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An Act To Allow for Greater Energy Competition in Maine by Amending the Law Governing Electric Generation or Generation-related Assets by Affiliates

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

Sec. 1. 35-A MRSA §3204, sub-§1-A is enacted to read:

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

A. "Financial interest" means any voting or nonvoting equity interest, partnership interest, whether limited or general, trust interest or joint venture in an entity. "Financial interest" does not include an interest created between an investor-owned transmission and distribution utility and a generation affiliate by virtue of their relationship with a common parent company.

B. "Generation affiliate" means an affiliated interest of an investor-owned transmission and distribution utility that owns, has a financial interest in or has control of generation or generation-related assets.

Sec. 2. 35-A MRSA §3204, sub-§5, as enacted by PL 1997, c. 316, §3, is amended to read:

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.

Sec. 3. 35-A MRSA §3204, sub-§5-A is enacted to read:

5-A. Ownership of generation or generation-related assets by a generation affiliate. An investor-owned transmission and distribution utility may have a generation affiliate as long as the generation affiliate exists separate from and independent of the investor-owned transmission and distribution utility. The commission shall adopt rules establishing the terms, conditions and standards of conduct governing the relationship between an investor-owned transmission and distribution utility and a generation affiliate that ensure the separation and independence of the generation affiliate and that also ensure, at a minimum, that:

A. The investor-owned transmission and distribution utility does not give any preference to a generation affiliate over generators not affiliated with the investor-owned transmission and distribution utility;

B. The costs of the generation affiliate are not recovered from ratepayers of the investor-owned transmission and distribution utility;

C. Any allocation of costs from an affiliated interest that provides services to both the investor-owned transmission and distribution utility and the generation affiliate is determined to be consistent with section 707, subsection 3, paragraph G and is consistent with the interests of the ratepayers of the investor-owned transmission and distribution utility;

D. The employees of the investor-owned transmission and distribution utility are not shared with and are physically separated from the employees of the generation affiliate; and

E. The accounts and records of the investor-owned transmission and distribution utility are kept separate from the accounts and records of the generation affiliate.

Nothing in this subsection is intended to limit or modify the scope or application of sections 707 and 708.

Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

For a violation of rules adopted under this subsection, the commission may order an investor-owned transmission and distribution utility to divest of a generation affiliate if the commission determines that divestiture is necessary to protect the interests of the investor-owned transmission and distribution utility or ratepayers. The commission may order a divestiture only after notice and opportunity to be heard and if no other available remedy is adequate to reasonably address the harm. In addition, the commission may impose administrative penalties in accordance with chapter 15.

Sec. 4. Rulemaking. Within 180 days of the effective date of this Act, the Public Utilities Commission shall provisionally adopt rules pursuant to the Maine Revised Statutes, Title 35-A, section 3204, subsection 5-A.

SUMMARY

This bill directs the Public Utilities Commission to develop clear standards and protections to be imposed on investor-owned transmission and distribution utilities to prevent them from providing preferential treatment to their generation affiliates in Maine.

This bill requires the commission to adopt major substantive rules to protect ratepayers and establish standards of conduct that govern the relationship between an investor-owned transmission and distribution utility and a generation affiliate. It requires that standards of conduct adopted by commission rule ensure at a minimum that a generation affiliate is not given preference over nonaffiliated competitive generators; costs of the generation affiliate are not recovered from ratepayers; employees of an investor-owned transmission and distribution utility are physically separate from and not shared with those of a generation affiliate; and the accounts and records of an investor-owned transmission and distribution utility and a generation affiliate are separate.

This bill defines "generation affiliate" as an affiliated interest that owns, has a financial interest in or controls generation or generation-related assets.

This bill defines "financial interest" as any voting or nonvoting equity interest, partnership interest, whether limited or general, trust interest or joint venture in an entity and specifies that a financial interest is not created between an investor-owned transmission and distribution utility and a generation affiliate solely by virtue of their relationship with a common parent company.

This bill establishes penalties for violations of rules adopted pursuant to this bill, and provides that the commission may require an investor-owned transmission and distribution utility to divest from its generation affiliate as a result of any violations of the rules.