

§708. Reorganizations

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

A. "Reorganization" means any creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest as defined in section 707 accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities or property. The commission may decide what other public utility actions constitute a reorganization to which the provisions of this section apply. Reorganizations include any reorganization for which a proceeding for approval is pending before any state or federal agency or court on or after July 13, 1982. For purposes of this subsection, a reorganization does not include any proceeding under the federal antitrust laws or the transfer of voting securities by gift, device or inheritance. [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. "Voting security" means any security presently entitling the owner or holder of any security to vote in the direction or management of the affairs of a company or any proprietary or other interest serving the same purposes. [PL 1987, c. 141, Pt. A, §6 (NEW).]

C. "Controlling interest" means:

(1) Voting power over voting shares of a corporation or entity that entitle the holders of those shares to cast at least 25% of the votes that all shareholders are entitled to cast in an election of the directors of the corporation or entity; or

(2) Voting power over at least 25% of the shares in any class of shares entitled to elect all the directors or any specified number of the directors.

For the purposes of this section, a person does not have a controlling interest if that person holds voting power, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified under this paragraph or who are not considered to have a controlling interest under this paragraph.

A person has voting power over a voting share if that person has shares, directly or indirectly, through any option, contract, arrangement, understanding, voting trust or conversion right or, by acting jointly or in concert or otherwise, has the power to vote, or to direct the voting of, that voting share. [PL 2011, c. 623, Pt. A, §13 (NEW).]

[PL 2011, c. 623, Pt. A, §13 (AMD).]

1-A. Legislative findings. The Legislature finds it is in the public interest to ensure that a reorganization of a public utility that would result in the transfer of ownership and control of a public utility or the parent company of a public utility serves the interest of the utility's ratepayers.

[PL 2019, c. 353, §1 (NEW).]

2. Reorganization subject to commission approval. Reorganization is subject to commission approval as follows.

A. Unless exempted by rule or order of the commission, a reorganization may not take place without the approval of the commission. A reorganization 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 utility's ratepayers and investors. If a reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, a reorganization may not be approved by the commission unless it is established by the applicant for approval that the reorganization provides net benefits to the utility's ratepayers. The commission shall rule upon all requests for approval of a reorganization 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, unless this period is extended either by agreement of all the parties or by the commission upon its determination that the party seeking the extension would be unreasonably disadvantaged because of circumstances beyond that party's control unless the extension were granted, as long as the party prior to the request for the extension had prosecuted its case in good faith and with due diligence. In granting its approval, 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 the following:

- (1) That the commission has reasonable access to books, records, documents and other information relating to the utility or any of its affiliates, except that the Public Utilities Commission may not have access to trade secrets unless it 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;
- (2) That the commission has all reasonable powers to detect, identify, review and approve or disapprove all transactions between affiliated interests;
- (3) That the utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired;
- (4) That the ability of the utility to provide safe, reasonable and adequate service is not impaired;
- (5) That the utility continues to be subject to applicable laws, principles and rules governing the regulation of public utilities;
- (6) That the utility's credit is not impaired or adversely affected;
- (7) That reasonable limitations be 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;
- (8) That the commission has reasonable remedial power including, but not limited to, the power, after notice to the 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 utility in the event that divestiture is necessary to protect the interest of the utility, ratepayers or investors. A divestiture order must provide a reasonable period within which the divestiture must be completed; and
- (9) That neither ratepayers nor investors are adversely affected by the reorganization, and if the reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, that the reorganization provides net benefits to the utility's ratepayers. [PL 2023, c. 168, §6 (AMD).]

B. The commission may intervene on behalf of the State in any proceeding before any state or federal agency or court before which an application for approval of reorganization is pending. The commission may enter into any binding settlement related to any proceeding in which the commission has intervened and may exercise any powers or rights provided by that settlement and may enforce these powers or rights. [PL 1987, c. 141, Pt. A, §6 (NEW).]

C. In determining whether a utility reorganization that would result in the transfer of ownership and control of a public utility or the parent company of a public utility provides net benefits to the utility's ratepayers pursuant to paragraph A, the commission, at a minimum, shall examine:

- (1) Whether the reorganization will result in a rate increase for the utility's ratepayers; and

(2) Whether the reorganization will result in a loss of local control of the utility's management and operations in a manner that limits the ability of local management to protect the interests of the utility's ratepayers in this State. [PL 2019, c. 353, §2 (NEW).]

[PL 2023, c. 168, §6 (AMD).]

2-A. Approval does not affect rate-making powers. Commission approval of a reorganization under this section may not limit or restrict the powers of the commission in determining and fixing any rate, fare, tolls, charge, classification, schedule or joint rate as provided in this Title.

[PL 1989, c. 159, §3 (NEW).]

3. Waiver. The commission may, by general rule, exempt classes of reorganizations from the requirements of subsection 2.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

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 5/100 of 1% of the transaction value as determined by the commission if the commission determines that the application may involve issues that would necessitate significant additional costs to the commission, except that, if a reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, the commission shall order the applicant to pay to the commission a filing fee in an amount equal to 5/100 of 1% of the transaction value as determined by the commission. 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 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 must be returned to the applicant.

[PL 2021, c. 318, §5 (AMD).]

4-A. Filing fee to Office of the Public Advocate. When an applicant pays a filing fee to the commission pursuant to subsection 4, the applicant shall, at the same time, pay to the Office of the Public Advocate a filing fee not to exceed 3/100 of 1% of the total transaction value of the reorganization, as determined by the commission, if the office determines that the application may involve issues that would necessitate significant additional costs to the office. The applicant may request the Office of the Public Advocate to waive all or a portion of the filing fee. The Office of the Public Advocate shall decide on the waiver request within 30 days.

Filing fees paid as required under this subsection must be segregated, apportioned and expended by the Office of the Public Advocate for the purposes of representing the interests of consumers in the proceeding before the commission or conducting public outreach to inform consumers about the proceeding. The Office of the Public Advocate shall return any portion of the filing fee that is not expended for these purposes to the applicant who paid the fee.

[PL 2021, c. 195, §1 (NEW).]

5. Limitation. The provisions of this section do not apply to any telephone utility other than a provider of provider of last resort service and apply to a provider of provider of last resort service only if the reorganization results in a merger, sale or transfer of a controlling interest of the provider of provider of last resort service.

[PL 2011, c. 623, Pt. A, §14 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1989, c. 159, §3 (AMD). PL 2011, c. 623, Pt. A, §§13, 14 (AMD). PL 2019, c. 353, §§1, 2 (AMD). PL 2021, c. 195, §1 (AMD). PL 2021, c. 318, §5 (AMD). PL 2023, c. 168, §6 (AMD).

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