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Legislative Document

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S.P. 495

In Senate, April 16, 2019

An Act Regarding Utility Reorganizations

(EMERGENCY)

Submitted by the Office of the Public Advocate pursuant to Joint Rule 204.
Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LAWRENCE of York.
Cosponsored by Senator: WOODSOME of York, Representative: RILEY of Jay.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** this legislation needs to take effect before the expiration of the 90-day
4 period because at least 2 proposals for utility reorganizations are imminent; and

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

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

10 **Sec. 1. 35-A MRSA §708, sub-§1-A** is enacted to read:

11 **1-A. Legislative findings.** The Legislature finds it is in the public interest to ensure
12 that reorganization of a utility serves the interest of the utility's ratepayers.

13 **Sec. 2. 35-A MRSA §708, sub-§2,** as enacted by PL 1987, c. 141, Pt. A, §6, is
14 amended to read:

15 **2. Reorganization subject to commission approval.** Reorganization ~~shall be~~ is
16 subject to commission approval as follows.

17 A. Unless exempted by rule or order of the commission, ~~no~~ a reorganization may not
18 take place without the approval of the commission. ~~No~~ A reorganization may not be
19 approved by the commission unless it is established by the applicant for approval that
20 the reorganization ~~is consistent with the interests of~~ provides net benefits to the
21 utility's ratepayers and is consistent with the interests of the utility's investors. The
22 commission shall rule upon all requests for approval of a reorganization within 60
23 days of the filing of the request for approval. If it determines that the necessary
24 investigation cannot be concluded within 60 days, the commission may extend the
25 period for a further period of no more than 120 days. In granting its approval, the
26 commission shall impose such terms, conditions or requirements as, in its judgment,
27 are necessary to protect the interests of ratepayers. These conditions ~~shall~~ must
28 include provisions ~~which assure~~ that ensure the following:

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

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

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

- 1 (4) That the ability of the utility to provide safe, reasonable and adequate service
2 is not impaired;
- 3 (5) That the utility continues to be subject to applicable laws, principles and
4 rules governing the regulation of public utilities;
- 5 (6) That the utility's credit is not impaired or adversely affected;
- 6 (7) That reasonable limitations be imposed upon the total level of investment in
7 nonutility business, except that the commission may not approve or disapprove of
8 the nature of the nonutility business;
- 9 (8) That the commission has reasonable remedial power including, but not
10 limited to, the power, after notice to the utility and all affiliated entities of the
11 issues to be determined and the opportunity for an adjudicatory proceeding, to
12 order divestiture of or by the utility in the event that divestiture is necessary to
13 protect the interest of the utility, ratepayers or investors. A divestiture order ~~shall~~
14 must provide a reasonable period within which the divestiture ~~shall~~ must be
15 completed; and
- 16 (9) That ratepayers receive net benefits from the reorganization and that neither
17 ratepayers nor investors are adversely affected by the reorganization.

18 B. The commission may intervene on behalf of the State in any proceeding before
19 any state or federal agency or court before which an application for approval of
20 reorganization is pending. The commission may enter into any binding settlement
21 related to any proceeding in which the commission has intervened and may exercise
22 any powers or rights provided by that settlement and may enforce these powers or
23 rights.

24 C. In determining whether a utility reorganization provides net benefits to the
25 utility's ratepayers pursuant to paragraph A, the commission, at a minimum, shall
26 examine:

- 27 (1) Whether the reorganization will result in a rate increase for the utility's
28 ratepayers; and
- 29 (2) Whether the reorganization will result in a loss of local control of the utility's
30 management and operations in a manner that limits the ability of local
31 management to protect the interests of the utility's ratepayers in this State.

32 **Sec. 3. Application.** Notwithstanding the Maine Revised Statutes, Title 1, section
33 302, this Act applies to actions and proceedings pending on the effective date of this Act.

34 **Sec. 4. Retroactivity.** This Act applies retroactively to March 27, 2019.

35 **Emergency clause.** In view of the emergency cited in the preamble, this
36 legislation takes effect when approved.

37 **SUMMARY**

38 This bill provides that a reorganization of a utility may not be approved by the Public
39 Utilities Commission unless it is established by the applicant for approval that the

1 reorganization provides net benefits to the utility's ratepayers and is consistent with the
2 interests of the utility's investors. In determining whether a utility reorganization
3 provides net benefits to the utility's ratepayers, the commission at a minimum must
4 examine whether the reorganization will result in a rate increase for the utility's
5 ratepayers and whether the reorganization will result in a loss of local control of the
6 utility's management and operations in a manner that limits the ability of local
7 management to protect the interests of the utility's ratepayers in this State.