must conduct a study to determine the most effective and efficient means of ensuring that northern Maine (currently connected to the New England electric grid through transmission lines that pass through Canada) is connected to the grid in a manner that ensures that customers there are able to take full advantage of retail access. By January 1, 1999, the commission must complete its study and report its findings and recommendations to the committee.

PUC Implementation

- Docket 97-586

Description: PUC **study** of the connection between Northern Maine and the New England grid.

Status: Report submitted December 1, 1998.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Reports and Rules

The following is a summary of the reports and rules that are required by the restructuring law. This information repeats what is discussed in more detail in the previous section; it is summarized here for the reader's convenient reference.

The information is provided in three formats:

- in summary list form (in the list of rules, only major substantive rules are identified),
- in table form (in the rules table, major substantive and required routine technical rules are listed), and
- in calendar form (only reports and major substantive rules due to the 119th, 1st Regular Session, are listed).

In the first two formats, references to the relevant sections of law, which may be found in Appendix A, are provided.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Reports

- **Annual report**

Annual report of PUC activity on restructuring due at end of each year (next due 12/31/98). (See p. 33, Appendix A).

- **Market power**

Final report of PUC and AG on market power issues due 12/1/98. (See pp. 45-46, Appendix A).

- **Conforming amendments**

PUC report of amendments to Title 35-A that are necessary to conform to the restructuring law due 12/31/98. (See p. 39, Appendix A).

- **Northern Maine and the grid**

Report on issues related to northern Maine's lack of adequate connection to the grid due 1/1/99. (See p. 39, Appendix A).

- **Standard offer**

Report on whether standard offer should be continued due 12/31/2004. (See p. 27, Appendix A).

- **Market limitations**

Report on appropriateness of 33% market share limitation on CMP and BHE due 1/1/2005. (See p. 19, Appendix A).

- **Renewable resources**

Evaluation of renewable portfolio program due 3/1/2005. (See p. 23, Appendix A).

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Reports To Legislature

Subject	From	Cite ²⁴	Page ²⁵	Due date	Comments
Restructuring	Work Group	Resolve 95, ch. 48	**	11/1/95	Issued 11/1/95; identified issues
Restructuring	PUC	Resolve 95, ch. 48	**	1/1/97	Issued 1/1/97; proposed plan
Low-income alternate funding	PUC/SPO	PL 97, ch. 316, Sec. 10	38	1/1/98	Issued 1/1/98; proposal not adopted
Market power, interim report	PUC/AG	PL 97, ch. 447, Sec. B-1	46	2/1/98	Issued 2/1/98; identified issues
Market power, final report	PUC/AG	PL 97, ch. 447, Sec. B-1	46	12/1/98	Issued 12/1/98; proposes law changes
Conforming amendments	PUC	PL 97, ch. 316, Sec. 11	39	12/31/98	
Northern ME grid connection	PUC	§3206(3)	19	1/1/99	Issued 12/1/98; identifies issues
Annual report	PUC	§3217(1)(2)	33	yearly 12/31	1st report issued 12/30/97
ISO (if problems)	PUC	§3217(3)	34	No date	
Standard offer continuation	PUC	§3212(4); §3217	27, 33	12/31/2004	
Market share limits (33%)	PUC	§3205(2)	13	1/1/2005	
Renewable portfolio	PUC	§3210(4)	23	3/1/2005	

²⁴ All references to § are in Title 35-A

²⁵ Page numbers refer to Appendix A

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Rules Review (major substantive rules)

- **Billing & Metering**

Rule establishing and governing competitive billing and metering due 3/1/99. (See p. 4, Appendix A).

- **Competitive Providers: Information filings**

Rule establishing requirements for information filings by competitive providers due 3/1/98. (See pp. 5, 34, Appendix A).

- **Divestiture**

Rules establishing procedures for granting extensions to the divestiture deadline and implementing the sale of capacity requirements for assets not divested due 3/1/99. (See p. 10, Appendix A).

- **Marketing by IOUs**

Rules regulating marketing by affiliates of CMP, BHE and MPS are due 3/1/99. (See pp. 13, 17, 18, Appendix A).

- **Renewables**

Rules implementing renewable resource requirements due 1/1/99. (See p. 23, Appendix A).

- **Conservation**

Rules implementing conservation program requirements due 7/1/99. (See p. 24, Appendix A).

- **Standard offer**

Rule implementing the standard offer requirements has been adopted in accordance with legislative approval and modifications. Because of a change in the law in 1998 concerning COUs, the rule must be amended and the amendment will require Legislative approval. There is no due date. (See p. 27, Appendix A).

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

- Consumer education

Rules establishing a consumer education program have been adopted and approved with changes by the Legislature (See p. 54, Appendix A).

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Required PUC rules on restructuring (current through November, 1998)

Subject ²⁶	Due	Law Cite ²⁷	Page ²⁸	Rule ²⁹	Current Status
Billing & Metering, Comp.	3/1/99	§3202(4)	4		Inquiry pending (98-688)
Comp. Providers, Info. Filings	3/1/99	§3203(3); PL97, Ch.316, Sec.4	5, 34	(Ch. 306)	Rule pending (98-708)
<i>Consumer Protections</i>	No date	§3203(6)	6	(Ch. 305)	<i>Rule pending (98-608)</i>
<i>Comp. Providers, Licensing</i>	No date	§3203(5)(9)	6, 7	(Ch. 305)	<i>Rule pending (98-608)</i>
Divestiture, extension	3/1/99	§3204(3)	10	(Ch. 307)	Rule pending (98-824)
Divestiture, sale of capacity	3/1/99	§3204(4)	10	(Ch. 307)	Rule pending (98-824)
Marketing, large T&Ds	3/1/99	§3205(2)(4)	13, 17	(Ch. 304)	Provisionally Adopted (98-457)
Marketing, small T&Ds	3/1/99	§3206(2)	18	(Ch. 304)	Provisionally Adopted (98-457)
<i>Marketing, in COU territory</i>	No date	§3207(2)	19	()	<i>Rule pending (98-457)</i>
Renewable portfolio standard	1/1/99	§3210(3)	23	(Ch. 311)	Rule pending (98-619)
<i>Renewable, voluntary fund</i>	No date	§3210(5)	24	(Ch. 312)	<i>Rule pending (98-620)</i>
Conservation programs	7/1/99	§3211	24	(Ch. 380)	Rule pending (97-591)
Standard offer	2/15/98	§3212(1)(2)	25	Ch. 301	Approved w/changes, Res.97, ch. 100
Standard offer (COUs)	No date	§3212(6)	27	Ch. 301	Amended rule pending (98-579)
<i>Bill unbundling</i>	7/1/98	§3213(1)	28	Ch. 309	<i>Rule adopted June 30, 98</i>
Consumer education	2/1/98	§3213(2)	28	Ch. 302	Approved w/change, Res.97, ch. 99
<i>Employee transition</i>	No date	§3216(6)	33	(Ch. 303)	<i>Rule pending (98-238)</i>
<i>QF contracts</i>	No date	PL 97, ch. 316, Sec. 7, 8	37-38	Ch. 360	<i>Rule adopted March 10, 1998</i>

²⁶ Items in **bold** are major substantive rules; items in *italics* are routine technical rules

²⁷ All references to Title 35-A unless otherwise indicated.

²⁸ Page numbers refer to Appendix A

²⁹ Chapter number of adopted or proposed rule (items in parentheses are not yet final).

<p align="center">ELECTRIC INDUSTRY RESTRUCTURING A LEGISLATOR'S HANDBOOK</p>
--

Calendar of required restructuring submissions to 119th Legislature

DATE			REPORT ³⁰	MAJOR RULE
Year	Month	Day		
98	Dec.	1	Market Power (AG and PUC)	
		31	Annual restructuring report	
			Conforming amendments	
99	Jan.	1	Northern Maine grid connection	Renewables, portfolio standard
	Feb.			
	March	1		Competitive billing and metering
				Competitive providers, info. filings
				Divestiture, date extension
				Divestiture, sale of capacity
				Marketing, large T&Ds
				Marketing, small T&Ds
	April			
	May			
	June			
	July	1		Conservation programs

³⁰ From PUC, unless otherwise indicated

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

Federal Matters

- Federal Laws/Congressional Activity

While there have been a number of attempts by members of Congress to do something with respect to electric industry restructuring, including proposals to mandate restructuring in all states, to repeal PUCHA (the law which imposes strict SEC review and regulation of utilities) and to repeal PURPA (the law which establishes a requirement that utilities purchase power from IPPs at avoided cost), nothing of significance has been enacted.

- FERC

The Federal Energy Regulatory Commission (FERC) has approved ISO New England, 83 FERC 61,045, April, 20, 1998.

The ISO (Independent System Operator) is a non-profit private corporation approved by the FERC to assume responsibility for management of the New England bulk (wholesale) electric power generation and transmission systems and administration of the FERC interstate (wholesale) open access tariff.

The ISO is based in Holyoke, Massachusetts and describes the administration of the competitive wholesale market as follows:

ISO New England is a "day-ahead - hourly" marketplace. This means that wholesale electricity suppliers and generators will bid their resources into the market the day before and submit separate bids for each resource for each hour of the day.

ISO New England will tabulate the bids and stack them in dollar terms from lowest to highest matching the expected hourly demand forecast for that hour and each hour in the next day. The ISO Operations staff will then determine the least cost dispatch sequence for the next day which reflects the actual bids. Generators will then be dispatched to match the actual load occurring on the system.

The highest bid resource that was dispatched to meet actual load sets the "market clearing price" for electricity. This is the price that will be paid to all suppliers by buyers who purchase power from the residual market.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

The competitiveness of the market is driven by the fact that if a supplier bids too high price for their resources, then the unit generator is not dispatched and the supplier receives no revenue. This encourages the supplier to bid the most competitive prices in order to compete for dispatch in the wholesale marketplace.

On October 28, 1998, the FERC issued two rulings (called the October 1998 Rulings) in which it disapproved of NEPOOL rules regarding generator access to the electric grid.³¹ FPL, the entity that has contracted to purchase CMP's assets, has filed suit in US District Court, Southern District of New York, claiming that the ruling "prevents FPL Energy Maine from having the same unconstrained access to the NEPOOL (pool transmission facilities) that CMP had always enjoyed"³² and that, as a consequence, CMP cannot deliver under the contract what FPL claims it bargained for: the "operation of the CMP assets in a manner that is substantially consistent with CMP's historic operation of the assets."³³ The PUC and

³¹The following news release issued by the FERC on October 28, 1998 describes its rulings:

COMMISSION PROVIDES GUIDANCE TO NEW ENGLAND TRANSMISSION PLANNING PROCESS

As part of its ongoing efforts to improve the operations of regional electricity markets, the Federal Energy Regulatory Commission today directed the New England Power Pool (NEPOOL) to file a new method for determining how it will address future transmission needs as the region seeks to accommodate changes in a restructured utility industry.

Under its open access tariff, NEPOOL is operated as a single control area. The control area essentially covers all the generation and transmission facilities in the six-state New England region. New England's non-profit Independent System Operator--ISO-New England--assumed operational control of NEPOOL's public utility members' transmission facilities in July 1997.

The Commission told NEPOOL that its interconnection procedures should be more specific and consistent and it should adopt a single application process administered by ISO-New England. NEPOOL must file a new plan by March 31, 1999.

"The Commission must ensure that NEPOOL develops fair and reasonable rules for all competitors. This is essential if we are to create effective competition in the New England energy market," said Commission Chairman James J. Hoecker.

The Commission found that NEPOOL's existing System Impact Study (SIS) procedures are based on faulty assumptions producing inaccurate and unreliable transmission expansion costs.

The SIS is a means by which NEPOOL determines whether the addition of a new generating unit requires expansion of the transmission grid.

Among other things, the Commission noted that requests for new generation exceed NEPOOL's existing generation resources. Following NEPOOL's current procedures would result in overexpansion of its transmission system.

Although today's order addresses NEPOOL's proposal, the New England ISO will be charged with implementing it.

In light of today's actions, the Commission, in a companion order, agreed with a complaint filed by Champion International Corporation and Bucksport Energy (Docket No. EL98-69-000). The companies charge that their planned joint project to build a gas-fired generation plant was constrained by NEPOOL's procedures. The companies complained of the difficult and costly application process, which caused them to lose their "place in line." NEPOOL evaluates proposed generation projects and their impact on the transmission system on a first-come, first-serve basis. The Commission directed NEPOOL to accommodate the companies' concerns and reinstate their place in line.

The Commission deferred action on NEPOOL's proposed pricing policy to cover transmission expansion costs. NEPOOL's proposal to split the costs between project applicants and current transmission system customers will be addressed when NEPOOL files its comprehensive management proposal next March.

³²FPL Energy Maine, Inc. complaint, page 23.

³³Id.

**ELECTRIC INDUSTRY RESTRUCTURING
A LEGISLATOR'S HANDBOOK**

then the FERC both subsequently approved the sale of the assets by CMP to FPL. In its approval of the sale, the FERC commented that FPL would acquire and be entitled to maintain CMP's existing access to the grid. FPL was apparently not satisfied by this comment,³⁴ and, at the time this report goes to print, continues to maintain its court action seeking release from the contract. While CMP publicly supported the continuance of the NEPOOL rule which the FERC disapproved, CMP vigorously opposes FPL's action and maintains that the consummation of purchase and sale agreement was in no manner contingent on the maintenance of the NEPOOL rule.

³⁴ In a November 24, 1998 press release, FPL Group stated that the FERC comments in the context of its approval of the sale "(do) not rectify the effect of FERC's October order reversing the New England Power Pools rules that assured that the operations of existing generators would not be materially and adversely affected by new generators."

APPENDIX A

THE ELECTRIC INDUSTRY RESTRUCTURING LAW

(as amended and including other related enactments)

Current through end of 118th Legislature

TABLE OF CONTENTS

THE CENTRAL PROVISIONS OF THE ORIGINAL BILL (as amended)	
35-A MRSA CHAPTER 32; The Heart of the Matter.....	1
§3201. Definitions.....	1
§3202. Retail access; deregulation	4
§3203. Licensing of competitive electricity providers; consumer protections; enforcement.....	5
§3204. Divestiture of generation	9
§3205. Marketing; large utilities.....	12
§3206. Marketing; small utilities	18
§3207. Marketing; consumer-owned utilities	19
§3208. Stranded cost recovery	19
§3209. Rate design	22
§3210. Renewable resources.....	22
§3211. Conservation programs.....	24
§3212. Standard offer.....	24
§3213. Bill unbundling; consumer education.....	28
§3214. Needs-based low-income assistance.....	29
§3215. Commission authority and responsibility.....	30
§3216. Transition; utility employees.....	31
§3217. Reports.....	33
Unallocated law from original bill.....	34
Sec. 4 PUC Rules on filings by competitive electricity providers.....	34
Sec. 5 QF contracts: treatment	35
Sec. 6 QF contracts: contracts tied to retail tariffs.....	36
Sec. 7 QF contracts: PUC set terms for short term energy rate contracts.....	37
Sec. 8 QF Contracts: PUC to set terms of other contracts; routine technical rules	38
Sec. 9 QF contracts no longer mandated by State law	38
Sec. 10 PUC/SPO Recommendation for low-income assistance program	38
Sec. 11 Conforming amendments (PUC report.....	39
Sec. 12 Committee Authority.....	39
Housekeeping provisions from original bill	39
OTHER RELATED LEGISLATION	
Education Allocation	40
Deregulation of Generation	41
Advanced Registration of Competitive Providers	44
Market Power Study	45
Hot Bench Issue	47
Protective orders	48
Intervenor funding.....	51
Employee licensing; transition.....	52
Kennebunk Light and Power District (CMP stranded costs	53
Approval of Consumer Education Rule.....	54
Approval of Standard Offer Rule.....	54

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

AN ACT TO RESTRUCTURE THE STATE'S ELECTRIC INDUSTRY

1997 PUBLIC LAW

CHAPTER 316

H.P. 1274 - L.D. 1804

Effective Date: September 19, 1997

As amended by:

- 1997 PL, Ch.558 (118th, 1st Reg., LD 1899)
- 1997 PL, Ch.447 (118th, 1st Reg., LD 1871)
- 1997 PL, Ch.691 (118th, 2nd Reg., LD 2285)
- 1997 PL, Ch.710 (118th, 2nd Reg., LD 1935)
- 1997 PL, Ch.638 (118th, 2nd Reg., LD 2018)

Additional related enactments:

- 1997 P&SL, Ch. 72 (118th, 2nd Reg., LD 2134)
- 1997 Resolves, Ch. 99 (118th, 2nd Reg., LD 2209)
- 1997 Resolves, Ch. 100 (118th, 2nd Reg., LD 2220)

35-A MRSA CHAPTER 32; The Heart of the Matter

CHAPTER 32

ELECTRIC INDUSTRY RESTRUCTURING

§3201. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Affiliated interest.** "Affiliated interest" has the same meaning as provided in section 707, subsection 1, paragraph A.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

2. Aggregate. "Aggregate" means to organize individual electricity consumers into a group or entity for the purpose of purchasing electricity on a group basis.

3. Aggregator. "Aggregator" means an entity that gathers individual customers together for the purpose of purchasing electricity.

4. Broker. "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity.

5. Competitive electricity provider. "Competitive electricity provider" means a marketer, broker, aggregator or any other entity selling electricity to the public at retail.

6. Consumer-owned transmission and distribution utility. "Consumer-owned transmission and distribution utility" means any transmission and distribution utility wholly owned by its consumers, including, but not limited to:

A. The transmission and distribution portion of a rural electrification cooperative organized under chapter 37;

B. The transmission and distribution portion of an electrification cooperative organized on a cooperative plan under the laws of the State;

C. A municipal or quasi-municipal transmission and distribution utility;

D. The transmission and distribution portion of a municipal or quasi-municipal entity providing generation and other services; and

E. A transmission and distribution utility wholly owned by a municipality.

7. Divest. "Divest" means to legally transfer ownership and control to an entity that is not an affiliated interest.

8. Electric billing and metering services. "Electric billing and metering services" means the following services:

A. Billing and collection;

B. Provision of a meter;

C. Meter maintenance and testing; and

D. Meter reading.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

9. Entity. "Entity" means a person or organization, including but not limited to any political, governmental, quasi-governmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization.

10. Generation assets. "Generation assets" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the generation of electric power.

11. Generation service. "Generation service" means the provision of electric power to a consumer through a transmission and distribution utility but does not encompass any activity related to the transmission or distribution of that power.

12. Large, investor-owned transmission and distribution utility. "Large, investor-owned transmission and distribution utility" means an investor-owned transmission and distribution utility serving more than 50,000 retail customers.

13. Marketer. "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.

14. Public entity. "Public entity" includes the State, any political subdivision of the State, a municipality and any quasi-municipal entity.

15. Qualifying facility. "Qualifying facility" has the same meaning as provided in section 3303.

16. Small, investor-owned transmission and distribution utility. "Small, investor-owned transmission and distribution utility" means an investor-owned transmission and distribution utility serving 50,000 or fewer retail customers.

17. Retail access. "Retail access" means the right of a retail consumer of electricity to purchase generation service from a competitive electricity provider.

18. Transmission and distribution plant. "Transmission and distribution plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the transmission, distribution or delivery of electricity for light, heat or power for public use and includes all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used, or to be used, for the transmission or distribution of electricity for light, heat or power for public use.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

19. Transmission and distribution utility. "Transmission and distribution utility" means a person, its lessees, trustees, receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State.

§3202. Retail access; deregulation

1. Right to purchase generation. Beginning on March 1, 2000, all consumers of electricity have the right to purchase generation services directly from competitive electricity providers.

2. Deregulation of generation services. Except as otherwise provided in this chapter, competitive electricity providers are not subject to regulation under this Title on or after March 1, 2000.

3. Aggregation permitted; limitation. When retail access begins, consumers of electricity may aggregate their purchases of generation service in any manner they choose. If a public entity serves as an aggregator, it may not require consumers of electricity within its jurisdiction to purchase generation service from that entity.

4. Electric billing and metering services. Beginning March 1, 2002, pursuant to rules adopted by the commission, the provision of electric billing and metering services is subject to competition. The commission by rule may establish an earlier date for the beginning of competition for the provision of billing or metering services, except that the commission may not set a beginning date that is prior to March 1, 2000.

The commission by rule shall establish minimum standards necessary to protect consumers of these services and codes of conduct governing the relationship among transmission and distribution utilities providing electric billing and metering services, any affiliates of transmission and distribution utilities providing such services and providers of such services that are not affiliated with a transmission and distribution utility. The commission shall determine each transmission and distribution utility's costs of providing electric billing and metering services that are reflected in consumer rates, including capital costs, depreciation, operating expenses and taxes, and shall separate this portion of the consumer rate into a separate charge.

Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

§3203. Licensing of competitive electricity providers; consumer protections; enforcement

1. Authority. In order to provide effective competition in the market for the generation and sale of electricity in the State and to provide an orderly transition from the current form of regulation to retail access, the commission shall license competitive electricity providers in accordance with this section.

2. Requirements. A competitive electricity provider may not undertake the sale of electricity at retail in this State without first receiving a license from the commission. Before approving a license application, the commission must receive from the applicant:

A. Evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason;

B. Evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities;

C. Disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the commission in the 12 months prior to the date of license application;

D. Evidence of the ability to satisfy the renewable resource portfolio requirement established under section 3210; and

E. Disclosure of the names and corporate addresses of all affiliates of the applicant.

The commission shall consider the need for requiring and, if it determines there is a need, may require a competitive electricity provider to file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service.

3. Informational filings; public information. The commission shall establish by rule information disclosure and filing requirements for competitive electricity providers. The rules must require generation providers to file their generally available rates, terms and conditions with the commission. The commission, subject to appropriate protective orders, may require the submission of individual service contracts or any other confidential information from a competitive electricity provider.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

The commission by rule shall establish standards for publishing and disseminating, through any means considered appropriate, information that enhances consumers' ability to effectively make choices in a competitive electricity market.

Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

4. Standard consumer protection provisions. As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a customer, wherever located, with a demand of 100 kilowatts or less:

A. May not terminate generation service without at least 30 day prior notice to the customer;

B. Must offer service to the customer for a minimum period of 30 days;

C. Must allow the customer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection;

D. May not telemarket services to the customer if the customer has filed with the commission a written request not to receive telemarketing from competitive electricity providers;

E. Must provide to the customer within 30 days of contracting for retail service a disclosure of information provided to the commission pursuant to rules adopted under subsection 3 in a standard written format established by the commission; and

F. Must comply with any other provisions adopted by the commission by rule or order.

5. Licensing renewals and revocations. Consistent with all applicable requirements of Title 5, chapter 375, the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.

6. Consumer protection standards; rules. The commission shall establish by rule consumer protection standards and standards to protect and promote market competition in order to protect retail

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

consumers of electricity from fraud and other unfair and deceptive business practices.

7. Penalties. In an adjudicatory proceeding, the commission may impose a penalty of up to \$5,000 for each violation of this section or any consumer protection rule adopted under this section. Each day a violation continues constitutes a separate offense. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under section 117.

8. Dispute resolution. The commission shall resolve disputes between competitive electricity providers and retail consumers of electricity concerning standards established pursuant to subsection 6.

9. Additional actions. The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider.

10. Cease and desist orders. The commission may issue a cease and desist order:

A. Following an adjudicatory hearing held in conformance with Title 5, chapter 375, subchapter IV, if the commission finds that any competitive electricity provider or transmission and distribution utility has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the commission or any lawful order issued by the commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004; or

B. In an emergency, without hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider or a transmission and distribution utility is selling electricity to retail consumers without being duly licensed or is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues in force and effect until further order of the commission or until stayed by a court of competent jurisdiction. In a subsequent hearing the commission shall in a final order affirm, modify or set aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the commission.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

11. Restitution. The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.

12. Enforcement. The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it.

13. Notice to Attorney General. If the commission has reason to believe that any competitive electricity provider or transmission and distribution utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

14. Disconnection restricted. A transmission and distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under section 3212.

15. Standard billing. The commission shall consider requiring standard billing information on bills for electric power service. If standard billing information is required, the commission shall investigate the possibility of adopting standards consistent with other New England states. The commission may not prohibit transmission and distribution utilities from contracting with generation service providers to include both entities' charges on a single bill. The commission may not preclude the inclusion of other information on bills for electric power service.

16. Access to load data. Upon request from a competitive electricity provider, the commission shall provide load data on a class basis that is in the possession of a transmission and distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.

17. Rules. Except as otherwise provided in this section, rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

§3204. Divestiture of generation

1. Divestiture required; exceptions. Except as provided in subsection 3, on or before March 1, 2000, each investor-owned electric utility shall divest all generation assets and generation-related business activities other than any:

A. Contract with a qualifying facility, contract with a party other than a qualifying facility or affiliated interest entered into solely for the purpose of restructuring a contract with a qualifying facility or contract with a demand-side management or conservation provider, broker or host;¹

B. Ownership interest in a nuclear power plant;

C. Ownership interest in a facility located outside the United States; or

D. Ownership interest in a generation asset that the commission determines is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

No later than January 1, 1999, each investor-owned electric utility shall submit to the commission a plan to accomplish the divestiture required under this subsection. In an adjudicatory proceeding, the commission shall review the plans for consistency with this chapter. By July 1, 1999, the commission shall issue an order approving the plan or modifying the plan to make it consistent with the requirements of this chapter. An investor-owned electric utility shall divest its generation assets in accordance with the commission's order.

2. Commission may require divestiture of Maine Yankee interests. Notwithstanding any other provision of this chapter, the commission, if necessary to achieve the purposes of this chapter, may, in an adjudicatory proceeding, require any investor-owned transmission and distribution utility to divest its ownership interests in the Maine Yankee Atomic Power Company on or after January 1, 2009. The commission may order divestiture under this subsection only after notice to all interested parties and an opportunity for those parties to be heard.

3. Extension; separation required. An investor-owned electric utility may apply to the commission for an extension to permit the utility to divest one or more generation assets after March 1, 2000. The commission shall grant an extension if the commission finds that an extension would be likely to improve the sale value of those assets on the market. If the commission grants an

¹ Amended PL 97, ch. 558

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

extension, the utility shall transfer to a distinct corporate entity by March 1, 2000 the generation assets to which the extension applies. Conduct of the utility and any affiliated corporate entity receiving the generation assets is governed by section 3205.

The commission by rule shall establish the procedure for granting extensions. By March 1, 1999, the commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

4. Sale of capacity and energy required. The commission by rule shall require each investor-owned electric utility after February 28, 2000 to sell rights to capacity and energy from all generation assets and generation-related business, including purchased power contracts that are not divested pursuant to subsection 1, except those rights to capacity and energy that the commission determines are necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

In the rules adopted under this subsection, the commission shall establish procedures to promote the maximum market value for these rights. Nothing in this subsection prohibits a utility from re-negotiating, buying out or buying down a contract with a qualifying facility in accordance with applicable laws. By March 1, 1999, the commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

5. Ownership of generation prohibited. Except as otherwise permitted under this chapter, on or after March 1, 2000, an investor-owned transmission and distribution utility may not own, have a financial interest in or otherwise control generation or generation-related assets.

6. Generation assets permitted. On or after March 1, 2000, notwithstanding any other provision in this chapter, the commission may allow an investor-owned transmission and distribution utility to own, have a financial interest in or otherwise control generation and generation-related assets to the extent that the commission finds that ownership, interest or control is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

7. Corporate law; exemptions. An order of the commission directing or approving divestiture renders an electric utility and its directors, officers and shareholders exempt from Title 13-A, sections 514, 517, 624 and 720 and from the Uniform Fraudulent Transfer Act, Title 14, chapter 504 for the matters addressed by

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

the order. A divestiture pursuant to a commission order directing or approving the divestiture does not constitute a sale of all or substantially all of the assets of a corporation within the meaning of Title 13-A, chapter 10.

8. Authority to transfer title. Except as otherwise expressly provided by law, a law of this State enacted prior to September 1, 1997, including any private and special law, that grants generation-asset-related rights, privileges or immunities to an investor-owned electric utility is deemed to grant authorization to the investor-owned electric utility to convey or otherwise transfer those rights, privileges or immunities in accordance with this section only if:

A. The investor-owned utility provides to the commission a copy of the law granting the rights, privileges or immunities and a description of the proposed transfer; and

B. The commission makes a written finding that the law grants rights, privileges or immunities that are generation assets required to be divested under this section or that are necessary to the ownership or operation of generation assets required to be divested under this section.

Upon the issuance of a written finding by the commission under paragraph B, an electric utility is authorized to transfer those generation-asset-related rights, privileges and immunities identified in the written finding of the commission, provided that the electric utility complies with all other applicable requirements of law, including section 1101. The commission may issue a written finding under paragraph B in an order approving a divestiture of generation assets, pursuant to section 1101.

For purposes of this subsection, "generation-asset-related rights, privileges or immunities" means rights, privileges or immunities that constitute generation assets or that are necessary to the ownership or operation of generation assets,

including water rights associated with hydro-electric facilities. For purposes of this subsection, the term "investor-owned electric utility" includes an affiliate of an investor-owned electric utility to the extent that the affiliate is transferring an asset that the affiliate is required to divest pursuant to this section.

Nothing in this subsection may be interpreted to permit the transfer of any rights, privileges or immunities that by law are expressly nontransferable or that are transferable only on condition, unless the condition is met. Nothing in this subsection may be interpreted as extinguishing or affecting any lawful rights, privileges or immunities that any person or entity or the public may have in any property held or transferred by an

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

electric utility. Nothing in this section authorizes the sale or transfer of any right of eminent domain. Any right of eminent domain held by an investor-owned electric utility in relation to generation-asset-related rights, privileges or immunities terminates upon the divestiture of the generation-asset-related rights, privileges or immunities.²

§3205. Marketing; large utilities

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affiliated competitive provider" means a competitive electricity provider whose relationship with a large investor-owned transmission and distribution utility qualifies it as an affiliated interest.

B. "Distribution utility" means a large investor-owned transmission and distribution utility that has an affiliated competitive provider.

C. "Purchasing entity" means a person that purchases 10% or more of the stock of a distribution utility on or after the effective date of this section.

D. "Related entity" means:

(1) Any person who owns, directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of the purchasing entity;

(2) Any person 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1);

(3) Any person 10% or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;

(4) Any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a purchasing entity, provided that the person or group of persons beneficially owns more than 3% of the purchasing entity's voting securities; or

² Subsection added PL 97, ch. 710, §9
Office of Policy and Legal Analysis

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

(5) Any purchasing entity of which any person defined in subparagraphs (1) to (4) is an affiliated interest.

E. "Voting securities" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company.

2. Marketing permitted. On and after the beginning of retail access, a large investor-owned transmission and distribution utility may not sell electric energy or capacity to any retail consumer of electricity. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated competitive provider may sell electric energy or capacity to retail consumers of electricity:

A. Outside the service territory of the distribution utility with which it is affiliated; and

B. Within the service territory of the distribution utility with which it is affiliated, except that:

(1) The affiliated competitive provider may not sell or contract to sell more than 33% of the total kilowatt hours sold within the service territory of the distribution utility, as determined by the commission by rule; and

(2) In accordance with section 3212, the affiliated competitive provider may not at any one time provide or bid to provide standard-offer service for more than 20% of electric load within the territory of the transmission and distribution utility with which it is affiliated.

No later than January 1, 2005, based on its evaluation of the development of the competitive retail electric sales market, the commission shall complete an evaluation of the need for the market share limitation imposed under paragraph B, subparagraph (1) and shall report its findings together with any recommendations to the joint standing committee of the legislature having jurisdiction over utility matters.

3. Standards of conduct. The following provisions govern the conduct of a distribution utility and an affiliated competitive provider.

A. A distribution utility may not, through a tariff provision or otherwise, give its affiliated competitive provider or customers of its affiliated competitive provider preference over nonaffiliated competitive electricity providers or

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

customers of nonaffiliated competitive electricity providers in matters relating to any regulated product or service.

B. All regulated products and services offered by a distribution utility, including any discount, rebate or fee waiver, must be available to all customers and competitive electricity providers simultaneously to the extent technically possible and without undue or unreasonable discrimination.

C. A distribution utility may not sell or otherwise provide regulated products or services to its affiliated competitive provider without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for that product or service.

D. A distribution utility shall process all similar requests for a regulated product or service in the same manner and within the same period of time.

E. A distribution utility may not condition or tie the provision of any regulated product, service or rate agreement by the distribution utility to the provision of any product or service in which an affiliated competitive provider is involved.

F. A distribution utility shall process all similar requests for information in the same manner and within the same period of time. A distribution utility may not provide information to an affiliated competitive provider without a request when information is made available to nonaffiliated competitive electricity providers only upon request. A distribution utility may not allow an affiliated competitive provider preferential access to any nonpublic information regarding the distribution system or customers taking service from the distribution utility that is not made available to nonaffiliated competitive electricity providers upon request, and a distribution utility shall instruct all of its employees not to provide affiliated competitive providers or nonaffiliated competitive electricity providers any preferential access to nonpublic information.

G. Employees of a distribution utility may not share with any affiliated competitive provider or any nonaffiliated competitive electricity provider:

(1) Any market information acquired from the affiliated competitive provider or from any nonaffiliated competitive electricity provider; or

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

(2) Any market information developed by the distribution utility in the course of responding to requests for distribution service.

H. A distribution utility shall keep a log of all requests for information made by the affiliated competitive provider and nonaffiliated competitive electricity providers and the date of the response to such requests. The log is subject to periodic review by the commission. The commission shall establish categories of requests for information and shall specify which categories, if any, are sufficiently trivial to be exempt from the log requirements imposed under this paragraph.

I. A distribution utility may not release any proprietary customer information without the prior written authorization of the customer.

J. A distribution utility shall refrain from giving any appearance of speaking on behalf of its affiliated competitive provider. Neither a distribution utility nor an affiliated competitive provider may in any way represent that any advantage accrues to customers or others in the use of the distribution utility's services as a result of that customer or others dealing with the affiliated competitive provider. A distribution utility may not engage in joint advertising or marketing programs of any sort with its affiliated competitive provider, nor may the distribution utility promote or market any product or service offered by its affiliated competitive provider. The commission shall maintain a current list of all competitive providers. If a customer requests information about competitive electricity providers, the distribution utility shall provide a copy of a list on which competitive electricity providers appear in random sequence and not in alphabetical order. The distribution utility may not in any manner promote its affiliated competitive provider.

K. Employees of a distribution utility may not state or provide to any customer or potential customer any opinion regarding the reliability, experience, qualifications, financial capability, managerial capability, operations capability, customer service record, consumer practices or market share of any affiliated competitive provider or nonaffiliated competitive electricity provider.

L. Employees of a distribution utility may not be shared with, and must be physically separated from those of, an affiliated competitive provider. The commission may approve an exemption from these separation requirements upon a finding by the commission that:

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

(1) Sharing employees or facilities would be in the best interest of the public;

(2) Sharing employees or facilities would have no anticompetitive effect; and

(3) The costs of any shared employees or facilities can be fully and accurately allocated between the distribution utility and the affiliated competitive provider.

Any request for an exemption must be accompanied by a full and transparent allocation of costs for any shared facilities or general and administrative support services. The commission shall allow a reasonable opportunity for parties to submit comments regarding any request for an exemption. An exemption is valid until the commission determines that modification or removal of the exemption is necessary.

M. A distribution utility and its affiliated competitive provider shall keep separate books of accounts and records, which are subject to review by the commission.

N. A distribution utility shall establish and file with the commission a dispute resolution procedure to address complaints alleging violations of this section or any rules adopted pursuant to this section. A dispute resolution procedure must, at a minimum, designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the claimant in writing within 30 days after the complaint was received, including a description of any action taken and the complainant's right to file a complaint with the commission if not satisfied with the results of the investigation. The distribution utility shall maintain a log of all new, resolved and pending complaints. The log is subject to annual review by the commission and must include, at a minimum, the written statement of the complaint and the resolution of the complaint or the reason why the complaint is still pending.

O. A distribution utility shall maintain its books of account and records of its transmission and distribution operations separately from those of its affiliated competitive provider, and the transmission and distribution books of account and records must be available for commission inspection.

P. A distribution utility shall maintain in a public place and file with the commission current written procedures implementing the standards of conduct established by this section and rules adopted by the commission pursuant to this section. Such written procedure must be in detail sufficient

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

to enable customers and the commission to determine that the company is in compliance with the requirements of this section.

4. Rules. The commission shall adopt rules implementing the provisions of this section, including:

A. Rules governing the tracking of the amount of kilowatt-hour sales by any affiliated competitive provider compared to the total kilowatt-hour sales within the service territory of the affiliated distribution utility;

B. Rules governing the procedure for divestiture; and

C. Rules establishing standards of conduct for distribution utilities and affiliated competitive providers consistent with the requirements of this section.

Beginning on the effective date of competition and annually thereafter, copies of the rules adopted under this section must be provided by distribution utilities to every employee of the distribution utility and posted prominently in every employee location.

Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

5. Penalties. The commission shall require the distribution utility to divest the affiliated competitive provider if the commission determines in an adjudicatory proceeding that:

A. The distribution utility or an affiliated competitive provider has knowingly violated any provision of this section or any rule adopted by the commission pursuant to this section; and

B. The violation resulted or had the potential to result in substantial injury to retail consumers of electric energy or to the competitive retail market for electric energy.

The commission may impose administrative penalties of up to \$10,000 for a violation of any provision of this section or any rule adopted by the commission pursuant to this section. Each day of a violation constitutes a separate offense. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under section 117.

6. Prohibition; divestiture. If, after the effective date of this section, 10% or more of the stock of a distribution utility is purchased by an entity:

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

A. The purchasing entity and any related entity may not sell or offer for sale generation service to any retail consumer of electric energy in this State; and

B. If, in an adjudicatory proceeding, the commission determines that an affiliated competitive provider obtains an unfair market advantage as a result of the purchase, the commission shall order the distribution utility to divest the affiliated competitive provider.

If the commission orders a divestiture pursuant to this subsection, the distribution utility must complete the divestiture within 12 months of the order to divest, unless the commission grants an extension. Upon application by the distribution utility, the commission may grant an extension for the purpose of permitting the utility to complete a divestiture that has been initiated in good faith but not finalized within the 12-month period. The commission shall oversee and approve a divestiture in accordance with rules adopted pursuant to subsection 4.

7. Effect of divestiture. If the commission orders a distribution utility to divest an affiliated competitive provider pursuant to this section, the distribution utility may not have an affiliated interest in a competitive electricity provider after the divestiture.

§3206. Marketing; small utilities

1. Small utilities; limitations. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated interest of a small investor-owned transmission and distribution utility may sell retail generation service to retail consumers of electricity located within or outside the service territory of the small investor-owned transmission and distribution utility with which it is affiliated.

2. Rules of conduct. By July 1, 1998, the commission shall open a rule-making proceeding to determine the extent of separation between a small investor-owned transmission and distribution utility and an affiliated competitive electricity provider necessary to avoid cross-subsidization and market power abuses. By March 1, 1999, the commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. In adopting rules under this subsection, the commission shall consider all relevant issues, including, but not limited to:

A. Codes of conduct that may be required to ensure the effectiveness of the separation requirement;

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

- B. Restrictions on employee activities;
- C. Accounting standards; and
- D. Information and service comparability requirements.

3. Commission study. The commission shall conduct a study to determine the most effective and efficient means of ensuring that the portions of this State that are currently connected to the New England electric grid through transmission lines that pass through Canada are connected to the grid in a manner that ensures that customers in those portions of the State are able to take full advantage of retail access. By January 1, 1999, the commission shall complete its study and report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over utility matters.

§3207. Marketing; consumer-owned utilities

1. Consumer-owned utilities; limitations. Consumer-owned transmission and distribution utilities:

- A. May sell retail generation service only within their respective service territories; and
- B. May not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service.

2. Commission review of marketing within territory. Notwithstanding any other provision of this chapter, the commission by rule shall limit or prohibit sale of generation services by competitive providers within the service territory of a consumer-owned transmission and distribution utility if the commission determines that allowing such sales would cause the consumer-owned transmission and distribution utility to lose its tax-exempt status under federal or state law. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§3208. Stranded cost recovery

1. Stranded costs defined. For the purposes of this section, the term "stranded costs" means a utility's legitimate, verifiable and unmitigable costs made unrecoverable as a result of the restructuring of the electric industry required by this chapter and determined by the commission as provided in this subsection.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

2. Calculation. For each electric utility, the commission shall determine the sum of the following to the extent they qualify as stranded costs pursuant to subsection 1:

A. The costs of a utility's regulatory assets related to generation;

B. The difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and

C. The difference between future contract payments and the market value of a utility's purchased power contracts.

When determining the market value of generation assets and purchased power contracts, the commission shall rely to the greatest extent possible on market information, including, but not limited to, market valuations that become known as generation assets and the rights to power under contracts with qualifying facilities are sold.

3. Exclusions. Notwithstanding any other provision of this chapter, the commission may not include any costs for obligations incurred on or after April 1, 1995 in a utility's stranded costs, except that the commission may include:

A. Regulatory assets created after April 1, 1995 and prior to March 1, 2000 for:

(1) The amortization of costs associated with the restructuring of a qualifying facility contract;

(2) Costs deferred pursuant to rate plans; or

(3) Energy conservation costs;

B. Obligations incurred by a utility after April 1, 1995 and prior to March 1, 2000 that are beyond the control of the electric utility; and

C. Obligations incurred by an electric utility after April 1, 1995 to reduce potential stranded costs.

4. Mitigation. An electric utility shall pursue all reasonable means to reduce its potential stranded costs and to receive the highest possible value for generation assets and contracts, including the exploration of all reasonable and lawful opportunities to reduce the cost to ratepayers of contracts with qualifying facilities. The commission shall consider a utility's efforts to satisfy this requirement when determining the amount of a utility's stranded costs.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

5. Stranded costs recoverable. When retail access begins, the commission shall provide a transmission and distribution utility a reasonable opportunity to recover stranded costs through the rates of the transmission and distribution utility, as provided in this section. The opportunity must be comparable to the utility's opportunity to recover stranded costs before the implementation of retail access under this chapter. Nothing in this chapter may be construed to give a transmission and distribution utility a greater or lesser opportunity to recover stranded costs than existed prior to the implementation of retail access. The commission may reduce or increase the amount of stranded costs that the commission allows a utility to recover based on the efforts of the utility to mitigate its stranded costs.

6. Determination of stranded costs charges. Before retail access begins, the commission shall estimate the stranded costs for each electric utility in the State. The commission shall use these estimates as the basis for a stranded costs charge to be charged by each transmission and distribution utility when retail access begins. In 2003 and every 3 years thereafter until the utility is no longer recovering adjustable stranded costs, the commission shall correct any substantial inaccuracies in the stranded costs estimates associated with adjustable stranded costs and adjust the stranded costs charges to reflect any such correction. The commission may correct adjustable stranded costs estimates and adjust the stranded costs charges at any other time. When correcting stranded costs estimates and adjusting stranded costs charges, the commission shall make any change effective only prospectively and may not reconcile past estimates to reflect actual values.

For purposes of this subsection, "adjustable stranded costs" means stranded costs other than stranded costs associated with divested generation assets.

7. Recovery of stranded costs. The commission shall set an amount of recoverable stranded costs after calculating the net aggregate value of all divested assets that had proceeds exceeding book costs against the aggregate value of all other stranded electricity generation assets. The commission may not shift cost recovery among customer classes in a manner inconsistent with existing law, as applicable.

8. Proceedings. The commission shall conduct separate adjudicatory proceedings to determine the stranded costs for each investor-owned utility and each consumer-owned utility. In the same proceedings, the commission shall establish the revenue requirements for each transmission and distribution utility and stranded costs charges to be charged by each transmission and distribution utility when

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

retail access begins. The proceedings must be completed by July 1, 1999.

§3209. Rate design

The commission shall set charges and rates collected by transmission and distribution utilities in accordance with this section.

1. Applicable law. The design of rate recovery for the collection of transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter must be consistent with existing law, as applicable. The commission may continue to permit recovery, in transmission and distribution utility rates, of costs previously incurred by the utility when it was an integrated electric utility that are not included in the recovery of stranded costs pursuant to section 3208.

2. Proceeding. Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before October 1, 1999 for the design of cost recovery for transmission and distribution costs, stranded costs and other costs recovered pursuant to this chapter and for the design of rates for backup or standby service.

3. Exit fees. A customer who significantly reduces or eliminates consumption of electricity due to self-generation, conversion to an alternative fuel or demand-side management may not be assessed an exit or reentry fee in any form for the reduction or elimination of consumption or reestablishment of service with a transmission and distribution utility.

4. Decommissioning costs. As required by federal law, rule or order, the commission shall include in the rates of a transmission and distribution utility decommissioning expenses associated with a nuclear unit.

§3210. Renewable resources

1. Policy. In order to ensure an adequate and reliable supply of electricity for Maine residents and to encourage the use of renewable and indigenous resources, it is the policy of this State to encourage the generation of electricity from renewable sources and to diversify electricity production on which residents of this State rely in a manner consistent with this section.

2. Definition. As used in this section, the term "renewable resource" means a source of electrical generation that generates power that can physically be delivered to the control region in which the New England Power Pool, or its successor as approved by

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

the Federal Energy Regulatory Commission, has authority over transmission and that:

A. Qualifies as a qualifying small power production facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997;

B. Qualifies as a qualifying cogeneration facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997 and was constructed prior to January 1, 1997; or

C. Whose total power production capacity does not exceed 100 megawatts and that relies on one or more of the following:

(1) Fuel cells;

(2) Tidal power;

(3) Solar arrays and installations;

(4) Wind power installations;

(5) Geothermal installations;

(6) Hydroelectric generators;

(7) Biomass generators; or

(8) Generators fueled by municipal solid waste in conjunction with recycling.

3. Portfolio requirements. As a condition of licensing pursuant to section 3203, each competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that no less than 30% of its portfolio of supply sources for retail electricity sales in this State are accounted for by renewable resources. By January 1, 1999, the commission shall provisionally adopt rules establishing reasonable procedures for implementing this requirement. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

4. Report. In view of property tax benefits, developments in other states and the development of a market for tradable credits for satisfying renewable resource requirements, the commission shall review the 30% portfolio requirement and make a recommendation for any change to the joint standing committee of the Legislature having jurisdiction over utilities and energy

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

matters no later than 5 years after the beginning of retail competition.

5. Funding for research and development. The commission by rule shall establish a program allowing retail consumers of electricity to make voluntary contributions to fund renewable resource research and development. The program must:

A. Include a mechanism for customers to indicate their willingness to make contributions;

B. Provide that transmission and distribution utilities collect and account for the contributions and forward them to the commission; and

C. Provide for a distribution of the funds to the University of Maine System, the Maine Maritime Academy or the Maine Technical College System for renewable resource research and development.

Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§3211. Conservation programs

The commission shall require transmission and distribution utilities to implement energy conservation programs and include the cost of any such programs in the rates of transmission and distribution utilities. The commission shall require transmission and distribution utilities to select energy efficiency service providers through periodic competitive bidding programs. The commission shall establish a reasonable level of funding for those programs comparable to the amount expended for similar programs in the year 1999 and regularly review the amount of funding needed.

By July 1, 1998, the commission shall commence a rule-making proceeding on energy conservation programs. By July 1, 1999, the commission shall provisionally adopt rules establishing energy conservation programs in compliance with this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

§3212. Standard offer

Except as provided in subsection 6, when retail access begins, the commission shall ensure that standard-offer service is available to all consumers of electricity.³

³ Amended PL 97, ch 638, §1.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

1. Establishment of terms and conditions. The commission shall open a rule-making proceeding no later than October 1, 1997 to establish terms and conditions for standard-offer service that include, but are not limited to:

- A. Entry and exit restrictions;
- B. Protection against a standard-offer service provider's failure to provide service as contracted for;
- C. Appropriate rate design issues;
- D. Retaining averaged prices for all customers in the same class; and
- E. Credit, collection and disconnection practices.

By February 15, 1998, the commission shall provisionally adopt rules establishing terms and conditions for standard-offer service. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

2. Selection of standard-offer service providers. After terms and conditions for standard-offer service have been established under subsection 1, the commission shall administer a bid process to select a standard-offer service provider for that transmission and distribution utility's service territory. By December 1, 1999, the commission shall review the bid submissions for each transmission and distribution utility and select the standard-offer service provider or providers for that utility's service territory.⁴

A. The commission shall determine the general credit data and specific information from general load and usage data that transmission and distribution utilities must provide to potential standard-offer service bidders, including, but not limited to, monthly demand and energy consumption and the number of customers in each customer class. The commission shall ensure that individual customer confidentiality is preserved in this process and that a transmission and distribution utility releases customer-specific data only with the customer's permission. If the transmission and distribution utility incurs additional costs to develop and produce the required data, the commission shall permit that utility to recover those costs through transmission and distribution rates.

B. The commission shall establish the maximum duration of a standard-offer service contract after considering all relevant

⁴ Amended PL 97, c. 691, §6

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

factors, including, but not limited to, market risks and the need for price stability and contract flexibility.

C. A competitive electricity provider that is an affiliate of a large investor-owned transmission and distribution utility may submit bids to provide standard-offer service for up to 20% of the electric load within the service territory of the large investor-owned transmission and distribution utility with which it is affiliated. To prevent the unfair use of information possessed by a large investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.

D. A consumer-owned transmission and distribution utility and a small investor-owned transmission and distribution utility may submit bids to provide standard-offer service for that utility's service territory. To prevent the unfair use of information possessed by a consumer-owned transmission and distribution utility or a small investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.

By February 15, 1998, the commission shall provisionally adopt rules establishing a methodology for structuring the bidding process for standard-offer service in order to implement the provisions of this subsection. In adopting rules, the commission shall consider methods to ensure, to the extent possible, at least 3 providers of standard-offer service in each transmission and distribution utility service territory, as long as the method does not result in any significant adverse impacts on rates paid by consumers. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

Notwithstanding any other provision of this Title, the commission may, in the event of a default by a standard-offer service provider, require the transmission and distribution utility in whose service territory the provider was providing standard-offer service to arrange and to provide for default service. The arrangement and provision of such default service by a transmission and distribution utility does not constitute selling electric energy or capacity at retail for purposes of section 3205, subsection 2.⁵

⁵ ¶ added PL 97, ch 691, §7
Office of Policy and Legal Analysis

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

Notwithstanding Title 5, section 1831, the commission is not subject to rules adopted by the State Purchasing Agent in conducting the competitive bidding process required under this section.⁶

3. Price cap; investigation. If the qualifying bids under subsection 2 for standard-offer service in any service territory, when combined with the regulated rates of transmission and distribution service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission shall investigate whether the implementation of retail access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place. Pursuant to section 3217, the commission shall notify the Legislature of the results of its investigation and its determination.

4. Implementation period. Standard-offer service must be available until March 1, 2005. By January 1, 2004, the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and in the public interest. The commission shall conclude the investigation by June 30, 2004 and report its results to the Legislature pursuant to section 3217.

5. Territorial and rate class application. Nothing in this section precludes the commission from permitting or requiring different terms and conditions for standard-offer service in different utility service territories or for different customer classes.

6. Consumer-owned utilities. Notwithstanding any other provision of this section, the commission is not required to conduct a competitive bidding process or select a standard-offer service provider or providers for the territory of a consumer-owned transmission and distribution utility if the consumer-owned transmission and distribution utility chooses one or more standard-offer service providers for its territory through a competitive bidding process conducted in accordance with the commission's rules governing the selection and criteria for approval of a standard-offer service provider. Selection of a standard-offer service provider or providers and agreements with or purchases from a standard-offer service provider or providers are not subject to the approval requirements of section 3133 or 3133-A. A consumer-owned transmission and distribution utility may choose a single standard-offer service provider. A consumer-owned transmission and distribution utility that intends to choose a standard-offer

⁶ ¶ added PL 97, ch 691, §7

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

service provider or providers in accordance with this subsection shall notify the commission.⁷

§3213. Bill unbundling; consumer education

1. Unbundled bills. Beginning January 1, 1999, electric utilities shall issue bills that state the current cost of electric capacity and energy separately from transmission and distribution charges and other charges for electric service. By January 31, 1998, each electric utility shall file with the commission a bill unbundling proposal. The commission shall complete its review of those proposals and adopt a rule establishing unbundled bill requirements by July 1, 1998. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

2. Consumer education advisory board; rules. The commission shall adopt rules implementing a consumer education program in compliance with this subsection.

A. The commission shall immediately organize a consumer education advisory board to investigate and recommend methods to educate the public about the implementation of retail access and its impact on consumers. The commission shall ensure broad representation of residential, industrial and commercial electric consumers, public agencies and the electric industry on the advisory board. Members of the board shall serve without compensation.

B. In its recommendations, the advisory board shall address:

(1) The level of funding necessary for adequate educational efforts and the appropriate source of that funding;

(2) The aspects of retail access on which consumers need education;

(3) The most effective means of accomplishing the education of consumers;

(4) The appropriate entities to conduct the education effort; and

(5) Any other issue relevant to the education of consumers regarding the implementation of retail access and its impact on consumers.

⁷ Added PL 97, Ch. 638, §2

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

C. The commission shall consider the recommendations of the advisory board when adopting rules to implement a consumer education program. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. The commission shall provide these rules to the Legislature in accordance with Title 5, chapter 375, subchapter II-A, no later than February 1, 1998.

3. Special assessment. Every electric utility and transmission and distribution utility subject to assessment under section 116 is subject to an additional assessment on its gross intrastate operating revenues for regulated services to produce:

- A. No more than \$200,000 in the 1997-98 fiscal year;
- B. No more than \$600,000 in the 1998-99 fiscal year;
- C. No more than \$600,000 in the 1999-2000 fiscal year; and
- D. No more than \$200,000 in the 2000-01 fiscal year.

All revenues derived from the assessments levied under this subsection must be deposited with the Treasurer of State in a separate account to be known as the Public Utilities Commission Consumer Education Fund, referred to in this subsection as "the fund." Revenues produced by the assessments may be used by the commission only for the purposes of designing and implementing the consumer education program established pursuant to subsection 2. Funds in the fund not expended during any fiscal year may not lapse but must be carried forward. Any funds remaining in the fund at the conclusion of the consumer education program established pursuant to subsection 2 must be returned proportionally to utilities assessed under this subsection and passed through to ratepayers in an appropriate rate-setting proceeding.⁸

§3214. Needs-based low-income assistance

1. Policy. In order to meet legitimate needs of electricity consumers who are unable to pay their electricity bills in full and who satisfy eligibility criteria for assistance, and recognizing that electricity is a basic necessity to which all residents of the State should have access, it is the policy of the State to ensure adequate provision of financial assistance.

2. Low-income assistance. In order to continue existing levels of financial assistance for low-income households and to meet future increases in need caused by economic exigencies, the commission shall:

⁸ Subsection added PL 97, ch 691, §8
Office of Policy and Legal Analysis

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

A. Receive funds collected by all transmission and distribution utilities in the State at a rate set by the commission in periodic rate cases; and

B. Set initial funding for programs based on an assessment of aggregate customer need in periodic rate cases. The funding formula may not result in assistance being counted as income or as a resource in other means-tested assistance programs for low-income households. To the extent possible, assistance must be provided in a manner most likely to prevent the loss of other federal assistance.

3. Special rate. Nothing in this section may be construed to prohibit a transmission and distribution utility from offering any special rate or program for low-income customers that is not in effect as of the effective date of this chapter, subject to the approval of the commission.

4. Financial support. If the Legislature appropriates from the General Fund financial support for households and individuals receiving assistance under this section, the commission may not terminate the assistance provided by transmission and distribution utilities unless the General Fund source has completely replaced such assistance. The commission may adjust the assistance provided pursuant to this section based on the amount of any financial support from the General Fund and may reinstitute assistance subsequent to any termination of assistance if the commission finds that the General Fund source no longer completely replaces such assistance.

§3215. Commission authority and responsibility

1. Authority. Without limiting the commission's authority under any other provision of law, the commission may:

A. Intervene and participate in proceedings at the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the United States Department of Energy and other federal agencies and in proceedings conducted by Canadian or other authorities or agencies whenever the interests of competition, consumers of electricity or economic development in this State are affected; and

B. Monitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or to any federal agency regarding:

(1) The safety and economic effects or potential effects of market competition on nuclear units; and

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

(2) The effects or potential effects of market competition on Maine's air quality.

2. Findings; responsibility. The Legislature finds that, in order for retail competition in this State to function effectively, the governance of any independent system operator with responsibility for operations of the regional transmission system must be fully independent of influence by market participants. The commission shall use all means within its authority and resources to advocate for and promote the interests of Maine ratepayers in any proceeding at the Federal Energy Regulatory Commission involving the development, governance, operations or conduct of an independent system operator.

§3216. Transition; utility employees

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Eligible employees" means all employees of an electric utility:

(1) Who are not officers of the utility;

(2) Who are employed by the utility on January 1, 1998; and

(3) Who are laid off due to retail competition.

Absent other just cause, a layoff after March 1, 2000 is deemed to have been due to retail competition. The commission by rule shall establish a date after which a layoff is deemed not to have been due to retail competition. An employee is not an eligible employee by reason of the transfer of the employee's job duties or assignment within a company or within affiliated companies at similar levels of compensation.

B. "Retail competition" means:

(1) Retail access; or

(2) The sale or merger of any generation asset that occurs prior to March 1, 2000.

2. Substantive plan. Prior to the beginning of retail access, each investor-owned electric utility shall prepare a plan for providing transition services and benefits for eligible employees. The plan must:

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

A. Include a program to assist eligible employees in maintaining fringe benefits and obtaining employment that makes use of their potential;

B. For 2 years after the beginning of retail access, provide to eligible employees retraining services and out-placement services and benefits, including intensive vocational-interests-and-aptitude screening;

C. Provide full tuition for 2 years at the University of Maine or a vocational or technical school in the State or other reasonable retraining services of value equal to full in-state tuition for 2 years at the University of Maine, at the discretion of the eligible employee;

D. For 24 months or until permanent replacement coverage is obtained through reemployment, whichever comes first, provide continued health care insurance at the benefit and contribution levels existing during employment with the utility; and

E. Provide severance pay equal to 2 weeks of base pay for each year of full-time employment.

The plan may include provisions for providing early retirement benefits.

3. Procedural requirements. Each investor-owned utility shall file with the commission a plan for providing transition services and benefits for eligible employees that conforms to the requirements of subsection 2. A plan must be filed prior to the utility finalizing any transaction that would result in an eligible employee being laid off or at least 90 days prior to the start of retail access, whichever is first. Prior to filing the plan with the commission, the utility shall inform its employees and their certified representatives of the provisions of the proposed plan and, in accordance with applicable law, shall confer with those employees or their certified representatives regarding the impact of the proposed plan on those employees and measures to minimize any resulting hardships on those employees.

While a plan is in effect, an investor-owned utility shall file notice with the commission of any closure or relocation of facilities and any action or reorganization that will result in layoffs. The notice must include a description of the actions, the reasons for them and an assessment of their effects on the utility's employees.

4. Collective bargaining. If an investor-owned electric utility company or one or more of its subsidiary or parent companies is party to a collective bargaining agreement recognized by federal or

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

state law, and if as a result of retail competition any of those companies creates, acquires or merges with any other entity, that entity shall continue to recognize and bargain with the union representing the employees of the company at the time of the creation, acquisition or merger and shall refrain from making unilateral changes in the employees' terms and conditions of employment. In addition, any successor employer is bound to the terms of the collective bargaining agreement to the extent permitted by federal law. Nothing in this section prevents any company, corporation or other business from entering into any collective agreement as allowed by state or federal law.

5. Cost recovery. The commission shall allocate the reasonable accrual increment cost of the services and benefits required under this section to ratepayers through charges collected by the transmission and distribution utility. All charges collected must be transferred to a system benefits administrator in the transmission and distribution utility and used to provide services and benefits pursuant to the requirements of this section.

6. Rules. The commission shall adopt rules necessary to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§3217. Reports

1. Annual restructuring report. On December 31st of each calendar year, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over utility matters a report describing the commission's activities in carrying out the requirements of this chapter and the activities relating to changes in the regulation of electric utilities in other states.

In its report the commission shall provide an accounting of the commission's actual and estimated future costs of enforcing and implementing the provisions of this chapter governing the relationship between a transmission and distribution utility and an affiliated competitive electricity provider and the costs incurred by transmission and distribution utilities in complying with those provisions. The commission shall also provide an assessment of the effects of imposing these costs on ratepayers and the potential effects of assessing transmission and distribution utilities for these costs and prohibiting the costs from being passed through to ratepayers.

2. Proposed changes. If the commission determines, after providing interested parties an opportunity to be heard, that any provision in this chapter is not in the public interest, the commission shall present a report to the joint standing committee of the Legislature having jurisdiction over utility matters stating the basis for the commission's conclusion and including draft

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

legislation designed to modify this chapter consistent with the public interest.

3. Independent system operator. The commission shall monitor events in the region pertaining to:

A. The development of an independent system operator with responsibility for transmission reliability;

B. The management of competitive access to the regional transmission system; and

C. Rights to negotiate potential contracts between sellers and buyers of electricity.

If the commission determines that there exists insufficient independence on the part of the independent system operator from any provider of wholesale transmission, competitive electricity provider or electric utility, or if it determines any other problem threatens regional transmission reliability, the commission shall provide a report to the joint standing committee of the Legislature having jurisdiction over utility matters with a recommendation as to what actions within the authority of the State are available to remedy this problem.

Unallocated law from original bill

Sec. 4 PUC Rules on filings by competitive electricity providers.

In adopting by rule requirements for competitive electricity providers pursuant to the Maine Revised Statutes, Title 35-A, section 3203, subsection 3 the commission may consider any requirements that the commission believes appropriate and shall consider the following filing requirements:

1. A statement of average prices at representative levels of kilowatt-hour usage in the most recent 6-month period;

2. A description of the average duration of supply arrangements with retail customers in the most recent 6-month period;

3. An explanation addressing whether pricing arrangements are fixed or will vary over a specified time period;

4. A statement indicating percentages of electricity supply over the recent 6-month period under categories of generation, including, but not limited to, oil-fired, nuclear, hydroelectric,

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

coal, biomass or other renewable resources and regional spot market purchases; and

5. A listing of expected air emissions and a comparison of those emissions to a regional average, as determined by the commission, for nitrous oxide, sulfur dioxide, mercury, fine particulates, radionuclides and carbon dioxide, calculated for a competitive electricity provider's supply sources in the aggregate over the most recent 6-month period.

Sec. 5 QF contracts: treatment

All existing contracts and agreements in effect as of March 1, 2000 between electric utilities and energy resource providers, including but not limited to qualifying facilities, continue in effect notwithstanding any other provision of this Act, and the rights of the parties to these contracts and agreements may not be abrogated or diminished as a result of implementing this Act.

All existing electric utilities shall provide each qualifying facility, each party to a contract entered into solely for the purpose of restructuring a contract with a qualifying facility except an affiliated interest and each demand-side management or conservation provider, broker or host with whom it has contracts as of March 1, 2000 the option to have the contract or contracts:⁹

1. Retained by the transmission and distribution utility if it is the same legal entity as the electric utility that entered into the contract or contracts; or

2. Assigned by the existing electric utility to the transmission and distribution utility if it exists as a distinct legal entity after implementation of the provisions of this Act.

If contracts with qualifying facilities in existence on March 1, 2000 contain provisions for the simultaneous purchase of energy, or energy and capacity, by an electric utility from a qualifying facility and by a qualifying facility from an electric utility, the transmission and distribution utility shall continue to sell at retail all transmission and distribution services to the qualifying facility, including the transmission of any energy, or energy and capacity, the qualifying facility may obtain in the competitive market. In the case of each such qualifying facility contract and each demand-side management or conservation contract assigned or retained as provided for in this section, any requirement pursuant to the contract that the qualifying facility or customer or host implementing demand-side management or conservation measures remain a customer of the electric utility that was an original party to

⁹ Amended PL 97, ch. 588

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

the contract or any requirement pursuant to the contract to purchase a certain amount of electricity from that electric utility is deemed to be fully satisfied by the qualifying facility, customer, or host (a) remaining a customer of the transmission and distribution utility that has retained the contract, or to whom it has been assigned pursuant to the option provided for in this section, (b) receiving any such required amounts of electricity by making purchases in the competitive energy market, and (c) receiving such purchases over the facilities of the transmission and distribution utility. The transmission and distribution utility shall make payments required under any such demand-side management or conservation contracts or this Act and is entitled to collect those payments in rates and charges as provided for in the Maine Revised Statutes, Title 35-A.

Sec. 6 QF contracts: contracts tied to retail tariffs.

Certain contracts for the sale of energy, or energy and capacity, by qualifying facilities contain terms that establish or adjust the purchase rate based upon the retail tariff rate or changes to that retail tariff rate paid by the qualifying facility to the electric utility for its purchases of electricity or upon reference to a particular retail tariff rate or changes in such retail tariff rate. The Legislature finds that after the date of retail access as provided for in this Act, a question may arise as to whether there is a retail tariff rate that provides for a comparable standard for sale of combined generation and transmission or distribution services. Following the implementation of retail access as provided for in this Act, the Public Utilities Commission shall, at the request of any qualifying facility, annually establish a rate using the same terminology as may be found in the contract, such as "industrial tariff" or "Principal Base Rate" or other reference term. Such rate or reference term will then be used to establish or adjust the rate for the purchase of energy, or energy and capacity, under the contract. Any such rate or reference term will be established by adjusting the applicable rate or reference term or actual contract rate, as the case may be, as it stood as of the date of implementation of deregulation, by the applicable annual change in the average of the total price paid for electric services by all retail customers in Maine taking service at the same voltage level as the customer whose rate or reference term is being established. The total price paid for electric services for this purpose includes the price paid by customers for transmission and distribution services, including any access charges, for electric energy and capacity, for stranded costs included in transmission and distribution company charges, for metering services and for any special facilities or equipment necessary for the customers to take service and any other fee, levy, premium, license, surcharge or other charge imposed by or pursuant to the act of any transmission and distribution utility, any competitive electricity provider or any arm, agency or

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

institution of government collected from such customers as a condition of obtaining those electric services. If the average price can not be determined in any year due to the absence or unavailability of data, then the commission shall use changes in the federally established Gross Domestic Product Price Index to determine the rate or reference term for that year. Solely for purposes of establishing a purchase rate under the applicable contract, the rate or reference term so established is deemed to be the applicable retail tariff or other reference term used in the contract for the qualifying facility's purchases of retail electric services from the utility purchaser under the contract, notwithstanding the actual price paid for such services established in accordance with this Act.

Sec. 7 QF contracts: PUC set terms for short term energy rate contracts.

After March 1, 2000, the Public Utilities Commission, no less frequently than annually, shall establish, for the 12-month period succeeding the annual date of establishment of such rates, short-term-energy-only rates for use in the purchase of energy by an electric utility where such a short-term-energy-only rate is used in a contract between a qualifying facility and an electric utility. The commission shall amend chapter 36, section 3 of its rules to comply with requirements of this section. The commission shall establish short-term-energy-only rates for both on-peak and off-peak hours, as defined by the commission by rule as of January 1, 1997, and, at the request of an electric utility or a qualifying facility, establish time-differentiated, peak and off-peak short-term-energy-only rates for any other hours defined in the applicable contract. After March 1, 2000, short-term-energy-only rates are defined as the estimated cost for the wholesale purchase of energy in Maine that includes fuel costs, start-up costs and variable operating and maintenance costs expressed on a cents-per-kilowatt-hour basis using the number of significant digits as employed in the establishment of the short-term-energy-only rate as of January 1, 1997 and adjusted to reflect the line loss costs or savings for deliveries at the various voltage levels for which the commission established adjustments as of January 1, 1997. In making estimates of short-term-energy-only rates, the commission shall be guided by the average market price for purchases of short-term energy in Maine during the 12 months previous to the period for which the rates will be estimated. In determining this average market price, the commission shall use, to the extent available, generally accepted and publicly available indicators of the market price or the components of market price as published or, if unavailable, the market price elsewhere in New England that the commission determines to represent a market price similar to the market price that would exist in Maine given relevant market conditions in the State at the time of the estimation.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

Sec. 8 QF Contracts: PUC to set terms of other contracts; routine technical rules

Consistent with this Act, the Public Utilities Commission by rule shall establish methods for establishing any rate, term, condition or other provision of any contract between an electric utility and a qualifying facility that may arguably be rendered impractical or impossible to perform or implement as a result of the restructuring of the electric industry pursuant to this Act, including but not limited to a method for establishing terms related to long-term avoided costs, as defined in chapter 36 of the commission's rules, as in effect on the effective date of this Act. By November 1, 1997, the commission shall commence a rulemaking establishing the method for establishing terms related to long-term avoided costs. The rules must establish methods that preserve the intent and purposes embodied in the contractual provisions. At the request of a party to a qualifying facility contract or pursuant to the terms of a contract, the commission shall employ the methodology established by the rules to address the impracticability or impossibility associated with provisions of the contract so as to preserve the intent and purposes embodied in the contract. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

Sec. 9 QF contracts no longer mandated by State law.

Notwithstanding the Maine Revised Statutes, Title 35-A, chapter 33, an electric utility or transmission and distribution utility may not be required pursuant to Title 35-A, chapter 33 to enter into a contract to purchase power from a qualifying facility after the effective date of this Act. Nothing in this section abrogates existing law or rules that provide qualifying facilities with the right to sell energy to an electric utility prior to March 1, 2000 on an as-available basis at the utility's short-term-only rate or to sell capacity and energy to an electric utility at any time before or after March 1, 2000 on a basis voluntarily and mutually agreed to by the qualifying facility and the electric utility.

Sec. 10 PUC/SPO Recommendation for low-income assistance program.

On or before January 1, 1998, the Public Utilities Commission and the State Planning Office shall provide to the Joint Standing Committee on Utilities and Energy, the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on Taxation, and to any other committees of relevant jurisdiction, legislation that funds assistance to low-income consumers of electricity through the General Fund or through a tax on all energy sources in the State. The commission and the State Planning Office shall solicit public comment prior to the production of draft legislation and also solicit public comment before finalizing its legislative proposal.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

Sec. 11 Conforming amendments (PUC report).

By December 31, 1998, the Public Utilities Commission shall identify and submit to the joint standing committee having jurisdiction over utilities and energy matters legislation proposing amendments required to conform other statutes to the provisions of this Act.

Sec. 12 Committee Authority.

The joint standing committee having jurisdiction over utilities and energy matters may report out legislation concerning electric industry restructuring to the Second Regular Session of the 118th Legislature or to the First Regular Session of the 119th Legislature or the Second Regular Session of the 119th Legislature.

Housekeeping provisions from original bill

Sec. 1. 35-A MRSA §3139, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed. (*Powers of foreign electric utility*)

Sec. 2. 35-A MRSA §3140, sub-§§1, 3 and 4, as enacted by PL 1987, c. 141, Pt. A, §6, are amended to read:

1. Foreign electric utility to notify commission before acting within this State. A foreign electric utility shall, before constructing, purchasing, owning, controlling, operating, managing or otherwise participating in a joint or common interest in a utility facility within this State:

A. Notify the commission in writing of the action to be taken by the utility; and

B. Provide any information reasonably required by the commission under section 3132.

3. Registered office and agent; service of process. A foreign electric utility :

A. Shall designate and continuously maintain in this State a registered office and a registered agent in accordance with Title 13-A, section 1212; and

B. Is subject to service of process, notice or demand as provided in Title 13-A, section 1212.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

4. Certificate of agency with regulatory jurisdiction over foreign electric utility. Upon the filing with the commission of a certificate of the appropriate regulatory agency of the state of domicile or principal locus of a foreign electric utility, or of the United States, stating either that the agency has regulatory jurisdiction over the issuance of stocks, bonds or other evidences of indebtedness payable more than 12 months from date of issue by that foreign electric utility to finance a utility facility in this State or that the agency has general supervision of that foreign electric utility in the conduct of its electric utility business, that foreign electric utility may not be deemed an "electric utility" as defined in section 102, subsection 5, merely by reason of the exercise by it of the authority granted in former section 3139.

Education Allocation¹⁰
--

Allocation of the Public Utilities Commission Consumer Education Fund. The Public Utilities Commission Consumer Education Fund must be allocated as designated in the following schedule.

1997-98

1998-99

PUBLIC UTILITIES COMMISSION

Consumer Education Fund

All Other	\$200,000	\$600,000
-----------	-----------	-----------

Allocates funds to fund the Public Utilities Commission consumer education program established pursuant to the Maine Revised Statutes, Title 35-A, section 3213.

¹⁰ PL 97, ch. 691, §9

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

Deregulation of Generation¹¹

35-A MRSA §102, sub-§6, as amended by PL 1987, c. 613, §1, is further amended to read:

6. Electric plant. "Electric plant" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, conservation, load management, transmission, delivery or furnishing of electricity for light, heat or power, for public use, and all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power for public use. "Electric plant" includes, but is not limited to, fixtures and personal property on the premises of a utility's customer, financed in whole or in part by that utility, and found by the commission to constitute a cost-effective investment in conservation or load management. In the case of these conservation or load management investments only, "electric plant" may include property actually owned by the customer or by a party other than the utility. The presence of property on the premises of a customer or other party, which property is included in the rate base of an electric utility as qualifying conservation or load management investment, ~~shall~~ may not cause the customer or other party to be determined to be a public utility for any purpose.

"Electric plant" does not include excluded electric plant, as defined in subsection 6-A.

35-A MRSA §102, sub-§6-A is enacted to read:

6-A. Excluded electric plant. "Excluded electric plant" means:

A. Prior to March 1, 2000, any generation assets, as defined in section 3201, subsection 10, and any related interconnecting transmission or distribution facilities used for the purpose of connecting one or more generation assets to transmission or distribution plant, as defined in section 3201, subsection 18, to the extent the generation assets are owned, leased, controlled, operated or managed for one or more of the following purposes:

(1) For the generation of electricity for sale for resale, or for sale at retail to any electric consumer for delivery outside of the State;

¹¹ PL 97, ch 710

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

(2) For the generation of electricity by a small power producer or cogenerator for its own use, for its tenants or its associates, as provided in section 3305, subsection 2;

(3) For the generation of electricity by an electric generation enterprise for its own use or for its affiliates as provided in chapter 31, subchapter V; or

(4) For self generation, as defined in subsection 16-A.

Prior to March 1, 2000, "excluded electric plant" does not include electric plant owned, leased, controlled, operated or managed by an entity that was regulated by the commission as an electric utility before September 19, 1997 or by an entity owning, operating, leasing, managing or controlling a nuclear power plant, as defined in section 4352, subsection 9.

B. After February 29, 2000, "excluded electric plant" means any generation assets, as defined in section 3201, subsection 10, other than generation assets held by an electric utility pursuant to section 3204, subsection 3 or 6.

35-A MRSA §102, sub-§16-A is enacted to read:

16-A. Self generation. "Self generation" means the generation of electricity for the use of an entity that owns, leases, operates, controls or manages, in whole or in part, generation assets, as defined in section 3201, subsection 10, provided that the electricity is not transmitted over transmission and distribution plant, as defined in section 3201, subsection 18.

35-A MRSA §906, sub-§3 is enacted to read:

3. Domestic electric utility. For purposes of this section only (*PUC approval of issuance of debt by domestic electric utility*), the term "domestic electric utility" does not include an entity that is not an electric utility as a result of the application of section 102, subsection 6-A.

35-A MRSA §3131, sub-§1-A is enacted to read:

1-A. Electric utility. "Electric utility" has the same meaning as defined in section 102, subsection 5. (*Fuel adjustment clause for electric utilities -- this provision excludes entities excluded by new definition of electric utility*)

35-A MRSA §3132, sub-§3-A, as enacted by PL 1989, c. 60, §4, is amended to read:

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

3-A. Minor transmission line construction projects. Each domestic electric utility shall file annually with the commission a schedule of minor transmission line construction projects that it intends to carry out during the next 5 years concerning transmission lines that will be capable of operating at 100 kilovolts or more. A minor transmission line construction project is a transmission line construction project, the cost of which does not exceed 25% of the utility's current annual transmission property depreciation charge. The schedule must describe each project, showing the length, location and estimated cost.

If the commission determines that an investigation of any minor transmission line construction project is warranted, it shall notify the electric utility within 60 days of the annual filing and the electric utility must then comply with the provisions of this section with respect to that project. The absence of commission notification requiring the utility to file a petition does not preclude such notification in subsequent years.

For purposes of this subsection only, the term "domestic electric utility" does not include an entity that is not an electric utility as a result of the application of section 102, subsection 6-A.

35-A MRSA §3140, sub-§5 is enacted to read:

5. Exemption. An entity that is not an electric utility as a result of the application of section 102, subsection 6-A is exempt from the requirements of this section (regulation of foreign electric utilities).

Sec. Application and interpretation. Whether an entity that owns, leases, controls, operates or manages electric plant, other than "excluded electric plant" as defined in the Maine Revised Statutes, Title 35-A, section 102, subsection 6-A, is an electric utility is determined by application of applicable provisions of the Maine Revised Statutes, Title 35-A. The definition of "excluded electric plant" under Title 35-A, section 102, subsection 6-A may not be construed to affect the application of other provisions of Title 35-A in any way other than to create the specific exclusions provided for in subsection 6-A. Nothing in this Act may be construed to affect the meaning of the term "for public use" as used in Title 35-A.

Advanced Registration of Competitive Providers¹²

35-A MRSA §3142 is enacted to read:

§3142. Registration required to market retail electric service

1. Registration required. Unless registered with the commission under this section, an entity may not contract or attempt to contract with any retail electric consumer to provide retail electric service for a time in the future in which entities are permitted to provide competitive retail electric service to retail consumers.

2. Required information. Any entity registering with the commission under this section shall provide:

A. The name, mailing address and phone number of the entity;

B. The name, mailing address and phone number of a contact person who is knowledgeable regarding the entity's activities in the State; and

C. The name and mailing address of any consumer in the State with which the entity has contracted to provide retail electric service.

An entity registered under this section promptly shall provide the commission with any additional relevant information requested by the commission, including, but not limited to, copies of any contracts for retail electric service. The commission shall provide for appropriate confidentiality protection as necessary for any information provided under this section.

3. Contracts void. Any contract for retail electric service entered into after the effective date of this section by an entity that is not registered with the commission under this section is deemed void.

3-A. Retail electric service. For the purposes of this section "retail electric service" does not include the sale of an electric commodity from an excluded electric plant, as defined in section 102, subsection 6-A, unless the sale is of generation service, as defined in section 3201, subsection 11, to a person who is not an affiliate, as defined in section 3180, subsection 1.¹³

4. Repeal. This section is repealed March 1, 2000.

¹² PL 97, ch. 447

¹³ PL 97, ch. 710

Market Power Study¹⁴

Sec. Public Utilities Commission and Department of the Attorney General to study market power issues related to electric industry restructuring. The Department of the Attorney General, referred to in this Part as the "department," and the Public Utilities Commission, referred to in this Part as the "commission," jointly shall conduct a study of market power issues raised by the prospect of retail competition in the electric industry. The department and the commission shall examine how a competitive electric industry may be structured or regulated to protect electric power trade and commerce from unlawful restraints, price discrimination, price fixing, oligopolization and monopolization. The commission and the department may examine any issue that the commission or the department determines to be relevant to assessing market power issues raised by the prospect of electric industry restructuring. The study must examine at a minimum the following:

- A. The effects of altering the system of electric power dispatch from a cost-based to a bid-based system;
- B. The potential for market concentration or horizontal market power;
- C. The potential for vertical market power arising from ownership or control of transmission and distribution systems of entities selling or marketing electric power;
- D. The extent to which imbalances of supply and demand create opportunities for the unreasonable exercise of market power;
- E. The significance of existing or potential transmission system constraints and the ownership and control of transmission ties;
- F. The significance of the isolation of portions of the transmission and distribution grid from other portions of the grid, in particular from those portions of the grid currently controlled by the New England power pool;
- G. The reasonable geographic areas and markets in which market power could be exercised;
- H. The extent to which market power in relevant markets is within the scope of federal regulatory jurisdiction; and

¹⁴ PL 97, ch. 447, Part B

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

I. The approaches taken in other states to address market power issues.

Work plan. The department and commission shall develop a work plan for coordinating work on the study in order to produce the reports required under section 6. The work plan must ensure jointly produced reports, although the plan may allow for differing recommendations and conclusions by the department and the commission.

Retaining experts. The department and the commission may retain experts or other consultants as they determine to be necessary in order to conduct the study as long as all costs are funded from resources available within the commission.

Coordination with other states. The department and the commission shall seek to coordinate their efforts with any similar studies undertaken in other states in the region.

Consultation with Legislature. The department and the commission regularly shall consult with the Joint Standing Committee on Utilities and Energy to update the committee on the progress of the study, to respond to any questions that the committee members may have and to discuss the examination of any relevant issues that the committee identifies to be of interest.

Reports. The department and the commission shall present to the Joint Standing Committee on Utilities and Energy an interim report of the department's and the commission's findings and recommendations no later than February 1, 1998 and a final report of their findings and recommendations no later than December 1, 1998. The interim and final reports must include any legislation necessary to implement the recommendations of the department or the commission.

Authorization to report out legislation. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may report out legislation related to electric industry restructuring to the Second Regular Session of the 118th Legislature or the First Regular Session of the 119th Legislature.

Funding of Attorney General position. An attorney position within the department must be designated by the Attorney General to conduct the study required by this Part and to investigate potential violations of antitrust laws within the electric utility industry. The position must be funded through June 30, 1999 from funds available within the commission.

Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Part.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

1997-98

PUBLIC UTILITIES COMMISSION

Regulatory Fund

All Other

\$86,433

Allocates funds to fund one Attorney position within the Department of the Attorney General to conduct a market power study and investigate potential violations of antitrust laws within the utilities industry.

Hot Bench Issue¹⁵

35-A MRSA §1305, sub-§5 is enacted to read:

5. Use of advisory staff. This subsection applies to the participation of advisory staff and consultants in commission proceedings.

A. If an advisory staff member or consultant relies upon facts not otherwise in the record or presents to the commission any independent financial or technical analysis not otherwise in the record, the staff member or consultant:

(1) Shall place any such information into the record;

(2) Is subject to discovery; and

(3) Must be available to answer questions regarding those facts or analysis, in the same manner as witnesses in the proceeding, at a time sufficient to permit parties to respond.

This paragraph does not apply to reviews, evaluations or examinations of information, data, studies, analyses or computer modeling placed into the record by other parties or other aid or advice provided by advisory staff members or consultants. Compliance with this paragraph does not render the advisory staff member or consultant an advocate under the Maine Administrative Procedure Act.

B. On request of any party in a proceeding, the commission shall assign one or more staff members who are not advisors in

¹⁵ PL 97, ch. 691

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

the proceeding to rule on any objection to discovery requests made by or directed to advisors.

C. The commission may assign one or more staff members who are not advisors in a proceeding to facilitate negotiated settlements in the proceeding.

Sec.. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, (35-A MRSA §1304, sub-§ 5) appl(ies) to all proceedings pending on the effective date of this Act...

Protective orders¹⁶

35-A MRSA §1311-A, as enacted by PL 1993, c. 535, §1, is amended to read:

§1311-A. Protective orders; confidential information

Records placed under a protective order by the commission pursuant to the Maine Rules of Civil Procedure, Rule 26 (c) in accordance with this section, are within the scope of a privilege against discovery within the meaning of Title 1, section 402, subsection 3, paragraph B and are not public records while under the protective order.

1. Issuance of protective orders. The following provisions govern the commission's issuance of protective orders.

A. The commission may issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26 (c). When issued, a protective order must be served on the party seeking the order. Service must be in accordance with the Maine Rules of Civil Procedure, Rule 5 (b). A requirement to disclose information pursuant to a protective order does not take effect until 24 hours after service of the protective order on the party seeking the protective order.

B. In granting protective orders, the commission shall balance the need to keep the information confidential with the policies of conducting its proceedings in an open and fair manner where all parties have the right and opportunity to participate effectively as provided under the Maine Administrative Procedure Act, the Maine Rules of Civil

¹⁶ PL 97, ch. 691

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

Procedure, the Maine Rules of Evidence and the Maine freedom of access laws.

C. The party requesting a protective order bears the burden of demonstrating the need for protection. The commission may partially and temporarily grant a request for a protective order, consistent with the provisions of paragraph D, to expedite the release of confidential information to certain parties, but the party seeking protection bears the burden of demonstrating that release of the information to other parties should be restricted. The commission may not issue a final order prohibiting or restricting access to a party without notice and an opportunity to be heard.

D. If the commission issues a protective order that denies a party access to information, the commission shall provide the information to the party's attorney, if any, subject only to the restriction that the attorney use the information solely for the purpose of the proceeding and not disclose the information to others, except that:

(1) The commission may deny an attorney access to information relating to bids if the attorney represents a party that made a competing bid; and

(2) The commission may impose further limitations if the commission finds that an attorney has a direct, personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information.

Unless the commission finds that the conditions of subparagraphs 1 or 2 are met, the obligations of attorneys under the ethical rules, including the obligation to decline representation in certain cases, the authority of the commission to discipline attorneys who appear before the commission, including the authority, under section 1502, to punish for contempt persons who fail to comply with a protective order, and the commission's ability to recommend sanctions by other bodies, including the discipline of attorneys by the courts and the Board of Overseers of the Bar, is sufficient security to permit the attorney to have access to information in order to represent a party before the commission.

E. The commission may prohibit or restrict the disclosure of information under protective order to a party's independent consultant only for compelling reasons and to the least extent necessary, except that the commission may require that the information be used only for the purposes of the proceeding in

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

which it is disclosed and may prohibit disclosure of the information by the independent consultant to others.

F. Notwithstanding any other provision of this subsection:

(1) The commission may deny all parties, including the commission and its staff, access to information if the commission finds that the potential for harm from disclosure of the information outweighs its probative value in the proceeding; and

(2) The commission may deny an attorney access to information under protective order if the commission finds that the attorney's request for access to the information is not made in good faith or that the attorney will not respect the terms of the protective order.

2. Appeal. A party required to disclose information pursuant to a protective order issued by a hearing examiner in accordance with subsection 1 may appeal to the commissioners sitting as the commission in accordance with this subsection.

A. The basis for an appeal brought pursuant to this subsection is that the potential for damage resulting from the disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding.

B. A party bringing an appeal pursuant to this subsection must file the appeal within 24 hours of service of the protective order.

C. If a party appeals in accordance with this subsection, the party is not required to disclose the information during the pendency of the appeal.

D. The commission shall render a decision on the appeal brought pursuant to this subsection within 7 business days of the filing of the appeal.

E. Notwithstanding subsection 1, the commission may impose limits on the disclosure of information beyond the limits imposed by the protective order issued in accordance with subsection 1 only if the commission finds that potential for damage resulting from disclosure of the information in accordance with the protective order clearly exceeds the probative value of the information in the proceeding.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

For purposes of this subsection, the term "hearing examiner" means a commission staff person authorized to issue a protective order in a commission proceeding.

Sec.. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, (35-A MRSA §1304, sub-§ 5)¹⁷ appl(ies) to all proceedings pending on the effective date of this Act except that Title 35-A, section 1311-A, subsections 1 and 2 do not apply to pending or future Public Utilities Commission proceedings in which the commission reviews a proposed sale of generation assets divested by an investor-owned electric utility pursuant to Title 35-A, section 3204.

Intervenor funding¹⁸

35-A MRSA §1310, sub-§1, ¶A, as enacted by PL 1989, c. 281, is amended to read:

A. In any commission proceeding in which standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., are implemented, the commission may order the utility to compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that:

(1) The position of the intervenor is not adequately represented by the Office of the Public Advocate or the Public Utilities Commission staff;

(2) The intervenor substantially contributed to the approval, in whole or in part, of a position advocated by the intervenor in the commission proceeding, except that, if no commission advocacy staff is appointed to a proceeding, the intervenor must be likely to contribute substantially to the conduct of the commission proceeding and to assist in the resolution of the issues raised in the proceeding; and

(3) Participation in the proceeding by the intervenor would impose a significant financial hardship on the intervenor.

¹⁷ Application is in error: retroactivity should include protective order provisions

¹⁸ PL 97, ch. 691

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

Sec.. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, (35-A MRSA §1304, sub-§ 5)¹⁹ appl(ies) to all proceedings pending on the effective date of this Act except that Title 35-A, section 1311-A, subsections 1 and 2 do not apply to pending or future Public Utilities Commission proceedings in which the commission reviews a proposed sale of generation assets divested by an investor-owned electric utility pursuant to Title 35-A, section 3204.

Employee licensing; transition²⁰

32 § 2401. License required

No installation or servicing of oil and solid fuel burner equipment shall be made, except as provided in this chapter, unless made by a person licensed by the board.

32 § 2401-A. Exceptions

The licensing provisions of this chapter shall not apply to the following:

....

4-A. Employees displaced by utility divestiture. A person installing or servicing oil or solid fuel burner equipment in an electric generation facility that an electric utility divested pursuant to Title 35-A, section 3204 if that person was employed by an electric utility on March 1, 1998 and installed or serviced oil or solid fuel burner equipment in an electric generation facility owned by that electric utility;

This subsection is repealed March 1, 2000.

32 §15109. Stationary steam engineers and boiler operators

....

2. Licenses. In order to safeguard life, health and property, the board shall provide for the mandatory licensing of stationary steam engineers and boiler operators.

Those persons operating boilers exempt under section 15102 and those persons employed by companies under the jurisdiction of the Public

¹⁹ Application is in error: retroactivity should include intervenor funding provisions

²⁰ PL 97, ch. 691

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

Utilities Commission or the United States Atomic Energy Commission, or its successor, are exempt from the licensing requirements.

A. A person operating or supervising the operation of boilers or undertaking any other activity for which a license would otherwise be required under this section is exempt from the licensing requirements of this section if that person undertakes those activities in an electric generation facility that an electric utility divested pursuant to Title 35-A, section 3204 and that person was employed by an electric utility on March 1, 1998 and undertook those activities in an electric generation facility owned by that electric utility.

This paragraph is repealed on March 1, 2000.

Kennebunk Light and Power District (CMP stranded costs)²¹

Sec. Kennebunk Light and Power District service. Notwithstanding the Maine Revised Statutes, Title 35-A, section 2102, the Kennebunk Light and Power District, referred to in this Act as the "power district," may, with the consent of the Kennebunk, Kennebunkport and Wells Water District, referred to in this Act as the "water district," connect its electric transmission or distribution facilities to the water district and sell electric power to the water district without the prior approval of the Public Utilities Commission. If the power district connects its electric transmission or distribution facilities to the water district and sells electric power to the water district, the water district shall pay to the Central Maine Power Company, referred to in this Act as the "company," an amount determined by the Public Utilities Commission to be a reasonable allocation of the company's stranded costs. The Public Utilities Commission shall make its determination of the amount the water district must pay based on the commission's initial determination of the company's stranded costs pursuant to Title 35-A, section 3208. Beginning on the date the water district is disconnected from the electric system of the company, the water district becomes liable for those stranded costs allocated to the water district by the Public Utilities Commission under this Act. The method and timing of payments by the water district to the company must be established by agreement between the water district and the company or, agreement failing, on a schedule determined by the Public Utilities Commission.

²¹ P&SL 97, ch 72

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

Approval of Consumer Education Rule

RESOLVES 97, CHAPTER 99

Adoption with amendment. Resolved: That the final adoption of Chapter 302: Consumer Education Program; Electric Restructuring, a provisionally adopted major substantive rule of the Public Utilities Commission and submitted to the Legislature for review pursuant to the Maine Administrative Procedure Act, is authorized, but only if the rule is amended as follows:

1. Section 5, paragraph B is amended by striking the last sentence and new language is inserted providing that the commission must consider the recommendations of the advisory board in developing and implementing the consumer education plan and program; and

2. Section 6, paragraph B is amended by inserting the word "only" after the phrase "for informational purposes."

The Public Utilities Commission is not required to hold hearings or conduct other formal proceedings prior to finally adopting the rule in accordance with this resolve.

Approval of Standard Offer Rule

RESOLVES 97, CHAPTER 100

Adoption with amendment. Resolved: That the final adoption of Chapter 301: Standard Offer Service, a provisionally adopted major substantive rule of the Public Utilities Commission, and submitted to the Legislature for review pursuant to the Maine Administrative Procedure Act, is authorized only if the rule is modified as follows.

1. An additional provision is inserted that provides that a transmission and distribution utility may recover through a rate case proceeding reasonable costs:

A. That are incurred by the transmission and distribution utility in providing standard offer service at the direction of the commission in the event of a default by the standard offer service provider; and

B. That are not covered by revenues received from standard offer customers or by the bond, letter of credit or corporate guarantee filed by the standard offer provider.

MAINE ELECTRIC RESTRUCTURING LAW
(as amended)

The Public Utilities Commission is not required to hold hearings or conduct other formal proceedings prior to finally adopting the rule in accordance with this resolve.

G:\OPLANRG\COMMTTEE\UTE\RESTRUCT\CH316.DOC (12/09/98 10:27 AM)