

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

S.P. 495 - L.D. 1560

An Act Regarding Utility Reorganizations

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

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

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

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

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

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

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

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

A. Unless exempted by rule or order of the commission, ~~no~~ a reorganization may not take place without the approval of the commission. ~~No~~ A reorganization may not be approved by the commission unless it is established by the applicant for approval that the reorganization is consistent with the interests of the utility's ratepayers and investors. If a reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, a reorganization may not be approved by the commission unless it is established by the applicant for approval that

the reorganization provides net benefits to the utility's ratepayers. The commission shall rule upon all requests for approval of a reorganization within 60 days of the filing of the request for approval. If it determines that the necessary investigation cannot be concluded within 60 days, the commission may extend the period for a further period of no more than 120 days. In granting its approval, the commission shall impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of ratepayers. These conditions ~~shall~~ must include provisions ~~which assure~~ that ensure the following:

- (1) That the commission has reasonable access to books, records, documents and other information relating to the utility or any of its affiliates, except that the Public Utilities Commission may not have access to trade secrets unless it is essential to the protection of the interests of ratepayers or investors. The commission shall afford trade secrets and other information such protection from public disclosure as is provided in the Maine Rules of Civil Procedure;
- (2) That the commission has all reasonable powers to detect, identify, review and approve or disapprove all transactions between affiliated interests;
- (3) That the utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired;
- (4) That the ability of the utility to provide safe, reasonable and adequate service is not impaired;
- (5) That the utility continues to be subject to applicable laws, principles and rules governing the regulation of public utilities;
- (6) That the utility's credit is not impaired or adversely affected;
- (7) That reasonable limitations be imposed upon the total level of investment in nonutility business, except that the commission may not approve or disapprove of the nature of the nonutility business;
- (8) That the commission has reasonable remedial power including, but not limited to, the power, after notice to the utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the utility in the event that divestiture is necessary to protect the interest of the utility, ratepayers or investors. A divestiture order ~~shall~~ must provide a reasonable period within which the divestiture ~~shall~~ must be completed; and
- (9) That neither ratepayers nor investors are adversely affected by the reorganization, and if the reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, that the reorganization provides net benefits to the utility's ratepayers.

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

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

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

(2) Whether the reorganization will result in a loss of local control of the utility's management and operations in a manner that limits the ability of local management to protect the interests of the utility's ratepayers in this State.

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

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

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