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Public Law
124th Legislature
First Regular Session

Chapter 329
H.P. 742 - L.D. 1075

**An Act To Establish the Community-
based Renewable Energy Pilot Program**

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

PART A

Sec. A-1. 5 MRSA §1766-A, as enacted by PL 2007, c. 52, §1, is amended to read:

§ 1766-A. Electricity purchases for state buildings

No later than January 1, 2010, all electricity consumed in state-owned buildings must be supplied by renewable resources. For purposes of this section, "renewable resource" ~~means any renewable resource defined~~ has the same meaning as in Title 35-A, section 3210, subsection 2, paragraph C. In purchasing electricity for state-owned buildings, the State may give preference to electricity generated by community-based renewable energy projects, as defined in Title 35-A, section 3602, subsection 1.

Sec. A-2. 35-A MRSA §3210, sub-§8, as amended by PL 2007, c. 403, §6, is further amended to read:

8. Credit trading. The commission shall allow competitive electricity providers to satisfy the portfolio requirements of subsections 3 and 3-A through the use of renewable energy credits if the commission determines that a reliable system of electrical attribute trading exists. When renewable energy credits are used to satisfy the portfolio requirements of subsections 3 and 3-A, the value of a renewable energy credit for electricity generated by a community-based renewable energy project, as defined in section 3602, that is participating in the community-based renewable energy pilot program established in section 3603 and elects the renewable energy credit multiplier under section 3605 is 150% of the amount of the electricity.

Sec. A-3. 35-A MRSA §3212, sub-§4-D is enacted to read:

4-D. Community-based renewable energy. The commission may incorporate energy generated by community-based renewable energy projects as defined in section 3602, subsection 1 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 energy from community-based renewable energy projects pursuant to this subsection.

Sec. A-4. 35-A MRSA c. 36 is enacted to read:

CHAPTER 36

COMMUNITY-BASED RENEWABLE ENERGY

§ 3601. Short title

This chapter may be known and cited as "the Community-based Renewable Energy Act."

§ 3602. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Community-based renewable energy project. "Community-based renewable energy project" means a locally owned electricity generating facility that generates electricity from an eligible renewable resource.

2. Eligible renewable resource. "Eligible renewable resource" means a renewable resource as defined in section 3210, subsection 2, paragraph C, except that "eligible renewable resource" does not include a generator fueled by municipal solid waste in conjunction with recycling and does include a generator fueled by landfill gas. "Eligible renewable resource" includes a biomass generator whose fuel includes anaerobic digestion of agricultural products, byproducts or wastes.

3. Locally owned electricity generating facility. "Locally owned electricity generating facility" means an electricity generating facility at least 51% of which is owned by one or more qualifying local owners.

4. Program participant. "Program participant" means a community-based renewable energy project that is participating in the community-based renewable energy pilot program established in section 3603.

5. Qualifying local owner. "Qualifying local owner" means a person or entity that is:

A. An individual who is a resident of the State;

B. A political subdivision of the State, including, but not limited to, a county, municipality, quasi-municipal corporation or district as defined in Title 30-A, section 2351, school administrative unit as defined in Title 20-A, section 1, public or private institution of higher education, regional council of governments or any other local or regional governmental organization, including, but not limited to, a board, commission or association;

C. A department, agency or instrumentality of the State;

D. A federally recognized Indian tribe located in the State;

E. A nonprofit corporation, organized under the laws of the State, including a unit owners association organized under Title 33, section 1603-101; or

F. A business corporation, organized under the laws of the State, at least 51% of which is owned by one or more residents of the State.

§ 3603. Community-based renewable energy pilot program

1. Program established. The community-based renewable energy pilot program, referred to in this section as "the program," is established to encourage the sustainable development of community-based renewable energy in the State. The program is administered by the commission.

2. Program scope; limits on generating capacity. The commission shall limit participation in the program in accordance with this subsection.

A. The installed generating capacity of a program participant may not exceed 10 megawatts.

B. The total installed generating capacity of all program participants combined may not exceed 50 megawatts.

C. The total installed generating capacity of program participants within the service territory of a single investor-owned transmission and distribution utility may not exceed 25 megawatts, unless a higher capacity limit is authorized by the utility and approved by the commission. The commission shall determine a generating capacity limit for the service territory of each investor-owned transmission and distribution utility at the outset of the program, taking into consideration the utility's electric load and share of electricity market in the State. The commission may modify the generating capacity limit under this paragraph based on program experience.

D. Of the 50-megawatt limit on total generating capacity under paragraph B, 10 megawatts must be reserved at the outset of the program for program participants that:

(1) Have an installed generating capacity of less than 100 kilowatts; or

(2) Are located in the service territory of a consumer-owned transmission and distribution utility.

The commission may modify the amount of generating capacity reserved under this paragraph based on program experience.

E. The total installed generating capacity of program participants that receive the renewable energy credit multiplier incentive under section 3605 may not exceed 10 megawatts.

3. Program eligibility criteria. To be eligible to participate in the program, a community-based renewable energy project must:

A. Provide documentation of a resolution of support passed by the municipal legislative body or municipal officers, as appropriate, of the municipality in which the community-based renewable energy project is proposed to be located, except that any project that is proposed to be located wholly in an unorganized or deorganized area of the State or that has a generating capacity of less than 100 kilowatts is exempt from the requirement set forth in this paragraph;

- B. In the case of a community-based renewable energy project proposed to be located on the tribal land or territory of a federally recognized Indian tribe in this State, including any land owned by the tribe or held in trust by the United States for the tribe, provide documentation that the tribe supports the community-based renewable energy project;
- C. Be connected to the electric grid of this State;
- D. Have an in-service date after September 1, 2009; and
- E. Satisfy the limits on generating capacity established in subsection 2.

The commission shall prescribe an application form or procedure that must be used to apply to the program under this chapter. The application form or procedure must include any information that the commission determines necessary for the purpose of administering the program. The commission shall, within 30 days of receipt of a completed application, determine whether a community-based renewable energy project qualifies to participate in the program and respond in writing.

4. Program incentives. Subject to the requirements of subsection 2, a program participant may elect one of the following program incentives:

- A. A long-term contract for community-based renewable energy pursuant to section 3604; or
- B. The renewable energy credit multiplier pursuant to section 3605.

§ 3604. Long-term contracts for community-based renewable energy

Long-term contracts with program participants who elect the long-term contract for community-based renewable energy pursuant to section 3603, subsection 4, paragraph A are governed by this section.

1. Investor-owned transmission and distribution utilities; required participation.

Notwithstanding section 3204, the commission may direct investor-owned transmission and distribution utilities to enter into long-term contracts with program participants located within the service territory of the utility for energy, capacity resources or renewable energy credits. The commission may direct 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. An investor-owned transmission and distribution utility shall sell energy, capacity resources or renewable energy credits purchased pursuant to this subsection into the wholesale electricity market or take other action relative to such energy, capacity resources or renewable energy credits as directed by the commission.

2. Consumer-owned transmission and distribution utilities; voluntary participation.

A consumer-owned transmission and distribution utility may, at the option of the utility, enter into long-term contracts with program participants located within the service territory of the utility for energy, capacity resources or renewable energy credits. Consumer-owned transmission and distribution utilities may enter into contracts under this subsection only as agents for their customers and only in accordance with this section.

3. Sale of energy; contract procedures. Energy, capacity resources or renewable energy credits contracted in long-term contracts pursuant to this section may be sold into the wholesale electricity market in conjunction with solicitations for standard-offer supply bids under section 3212 or solicitations

for green power offer bids under section 3212-A. To the greatest extent possible, the commission shall develop procedures for long-term contracts for transmission and distribution utilities under this section having the same legal and financial effect as the procedures used for standard-offer service pursuant to section 3212 for transmission and distribution utilities.

4. Contract term. A contract entered into pursuant to this section may not be for more than 20 years.

5. Contract pricing; cost containment. The commission shall ensure that in any contract entered into pursuant to this section:

A. The average price per kilowatt-hour within each contract year does not exceed 10¢; and

B. The cost of the contract does not exceed the cost of the project plus a reasonable rate of return on investment as determined by the commission.

6. Competitive solicitation process and contract negotiation; large generators.

For program participants with a generating capacity of one megawatt or more, the commission shall, in accordance with this subsection, conduct competitive solicitations for long-term contracts. The commission shall require that bids include full project cost disclosure. Following a review of bids received, the commission may negotiate with one or more potential suppliers. The commission shall negotiate contracts that are commercially reasonable and that commit all parties to commercially reasonable behavior. In selecting program participants for contracting pursuant to this subsection, the commission shall select program participants that are competitive and the lowest priced when compared to other available bids of the same or similar contract duration or terms.

7. Contract administration; small generators. For program participants with a generating capacity of less than one megawatt, the commission shall administer long-term contracts at prices established by the commission by rule. The commission shall, at a minimum, establish prices for energy generated by the following renewable resources:

A. Wind power installations;

B. Solar arrays and installations; and

C. Any other renewable resource upon request of one or more community-based renewable energy generators that use that resource.

The commission shall establish prices under this subsection based on an analysis of reasonable costs and may establish different prices for different resources or technologies and different prices by time of generation in accordance with that analysis.

8. Cost recovery. The commission shall ensure that a transmission and distribution utility recovers in rates all costs of contracts entered into under this section, including but not limited to any effects 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 energy is sold must be reflected in rates and may not be considered to be imprudent.

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 energy have been provided.

10. Ratepayer protection. The commission shall ensure that mechanisms are established to provide protections for ratepayers over the term of contracts entered into pursuant to this section.

§ 3605. Renewable energy credit multiplier

The renewable energy credit multiplier is governed by this section. The value of a renewable energy credit for electricity generated by a program participant that elects the renewable energy credit multiplier under section 3603, subsection 4, paragraph B is 150% of the amount of the electricity. When a program participant elects the renewable energy credit multiplier, the multiplier must be accounted for when renewable energy credits are used to satisfy the portfolio requirements of section 3210, subsections 3 and 3-A.

§ 3606. Rules

The commission shall adopt rules to implement this chapter. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§ 3607. Tracking; biennial report

The commission shall develop and administer a system to register and track the development of community-based renewable energy projects and by January 15, 2011 and biennially by January 15th thereafter shall report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters on the program and the development of community-based renewable energy projects. The report must include, but is not limited to:

1. Community-based renewable energy development. Documentation of the progress of community-based renewable energy development, including the number of community-based renewable energy projects in the State, the generating capacity of those projects and the kilowatt-hours of electricity purchased from community-based renewable energy projects; and

2. Program implementation; assessment; recommendations. Actions taken by the commission to implement the program, an assessment of the effectiveness of the program with respect to encouraging the sustainable development of community-based renewable energy in the State and recommendations, including any necessary implementing legislation, to improve the program.

§ 3608. Regulatory approvals; use of public resources

1. Regulatory approval. The development, siting and operation of a community-based renewable energy project is subject to all applicable regulatory reviews and approvals required by governmental entities, including, but not limited to, municipalities and state agencies, pursuant to law, ordinance or rule.

2. Use of publicly owned land, water or facilities. Nothing in this chapter limits the authority of the State or a political subdivision of the State to use publicly owned land, water or facilities in the development and operation of a community-based renewable energy project or to lease publicly owned land, water or facilities to other qualifying owners for the development and operation of a community-based renewable energy project.

§ 3609. Repeal; authority for legislation

This chapter is repealed December 31, 2015. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may report out legislation regarding this program to the First Regular Session of the 126th Legislature.

Sec. A-5. 35-A MRSA §10008, sub-§6, ¶E, as enacted by PL 2007, c. 317, §15, is amended to read:

E. Nonelectric savings programs must be used to maximize fossil-fueled energy efficiency and conservation and associated greenhouse gas reductions, subject to the apportionment between fossil fuel and electricity conservation set forth in paragraph B. Community-based renewable energy projects, as defined in section 3602, subsection 1, may apply for funding from the trust as nonelectric savings programs.

Sec. A-6. Community-based renewable energy pilot program; first biennial report; incentives for economically disadvantaged areas. In the report due January 15, 2011 under the Maine Revised Statutes, Title 35-A, section 3607, the Public Utilities Commission shall provide recommendations regarding policy options, including but not limited to financial incentives, to encourage the development of community-based renewable energy projects in economically disadvantaged areas of the State. For the purposes of this section, "economically disadvantaged areas" includes, but is not limited to, communities, counties and other geographic areas of the State in which the average weekly wage is below the state average weekly wage or the unemployment rate is greater than the state unemployment rate.

Sec. A-7. Interim progress report. No later than February 15, 2010, the Public Utilities Commission shall submit an interim progress report to the Joint Standing Committee on Utilities and Energy regarding the development and implementation of the community-based renewable energy pilot program pursuant to the Maine Revised Statutes, Title 35-A, chapter 36, including, but not limited to:

1. Rulemaking undertaken by the commission pursuant to Title 35-A, section 3606, including, but not limited to, rulemaking to establish prices for long-term contracts for program participants with a generating capacity of less than one megawatt pursuant to Title 35-A, section 3604, subsection 7;
2. The development of contract terms and conditions for long-term contracts under Title 35-A, section 3604; and
3. The number and types of projects that have expressed interest in the program to date, based on inquiries and applications made to the commission.

PART B

Sec. B-1. 35-A MRSA §3210, sub-§7, as amended by PL 2007, c. 403, §5, is further amended to read:

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, including, but not limited to, the green power offer and other green power supply products and renewable energy credit products certified under section 3212-A. 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, including the green power offer and other green power supply products and renewable energy credit products certified under section 3212-A, 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.

Sec. B-2. 35-A MRSA §3212-A, sub-§1, ¶A, as enacted by PL 2007, c. 403, §8, is further amended to read:

A. "Green power supply" means electricity supply or renewable energy credits for electricity generated only from renewable capacity resources as defined in section 3210-C, subsection 1, paragraph E, except that the total power production capacity limit of 100 megawatts under section 3210, subsection 2, paragraph C does not apply to wind power installations or from a generator fueled by landfill gas, including electricity generated by community-based renewable energy projects as defined in section 3602, subsection 1. For the purposes of this section, "green "Green power supply" includes a biomass generator, whose fuel may include, but is not limited to, anaerobic digestion of agricultural products, byproducts or wastes.

Sec. B-3. 35-A MRSA §3212-A, sub-§1-A is enacted to read:

1-A. Green power offer. The commission shall arrange for a green power offer that is composed of green power supply in accordance with this subsection. Except as provided in this subsection, the commission shall ensure that the green power offer is available to all residential and small commercial electricity customers, as defined by the commission by rule, and shall administer a competitive bid process to select a green power offer provider or providers for the service territory of a transmission and distribution utility.

A. The green power offer must be in addition to existing standard-offer service under section 3212.

B. The commission shall, to the maximum extent possible:

(1) Incorporate green power supply from community-based renewable energy projects, as defined in section 3602, subsection 1, into the green power offer; and

(2) Encourage entities based in this State to provide green power supply from community-based renewable energy projects, as defined in section 3602, subsection 1 for the green power offer pursuant to this subsection.

C. The green power offer may include incidental amounts of electricity supply that do not meet the definition of green power supply, if the commission determines that including such electricity supply is necessary to ensure that a green power offer provider can meet its retail load obligation.

D. The commission shall, in accordance with section 3210, subsection 7, inform residential and small commercial consumers of electricity in this State of the opportunity to purchase the green power offer.

E. The commission is not required to arrange for a green power offer in the event that the commission receives no bids to provide the green power offer in a transmission and distribution utility's territory, determines that the bids it receives are inadequate or unacceptable or determines, based on prior experience arranging for a green power offer in a utility's territory, that it is reasonably likely that it will not receive any adequate or acceptable bids.

F. The commission is not required to arrange for a green power offer for the territory of a consumer-owned transmission and distribution utility. If the commission arranges standard-offer service for a consumer-owned transmission and distribution utility, the consumer-owned transmission and distribution utility may elect to have the commission arrange a green power offer in accordance with this subsection. A consumer-owned transmission and distribution utility may establish a green power offer through a competitive bidding process conducted in accordance with the commission's rules governing the selection of a green power offer provider under this subsection.

The commission shall adopt rules to implement this subsection. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. B-4. 35-A MRSA §3212-A, sub-§2, as enacted by PL 2007, c. 403, §8, is amended to read:

2. Certification; information in bill inserts. Beginning July 1, 2008, information regarding the availability of the green power offer and of green power supply products and renewable energy credit products that are certified by the commission may, at the option of the provider of the products offer or the product and with the cooperation of the transmission and distribution utility, be presented through inserts in customer bills issued by transmission and distribution utilities. The costs of the inserts, including but not limited to printing and postage costs, are the responsibility of the provider of the offer or product. The commission may define the criteria for certification of green power supply products and renewable energy credit products by order or by rule, and the commission may limit the criteria for certification for consumer protection and eligibility verification purposes. Rules adopted to implement this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. B-5. 35-A MRSA §3212-A, sub-§3, as enacted by PL 2007, c. 403, §8, is amended to read:

3. Repeal. This section is repealed July 1, 2010 December 31, 2015.

Effective September 12, 2009