

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Ensure That Large Public Utility Reorganizations Advance the Economic Development and Information Access Goals of the State

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

Sec. 1. 35-A MRSA §708, sub-§2, ¶A, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. 2. 35-A MRSA §708, sub-§2, ¶¶A-1 and A-2 are enacted to read:

A-1. Unless exempted by rule or order of the commission, a reorganization in which any of the public utilities that are parties to the proposed transaction has gross annual state revenues exceeding \$50,000,000 may not take place without the approval of the commission.

(1) Before approving a reorganization in which any of the public utilities that are parties to the proposed transaction has gross annual state revenues exceeding \$50,000,000, the commission must find that the proposal will:

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

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

(c) Be consistent with the interests of the public utility's investors; and

(d) Be consistent with the interests of the public utility's employees.

(2) In granting its approval under subparagraph (1), the commission shall impose such terms, conditions or requirements as in its judgment are necessary to ensure that the reorganization provides an affirmative benefit to the public. These conditions must include provisions that ensure:

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

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

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

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

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

(f) That the public utility's credit is not impaired or adversely affected;

(g) That reasonable limitations are imposed upon the total level of investment in nonutility business, except that the commission may not approve or disapprove of the nature of the nonutility business;

(h) That the commission has reasonable remedial power, including, but not limited to, the power, after notice to the public utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the public utility in the event that divestiture is necessary to protect the interests of the public utility, ratepayers or investors. A divestiture order must provide a reasonable period within which the divestiture must be completed;

(i) That ratepayers, the public utility's investors and the public utility's employees are not adversely affected by the reorganization;

(j) That the reorganization does not result in the subsidization by the public utility of activities that are not connected to the provision of public utility services to ratepayers;

(k) That the reorganization is not likely to have a significant adverse effect on competition in those markets over which the commission has jurisdiction;

(l) That the reorganization is not likely to result in any adverse rate impact on the public utility's retail customers; and

(m) That the reorganization does not adversely affect the location and the accessibility of the public utility's management and operations and does not adversely affect the proportion and number of the public utility's employees who reside in the State.

A-2. Unless exempted by rule or order of the commission, a reorganization of a public utility other than a public utility subject to paragraph A-1 may not take place without the approval of the commission.

(1) The reorganization of a public utility other than a public utility subject to paragraph A-1 may not be approved by the commission unless it is established by the applicant for approval that the reorganization is consistent with the interests of the public utility's ratepayers and investors. The commission shall rule upon a request for approval of a reorganization under this subparagraph within 60 days of the filing of the request for approval. If it determines that the necessary investigation cannot be concluded within 60 days, the commission may extend the period for a further period of no more than 120 days.

(2) In granting its approval under subparagraph (1), the commission shall impose such terms, conditions or requirements as in its judgment are necessary to protect the interests of ratepayers. These conditions must include provisions that ensure:

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

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

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

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

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

(f) That the public utility's credit is not impaired or adversely affected;

(g) That reasonable limitations are imposed upon the total level of investment in nonutility business, except that the commission may not approve or disapprove of the nature of the nonutility business;

(h) That the commission has reasonable remedial power, including, but not limited to, the power, after notice to the public utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the public utility in the event that divestiture is necessary to protect the interests of the public utility, ratepayers or investors. A divestiture order must provide a reasonable period within which the divestiture must be completed; and

(i) That neither ratepayers nor investors are adversely affected by the reorganization.

Sec. 3. 35-A MRSA §708, sub-§4, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

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

Sec. 4. 35-A MRSA §1101, sub-§1-A is enacted to read:

1-A. Standard of approval for sales, mergers and consolidations of large public utilities. Before authorizing a sale, merger, consolidation or other disposition of property subject to subsection 1 in which any of the public utilities that are parties to the proposed transaction has gross annual state revenues exceeding \$50,000,000, the commission must find that the proposal:

- A. Advances the economic development and information access goals of the State as set forth in section 7101, subsections 2 and 4 to the extent applicable to the type of public utilities involved;
- B. Results in short-term and long-term economic benefits to ratepayers;
- C. Is consistent with the interests of the public utility's investors; and
- D. Is consistent with the interests of the public utility's employees.

The commission shall impose such terms, conditions or requirements as in its judgment are necessary to ensure that the transaction provides an affirmative benefit to the public. These conditions must include provisions that ensure that the transaction meets each of the factors set forth in section 708, subsection 2, paragraph A-1, subparagraph (2).

Sec. 5. 35-A MRSA §1103, sub-§1-A is enacted to read:

1-A. Standard of approval for sales of large public utilities. Before authorizing a sale or other disposition of stock subject to subsection 1 in which any of the public utilities that are parties to the proposed transaction has gross annual state revenues exceeding \$50,000,000, the commission must find that the proposal:

- A. Advances the economic development and information access goals of the State as set forth in section 7101, subsections 2 and 4 to the extent applicable to the type of public utilities involved;
- B. Results in short-term and long-term economic benefits to ratepayers;
- C. Is consistent with the interests of the public utility's investors; and
- D. Is consistent with the interests of the public utility's employees.

The commission shall impose such terms, conditions or requirements as in its judgment are necessary to ensure that the transaction provides an affirmative benefit to the public. These conditions must include provisions that ensure that the transaction meets each of the factors set forth in section 708, subsection 2, paragraph A-1, subparagraph (2).

Sec. 6. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to any decision made by the Public Utilities Commission on or after the effective date of this Act, including decisions made in proceedings pending at the time this Act takes effect.

SUMMARY

This bill requires the Public Utilities Commission to approve a sale, merger, consolidation or reorganization involving a public utility with gross annual state revenues greater than \$50,000,000 only when it is satisfied that the proposal will advance the economic development and information access goals of the State, result in economic benefits to ratepayers and be consistent with the interests of investors and public utility employees. The bill also allows the commission to charge a filing fee of up to \$100,000 to an applicant for reorganization when the applicant is a public utility that has gross annual state revenues greater than \$50,000,000. In the case of a public utility with gross annual state revenues totaling \$50,000,000 or less, the standard under this bill is the same standard as is currently applicable.