

Title 35-A, Chapter 32, ELECTRIC INDUSTRY RESTRUCTURING (HEADING: PL 1997, c. 316, §3 (new))

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Chapter 32: ELECTRIC INDUSTRY RESTRUCTURING (HEADING: PL 1997, c. 316, §3 (new))

§3201. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 316, §3 (new).]

1. Affiliated interest. "Affiliated interest" has the same meaning as provided in section 707, subsection 1, paragraph A. [1997, c. 316, §3 (new).]

2. Aggregate. "Aggregate" means to organize individual electricity consumers into a group or entity for the purpose of purchasing electricity on a group basis. [1997, c. 316, §3 (new).]

3. Aggregator. "Aggregator" means an entity that gathers individual consumers together for the purpose of purchasing electricity. [1999, c. 398, Pt. A, §72 (amd); §§104, 105 (aff).]

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. [1997, c. 316, §3 (new).]

5. Competitive electricity provider. "Competitive electricity provider" means a marketer, broker, aggregator or any other entity selling electricity to the public at retail. [1997, c. 316, §3 (new).]

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; [1997, c. 316, §3 (new).]

B. The transmission and distribution portion of an electrification cooperative organized on a cooperative plan under the laws of the State; [1997, c. 316, §3 (new).]

C. A municipal or quasi-municipal transmission and distribution utility; [1997, c. 316, §3 (new).]

D. The transmission and distribution portion of a municipal or quasi-municipal entity providing generation and other services; and [1997, c. 316, §3 (new).]

E. A transmission and distribution utility wholly owned by a municipality. [1997, c. 316, §3 (new).]

7. Divest. "Divest" means to legally transfer ownership and control to an entity that is not an affiliated interest. [1997, c. 316, §3 (new).]

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

A. Billing and collection; [1997, c. 316, §3 (new).]

B. Provision of a meter; [1997, c. 316, §3 (new).]

C. Meter maintenance and testing; and [1997, c. 316, §3 (new).]

D. Meter reading. [1997, c. 316, §3 (new).]

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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

[1999, c. 398, Pt. A, §72 (amd); §§104, 105 (aff).]

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

[1997, c. 316, §3 (new).]

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

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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

[1997, c. 316, §3 (new).]

18. Transmission and distribution plant.

[1999, c. 398, Pt. A, §73 (rp); §§104, 105 (aff).]

19. Transmission and distribution utility.

[1999, c. 398, Pt. A, §73 (rp); §§104, 105 (aff).]

PL 1997, Ch. 316, §3 (NEW).

PL 1999, Ch. 398, §A104,105 (AFF).

PL 1999, Ch. 398, §A72,73 (AMD).

§3202. Retail access; deregulation

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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.
[1997, c. 316, §3 (new).]

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.
[1997, c. 316, §3 (new).]

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.
[1997, c. 316, §3 (new).]

4. Electric billing and metering services. The commission by rule may provide for competition in the provision of electric billing and metering services. The commission in its rules shall establish terms and conditions for such competition including which services are subject to competition and which customers will receive competitive services.

If the commission provides for competition for any billing or metering services, the commission shall:

A. Establish in its rules minimum standards necessary to protect consumers of such services and codes of conduct governing the relationship among transmission and distribution utilities providing such 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; and
[1999, c. 601, §1 (new).]

B. Determine each transmission and distribution utility's costs of providing such services as 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.
[1999, c. 601, §1 (new).]

Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.
[1999, c. 601, §1 (rpr).]

5. International transmission contracts. Notwithstanding section 3204, transmission and distribution utilities, including consumer-owned utilities, that operate or manage a portion of the grid connected to the New England grid by transmission lines that pass through Canada may enter into commercially reasonable contracts with Canadian electric utilities for the purchase of back-up services, tie-line interruption services, ancillary services, transmission services or any other service that promotes effective retail electric competition in northern Maine. The transmission and distribution utilities shall make all such contract services available to competitive electricity providers at cost, on an equitable basis. Commission approval of such contracts is not required. Nothing in this subsection exempts from commission jurisdiction utility operations or activities undertaken pursuant to such contracts.
[1999, c. 398, Pt. B, §1 (new).]

6. Exception. Notwithstanding any other provision of this chapter, an electric utility whose system is not physically connected to any transmission and distribution utility is exempt from this chapter. The commission shall ensure that such an electric utility's rates, including consideration of generation-related costs, are just and reasonable.
[1999, c. 398, Pt. E, §1 (new).]

PL 1997, Ch. 316, §3 (NEW).

PL 1999, Ch. 398, §B1, D1, E1 (AMD).

PL 1999, Ch. 601, §1 (AMD).

§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.
[1997, c. 316, §3 (new).]

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:

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- A. Evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason; [1997, c. 316, §3 (new).]
- B. Evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities; [1997, c. 316, §3 (new).]
- 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; [1997, c. 316, §3 (new).]
- D. Evidence of the ability to satisfy the renewable resource portfolio requirement established under section 3210; [1999, c. 398, Pt. J, §1 (amd).]
- E. Disclosure of the names and corporate addresses of all affiliates of the applicant; and [1999, c. 398, Pt. J, §1 (amd).]
- F. Evidence that the applicant is registered with the State Tax Assessor as a seller of tangible personal property pursuant to Title 36, section 1754-B, together with a statement that the applicant agrees to be responsible for the collection and remission of taxes in accordance with Title 36, Part 3 on all taxable sales of electricity made by the applicant to consumers located in this State. [1999, c. 398, Pt. J, §2 (new).]

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. [1999, c. 398, Pt. J, §§1, 2 (amd).]

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.

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.

[1997, c. 316, §3 (new).]

4. Consumer protection provisions. As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a residential consumer or to a small commercial consumer:

- A. May not terminate generation service without at least 30-day prior notice to the consumer; [1999, c. 657, §18 (amd).]
- B. Must offer service to the consumer for a minimum period of 30 days; [1999, c. 657, §18 (amd).]
- C. Must allow the consumer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection; [1999, c. 657, §18 (amd).]
- D. Must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing; [2003, c. 558, §1 (amd).]
- E. Must provide to the consumer 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; [2003, c. 558, §2 (amd).]
- F. Must comply with any other applicable standards or requirements adopted by the commission by rule or order; and [2003, c. 558, §2 (amd).]
- G. Must provide at least once annually to the consumer any information disclosures required by the commission by rule pursuant to subsection 3. [2003, c. 558, §3 (new).]

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For purposes of this subsection, "residential consumer" means a consumer defined as residential under the terms and conditions of the consumer's transmission and distribution utility. For purposes of this subsection, "small commercial consumer" means, in the case of a consumer served by an investor-owned transmission and distribution utility, a nonresidential consumer that meets the availability criteria to take service under a core customer class of the transmission and distribution utility that does not pay a demand charge to the transmission and distribution utility or, in the case of a consumer served by a consumer-owned transmission and distribution utility, a nonresidential consumer with a demand of 20 kilowatts or less.

[2003, c. 558, §§1-3 (amd).]

4-A. General consumer protections. As a condition of licensing, a competitive electricity provider:

A. Shall obtain a consumer's authorization before serving the consumer; [1999, c. 657, §19 (new).]

B. May not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number, usage and historical payment information, without the consent of the customer; [1999, c. 657, §19 (new).]

C. Must comply with the provisions of the Maine Unfair Trade Practices Act, Title 5, chapter 10; [1999, c. 657, §19 (new).]

D. May not collect or seek to collect unreasonable costs from a customer who is in default; [1999, c. 657, §19 (new).]

E. Must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f; [1999, c. 657, §19 (new).]

F. Must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing; and [2003, c. 558, §4 (amd).]

G. [2003, c. 558, §5 (rp).]

H. Must comply with any other applicable standards or requirements established by the commission by rule. [1999, c. 657, §19 (new).]

[2003, c. 558, §§4, 5 (amd).]

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.

[1997, c. 316, §3 (new).]

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 consumers of electricity from fraud and other unfair and deceptive business practices. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, the commission may provide by rule that a competitive electricity provider may satisfy the requirements of subsection 4-A, paragraph A by obtaining from the customer oral authorization obtained by an independent 3rd party.

[RR 2003, c. 2, §112 (cor).]

7. Penalties. The commission may impose administrative penalties upon a competitive electricity provider in accordance with chapter 15.

[2003, c. 505, §29 (rpr).]

8. Dispute resolution. The commission shall resolve disputes between competitive electricity providers and retail consumers of electricity concerning standards or requirements established by or pursuant to subsection 4, 4-A or 6.

[1999, c. 657, §20 (amd).]

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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.

[1997, c. 316, §3 (new).]

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 [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]
[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

13-A. Investigation. The commission may investigate any matter relating to the provision of service by a competitive electricity provider pursuant to this chapter. In conducting an investigation under this subsection, the commission shall use the procedures established under section 1303, subsection 2.

[1999, c. 398, Pt. A, §74 (new); §§104, 105 (aff).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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16-A. Customer information. A transmission and distribution utility may not release any customer-specific information to a licensed competitive electricity provider unless the provider produces sufficient evidence, as defined by the commission by rule, that the provider has obtained the customer's authorization.

[1999, c. 237, §1 (new).]

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.

[1997, c. 316, §3 (new).]

18. Confidentiality of consumer information. Information concerning customers of a competitive electricity provider is subject to the same confidentiality protections afforded utility customer information under section 704, subsection 5.

[1999, c. 398, Pt. A, §75 (new); §§104, 105 (aff).]

PL 1997, Ch. 316, §3 (NEW).

PL 1999, Ch. 237, §1 (AMD).

PL 1999, Ch. 398, §A104,105 (AFF).

PL 1999, Ch. 398, §A74,75,J1,2 (AMD).

PL 1999, Ch. 657, §18-20 (AMD).

PL 2001, Ch. 71, §1 (AMD).

PL 2003, Ch. 505, §29 (AMD).

PL 2003, Ch. 558, §1-5 (AMD).

RR 2003, Ch. 2, §112 (COR).

§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; [1997, c. 558, §1 (amd).]

B. Ownership interest in a nuclear power plant; [1997, c. 316, §3 (new).]

C. Ownership interest in a facility located outside the United States; or [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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.

[1997, c. 558, §1 (amd).]

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.

[1997, c. 316, §3 (new).]

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 or generation-related business activities 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 or would be likely to reduce the level of the utility's stranded costs.

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The commission by rule shall establish the procedure for granting extensions. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 577, §1 (amd).]

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. The commission shall adopt all rules required under this subsection. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 577, §2 (amd).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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-C, section 651 and from the Uniform Fraudulent Transfer Act, Title 14, chapter 504 for the matters addressed by the order. A divestiture pursuant to a commission order directing or approving the divestiture is not subject to limitations contained in the corporation's articles of incorporation and, notwithstanding Title 13-C, chapter 12, does not require shareholder approval.

[2003, c. 344, Pt. D, §24 (amd).]

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 [1997, c. 710, §9 (new).]

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. [1997, c. 710, §9 (new).]

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 electric utility. Nothing in this section authorizes the sale or transfer of any right of eminent domain. Any right

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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.
[1997, c. 710, §9 (new).]

9. Other regulatory approvals; limitation. A transfer of interests or rights in real property necessary to consummate a divestiture pursuant to this section that results in a division of ownership of any lot or parcel of real property:

A. Is exempt from municipal and state agency approval required pursuant to laws, ordinances or rules related to land use, zoning, shoreland zoning or subdivision of property; and [1999, c. 43, §1 (new).]

B. Does not constitute a violation of laws, ordinances or rules relating to land use, zoning, shoreland zoning or subdivision of property. [1999, c. 43, §1 (new).]

Any subsequent regulated activity relating to any resulting parcel is subject to all applicable regulatory reviews and approvals by a municipality or state agency. A municipality or state agency, in its review of any subsequent regulated activity relating to any resulting parcel, may consider the division of ownership accomplished pursuant to the exemption granted under this subsection and may, in accordance with applicable standards established by law, rule or ordinance, deny or condition its approval based on the cumulative effect of that division of ownership and the subsequent regulated activity, as though both were occurring at the same time.

For purposes of this subsection, "subsequent regulated activity" means any activity occurring after a division of ownership accomplished pursuant to the exemption granted under this subsection that is subject to regulatory review by a municipality or state agency, including any change of use, division of ownership or development. For purposes of this subsection, "resulting parcel" means a lot or parcel of real property resulting from a division of ownership accomplished pursuant to an exemption granted under this subsection.
[1999, c. 43, §1 (new).]

10. Retail contracts for bundled electricity service extending beyond March 1, 2000. If a transmission and distribution utility has entered into a contract to provide bundled electricity service to a retail customer at a price other than the applicable tariffed rate for a term extending beyond March 1, 2000, the utility shall attempt to renegotiate and reform the contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the contract, except that an investor-owned transmission and distribution utility may not agree to provide directly or indirectly generation service to the customer on or after March 1, 2000.

The utility shall reform the contract so that the customer pays a total price for delivered electricity on an annual basis during the remaining term of the contract equal to the price contained in the contract. If the customer has exercised due diligence to obtain the lowest price from a competitive electricity provider for generation service for the remaining term of the contract, the utility shall reform the contract to provide a price for transmission and distribution services, stranded costs and all other applicable utility charges that is equal to the difference between the original contract price and the price for generation service obtained by the customer. If the customer has failed to exercise due diligence, the price must be equal to the difference between the original contract price and a reasonable market price for generation service for that customer.

If after good faith negotiations the contracting parties are unable to agree to a reformed contract, either party may petition the commission to resolve the dispute. The commission shall determine any unresolved issues and impose a reformed contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the original contract. Prior to its final determination, the commission shall review updated information provided by the retail customer concerning the price of its generation service. The commission may not approve a retail contract with a price term longer than the expected duration of the retail customer's generation service contract. Changes to a contract reformed under this subsection take effect on March 1, 2000. A transmission and distribution utility shall ensure that any contract subject to this subsection has been reformed before that date.
[1999, c. 398, Pt. K, §1 (new).]

PL 1997, Ch. 316, §3 (NEW).

PL 1997, Ch. 558, §1 (AMD).

PL 1997, Ch. 710, §9 (AMD).

PL 1999, Ch. 43, §1 (AMD).

PL 1999, Ch. 398, §K1,N1 (AMD).

PL 1999, Ch. 577, §1,2 (AMD).

PL 2003, Ch. 344, §D24 (AMD).

§3205. Marketing; large utilities

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

Title 35-A, Chapter 32, ELECTRIC INDUSTRY RESTRUCTURING (HEADING: PL 1997, c. 316, §3 (new))

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. [1997, c. 316, §3 (new).]

B. "Distribution utility" means a large investor-owned transmission and distribution utility that has an affiliated competitive provider. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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

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

[1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

[1997, c. 316, §3 (new).]

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 [1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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 customers of nonaffiliated competitive electricity providers in matters relating to any regulated product or service. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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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. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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

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

[1997, c. 316, §3 (new).]

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 and shall keep a log of any other transactions between the distribution utility and the affiliated provider that the commission may by rule require. 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. [1999, c. 398, Pt. G, §1 (amd).]

I. [1999, c. 237, §2 (rp).]

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. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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:

(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

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(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. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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 to enable customers and the commission to determine that the company is in compliance with the requirements of this section. [1997, c. 316, §3 (new).]

Q. A distribution utility may not subsidize the business of its affiliated competitive provider at ratepayer expense in any manner not specifically authorized under this section. [1999, c. 398, Pt. G, §2 (new).]
[1999, c. 237, §2 (amd); c. 398, Pt. G, §§1,2 (amd).]

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; [1997, c. 316, §3 (new).]

B. Rules governing the procedure for divestiture; and [1997, c. 316, §3 (new).]

C. Rules establishing standards of conduct for distribution utilities and affiliated competitive providers consistent with the requirements of this section. [1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

5. Penalties.

[1999, c. 398, Pt. G, §3 (rp).]

6. Prohibition; divestiture.

[1999, c. 398, Pt. G, §3 (rp).]

7. Effect of divestiture.

[1999, c. 398, Pt. G, §3 (rp).]

PL 1997, Ch. 316, §3 (NEW).

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PL 1999, Ch. 237, §2 (AMD).

PL 1999, Ch. 398, §G1-3 (AMD).

§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. [1997, c. 316, §3 (new).]

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; [1997, c. 316, §3 (new).]

B. Restrictions on employee activities; [1997, c. 316, §3 (new).]

C. Accounting standards; and [1997, c. 316, §3 (new).]

D. Information and service comparability requirements. [1997, c. 316, §3 (new).]
[1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

PL 1997, Ch. 316, §3 (NEW).

§3206-A. Marketing; investor-owned utilities; penalties

1. Penalties. The commission shall require an investor-owned transmission and distribution utility to divest an affiliated competitive provider if the commission determines in an adjudicatory proceeding that:

A. The distribution utility or an affiliated competitive provider has knowingly violated section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections; and [1999, c. 398, Pt. G, §4 (new).]

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. [1999, c. 398, Pt. G, §4 (new).]

The commission may impose administrative penalties of up to \$100,000 for a violation of section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections. Each day of a violation constitutes a separate offense. In addition, the commission may require disgorgement of profits or revenues realized as a result of a violation of section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections.

[2003, c. 505, §30 (amd).]

2. Prohibition; divestiture. If, after the effective date of this section, 10% or more of the stock of an investor-owned transmission and distribution utility is purchased by an entity:

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 [1999, c. 398, Pt. G, §4 (new).]

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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 investor-owned transmission and distribution utility to divest the affiliated competitive provider. [1999, c. 398, Pt. G, §4 (new).]

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. [1999, c. 398, Pt. G, §4 (new).]

3. Effect of divestiture. If the commission orders an investor-owned transmission and distribution utility to divest an affiliated competitive provider pursuant to this section, the investor-owned transmission and distribution utility may not have an affiliated interest in a competitive electricity provider after the divestiture. [1999, c. 398, Pt. G, §4 (new).]

As used in this section, the term "affiliated competitive provider" means a competitive electricity provider whose relationship with an investor-owned transmission and distribution utility qualifies it as an affiliated interest. [1999, c. 398, Pt. G, §4 (new).]

PL 1999, Ch. 398, §4 (NEW).

PL 2003, Ch. 505, §30 (AMD).

§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 are authorized to purchase electric power and energy at wholesale, provided that the consumer-owned transmission and distribution utility complies with the requirements of section 3203, subsection 3 and section 3210, subsection 3, and to purchase such transmission and related services as may be required to effect the delivery of such power and energy to their respective service territories; and [2003, c. 141, §1 (amd).]

B. May not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service.

[1997, c. 316, §3 (new).]

[2003, c. 141, §1 (amd).]

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.

[1997, c. 316, §3 (new).]

PL 1997, Ch. 316, §3 (NEW).

PL 2003, Ch. 141, §1 (AMD).

§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.

[1997, c. 316, §3 (new).]

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; [1997, c. 316, §3 (new).]

B. The difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and [1997, c. 316, §3 (new).]

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C. The difference between future contract payments and the market value of a utility's purchased power contracts. [1997, c. 316, §3 (new).]

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.
[1997, c. 316, §3 (new).]

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;

[1997, c. 316, §3 (new).]

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 [1997, c. 316, §3 (new).]

C. Obligations incurred by an electric utility after April 1, 1995 to reduce potential stranded costs. [1997, c. 316, §3 (new).]

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

Title 35-A, Chapter 32, ELECTRIC INDUSTRY RESTRUCTURING (HEADING: PL 1997, c. 316, §3 (new))

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

[1999, c. 398, Pt. L, §1 (amd).]

PL 1997, Ch. 316, §3 (NEW).

PL 1999, Ch. 398, §L1 (AMD).

§3209. Rate design

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

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

2. Proceeding. Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before December 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.

[1999, c. 398, Pt. L, §2 (amd).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

PL 1997, Ch. 316, §3 (NEW).

PL 1999, Ch. 398, §L2 (AMD).

§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, efficient and indigenous resources, it is the policy of this State to encourage the generation of electricity from renewable and efficient sources and to diversify electricity production on which residents of this State rely in a manner consistent with this section.

[1999, c. 398, Pt. I, §1 (amd).]

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

A. "Efficient resource" means a source of electrical generation that:

(1) 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, was constructed prior to January 1, 1997 and meets the following efficiency standard:

(a) During any calendar year, the sum of the useful power output and the useful thermal energy output of the facility is no less than 60% of the total energy input to the facility.

For purposes of this paragraph, the term "useful power output" means the electrical or mechanical energy made available for use, exclusive of any energy used in the power production process. For purposes of this paragraph, the term "useful thermal energy" means thermal energy made available to an industrial or commercial process, net of any heat contained in condensate return and makeup water, used in a heating application or used in a space cooling application. [1999, c. 398, Pt. I, §2 (rpr).]

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B. "Eligible resource" means a source of electrical generation that:

- (1) Generates power that can physically be delivered to the control region in which the New England Power Pool, or its successor as approved by the Federal Energy Regulatory Commission, has authority over transmission, or to the Maritimes Control Area; and
- (2) Is either a renewable resource or an efficient resource.

[1999, c. 398, Pt. I, §2 (rpr).]

C. "Renewable resource" means a source of electrical generation:

- (1) That qualifies as a 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; or
- (2) Whose total power production capacity does not exceed 100 megawatts and that relies on one or more of the following:
 - (a) Fuel cells;
 - (b) Tidal power;
 - (c) Solar arrays and installations;
 - (d) Wind power installations;
 - (e) Geothermal installations;
 - (f) Hydroelectric generators;
 - (g) Biomass generators; or
 - (h) Generators fueled by municipal solid waste in conjunction with recycling.

[1999, c. 398, Pt. I, §2 (rpr).]

[1999, c. 398, Pt. I, §2 (rpr).]

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 is accounted for by eligible resources. If a competitive electricity provider represents to a customer that the provider is selling to the customer a portfolio of supply sources that includes more than 30% eligible resources, the resources necessary to supply more than 30% of that customer's load may not be applied to meet the aggregate 30% portfolio requirement. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 398, Pt. I, §3 (amd).]

4. Report. In view of property tax benefits, developments in other states and the development of a market for tradable credits for satisfying eligible 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 matters no later than 5 years after the beginning of retail competition.

[1999, c. 398, Pt. I, §3 (amd).]

5. Funding for research and development; community demonstration projects. The commission by rule shall establish a program allowing retail consumers of electricity to make voluntary contributions to fund renewable resource research and development and to fund demonstration community projects using renewable energy technologies. The State Planning Office shall administer the program. The program must:

A. Include a mechanism for customers to indicate their willingness to make contributions; [1997, c. 316, §3 (new).]

B. Provide that transmission and distribution utilities collect and account for the contributions and forward them to the commission; [1999, c. 372, §1 (amd).]

C. Provide for a distribution of the funds to the University of Maine System, the Maine Maritime Academy or the Maine Community College System for renewable resource research and development; and [1999, c. 372, §1 (amd); 2003, c. 20, Pt. 00, §2 (amd); §4 (aff).]

Title 35-A, Chapter 32, ELECTRIC INDUSTRY RESTRUCTURING (HEADING: PL 1997, c. 316, §3 (new))

D. Provide for a distribution of the funds to Maine-based nonprofit organizations that qualify under the federal Internal Revenue Code, Section 501(c)(3), consumer-owned electric cooperatives, community-based nonprofit organizations and community action programs for demonstration community projects using renewable energy technologies. [1999, c. 372, §1 (new).]

Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [1999, c. 372, §1 (amd); 2003, c. 20, Pt. 00, §2 (amd); §4 (aff).]

6. Fund. There is established the Renewable Resource Fund, referred to in this subsection as the "fund." The fund is a nonlapsing fund administered by the State Planning Office. All funds collected by the commission pursuant to subsection 5 must be deposited in the fund for distribution by the State Planning Office in accordance with subsection 5. The State Planning Office may seek and accept funding for the program established pursuant to subsection 5 from other sources, public or private. Any funds accepted for use in the program established pursuant to subsection 5 must be deposited in the fund. [1999, c. 372, §2 (new).]

7. Information. The commission shall inform electricity consumers in this State of the benefits of electricity generated in this State using renewable resources and of the opportunities available in this State to purchase electricity that is generated using those resources. The commission may not promote any renewable resources over others. The commission may apply for, receive and expend grant money from the United States Department of Energy and other government agencies for this purpose. Notwithstanding section 3211-A, subsection 5, the commission also may use up to \$100,000 per year from the conservation program fund established under section 3211-A, subsection 5 to support the purposes of this subsection. The commission may create or cause to be created a brand or logo to identify Maine renewable resources to consumers. The commission shall register any mark or logo created pursuant to this subsection with the United States Patent and Trademark Office or in accordance with Title 10, chapter 301-A, or both. Any brand or logo created pursuant to this subsection may only be used in accordance with the purposes of this subsection as approved by the commission. [2003, c. 665, §1 (new).]

8. Credit trading. The commission shall allow competitive electricity providers to satisfy the portfolio requirements of subsection 3 through the use of renewable energy credits if the commission determines that a reliable system of electrical attribute trading exists. [2005, c. 646, §2 (new).]

PL 1997, Ch. 316, §3 (NEW).

PL 1999, Ch. 372, §1,2 (AMD).

PL 1999, Ch. 398, §I1-3 (AMD).

PL 2003, Ch. 20, §002 (AMD).

PL 2003, Ch. 20, §004 (AFF).

PL 2003, Ch. 665, §1 (AMD).

PL 2005, Ch. 646, §2 (AMD).

§3210-A. Small generator aggregation

1. Standard-offer service provider purchase requirement. In accordance with rules adopted pursuant to this section, the commission, at the request of the owner or operator of a generator with a capacity of 5 megawatts or less, shall:

A. If the generator is located in an area of this State within the New England independent system operator control area, require a standard-offer service provider that serves an area of this State within the New England independent system operator control area to purchase the output of that generator at applicable market clearing prices or at such other prices determined by the commission to be financially neutral to the standard-offer service provider; and [2003, c. 555, §1 (new).]

B. If the generator is located in an area of this State in which the retail market is administered by the independent system administrator for northern Maine and the commission finds that the market design will accommodate purchases in a manner that is financially neutral to the standard-offer service provider, require a standard-offer service provider that serves that area of the State, or a portion of that area, to purchase the output of that generator at prices determined by the commission to be financially neutral to the standard-offer service provider. [2003, c. 555, §1 (new).]

The requirements of this subsection apply only if they can be accomplished in a manner that is financially neutral to standard-offer service providers.

[2003, c. 555, §1 (new).]

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2. Transmission and distribution utility administration. Transmission and distribution utilities shall administer the purchase and sale of electricity required under this section. Administrative costs incurred by a transmission and distribution utility under this subsection must be paid, in a manner established by the commission, by the generators of the electricity the purchase and sale of which the utility administers.

[2003, c. 555, §1 (new).]

3. Rules. The commission shall adopt rules to implement this section, including, but not limited to, rules identifying how the commission assigns purchasing obligations to particular standard-offer service providers and the timing and manner of such obligations. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 555, §1 (new).]

PL 2003, Ch. 555, §1 (NEW).

§3210-B. Electric utility and conservation benefits (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/09)

1. Discount rates. Transmission and distribution utilities may offer discounted rates to qualified Pine Tree Development Zone businesses established under Title 30-A. If a transmission and distribution utility requires approval prior to offering any such rate, the transmission and distribution utility shall apply to the commission in accordance with applicable provisions of this Title, and the commission may approve the rate if it finds it to be in accord with applicable requirements of this Title, except that the commission may take into account the overall benefits to ratepayers resulting from state efforts to promote economic development within Pine Tree Development Zones.

[2003, c. 610, §2 (new).]

2. Line extensions. When approving or authorizing line extension terms and conditions for qualified Pine Tree Development Zone businesses established under Title 30-A, the commission may take into account the overall benefits to ratepayers resulting from state efforts to promote economic development within Pine Tree Development Zones established pursuant to Title 30-A.

[2003, c. 610, §2 (new).]

3. Conservation programs. In designing and implementing conservation programs pursuant to section 3211-A, the commission may make available to qualified Pine Tree Development Zone businesses established under Title 30-A special programs of enhanced value to aid state efforts to promote economic development within Pine Tree Development Zones. A program made available pursuant to this subsection must be cost-effective as defined by the commission by rule or order pursuant to section 3211-A.

[2003, c. 610, §2 (new).]

4. Electricity sales. Notwithstanding section 3210, the sale of electricity by a competitive electricity provider to a qualified Pine Tree Development Zone business established under Title 30-A is exempt from the requirements of that section and, at the request of the competitive electricity provider, sales to qualified Pine Tree Development Zone businesses must be excluded from any calculation by the commission to determine compliance with that section.

[2003, c. 610, §2 (new).]

5. Repeal. This section is repealed December 31, 2009.

[2003, c. 610, §2 (new).]

35-A §03210-B

Electric utility and conservation benefits

(WHOLE SECTION TEXT REPEALED 12/31/09 by PL 2003, c. 610, §2)

PL 2003, Ch. 610, §2 (NEW).

§3210-C. Capacity resource adequacy

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

A. "Capacity resource" means any renewable capacity resource, nonrenewable capacity resource or new interruptible, demand response or energy efficiency capacity resource. [2005, c. 677, Pt. C, §1 (new).]

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B. "Interruptible, demand response or energy efficiency capacity resource" means a resource that has demand response, interruptible or energy efficiency capacity recognized by the commission. [2005, c. 677, Pt. C, §1 (new).]

C. "New" as applied to any capacity resource means a capacity resource that:

- (1) Has an in-service date after September 1, 2005;
- (2) Was added to an existing facility after September 1, 2005;
- (3) For at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource; or
- (4) Was refurbished after September 1, 2005 and is operating beyond its previous useful life or is employing an alternate technology that significantly increases the efficiency of the generation process.

[2005, c. 677, Pt. C, §1 (new).]

D. "Nonrenewable capacity resource" means an electric generation resource other than a renewable capacity resource. [2005, c. 677, Pt. C, §1 (new).]

E. "Renewable capacity resource" means a renewable resource, as defined in section 3210, subsection 2, paragraph C, except "renewable capacity resource" does not include:

- (1) A generator fueled by municipal solid waste in conjunction with recycling; or
- (2) A hydroelectric generator unless it meets all state and federal fish passage requirements.

[2005, c. 677, Pt. C, §1 (new).]

[2005, c. 677, Pt. C, §1 (new).]

2. Policy. It is the policy of this State:

A. That the share of new renewable capacity resources as a percentage of the total capacity resources in this State on December 31, 2007 increase by 10% by 2017 and that, to the extent possible, the increase occur in uniform annual increments; [2005, c. 677, Pt. C, §1 (new).]

B. To reduce electric prices and price volatility for the State's electricity consumers and to reduce greenhouse gas emissions from the electricity generation sector; and [2005, c. 677, Pt. C, §1 (new).]

C. To develop new capacity resources to reduce demand or increase capacity so as to mitigate the effects of any regional or federal capacity resource mandates. [2005, c. 677, Pt. C, §1 (new).]

[2005, c. 677, Pt. C, §1 (new).]

3. Commission authority. The commission may direct large investor-owned transmission and distribution utilities to enter into long-term contracts for:

A. Capacity resources; and [2005, c. 677, Pt. C, §1 (new).]

B. Any available energy associated with capacity resources contracted under paragraph A:

- (1) To the extent necessary to fulfill the policy of subsection 2, paragraph A; or
- (2) If the commission determines appropriate for purposes of supplying standard-offer service pursuant to section 3212. If contracts are entered into pursuant to this subparagraph, the contracts must be treated as standard-offer service contracts pursuant to section 3212.

[2005, c. 677, Pt. C, §1 (new).]

The commission may direct large investor-owned transmission and distribution utilities to enter into contracts under this subsection only as agents for their customers and only in accordance with this section. To the greatest extent possible, the commission shall develop procedures having the same legal and financial effect as the procedures used for standard-offer service pursuant to section 3212 for large investor-owned transmission and distribution utilities.

The commission may enter into contracts for interruptible, demand response or energy efficiency capacity resources.

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Capacity resources contracted under this subsection may not exceed the amount necessary to ensure the reliability of the electric grid of this State or to lower customer costs as determined by the commission pursuant to rules adopted under subsection 10.

Unless the commission determines the public interest requires otherwise, a capacity resource may not be contracted under this subsection unless the commission determines that the capacity resource is recognized as a capacity resource for purposes of any regional or federal capacity requirements.

[2005, c. 677, Pt. C, §1 (new).]

4. Priority of capacity resources. In selecting capacity resources for contracting pursuant to subsection 3, the commission shall apply the following standards.

A. The commission shall select capacity resources that are competitive and the lowest price when compared to other available offers for capacity resources of the same or similar contract duration. The commission shall consider the cost of the capacity and the cost of related energy. The commission shall, by rules adopted pursuant to subsection 10, establish a methodology for calculating and considering the cost of related energy for capacity-only offers. [2005, c. 677, Pt. C, §1 (new).]

B. Among capacity resources meeting the standard in paragraph A, the commission shall choose among capacity resources in the following order of priority:

- (1) New interruptible, demand response or energy efficiency capacity resources located in this State;
- (2) New renewable capacity resources located in this State;
- (3) New capacity resources with no net emission of greenhouse gases;
- (4) New nonrenewable capacity resources located in this State. The commission shall give preference to new nonrenewable capacity resources with no net emission of greenhouse gases;
- (5) Capacity resources that enhance the reliability of the electric grid of this State. The commission shall give preference to capacity resources with no net emission of greenhouse gases; and
- (6) Other capacity resources.

[2005, c. 677, Pt. C, §1 (new).]

[2005, c. 677, Pt. C, §1 (new).]

5. Contract term. A contract entered into pursuant to subsection 3 may not be for more than 10 years, unless the commission finds a contract for a longer term to be prudent.

[2005, c. 677, Pt. C, §1 (new).]

6. Competitive solicitation process and contract negotiation. For purposes of selecting potential capacity resources for contracting pursuant to subsection 3, the commission shall conduct a competitive solicitation no less often than every 3 years if the commission determines that the likely benefits to ratepayers resulting from any contracts entered into as a result of the solicitation process will exceed the likely costs. Following review of bids, the commission may negotiate with one or more potential suppliers. When only one bid has been offered, the commission shall ensure that negotiations are based on full project cost disclosure by the potential supplier. The commission shall negotiate contracts that are commercially reasonable and that commit all parties to commercially reasonable behavior.

[2005, c. 677, Pt. C, §1 (new).]

7. Disposition of resources. A large investor-owned transmission and distribution utility shall sell capacity resources purchased pursuant to subsection 3 or take other action relative to such capacity resources as directed by the commission.

[2005, c. 677, Pt. C, §1 (new).]

8. Cost recovery. The commission shall ensure that a large investor-owned transmission and distribution utility recovers in rates all costs of contracts entered into pursuant to subsection 3, including but not limited to any impacts on the utility's costs of capital. A price differential existing at any time during the term of the contract between the contract price and the prevailing market price at which the capacity resource is sold must be reflected in rates and may not be deemed to be imprudent.

[2005, c. 677, Pt. C, §1 (new).]

9. Contract payments. Contracts for capacity and related energy entered into pursuant to this section must provide that payments will be made only after contracted amounts of capacity and related energy have been provided.

[2005, c. 677, Pt. C, §1 (new).]

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10. Rules. The commission shall adopt rules to implement this section. In adopting rules, the commission shall consider the financial implications of this section on large investor-owned transmission and distribution utilities. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The commission may not enter into or direct any large investor-owned transmission and distribution utility to enter into any contract pursuant to this section until rules are finally adopted under this subsection. [2005, c. 677, Pt. C, §1 (new).]

PL 2005, Ch. 677, §C1 (NEW).

§3210-D. Resource plan

The commission shall adopt by rule a long-term plan for electric resource adequacy for this State to ensure grid reliability and the provision or availability of electricity to consumers at the lowest cost. [2005, c. 677, Pt. C, §1 (new).]

After final adoption of rules under this section, the commission shall take any necessary action within its authority under this Title to support achievement of the objectives of the plan. [2005, c. 677, Pt. C, §1 (new).]

Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 677, Pt. C, §1 (new).]

PL 2005, Ch. 677, §C1 (NEW).

§3211. Conservation programs (REPEALED)

PL 1997, Ch. 316, §3 (NEW).

PL 1999, Ch. 336, §3 (RPR).

PL 2001, Ch. 624, §3 (RP).

§3211-A. Conservation programs

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

A. "Administrative costs" means costs of the commission that are funded pursuant to and associated with the implementation of this section, including, but not limited to, costs of program planning and evaluation, costs of securing necessary expertise, costs associated with contract formation and administration and costs of monitoring and enforcing contractual obligations. [2001, c. 624, §4 (new).]

B. "Administration fund" means the conservation administration fund established by the commission pursuant to subsection 6. [2001, c. 624, §4 (new).]

C. "Available funds" means funds available in the program fund but does not include any funds provided to the Energy Resources Council pursuant to subsection 5-A. [2003, c. 487, §2 (amd).]

D. "Conservation programs" means programs developed by the commission pursuant to this section designed to reduce inefficient electricity use. [2001, c. 624, §4 (new).]

E. "Prior conservation efforts" means programs to promote conservation undertaken at the direction or with the authorization of the commission prior to March 1, 2002. [2001, c. 624, §4 (new).]

F. "Program fund" means the conservation program fund established by the commission pursuant to subsection 5. [2001, c. 624, §4 (new).]

G. "Service provider" means a public or private provider of energy conservation services or an entity selected by the commission to contract with such providers or otherwise arrange the delivery of conservation programs. [2001, c. 624, §4 (new).]

H. "Total conservation expenditures" means expenditures of a transmission and distribution utility associated with prior conservation efforts plus assessments paid by the utility pursuant to this section. [2001, c. 624, §4 (new).]
[2003, c. 487, §2 (amd).]

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2. Programs. The commission shall develop and, to the extent of available funds, implement conservation programs in accordance with this section. The commission shall establish and, on a schedule determined by the commission, revise objectives and an overall energy strategy for conservation programs. Conservation programs implemented by the commission must be consistent with the objectives and an overall energy strategy developed by the commission and be cost effective, as defined by the commission by rule or order. In defining "cost effective," the commission may consider the extent to which a program promotes sustainable economic development or reduces environmental damage to the extent the commission can quantify or otherwise reasonably identify such effects. Consistent with the other requirements of this section, the commission, in adopting and implementing conservation programs, shall seek to encourage efficiency in electricity use, provide incentives for the development of new, energy-efficient business activity in the State and take into account the costs and benefits of energy efficiency and conservation to existing business activity in the State.

A. The commission shall consider, without limitation, conservation programs that:

- (1) Increase consumer awareness of cost-effective options for conserving energy;
- (2) Create more favorable market conditions for the increased use of efficient products and services;
- (3) Promote sustainable economic development and reduced environmental damage; and
- (4) Reduce the price of electricity over time for all consumers by achieving reductions in demand for electricity during peak use periods.

[2005, c. 569, §1 (amd).]

B. The commission shall:

- (1) Target at least 20% of available funds to programs for low-income residential consumers, as defined by the commission by rule;
- (2) Target at least 20% of available funds to programs for small business consumers, as defined by the commission by rule; and
- (3) To the greatest extent practicable, apportion remaining available funds among customer groups and geographic areas in a manner that allows all other customers to have a reasonable opportunity to participate in one or more conservation programs.

[2001, c. 624, §4 (new).]

C. The commission shall hold at least one public hearing and invite, accept, review and consider comments and suggestions from interested parties prior to adopting or substantially revising conservation programs or the objectives and overall strategy for conservation programs. [2001, c. 624, §4 (new).]

D. The commission shall monitor conservation planning and program development activities in the region and around the country. [2001, c. 624, §4 (new).]

E. The commission shall implement conservation programs by contracting with service providers in accordance with subsection 3. [2001, c. 624, §4 (new).]

F. The commission shall monitor and evaluate the delivery of conservation programs by service providers and assess the cost-effectiveness of programs in meeting the objectives and overall strategy established by the commission. [2001, c. 624, §4 (new).]

G. The commission, to the extent possible, shall coordinate its efforts with other agencies of the State with energy-related responsibilities. [2001, c. 624, §4 (new).]

H. The commission shall secure sufficient technical and administrative expertise to carry out its responsibilities pursuant to this section by:

- (1) Contracting with appropriate entities with relevant expertise and experience;
- (2) Establishing one or more advisory groups composed of persons with relevant expertise and experience; or
- (3) Any other reasonable means developed by the commission.

[2001, c. 624, §4 (new).]

I. The commission may coordinate its efforts under this section with similar efforts in other states in the northeast region and enter into agreements with public agencies or other entities in or outside of the State for joint or cooperative conservation planning or

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conservation program delivery, if the commission finds that such coordination or agreements would provide demonstrable benefits to citizens of the State and be consistent with this section, the conservation programs and the objectives and overall strategy for the conservation programs. [2001, c. 624, §4 (new).]

J. The commission shall encourage school facility managers to complete an energy efficiency training and certification program established and conducted by the commission under this section. To the extent the commission determines necessary and appropriate to meet the goals of this paragraph, the commission may, in accordance with the requirements of this section, establish incentive mechanisms to encourage participation in this program. For purposes of this paragraph, "school facility managers" means persons employed by school administrative units in this State who are responsible for the design or operation of school administrative unit facilities or the heating, ventilation or air conditioning systems or equipment used in such facilities. [2005, c. 569, §2 (new).]

[2005, c. 569, §§1, 2 (amd).]

3. Implementation. The commission shall seek to implement the delivery of conservation programs in all regions of the State on an equitable basis and to citizens at all income levels. The commission may arrange the delivery of conservation programs by contracting with service providers. The commission shall select service providers in accordance with this subsection.

A. The commission shall select service providers through a competitive bidding process. [2001, c. 624, §4 (new).]

B. To the extent practicable, the commission shall encourage the development of resources, infrastructure and skills within the State by giving preference to in-state service providers. [2001, c. 624, §4 (new).]

C. Notwithstanding paragraph A:

(1) The commission may select a service provider for one or more conservation programs without employing a competitive bidding process if the commission finds that the selection of the service provider will promote the efficient and effective delivery of conservation programs and is consistent with the objectives and overall strategy of the conservation programs; and

(2) For the delivery of conservation programs to low-income residential consumers, the commission, without employing a competitive bidding process, may utilize the delivery system for the Weatherization Assistance for Low-income Persons Program administered through the United States Department of Energy and the network of for-profit and not-for-profit entities who have held contracts with transmission and distribution utilities to deliver conservation services to low-income and residential customers.

[2001, c. 624, §4 (new).]

Notwithstanding Title 5, section 1831, the commission is not subject to rules adopted by the State Purchasing Agent in selecting service providers pursuant to this subsection. The commission shall adopt rules establishing procedures governing the selection of service providers under this subsection. The commission shall consult with the State Purchasing Agent in developing the rules.

[2001, c. 624, §4 (new).]

4. Funding level. The commission shall assess transmission and distribution utilities to collect funds for conservation programs and administrative costs in accordance with this subsection. The amount of all assessments by the commission under this subsection plus expenditures of a transmission and distribution utility associated with prior conservation efforts must result in total conservation expenditures by each transmission and distribution utility that:

A. Are based on the relevant characteristics of the transmission and distribution utility's service territory, including the needs of customers; [2001, c. 624, §4 (new).]

B. Do not exceed .145 cent per kilowatt-hour; [2005, c. 459, §1 (amd).]

C. Except as provided in subsection 7-A, are no less than 0.5% of the total transmission and distribution revenues of the transmission and distribution utility; and [2003, c. 275, §1 (amd).]

D. Are proportionally equivalent on a per-kilowatt-hour basis to the total conservation expenditures of other transmission and distribution utilities, unless the commission finds that a different amount is justified. [2003, c. 217, §1 (amd).]

[2005, c. 459, §1 (amd).]

5. Conservation program fund. The commission shall establish a conservation program fund to be used solely for conservation programs.

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A. The commission shall deposit all assessments collected pursuant to this section, other than funds deposited in the administration fund, into the program fund. [2001, c. 624, §4 (new).]

B. Any interest earned on funds in the program fund must be credited to the program fund. [2001, c. 624, §4 (new).]

C. Funds not spent in any fiscal year remain in the program fund to be used for conservation programs. [2001, c. 624, §4 (new).]

D. The commission may apply for and receive grants from state, federal and private sources for deposit in the program fund and also may deposit in the program fund any grants or other funds received by or from any entity with which the commission has an agreement or contract pursuant to this section if the commission determines that receipt of those funds would be consistent with the purposes of this section. If the commission receives any funds pursuant to this paragraph, it shall establish a separate account within the program fund to receive the funds and shall keep those funds and any interest earned on those funds segregated from other funds in the program fund. [2001, c. 624, §4 (new).]

[2001, c. 624, §4 (new).]

5-A. Support for Energy Resources Council. Notwithstanding any other provision of this section:

A. The Energy Resources Council established under Title 5, section 3327 may apply to the commission for funding from the program fund to support projects and activities of the council related to energy conservation; and [2003, c. 487, §3 (new).]

B. The commission may provide up to \$200,000 in any fiscal year to the Energy Resources Council established under Title 5, section 3327 from the program fund if the funds are needed for particular projects or activities directed by the Legislature to be undertaken by the council, or the commission finds the projects or activities are generally consistent with the overall purposes of this section.

[2003, c. 487, §3 (new).]

[2003, c. 487, §3 (new).]

6. Conservation administration fund. The commission shall establish a conservation administration fund to be used solely to defray administrative costs. The commission annually may deposit funds collected pursuant to this section into the administration fund up to a maximum in any fiscal year of \$1,300,000. Any interest on funds in the administration fund must be credited to the administration fund and any funds unspent in any fiscal year must either remain in the administration fund to be used to defray administrative costs or be transferred to the program fund.

[2001, c. 624, §4 (new).]

7. Prior conservation efforts. Except as otherwise directed by the commission, transmission and distribution utilities shall continue to administer contracts associated with prior conservation efforts. Such contracts may not be renewed, extended or otherwise modified by transmission and distribution utilities in a manner that results in any increased expenditures associated with those contracts.

[2001, c. 624, §4 (new).]

7-A. Funds held in trust. All funds collected from electricity consumers pursuant to this section, including assessments collected from transmission and distribution utilities and deposited in the program fund or the administration fund and any prior conservation efforts, are collected under the authority and for the purposes of this section and, whether held by the commission, transmission and distribution utilities or their agents, are deemed to be held in trust for the purposes of benefiting electricity consumers. In the event funds are not expended or contracted for expenditure within 2 years of being collected from consumers, the commission shall return the value of those funds to consumers by appropriate reductions in the assessment collected pursuant to subsection 4.

[2003, c. 275, §2 (new).]

8. Resolution of disputes. Upon receipt of an appropriate filing by a party to a contract relating to prior conservation efforts, the commission shall adjudicate a dispute relating to the interpretation or administration of the contract by the transmission and distribution utility.

In the case of a dispute filed after the effective date of this subsection, the commission shall refer the dispute to commercial arbitration in accordance with this paragraph. Each party to the contract shall select an arbitrator who is not a current employee of the party. The selected arbitrators shall then select a 3rd arbitrator. If the arbitrators can not agree on the 3rd arbitrator, each party shall submit to the commission a list of at least 3 arbitrators who have no previous or current interest in the contract and, to the extent practicable, have special competence and experience with respect to the subject matter involved in the dispute. The commission shall choose the 3rd arbitrator from among the persons on the lists provided by the parties. After their selection, the arbitrators shall promptly hear and determine the controversy pursuant to the rules of the American Arbitration Association for the conduct of commercial arbitration

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proceedings, except that if such rules conflict with any procedural rules established by the commission or applicable provisions of the laws of this State relating to arbitration, the applicable commission rules or provisions of state law govern the arbitration. The arbitrators shall submit their decision to the commission.

A. The commission shall accept or reject the decision within 30 days of its submission, unless the commission requires additional time, in which case it may extend its review for another 30 days. [2001, c. 624, §4 (new).]

B. If the commission does not reject the decision within 30 days or, if it extends its review period an additional 30 days, within 60 days, the decision is deemed accepted. [2001, c. 624, §4 (new).]

C. If the commission rejects the decision, the commission shall adjudicate the dispute. [2001, c. 624, §4 (new).]

A decision by the commission under this subsection, including a decision by the arbitrators that is deemed accepted by the commission pursuant to paragraph B, is enforceable in a court of law.

[2001, c. 624, §4 (new).]

9. Cost recovery. The commission shall include all assessments under this section in the rates of transmission and distribution utilities.

[2001, c. 624, §4 (new).]

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

[2001, c. 624, §4 (new).]

11. Report. The commission shall report by December 1st of each year to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. The report must include:

A. A description of actions taken by the commission pursuant to this section, including descriptions of all conservation programs implemented during the prior 12 months and all conservation programs that the commission plans to implement during the next 12 months, a description of how the commission determines the cost effectiveness of each conservation program and its assessment of the cost effectiveness of programs implemented during the prior 12 months; [2001, c. 624, §4 (new).]

B. An accounting of:

(1) Assessments made on each transmission and distribution utility pursuant to this section during the prior 12 months and projected assessments during the next 12 months;

(2) Total deposits into and expenditures from the program fund during the prior 12 months and projected deposits into and expenditures from the program fund during the next 12 months;

(3) The amount and source of any grants or funds deposited in the program fund pursuant to subsection 5, paragraph D during the previous 12 months and the projected amount and source of any such funds during the next 12 months; and

(4) Total deposits into and expenditures from the administration fund during the prior 12 months and projected deposits into and expenditures from the administration fund during the next 12 months;

[2005, c. 569, §3 (amd).]

C. Any recommendations for changes to law relating to energy conservation; and [2005, c. 569, §4 (amd).]

D. The status of the progress towards meeting the goals of subsection 2, paragraph J and the strategies that have been implemented to meet those goals. The report also must include an accounting, to the extent available, of the energy savings that have been achieved by school administrative units after their school facility managers have been certified pursuant to subsection 2, paragraph J. A school administrative unit is not required to incur additional costs in order to supply information to the commission for its report. [2005, c. 569, §5 (new).]

[2005, c. 569, §§3-5 (amd).]

12. Independent analysis of programs. The commission shall arrange for an independent evaluation of each major program implemented under this section. Each major program must be evaluated at least once every 5 years. The evaluation must include an accounting audit of the program and an evaluation of the program's effectiveness in meeting the goals of this section. The evaluations must be conducted by a competent professional with expertise in energy efficiency matters, including the management of cost-effective

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energy efficiency programs. The commission shall include the results of all evaluations conducted under this subsection in the annual report submitted pursuant to subsection 11. For purposes of this subsection, "major program" means a program with an annual budget of more than \$500,000.

[2005, c. 569, §6 (new).]

PL 2001, Ch. 624, §4 (NEW).

PL 2003, Ch. 217, §1 (AMD).

PL 2003, Ch. 219, §1 (AMD).

PL 2003, Ch. 275, §1,2 (AMD).

PL 2003, Ch. 487, §2,3 (AMD).

PL 2005, Ch. 459, §1 (AMD).

PL 2005, Ch. 569, §1-6 (AMD).

§3211-B. Additional energy conservation programs (REPEALED)

PL 2003, Ch. 20, §RR10 (NEW).

PL 2003, Ch. 20, §RR18 (AFF).

PL 2003, Ch. 644, §8 (RP).

PL 2003, Ch. 688, §G1 (AFF).

PL 2005, Ch. 459, §2 (NEW).

RR 2005, Ch. 1, §17 (RAL).

§3211-C. Solar energy rebate program; fund (REALLOCATED FROM TITLE 35-A, SECTION 3211-B) (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/08)

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

A. "Qualified solar energy system" means a solar photovoltaic system or a solar thermal system. [RR 2005, c. 1, §17 (ral).]

B. "Solar photovoltaic system" means a solar energy device with a peak generating capacity of 100 kilowatts or less used for generating electricity for use in a residence or place of business. [RR 2005, c. 1, §17 (ral).]

C. "Solar thermal system" means a configuration of solar collectors and a pump, heat exchanger and storage tank or fans designed to heat water or air. Solar thermal system types include forced circulation, integral collector storage, thermosyphon and self-pumping systems. [RR 2005, c. 1, §17 (ral).]

[RR 2005, c. 1, §17 (ral).]

2. Solar energy rebate program. To the extent that funds are available in the fund established in subsection 3, an owner or tenant of residential or commercial property located in the State is entitled to a rebate for a qualified solar energy system that is installed in accordance with this subsection after July 1, 2005 that will be connected to the electrical grid.

A. A solar photovoltaic system qualifies for a rebate of \$3 per watt on the first 2,000 watts of installed capacity and \$1 per watt for the next 1,000 watts if:

(1) For a system installed after July 1, 2005 but before January 1, 2007, the system is installed by a master electrician who has completed a training course to prepare for certification by a North American board of certified energy practitioners or by a master electrician working in conjunction with either a person who has been certified by a North American board of certified energy practitioners or a person who has completed a training course to prepare for certification by a North American board of certified energy practitioners; or

(2) For a system installed on or after January 1, 2007, the system is installed by a master electrician who has been certified by a North American board of certified energy practitioners or by a master electrician working in conjunction with a person who has been certified by a North American board of certified energy practitioners.

[RR 2005, c. 1, §17 (ral).]

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B. A solar thermal system designed to heat water qualifies for a rebate of 25% of the cost of the system, including installation, or \$1,250, whichever is less, if the system is installed by a licensed plumber who has been certified by the commission to install such systems or by a licensed plumber working in conjunction with a person who has been certified by the commission to install such systems. [RR 2005, c. 1, §17 (ral).]

C. A solar thermal system designed to heat air qualifies for a rebate of 25% of the cost of the system, including installation, or \$1,250, whichever is less. [RR 2005, c. 1, §17 (ral).]

In the case of a newly constructed residence, the rebate must be available to the original owner or occupant.

[RR 2005, c. 1, §17 (ral).]

3. Funding level; fund. The commission shall assess transmission and distribution utilities to collect funds for the solar energy rebate program in accordance with this subsection. The amount of all assessments by the commission under this subsection must result in total program expenditures by each transmission and distribution utility that do not exceed 0.005 cent per kilowatt-hour. To the extent practicable, the commission shall establish and collect the assessment in a manner that is consistent with the assessment made under section 3211-A. The commission shall establish a solar energy rebate program fund to be used solely for the purposes of this section. All assessments made under this subsection are deposited in the fund. Any interest on funds in the fund must be credited to the fund. Funds not spent in any fiscal year remain in the fund to be used for the purposes of this section. In each fiscal year, 25% of the fund is allotted to solar photovoltaic system rebates and 75% of the fund is allotted to solar thermal system rebates.

[RR 2005, c. 1, §17 (ral).]

4. Rules. The commission shall adopt rules necessary to implement the provisions of this section, including procedures and standards for demonstrating qualification for a rebate under this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[RR 2005, c. 1, §17 (ral).]

5. Report. The commission shall report by December 1st of each year to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters a description of actions taken by the commission pursuant to this section during the prior 12 months.

[RR 2005, c. 1, §17 (ral).]

6. Limitation to residents of State; repeal. Participation in the solar energy rebate program and fund established in this section is limited to residents of the State. This section is repealed December 31, 2008.

[RR 2005, c. 1, §17 (ral).]

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Solar energy rebate program; fund

(WHOLE SECTION TEXT REPEALED 12/31/08 by T. 35-A, §3211-C, sub-§6 (rp); RR 2005, c. 1, §17 (ral))

RR 2005, Ch. 1, §17 (RAL).

§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. [1997, c. 638, §1 (amd).]

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; [1997, c. 316, §3 (new).]

B. Protection against a standard-offer service provider's failure to provide service as contracted for; [1997, c. 316, §3 (new).]

C. Appropriate rate design issues; [1997, c. 316, §3 (new).]

D. Retaining averaged prices for all customers in the same class; and [1997, c. 316, §3 (new).]

E. Credit, collection and disconnection practices. [1997, c. 316, §3 (new).]

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The commission shall adopt rules establishing terms and conditions for standard-offer service. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 577, §3 (amd).]

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.

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. [1997, c. 316, §3 (new).]

B. The commission shall establish the maximum duration of a standard-offer service contract after considering all relevant factors, including, but not limited to, market risks and the need for price stability and contract flexibility. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

The commission shall 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 routine technical 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. Notwithstanding any other provision of this Title, the commission may, in the event that the commission receives no bids to provide standard-offer service in a transmission and distribution utility's territory or the commission determines that the bids it receives are inadequate or unacceptable, require the transmission and distribution utility to arrange and to provide for default service. Notwithstanding any other provision of this Title, the commission may require a transmission and distribution utility to provide default service to its customers that are not located within either the New England independent system operator control area or the Maritimes control area; and default service pursuant to this sentence must be provided to customers at the same price and on the same terms and conditions as standard-offer service is provided to the customers of the transmission and distribution utility in the standard-offer class in which the customer is eligible to receive 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.

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.

[1999, c. 577, §4 (amd); c. 578, §1 (amd).]

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

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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.

[1997, c. 316, §3 (new).]

4. Implementation period and investigation. Standard-offer service must be available until March 1, 2005. By August 1, 2002, the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and in the public interest and, if so, how best to make such service available after March 1, 2005. The commission shall conclude the investigation by December 1, 2002 and report its results and recommendations to the Legislature pursuant to section 3217. In its investigation, the commission shall solicit the input of all interested parties and consider the questions in paragraphs A to D in addition to other issues the commission determines appropriate.

A. Are the goals of this chapter best fulfilled if standard-offer service ceases altogether on March 1, 2005 or at a date certain after March 1, 2005? [2001, c. 528, §1 (new).]

B. Should opportunities for retail aggregators be changed to ensure greater participation in competitive markets by residential and small commercial customers, beginning March 1, 2005? [2001, c. 528, §1 (new).]

C. Beginning March 1, 2005, should any standard-offer provider selected by the commission pursuant to subsection 2 be required to offer at least one standard-offer service that is composed entirely of renewable resources as defined in section 3210? [2001, c. 528, §1 (new).]

D. Should this chapter be amended to enable aggregators, beginning March 1, 2005, automatically to receive by contract, for a term designated in that contract, the designation as competitive electricity provider for all the electric accounts in a given municipality if:

(1) That municipality adopts a "negative-option" form of municipal aggregation, following notice and opportunity for hearing, by means of a recorded vote of the municipal officers or the appropriate governing body; and

(2) All customers in that municipality reserve the right to leave the municipal aggregation and designate a different provider, in writing, within a time period established by legislative enactment?

[2001, c. 528, §1 (new).]

[2001, c. 528, §1 (amd).]

4-A. Renewables; hedging.

[2005, c. 677, Pt. B, §1 (rp).]

4-B. Demand response and energy efficiency. The commission may incorporate cost-effective demand response and energy efficiency into the supply of standard-offer service. The commission shall encourage entities based in this State that are not otherwise either a standard-offer service provider or its affiliate to participate in supplying cost-effective demand response or energy efficiency pursuant to this subsection.

[2005, c. 677, Pt. B, §2 (new).]

4-C. Authority to establish various contract lengths and terms. For the purpose of providing over a reasonable time period the lowest price for standard-offer service to residential and small commercial customers, the commission, with respect to residential and small commercial standard-offer service, may, in addition to incorporating cost-effective demand response and energy efficiency pursuant to subsection 4-B and to the extent authorized in section 3210-C, incorporating the energy portion of any contracts entered into pursuant to section 3210-C, establish various standard-offer service contract lengths and terms.

[2005, c. 677, Pt. B, §2 (new).]

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.

[1997, c. 316, §3 (new).]

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

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criteria for approval of a standard-offer service provider, or if the consumer-owned transmission and distribution utility enters into one or more contracts to purchase power at wholesale for the purpose of providing retail generation service within its service territory. Selection of a standard-offer service provider or providers and agreements with or purchases from a standard-offer service provider or providers or other wholesale power supply 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 service provider or providers, or to enter into a wholesale power purchase contract for the purpose of providing retail generation service within its service territory, in accordance with this subsection shall notify the commission. [2003, c. 141, §2 (amd).]

PL 1997, Ch. 316, §3 (NEW).
PL 1997, Ch. 638, §1,2 (AMD).
PL 1997, Ch. 691, §6,7 (AMD).
PL 1999, Ch. 398, §F1 (AMD).
PL 1999, Ch. 577, §3,4 (AMD).
PL 1999, Ch. 578, §1 (AMD).
PL 2001, Ch. 528, §1 (AMD).
PL 2003, Ch. 141, §2 (AMD).
PL 2003, Ch. 665, §2 (AMD).
PL 2005, Ch. 677, §B1,2 (AMD).

§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.

[1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

[1997, c. 316, §3 (new).]

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:

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- A. No more than \$200,000 in the 1997-98 fiscal year; [1997, c. 691, §8 (new).]
- B. No more than \$600,000 in the 1998-99 fiscal year; [1997, c. 691, §8 (new).]
- C. No more than \$600,000 in the 1999-2000 fiscal year; and [1997, c. 691, §8 (new).]
- D. No more than \$200,000 in the 2000-01 fiscal year. [1997, c. 691, §8 (new).]

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.

[1997, c. 691, §8 (new).]

PL 1997, Ch. 316, §3 (NEW).

PL 1997, Ch. 691, §8 (AMD).

§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.

[1997, c. 316, §3 (new).]

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:

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 [1997, c. 316, §3 (new).]

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. [1997, c. 316, §3 (new).]

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

5. Ensuring equitable treatment for persons with certain disabilities. If the commission establishes or approves one or more low-income assistance programs under subsection 2 or 3 that result in similarly situated persons receiving different levels of assistance depending solely upon which transmission and distribution utility service territory they reside in, the commission shall by rule establish an equitable-treatment program consistent with this subsection.

A. The equitable-treatment program must be available to any person who:

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(1) Is eligible for benefits under the transmission and distribution utility's low-income assistance program established in accordance with subsection 2; and

(2) Provides documentation from a doctor that the person for health reasons needs an oxygen pump at least 8 hours each day.

[2005, c. 132, §1 (new).]

B. The equitable-treatment program must be designed to ensure that the low-income assistance benefits provided under this section to persons who qualify under paragraph A mitigate, to an extent that is reasonably equivalent in each transmission and distribution utility territory, electric charges associated with the operation of an oxygen pump. The commission may not reduce any assistance provided under any low-income assistance program established under subsection 2 in order to satisfy the requirements of this paragraph. [2005, c. 132, §1 (new).]

C. The commission shall establish an administratively simple and inexpensive method of administering the equitable-treatment program. [2005, c. 132, §1 (new).]

D. Reasonable costs incurred by a transmission and distribution utility in implementing any program established by the commission under this subsection are just and reasonable expenses for rate-making purposes. [2005, c. 132, §1 (new).]

E. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 132, §1 (new).]

[2005, c. 132, §1 (new).]

PL 1997, Ch. 316, §3 (NEW).

PL 2005, Ch. 132, §1 (AMD).

§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 [1997, c. 316, §3 (new).]

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

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

[1997, c. 316, §3 (new).]

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

PL 1997, Ch. 316, §3 (NEW).

§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 full-time and part-time employees of an electric utility:

(1) Who are not officers of the utility;

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- (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. [1999, c. 398, Pt. M, §1 (amd); §3 (aff).]

B. "Retail competition" means:

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

[1997, c. 316, §3 (new).]

[1999, c. 398, Pt. M, §1 (amd); §3 (aff).]

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:

A. Include a program to assist eligible employees in maintaining fringe benefits and obtaining employment that makes use of their potential; [1997, c. 316, §3 (new).]

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; [1997, c. 316, §3 (new).]

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; [1997, c. 316, §3 (new).]

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 [1997, c. 316, §3 (new).]

E. Provide severance pay equal to 2 weeks of current base pay for each year of full-time and one week of current base pay for each year of part-time employment. [1999, c. 398, Pt. M, §2 (amd); §3 (aff).]

The plan may include provisions for providing early retirement benefits.

[1999, c. 398, Pt. M, §2 (amd); §3 (aff).]

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.

[1997, c. 316, §3 (new).]

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 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.

[1997, c. 316, §3 (new).]

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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.

[1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

PL 1997, Ch. 316, §3 (NEW).

PL 1999, Ch. 398, §M1,2 (AMD).

PL 1999, Ch. 398, §M3 (AFF).

§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.

No later than December 1, 2002, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over utility matters the report required under section 3212, subsection 4, with recommendations for action by the Legislature.

[2001, c. 528, §2 (amd).]

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

[1997, c. 316, §3 (new).]

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; [1997, c. 316, §3 (new).]

B. The management of competitive access to the regional transmission system; and [1997, c. 316, §3 (new).]

C. Rights to negotiate potential contracts between sellers and buyers of electricity. [1997, c. 316, §3 (new).]

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.

[1997, c. 316, §3 (new).]

PL 1997, Ch. 316, §3 (NEW).

PL 2001, Ch. 528, §2 (AMD).