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Public Law
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Chapter 656
S.P. 885 - L.D. 2255

**An Act To Protect Maine's Energy Sovereignty through the Designation
of Energy Infrastructure Corridors and Energy Plan Development**

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

PART A

Sec. A-1. 12 MRSA §685-A, sub-§11, as amended by PL 1999, c. 657, §5, is further amended to read:

11. Exemptions. Real estate used or to be used by a public utility, as defined in Title 35-A, section 102, subsection 13, or a person who is issued a certificate by the Public Utilities Commission under Title 35-A, section 122 may be wholly or partially exempted from regulation to the extent that the commission may not prohibit such use but may impose terms and conditions for use consistent with the purpose of this chapter, when, upon timely petition to ~~the Public Utilities Commission and after a~~ notice and public hearing, the Public Utilities Commission determines that such exemption is necessary or desirable for the public welfare or convenience. The Public Utilities Commission shall adopt by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-2. 30-A MRSA §4352, sub-§4, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

4. Exemptions. Real estate used or to be used by a ~~public service corporation~~ utility, as defined in Title 35-A, section 102, subsection 13, or a person who is issued a certificate by the Public Utilities Commission under Title 35-A, section 122 is wholly or partially exempt from an ordinance only when on petition, notice and public hearing the Public Utilities Commission determines that the exemption is reasonably necessary for public welfare and convenience. The Public Utilities Commission shall adopt by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-3. 35-A MRSA §122 is enacted to read:

§ 122. Energy infrastructure corridors

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

A. "Department" means the Department of Environmental Protection.

B. "Energy infrastructure" includes electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include generation interconnection transmission facilities or energy generation facilities.

C. "Energy infrastructure corridor" or "corridor" means a geographic area within the State designated by the commission in accordance with this section for the purposes of siting energy infrastructure.

D. "Generation interconnection transmission facility" has the same meaning as in section 3132, subsection 1-B.

E. "Interested person" means a person that can demonstrate to the commission the financial and technical capability to engage in the development and construction of energy infrastructure.

F. "Project" means the development or construction of energy infrastructure within an energy infrastructure corridor.

G. "Tribe" includes the Penobscot Nation, as defined in Title 30, section 6203, subsection 10; the Passamaquoddy Tribe, as defined in Title 30, section 6203, subsection 7; the Houlton Band of Maliseet Indians, as defined in Title 30, section 6203, subsection 2 and the Aroostook Band of Micmacs, as defined in Title 30, section 7202, subsection 1.

2. Designation of energy infrastructure corridors. The commission may, upon petition, designate energy infrastructure corridors in accordance with this subsection.

A. The commission may designate an energy infrastructure corridor only by rule. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

(1) The rulemaking to designate an energy infrastructure corridor must include a public hearing in which any member of the public may submit oral or written testimony or comments, which must be incorporated into the rule-making record in accordance with Title 5, section 8052, subsection 1. The commission shall provide an opportunity for examination of the petitioner at a rule-making hearing. The commission shall allow for written comments by any member of the public up to 7 days prior to the hearing. The commission shall allow a second round of written comments to be filed within 10 days of the hearing or within such longer time as the commission may direct.

(2) In any rulemaking regarding the designation of an energy infrastructure corridor, the commission shall address all written comments, including those submitted pursuant to subsection 3, and state its rationale for adopting or rejecting any proposals or recommendations contained in those written comments.

(3) A designation of an energy infrastructure corridor must be based on substantial evidence in the record of the rule-making hearing.

B. The commission may commence a proceeding to designate an energy infrastructure corridor only upon the filing of a petition for the designation of a corridor by the Office of the Public Advocate, the Executive Department, Governor's Office of Energy Independence and Security or an interested person.

C. The commission shall dismiss a petition for the designation of an energy infrastructure corridor filed under this subsection if, after preliminary review, the commission determines that the petition:

(1) Does not contain sufficient information to support the designation of an energy infrastructure corridor; or

(2) Was filed by a person other than the Office of the Public Advocate, Executive Department, Governor's Office of Energy Independence and Security or an interested person as defined by subsection 1, paragraph E.

D. The commission may designate an energy infrastructure corridor only if the commission finds that the future development of energy infrastructure within the corridor is reasonably likely to be:

(1) In the public interest, including, but not limited to, consideration of:

(a) Encouraging colocation of energy infrastructure;

(b) Enhancing the efficient utilization of existing energy infrastructure; and

(c) Limiting impacts on the landscape; and

(2) Consistent with environmental and land use laws and rules of the State. A finding that the future development of energy infrastructure within the corridor is reasonably likely to be consistent with environmental and land use laws and rules of the State under this paragraph has no evidentiary value in a subsequent consolidated environmental permit proceeding undertaken by the department pursuant to subsection 6.

E. In designating a geographic area as an energy infrastructure corridor, the commission shall limit the geographic area of the corridor to an area no greater in breadth and scope than is necessary to achieve the purposes of this section.

F. The commission may not designate an energy infrastructure corridor that is located on any of the following lands:

(1) Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A;

(2) Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6;

(3) Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9;

(4) Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2;

(5) Lands that constitute a park as defined in Title 12, section 1801, subsection 7 and Baxter State Park; and

(6) Federally owned land.

3. Consultation and notification required; comments. Prior to designating an energy infrastructure corridor under subsection 2, the commission shall, at a minimum, notify, consult with and accept comments from:

A. The department;

B. Appropriate state and federal energy and natural resources protection agencies, as specified by rules adopted pursuant to subsection 9;

C. The municipalities in which the corridor would be located;

D. The Maine Land Use Regulation Commission, if the proposed energy infrastructure corridor, or any portion of the corridor, is located within unorganized or deorganized territories of the State; and

E. A tribe, if the proposed energy infrastructure corridor, or any portion of the corridor, is located on land of a tribe other than those lands specified in subsection 2, paragraph F.

4. Use of corridors; certificate and permit required. Development or construction of energy infrastructure within an energy infrastructure corridor is governed by this subsection.

A. A transmission and distribution utility may not engage in development or construction of a transmission line covered by section 3132 within an energy infrastructure corridor, unless:

(1) The commission has issued a certificate of public convenience and necessity approving the transmission line in accordance with section 3132; and

(2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6.

B. A transmission and distribution utility may not engage in development or construction of energy infrastructure other than a transmission line covered by section 3132 within an energy infrastructure corridor, unless:

(1) The commission has issued a corridor use certificate approving the project in accordance with subsection 5; and

(2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6.

C. A person that is not a transmission and distribution utility may not engage in development or construction of energy infrastructure within an energy infrastructure corridor, unless:

(1) The commission has issued a corridor use certificate approving the project in accordance with subsection 5; and

(2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6.

5. Corridor use certificate. Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, except for a transmission and distribution utility that proposes a transmission line subject to the requirements of section 3132, that person shall file with the commission a petition for a corridor use certificate. The petition for the corridor use certificate must contain such information as the commission by rule requires. The commission shall process a petition for a corridor use certificate in an adjudicatory proceeding. The commission shall issue a corridor use certificate upon a finding that the project is:

A. In the public interest; and

B. Reasonably likely to:

(1) Minimize utility rates or increase the reliability of utility service;

(2) Have the net effect of reducing the release of greenhouse gases; or

(3) Enhance economic development within the State.

6. Environmental review; consolidated environmental permit. Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, that person shall file with the department an application for a consolidated environmental permit. The department shall adopt by rule pursuant to subsection 9 a process for the review of applications and the issuance of the consolidated environmental permit in accordance with this subsection. The department may request comments from and consult with other agencies and programs that are required by law to issue separate approvals for some or all projects.

A. A consolidated environmental permit issued by the department takes the place of any other permits or licenses that the department would otherwise require for the proposed project.

B. The application for a consolidated environmental permit must contain such information as the department requires, including, but not limited to, all studies and documentation necessary to determine whether the proposed project is in compliance with the environmental laws of the State administered by the department.

C. The applicant for a consolidated environmental permit shall pay a fee specified by rule and reimburse the department for any additional costs of regulatory review, including expenses for outside peer review or other consultants or experts assisting the department in its review. Outside review of applications under this subsection is governed by Title 38, section 344-A, except that the Commissioner of Environmental Protection is not required to obtain the consent of the applicant to enter into an agreement with an outside reviewer or require that the costs of the outside review be reimbursed by the applicant.

D. The department shall issue its decision on an application for a consolidated environmental permit within a timeframe specified by department rule or guideline. The decision may specify approval, denial or approval in part and denial in part. A proposed project may not be undertaken if it is denied in whole or in part by the department.

E. Upon issuance of a consolidated environmental permit, the department shall certify to the commission that the permit has been issued and whether the proposed project complies, in part or in whole, with the environmental laws of the State administered by the department and whether other agencies and programs that are required by law to issue separate approvals for some or all aspects of the project have taken final agency action on those matters requiring their separate approval.

F. The department shall enforce the terms of the consolidated environmental permit.

G. The terms of the consolidated environmental permit may require additional submissions by the permit holder, studies and approvals with conditions.

If the department receives an application for a permit to develop or construct energy infrastructure within an energy infrastructure corridor prior to adopting a rule to implement this subsection, the department shall process the application in accordance with the department's existing review and permitting procedures.

7. Eminent domain. This subsection grants and limits certain rights of eminent domain with respect to energy infrastructure corridors.

A. The eminent domain authority of a transmission and distribution utility within an energy infrastructure corridor is governed by section 3136.

B. Subject to approval by the commission, a person that is not a transmission and distribution utility that receives a corridor use certificate under subsection 5 to develop energy infrastructure within an energy infrastructure corridor may take and hold by right of eminent domain lands and easements within that corridor necessary for the proper location of the energy infrastructure covered by the corridor use certificate in the same manner and under the same conditions as set forth in chapter 65. The right of eminent domain granted in this paragraph does not apply to:

- (1) Lands or easements located within 300 feet of an inhabited dwelling;

(2) Lands or easements on or adjacent to any developed or undeveloped water power;

(3) Lands or easements so closely paralleling existing wire lines of other utilities that the proposed energy infrastructure would substantially interfere with service rendered over the existing lines, except with the consent of the owners;

(4) Lands or easements owned or used by railroad corporations, except as authorized pursuant to section 2311;

(5) Lands or easements owned by the State; and

(6) Transmission and distribution plant that is owned, controlled, operated or managed by a transmission and distribution utility on the effective date of this section.

C. The commission may take and hold by right of eminent domain lands and easements within an energy infrastructure corridor in accordance with this paragraph, notwithstanding any transmission and distribution utility ownership of the lands or easements.

(1) The commission may exercise the authority under this paragraph only in an adjudicatory proceeding upon a petition by the Office of the Public Advocate or the Executive Department, Governor's Office of Energy Independence and Security demonstrating that such action is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor. A determination by the commission that the exercise of eminent domain under this paragraph is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor constitutes reviewable final agency action.

(2) The amount of any lands or easements taken by the commission pursuant to this subsection may be no greater than is required to avoid the harm to electricity consumers identified under subparagraph (1).

(3) The right of eminent domain granted in this paragraph does not apply to personal property, fixtures or improvements that constitute transmission and distribution plant.

(4) The commission may exercise the right of eminent domain for the purposes of this paragraph in the same manner and under the same conditions as set forth in chapter 65. For the purposes of the exercise of eminent domain authorized by this paragraph, the commission is both a person and the State.

(5) The commission is authorized to assess transmission and distribution utilities to the extent necessary to obtain sufficient funds to pay for lands and easements taken pursuant to this subsection.

(6) The commission, in an adjudicatory proceeding upon petition by the Office of the Public Advocate or the Executive Department, Governor's Office of Energy Independence and Security, may transfer or convey to any person or state agency lands and easements once acquired, except that a transmission and distribution utility whose lands or easements were taken pursuant to this paragraph must be given the first opportunity to acquire the lands or easements to the extent necessary or useful in the performance of its duties as a transmission and distribution utility.

(7) The commission shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters during the next regular session of the Legislature following the acquisition of lands or easements by eminent domain.

8. Utility service territory. Nothing in this section modifies existing restrictions on entities providing service within a public utility's service territory provided under chapter 21.

9. Rules. The commission shall adopt by rule standards and procedures to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted by the commission for the designation of an energy infrastructure corridor, pursuant to subsection 2, paragraph A, are major substantive rules.

10. Repeal. This section is repealed July 30, 2011.

Sec. A-4. Examination of generation interconnection transmission facilities; report. The Department of Environmental Protection shall examine whether generation interconnection transmission facilities, as defined in the Maine Revised Statutes, Title 35-A, section 3132, subsection 1-B, should be added to the definition of "energy infrastructure" under Title 35-A, section 122, subsection 1. The department shall consult with the Public Utilities Commission, the Office of the Public Advocate, the Executive Department, Governor's Office of Energy Independence and Security and the Maine Land Use Regulation Commission as part of the examination required under this section. No later than March 14, 2009, the department shall report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters.

PART B

Sec. B-1. 35-A MRSA §3210-C, sub-§1, ¶A-1 is enacted to read:

A-1. "Contract for differences" means a contractual arrangement between a buyer and a seller in which cash payments are made based on the actual or relative difference between a target price for energy or a capacity resource and the market value of the energy or capacity resource. Under a contract for differences, the seller pays to the buyer the positive difference between the market value

and the target price and the buyer pays to the seller the negative difference between the market value and the target price. "Contract for differences" does not include a contract for the physical delivery of energy or capacity resources.

Sec. B-2. 35-A MRSA §3210-C, sub-§3, as amended by PL 2007, c. 293, §2, is further amended to read:

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

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 or lowering the cost of standard-offer service or otherwise lowering the cost of electricity for the ratepayers in the State. Available energy contracted pursuant to this subparagraph may be sold into the wholesale electricity market in conjunction with solicitations for standard-offer supply bids.

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. The commission may permit, but may not require, investor-owned transmission and distribution utilities to enter into contracts for differences that are designed and intended to buffer ratepayers in the State from potential negative impacts from transmission development. To the greatest extent possible, the commission shall develop procedures for long-term contracts for investor-owned transmission and distribution utilities under this subsection 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. These contracts are not subject to the rules of the State Purchasing Agent. In a competitive solicitation conducted pursuant to subsection 6, the commission shall allow transmission and distribution utilities to submit bids for interruptible, demand response or energy efficiency capacity resources.

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.

The commission shall ensure that any long-term contract authorized under this subsection is consistent with the State's goals for greenhouse gas reduction under Title 38, section 576 and the regional greenhouse gas initiative as described in the state climate action plan required in Title 38, section 577.

Sec. B-3. 35-A MRSA §3210-C, sub-§7, as amended by PL 2007, c. 293, §4, is further amended to read:

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

Sec. B-4. 35-A MRSA §3210-C, sub-§8, as enacted by PL 2005, c. 677, Pt. C, §1, is amended to read:

8. Cost recovery. The commission shall ensure that ~~a large~~an 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 or any gains or losses derived from contracts for differences must be reflected in rates and may not be deemed to be imprudent.

Sec. B-5. 35-A MRSA §3210-C, sub-§10, as enacted by PL 2005, c. 677, Pt. C, §1, is amended to read:

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.

PART C

Sec. C-1. 2 MRSA §9 is enacted to read:

§ 9. Governor's Office of Energy Independence and Security

1. Office established. The Governor's Office of Energy Independence and Security, referred to in this section as "the office," is established in the Executive Department to carry out responsibilities of the State relating to energy resources, planning and development. The office is directly responsible to the Governor.

2. Director. The office is under the control and supervision of the Director of the Governor's Office of Energy Independence and Security, referred to in this section as "the director." The director is appointed by the Governor and serves at the pleasure of the Governor.

3. Duties. The director is responsible for the execution of the duties of the office. The director shall:

- A. Chair the Energy Resources Council, established under Title 5, section 3327;
- B. In collaboration with the Energy Resources Council and other relevant state agencies, coordinate state energy policy;
- C. Prepare and submit a comprehensive state energy plan to the Governor and the Legislature by January 15, 2009 and every 2 years thereafter;
- D. In collaboration with other relevant state agencies, private industry and nonprofit organizations, collect and analyze energy data, including, but not limited to, data on energy supply, demand and costs in this State with consideration of all available energy sources;
- E. Coordinate the dissemination of energy information to the public and the media;
- F. Provide technical assistance and information to the Governor and the Legislature regarding the State's short-range and long-range energy needs and the resources to meet those needs;
- G. Seek funds and partnerships with public and private sources to support the goals of the office, including, but not limited to, promoting energy efficiency, demand-side management and distributed generation;
- H. Work with transmission and distribution utilities, state agencies involved in the permitting of energy generation facilities and other relevant entities to negotiate agreements that create value for electricity consumers with developers of renewable generation who are interested in building energy generation facilities or developing or utilizing energy transmission infrastructure in this State. This paragraph does not authorize the director to be a signatory to any such agreement unless that authority is otherwise granted by law. The director shall report on activities undertaken pursuant to this paragraph by February 1, 2009, and annually thereafter, to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters;
- I. Monitor energy transmission capacity planning and policy affecting this State and the regulatory approval process for the development of energy infrastructure pursuant to Title 35-A, section 122 and make recommendations to the Governor and the Legislature as necessary for changes to the relevant laws and rules to facilitate energy infrastructure planning and development; and
- J. Take action as necessary to carry out the goals and objectives of the state energy plan prepared pursuant to paragraph C.

Sec. C-2. 5 MRSA §3304, sub-§3, ¶K, as enacted by PL 1989, c. 501, Pt. DD, §7, is repealed.

Sec. C-3. 5 MRSA §3327, sub-§1, as amended by PL 2005, c. 425, §2, is further amended to read:

1. Council established; membership. In order to facilitate more effective interagency coordination of the State's activities regarding energy issues, the Energy Resources Council, referred to in this chapter as the "council," is established. The chair of the council is the Director of the State Planning Office Governor's Office of Energy Independence and Security within the Executive Department, who is responsible for ensuring that the council carries out its responsibilities under this chapter. The membership of the council is as followsalso includes:

- A. The Director of the State Planning Office or the director's designee;

- B. The chair of the Public Utilities Commission or the chair's designee;
- C. The Commissioner of Environmental Protection or the commissioner's designee;
- D. The Public Advocate or the Public Advocate's designee;
- E. The Commissioner of Transportation or the commissioner's designee;
- F. The Commissioner of Administrative and Financial Services or the commissioner's designee;
- G. The Commissioner of Economic and Community Development or the commissioner's designee;
- H. The Director of the Maine State Housing Authority or the director's designee; and
- I. The Commissioner of Conservation or the commissioner's designee.

Sec. C-4. 5 MRSA §3327, sub-§3, as amended by PL 2003, c. 487, §1, is further amended to read:

3. Quarterly meetings; staff; funding. The council shall meet at least quarterly. The council shall prepare a work ~~program~~plan for each year ~~establishing that outlines anticipated activities and establishes priorities among its efforts.~~ The State Planning Office, within the Executive Department, Governor's Office of Energy Independence and Security shall provide staff support to the council. Funding to support the work of the council and its staff is as follows.

- A. A state agency applying for funds under the State Energy Program of the United States Department of Energy pursuant to 10 Code of Federal Regulations, Part 420 shall, as directed by the council, apply for funds to support the work of the council and its staff.
- B. To the extent funds available pursuant to paragraph A are insufficient to fund fully staff support for the council, each member of the council shall enter into an agreement with the ~~State Planning Office~~Executive Department, Governor's Office of Energy Independence and Security to share in the cost of providing the staff support.
- C. The council may seek, and the Public Utilities Commission may provide, funds to the council pursuant to Title 35-A, section 3211-A, subsection 5-A.

Sec. C-5. 5 MRSA §3327, sub-§4, as enacted by PL 2001, c. 630, §1, is amended to read:

4. Report; legislative oversight. By January 15th of each year, the chair of the council shall prepare and submit to the Governor and to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters an annual report describing the council's activities during the previous calendar year and ~~an outline of anticipated activities~~the council's work plan for the current calendar year. The report must also include an evaluation of the council's effectiveness in meeting the requirements of this chapter and the adequacy of available staffing resources. The report may include recommendations for changes to law regarding energy policy. ~~After receiving a receipt and review of the annual report required under this subsection,~~ the joint standing committee of the Legislature having jurisdiction over utilities and energy matters may report out~~submit~~ legislation relating to energy policy.