however, the maximum civil penalty shall not exceed $2,000,000.40
Penalties collected by the commission under this section must be
deposited in the Public Utilities Commission Intervenor
Reimbursement Fund, under Section XXX-28.

G. Cease and desist orders. The commission may issue a cease and
desist order.

(1) Following an adjudicatory hearing held in conformance with
[insert identification of type of hearing needed under state statutes,
and cross-reference to Mini-APA], if the commission finds that
any competitive electricity provider, distribution utility or
transmission utility has 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 [cross-reference to Mini-APA section]; or

(2) In an emergency, without in force and effect until further order
of the hearing or notice, if the commission receives a written,
verified complaint or affidavit showing that a competitive
electricity provider 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 until otherwise
determined by 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.

40 Ma. Stat. 1997, c. 164, § 193; Ma. G. L. c. 164, § 1F(7)—for violations of
Ma. G. L. c. 164, §§ 1A—1H, or c.93A (Unfair and Deceptive Acts and Practices).
Massachusetts' overall limitation is $1,000,000. The model statute proposes to place
penalty receipts in a fund to be used to support intervention by consumers and
consumer groups in proceedings regarding restructuring before the commission.
SEC. XXX-11. PRIVACY AND UNWANTED SOLICITATIONS

A. Privacy/unwanted solicitations. To protect a customer's right to privacy from unwanted solicitation, each distribution utility shall distribute to each customer a form approved by the commission which the customer shall submit to his distribution utility in a timely manner if he wants his name, address, telephone number and rate class to be released to competitive electric providers. On and after [transition date], each distribution utility shall make available to all competitive electric providers customer names, addresses, telephone numbers, if known, and rate class, of those customers from whom the distribution utility has received a form from a customer requesting that such information be released. Additional information about a customer for marketing purposes shall not be released to any electric provider unless a customer signs a release which shall be made available by the commission. No customer information will be provided to a third party without specific written permission of the customer.

B. 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 or distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.

SEC. XXX-12. UNAUTHORIZED SWITCHING, UNAUTHORIZED CHARGES PROHIBITED; PENALTIES

A. Unauthorized switching. Except as provided in sections [cross-reference municipal aggregation and RMA sections], it shall be unlawful for a competitive electricity provider to provide power or other services to such a customer without first obtaining said affirmative choice from the customer signing of a letter of authorization, third-party verification or the completion of a toll-free call made by the customer to an independent third party. For

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4 Conn. H.B. 5005, § 26(a), Public Act 98-28 (1998). Connecticut statute is negative check-off, requiring customer to ask to be taken off lists, failing which the information is made public. The model statute, by contrast, requires an affirmative statement in writing from the customer asking for information to be released to providers.
the purposes of this section, "letter of authorization" shall mean, (1) a separate document whose sole purpose is to authorize switching of a customer's competitive electricity provider, and which (2) shall not be combined with inducements of any kind on the same document and (3) at a minimum, the letter of authorization must be printed with readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms: (a) that the consumer understands that only the competitive electricity provider may be designated and (b) that the consumer understands that signing the letter may involve a charge to the consumer for changing competitive electricity providers.

Letters of authorization shall not suggest or require that a consumer take some action in order to retain the consumer's current competitive electricity provider. Upon switching of a customer's service provider, there shall be included in the customer's bill for distribution service an acknowledgment of the service switch, along with information on how to file a complaint regarding an unauthorized switch.  

B. Unauthorized charges. No entity shall charge for service to a customer that the customer has not ordered.

C. Complaints; penalties. A customer may initiate a complaint that his retail electricity service has been switched to another competitive electricity provider without his prior authorization. Said complainant shall file the complaint with the commission within 30 days after the statement date of the notice indicating that the customer's retail electricity service has been switched.  The commission may, after a full hearing and determination by the commission that such entity knowingly, intentionally, maliciously or fraudulently switched the service of more than two customers in a one-month period, be prohibited from selling electricity in the state for a period of up to one year for a violation of this Section XXX-12, and a civil penalty


\[\text{Added category of "knowing" violations, and reduced minimum period of violations to one month and minimum number slammed or crammed to two. Ma. Stat.}\]

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not to exceed $40,000 for the first offense and not less than $150,000 for any subsequent offense per customer.\(^4\) Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Intervenor Reimbursement Fund, under Section XXX-28.

SEC. XXX-13. DISCLOSURE, BILLING INFORMATION AND LABELING

A. Comparative information to make informed purchases. The commission shall promulgate uniform labeling regulations which shall be applicable to all competitive electricity providers as a condition of licensure, which shall require disclosure, without limitation, of the information required by this section, together with price data, information on price variability and customer service information, in such a format as to permit reasonable comparisons between price and service offerings of competitive electricity providers.

B. Format of disclosures; limitation on misleading disclosures.

(1) The commission shall prescribe standard typical billing determinants, and competitive electricity providers shall compute the total bill per month per customer for each such example of standard typical billing determinants. Such information shall be disclosed in bold print in print advertisements and on any periodic billing materials, or through clear and unhurried spoken language in the case of television or radio advertisements.\(^5\)

(2) Competitive electricity providers shall comply with federal and state laws governing unfair advertising and labeling.\(^6\)


(3) A competitive electricity provider shall not advertise or disclose the price of electricity in such a manner as to mislead a reasonable person into believing that the electric generation services portion of the bill will be the total bill amount for the delivery of electricity to the customer’s location. When advertising or disclosing the price for electricity, the competitive electricity provider shall also disclose the distribution utility’s average current charges, including the competitive transition charge and system benefits charges, inclusive, for that customer class.  

C. Notice to customers of terms and conditions. All distribution utilities and competitive electricity providers shall notify their customers in writing of the terms of their agreement to provide service at the time service is initiated.

D. Disclosure of rates, terms, conditions and other consumer information. Before service is initiated by a competitive electricity provider to any customer, the competitive electricity provider shall disclose information on rates and other information to a customer in a written statement which the customer may retain. Each competitive electricity provider shall annually mail a booklet containing this information to each of its residential customers.

E. Commission requirements. The commission shall promulgate such rules and regulations prescribing additional information to be disclosed by a competitive electricity provider company in any advertising or marketing.

F. Notice of standard-offer and low-income discount services. Each distribution utility shall periodically notify all customers of the availability and method of obtaining low-income discount rates and standard-offer service.

G. Commission to make available information. The commission shall maintain and make available to customers upon request, a list


of competitive electricity providers and the following information about each such electric provider:

(1) rates and charges provided by the electric provider;
(2) applicable terms and conditions of a contract for electric generation services provided by the electric provider;
(3) the percentage of each provider's total electric output derived from each of the categories of energy sources listed in this subsection and those otherwise specified by the commission;
(4) the rates at which each facility operated by or under long-term contract to the provider emits nitrogen oxides, sulfur oxides, carbon dioxide, carbon monoxide, radionuclides, particulates and heavy metals, and the analysis of environmental characteristics of each such category of energy source and to the extent such information is unknown, the estimated percentage of the provider's total electric output for which such information is unknown, along with the word "unknown" for that percentage;
(5) a record of customer complaints and the disposition of each complaint; and
(6) any other information the commission determines will assist customers in making informed decisions when choosing a competitive electric provider. The commission shall update the information quarterly. The commission shall publish such information in standard format so that a customer can readily understand and compare the services provided by each competitive electricity provider. The commission shall publish this information and make its publication broadly available.

H. Rules on filings by competitive electricity providers. In adopting by rule requirements for filing and disclosure of information by competitive electricity providers pursuant to this section, the commission may consider any requirements that the commission believes appropriate and shall consider the following filing requirements:

(1) a statement of average prices at representative levels of kilowatt-hour usage in the most recent six-month period;

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I. Price reporting and commission price information dissemination. Each distribution utility shall report monthly to the commission the average of prices charged by the distribution utility and all competitive electricity suppliers, weighted by the relative numbers of kilowatt-hours of generation sold by each entity in the case where more than one entity supplies generation service, by customer class and separately by subclass within the residential class, for default service and standard-offer service, respectively, in the service area of the distribution utility, on a bundled basis, and broken out between distribution, transmission and generation services, respectively. The commission shall develop and issue, by March first of each year or such other date as the commission shall select, a report which shall detail the status in the previous calendar year of pricing disparities between customer classes and separately within the residential class, regions of the state and distribution companies and competitive electricity providers serving consumers, provided, however, that said report shall also include a comparison of each customer class in the state as compared with the same classes in each of the 49 other states and the District of Columbia.55

J. Unbundled bills. Beginning [as soon after passage of the legislation as the commission can process a rate and cost allocation case], distribution 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 [a date soon after passage, and long enough before the ultimate unbundling deadline to permit commission processing of the contested case], each distribution 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 [shortly before the issuance of unbundled bills must begin].

SEC. XXX-14. DIVESTITURE OF GENERATION

A. Divestiture required; exceptions On or before [transition date], each investor-owned electric utility shall divest all generation assets and generation-related business activities other than any:

(1) contract with a qualifying facility or with a demand-side management or conservation provider, broker or host;
(2) ownership interest in a nuclear power plant; or

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54 Maine Revised Statutes, Title 35-A, § 3213.

57 Maine Revised Statutes, Title 35-A, § 3204. See also Appendix II, an adapted version of the Connecticut language on stranded cost recovery (eliminating the securitization references). But see Stranded Costs and Market Structures in the Electric Industry, a white paper prepared by Tellus Institute for AARP, 1997, in which the authors argue that requiring divestiture (sale) of assets and using the sales price as the basis for calculating stranded costs has a number of disadvantages. The Connecticut language contains a number of provisions that can be adapted to the situation where you decide to use a so-called "administrative" determination of stranded costs, rather than requiring a divestiture sale and obtaining a "market" determination of such costs.

54 Maine exemption for ownership interest in a facility located outside the United States is removed, to prevent cross-subsidization of foreign investments with distribution utility ratepayer funds, particularly stranded cost recovery, which increases cash flow.

59 This, of course, only applies in a state whose utilities own nuclear generation. It is also a highly political question, and it involves a consideration of whether the Nuclear Regulatory Commission (NRC) would permit divestiture, and whether a buyer could be found. The NRC will not issue a license to a plant unless the

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(3) ownership interest in a generation asset that the commission determines is necessary for the utility to perform its obligations as a transmission or distribution utility in an efficient manner, so long as the commission determines that continued ownership of such generation asset will not significantly impede competition.

No later than [three to six months after passage of the bill], 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, including the conditions for competition set forth in Section XXX-2(E), and the impact of such divestiture on horizontal and vertical market power, and on accuracy and equity in treatment of stranded costs. By [six to nine months after passage of the bill, depending on choice of filing date], the commission shall issue an order approving the plan, rejecting 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.

B. Sale of capacity and energy required. The commission by rule shall require each investor-owned electric utility after [date around time of transition] 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 distributed capacity and energy that the commission determines are necessary for the utility to perform its obligations as a transmission or distribution utility in an operator is financially secure. As for whether nuclear plants have a market, there are indications pro and con, from recent transactions for shares in such plants. The language here reflects Maine's handling of these issues, but need not be how every other state treats the question.

60 Maine option to request extension of time for sale is deleted—evidence is growing that the longer a company waits to sell its generation, the lower the sales price will be. Thus, the risk of losing that premium of sales price over book enjoyed by companies that have divested so far is added to the risk of delaying the creation of a truly competitive market.
efficient manner, taking into account considerations of life cycle cost, environmental impacts and reliability.\textsuperscript{41}

C. \textbf{Maximizing sales value.} 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 an electric utility from renegotiating, buying out or buying down a contract with a qualifying facility in accordance with applicable laws. By [date six months after passage of statute], the commission shall provisionally adopt all rules required under this subsection.

D. Ownership of generation prohibited. Except as otherwise permitted under this chapter, on or after [transition date], investor-owned transmission or distribution utilities may not own, have a financial interest in or otherwise control generation or generation-related assets.

E. Generation assets permitted. On or after [transition date], notwithstanding any other provision in this chapter, the commission may allow an investor-owned transmission or 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 or distribution utility in an efficient manner.

\section*{SEC. XXX-15. DEFAULT SERVICE}

A. \textbf{Designated default service provider.} The commission may provide for the selection of an entity through competitive bidding to provide default service to customers who, for any reason, have stopped receiving electric generation service or other competitive services, provided, however, that the default service rate so procured shall not exceed the average monthly market price of electricity or other competitive service, respectively and provided, further, that all bids shall include payment options with rates that

\textsuperscript{41} Adds to Maine exemption the limitation that only distributed capacity and energy may be acquired by a monopoly distribution utility, and sets out the standards of least cost, environmental mitigation, and reliability.
remain uniform for periods of up to six months. The commission may authorize a competitive electricity provider to provide default service.  

B. Reallocation of excess charges. Whenever the average of residential default service prices for a 12-month period is more than the average of system-average prices for the same period, the distribution utility will increase the access charge per kilowatt-hour to all non-residential default customers by an amount equal to the difference between the average residential default service price in the aforementioned 12-month period and the average system price in that period. The sums so collected shall be credited to the residential default service charges as an equal amount per kilowatt-hour in the subsequent 12 months.

SEC. XXX-16. MARKETING: LARGE UTILITIES

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

(1) "Affiliated competitive electricity provider" means a competitive electricity provider whose relationship with a large investor-owned transmission or distribution utility qualifies it as an affiliated interest.

(2) "Purchasing entity" means a person that purchases 10 percent or more of the stock of a distribution utility on or after the effective date of this section.

(3) "Related entity" means:

(i) any person or entity that owns, directly, indirectly or through a chain of successive ownership, 10 percent or more of the voting securities of the purchasing entity;

(ii) any person or entity 10 percent or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (i);

(iii) any person or entity 10 percent or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;

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43 Maine Revised Statutes, Title 35-A, § 3205.
(iv) any person, entity or group of persons or entities 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, entity or group of persons or entities beneficially owns more than 3 percent of the purchasing entity's voting securities; or
(v) any purchasing entity of which any person or entity defined in subparagraphs (i) to (iv) is an affiliated interest.

(4) "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.

B. Marketing permitted. On and after the beginning of retail access, a large investor-owned transmission or distribution utility may not sell electric energy or capacity to any retail consumer of electricity in the geographic area where it provides transmission or distribution service, except as specifically authorized by this chapter. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated competitive electricity provider may sell electric energy or capacity to retail consumers of electricity:

(1) outside the service territory of the transmission or distribution utilities with which it is affiliated; and
(2) within the service territory of the transmission or distribution utilities with which it is affiliated, except that:
   (i) the affiliated competitive electricity provider may not sell or contract to sell more than 33 percent of the total kilowatt-hours sold within the service territory of its affiliated transmission or distribution utilities, as determined by the commission by rule; and
   (ii) in accordance with Section XXX-5, the affiliated competitive electricity provider may provide standard-offer service within the territory of the transmission or distribution utilities with which it is affiliated where no winning bid offering prices equal to or below the standard-offer price is accepted.

C. Commission evaluation of market share limitation. No later than [five or six years after the transition date], 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 committee of the Legislature having jurisdiction over utility matters.

D. Standards of conduct. The following provisions govern the conduct of transmission and distribution utilities and affiliated competitive electricity providers.

(1) A transmission or distribution utility may not, through a tariff provision or otherwise, give its affiliated competitive electricity provider or retail customers of its affiliated competitive electricity provider preference over non-affiliated competitive electricity providers or retail customers of non-affiliated competitive electricity providers in matters relating to any regulated product or service.

(2) All regulated products and services offered by a transmission or 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.

(3) A transmission or distribution utility may not sell or otherwise provide regulated products or services to its affiliated competitive electricity 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.

(4) A transmission or distribution utility shall process all similar requests for a regulated product or service in the same manner and within the same period of time.

(5) A transmission or distribution utility may not condition or tie the provision of any regulated product, service or rate agreement by the transmission or distribution utility to the provision of any product or service in which an affiliated competitive electricity provider is involved.

(6) (i) A transmission or distribution utility shall process all similar requests for information in the same manner and within the same period of time.
(ii) A transmission or distribution utility may not provide information to an affiliated competitive electricity provider without a request when information is made available to non-affiliated competitive electricity providers only upon request.

(iii) A transmission or distribution utility may not allow an affiliated competitive electricity provider preferential access to any non-public information regarding the transmission or distribution system or customers taking service from the transmission or distribution utility that is not made available to non-affiliated competitive electricity providers upon request.

(iv) A transmission or distribution utility shall instruct all of its employees not to provide affiliated competitive electricity providers or non-affiliated competitive electricity providers any preferential access to non-public information.

(7) Employees of a transmission or distribution utility may not share with any affiliated competitive electricity provider or any non-affiliated competitive electricity provider:

(i) any market information acquired from the affiliated competitive electricity provider or from any non-affiliated competitive electricity provider; or

(ii) any market information developed by the transmission or distribution utility in the course of responding to requests for transmission or distribution service.

(8) A transmission or distribution utility shall keep a log of all requests for information made by the affiliated competitive electricity provider and non-affiliated competitive electricity providers and the date of the response to such requests. 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.

(9) A transmission or distribution utility may not release any proprietary customer information without the prior written authorization of the customer.

(10) (i) A transmission or distribution utility shall refrain from giving any appearance of speaking on behalf of its affiliated competitive electricity provider. The transmission or
distribution utility may not in any manner promote its affiliated competitive electricity provider.

(ii) Neither transmission and distribution utilities nor their affiliated competitive electricity providers may in any way represent that any advantage accrues to customers or others in the use of the transmission or distribution utility’s services as a result of that customer or others dealing with the affiliated competitive electricity provider.

(iii) A transmission or distribution utility may not engage in joint advertising or marketing programs of any sort with its affiliated competitive electricity provider, nor may the transmission or distribution utility promote or market any product or service offered by its affiliated competitive electricity provider.

(iv) No such affiliate may use the name, corporate name, logo or other identifying information indicating a link to the transmission or distribution utility without payment of a royalty to the transmission or distribution utility in an amount to be determined by the commission based on the market value to the affiliate of such identifying information, which such royalty payment shall be used to reduce any stranded cost payments otherwise chargeable by such utility.

(v) The commission shall maintain a current list of all competitive providers. If a customer requests information about competitive electricity providers, the transmission or distribution utility shall provide a copy of a list on which competitive electricity providers appear in random sequence and not in alphabetical order.\(^4\)

(11) Employees of a transmission or 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 electricity provider or non-affiliated competitive electricity provider.

(12) Employees of a transmission or distribution utility may not be shared with, and must be physically separated from those of, an

\(^4\) Section reorganized and royalty provision added.
affiliated competitive electricity provider. The commission may approve an exemption from these separation requirements upon a finding by the commission that:

(i) sharing employees or facilities would be in the best interest of the public;

(ii) sharing employees or facilities would have no anti-competitive effect; and

(iii) the costs of any shared employees or facilities can be fully and accurately allocated between the transmission or distribution utility and the affiliated competitive electricity 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.

(13) A transmission or distribution utility and its affiliated competitive electricity provider shall keep separate books of accounts and records, which are subject to review and audit by the commission at the utility’s expense.

(14) A transmission or 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 claimant’s right to file a complaint with the commission if not satisfied with the results of the investigation. The transmission or 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.

(15) Transmission and distribution utilities shall maintain their books of account and records of their transmission and
distribution operations separately from those of their affiliated competitive electricity provider, and the transmission and distribution books of account and records must be available for commission inspection.

(16) A transmission or 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.

(17) Each distribution utility should post on its Internet site the load profile and other load data required by the commission.

E. Affiliates and affiliate transactions: billing and metering services. If billing and metering services are declared competitive, the commission by rule shall establish minimum standards necessary to protect consumers of these services and codes of conduct governing the relationship among distribution utilities providing electric billing and metering services, any affiliates of distribution utilities providing such services, and providers of such services that are not affiliated with a distribution utility. The commission shall determine each distribution utility’s costs of providing electric billing and metering services that are 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.

F. Limitation. Notwithstanding any other provision, no electric provider or generation entity or affiliate that owns or controls more than 15 percent of the electricity generation capacity that is dispatched by the [regional independent service operator (ISO)], or its successor, may offer electric generation services in the state.

G. Rules. The commission shall adopt rules implementing the provisions of this section, including:

(1) rules governing the tracking of the amount of kilowatt-hour sales by any affiliated competitive electricity provider compared to the total kilowatt-hour sales within the service territory of the affiliated transmission or distribution utility;

(2) rules governing the procedure for divestiture; and
(3) rules establishing standards of conduct for transmission or distribution utilities and affiliated competitive electricity providers consistent with the requirements of this section.

Beginning on the effective date of competition and annually thereafter, copies of the rules adopted under this section must be provided by transmission or distribution utilities to every employee of the transmission or distribution utility and posted prominently in every employee location.

H. Penalties. The commission shall require the transmission or distribution utility to divest the affiliated competitive electricity provider if the commission determines in an adjudicatory proceeding that:

(1) the transmission or distribution utility or an affiliated competitive electricity provider has knowingly violated any provision of this section or any rule adopted by the commission pursuant to this section; and
(2) 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.

The commission may impose administrative penalties of up to $10,000 for a violation of any provision of this section or any rule adopted by the commission pursuant to this section. Each day of a violation constitutes a separate offense.

I. Prohibition; divestiture. If, after the effective date of this section, 10 percent or more of the stock of a transmission or distribution utility is purchased by an entity:

(1) 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
(2) if, in an adjudicatory proceeding, the commission determines that an affiliated competitive electricity provider obtains an unfair market advantage as a result of the purchase, the commission shall order the transmission or distribution utility to divest the affiliated competitive electricity provider.

If the commission orders a divestiture pursuant to this subsection, the transmission or distribution utility must complete the
divestiture within 12 months of the order to divest, unless the commission grants an extension. Upon application by the transmission or 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 Section XXX-14.

J. Effect of divestiture. If the commission orders a transmission or distribution utility to divest an affiliated competitive electricity provider pursuant to this section, the transmission or distribution utility may not have an affiliated interest in a competitive electricity provider after the divestiture.

K. Access to books; audits. The commission shall have access to all books and records of any affiliated competitive electricity provider, and may audit the same. The distribution utility shall pay the cost of any audit ordered by the commission pursuant to this section.

SEC. XXX-17. MARKETING: SMALL UTILITIES

A. 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 customers of electricity located within or outside the service territory of the small investor-owned transmission and distribution utility with which it is affiliated.

B. Rules of conduct. By [six months after passage of Act], the commission shall open a rulemaking 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 [one year after passage of Act], the commission shall provisionally adopt all rules required under this subsection. In adopting rules under this subsection, the commission shall consider all relevant issues, including, but not limited to:

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65 Maine Revised Statutes, Title 35-A, § 3206.

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(1) codes of conduct that may be required to ensure the
effectiveness of the separation requirement;
(2) restrictions on employee activities;
(3) accounting standards; and
(4) information and service comparability requirements.

SEC. XXX-18. MARKETING: CONSUMER-OWNED UTILITIES

A. Consumer-owned utilities; limitations. Consumer-owned
transmission and distribution utilities:
(1) may sell retail generation service only within their respective
service territories; and
(2) may not sell wholesale generation service except incidental sales
necessary to reduce the cost of providing retail service.

B. 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.

SEC. XXX-19. STRANDED COST RECOVERY

A. Stranded costs defined. For the purposes of this section, the term
"stranded costs" means a utility's prudent, 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.

B. 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:

46 Maine Revised Statutes, Title 35-A, § 3207.

47 Maine Revised Statutes, Title 35-A, § 3208. See also Appendix II, an
adapted version of the Connecticut language (with references to securitization
removed).

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(1) the costs of a utility's regulatory assets related to generation;
(2) the difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and
(3) the difference between future contract payments and the market value of a utility's purchased power contracts.

C. Exclusions. Notwithstanding any other provision of this chapter, the commission may not include any costs for obligations incurred on or after April 1, 1995 [choose some date after which no one can seriously argue competition was not likely], in a utility's stranded costs, except that the commission may include:

(1) regulatory assets created after April 1, 1995, and prior to [day bill filed or day PUC started proceedings] including:
   (i) the amortization of costs associated with the restructuring of a qualifying facility contract;
   (ii) costs deferred pursuant to rate plans; and
   (iii) energy conservation costs;
(2) obligations incurred by a utility after April 1, 1995 [same date], and prior to [transition date] that are beyond the control of the electric utility; and
(3) obligations incurred by an electric utility after April 1, 1995 [same date], to reduce potential stranded costs.

D. 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.\(^{64}\)

\(^{64}\) See Appendix II, modified version of Connecticut statute, for more detail on the question of "mitigation" of costs. See also Stranded Costs and Market Structures in the Electric Industry, prepared by Telha Institute for AARP, 1997, on what constitutes true mitigation, and on cost-shifting risks of some measures that have been given the name "mitigation."
E. Stranded costs recoverable; mitigation.

(1) When retail access begins, the commission shall provide a distribution utility a reasonable opportunity to recover stranded costs through the rates of the distribution utility, as provided in this section.69 The distribution utility shall be permitted return of 100 percent of the costs determined by the commission to be stranded, which recovery shall be allowed over a period not to exceed 10 years, but the distribution utility shall not be entitled to a return on such stranded costs.70 Nothing in this chapter may be construed to give a distribution utility a greater71 opportunity to recover stranded costs than existed prior to the implementation of retail access.

(2) 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, and based on its compliance with this chapter.72 Any electric utility seeking to claim stranded costs shall, in accordance with this subsection, take all reasonable efforts to reduce such stranded costs,

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69 Maine statute provides for comparably full cost recovery: "The opportunity must be comparable to the utility's opportunity to recover stranded costs before the implementation of retail access under this chapter."

70 This formula, a return "of" but not "on" costs, provides in practice a sharing of uneconomic costs between shareholders and customers. Depending on the utility's cost of capital, and the length of the recovery period, the utility will bear up to 50 percent of the net present value of stranded costs, assuming compliance with the statute and all reasonable steps to mitigate stranded costs. For more discussion of the basis for such a sharing, see Stranded Costs and Market Structures in the Electric Industry, prepared by Telus Institute for AARP, 1997. Alternative formulations allow a utility the cost of debt capital (e.g., interest payments it must make on corporate bonds it has floated) but no return on equity capital (what is commonly thought of as profit). This provides a higher recovery by the utility, but still imposes a sharing of the burden of uneconomic costs.

71 Maine statute includes floor: "or lesser."

72 Added standard of overall compliance with statute as condition of stranded cost recovery. Will be helpful in cases of abuse of residual monopoly status. Material after this point in this subsection on mitigation is adapted from the Connecticut statute. See Appendix II for more context.

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Obtained and made public by the Natural Resources Defense Council, March/April 2002
and to mitigate present value rate impacts,73 so long as the present value of such stranded costs is not thereby increased.74 Before the approval by the commission of any stranded cost recovery, the electric utility shall show to the satisfaction of the commission that the electric utility has taken all reasonable steps to reduce such stranded costs and to mitigate near-term rate impacts, so long as the present value of such stranded costs is not thereby increased, and also that it has taken all reasonable steps to minimize the net present value cost to be recovered from customers.

(3) Steps to reduce costs, mitigate near-term rate impacts or minimize the net present value cost to be recovered from customers, shall include:75

(i) good faith efforts to negotiate the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission;76

(ii) the reasonable costs of the consultants appointed to conduct the auctions of generation assets pursuant to Section XXX-14 of this Act;

73 Maine statute says "mitigate near-term" rate impacts.

74 The term "mitigate" is used in the Connecticut statute. "Mitigation" has come to mean a large number of actions that tend to reduce near-term rate impacts or the total amount claimed in stranded costs, but which do not necessarily reduce the outlay expected of customers, at least over the remaining useful life of the assets claimed to be stranded by competition. This rewrite, therefore, takes pains to use language that is more specific in describing what is authorized, and what the impact will be, requiring always that the net present value of any steps not increase as a result of "mitigation" efforts.

75 Reference to negotiating the employment of nonmanagerial staff by the new owners of power plants sold as a result of divestiture are deleted. Union issues will be important in the design of a restructuring statute, unions can be allies of consumers in important ways, and many unions point out that good jobs with good pay and steady employment are one of the "stranded benefits" of the current system. However, writing in the desired solutions to these problems was beyond the scope of this draft.

76 Connecticut also requires that "the fixed present value of any contract to which a political subdivision of the state is a party shall be calculated using the political subdivision's tax-exempt borrowing rate as the discount rate."

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(iii) maximization of market revenues from existing generation assets;\(^7\)

(iv) efforts to maximize current and future operating efficiency, including appropriate and timely maintenance, trouble-shooting, aggressive identification and correction of potential problem areas.\(^7\)

(4) Steps to reduce costs, mitigate near-term rate impacts or minimize the net present value cost to be recovered from customers, may include:

(i) reduction of book assets by application of net proceeds of any sale of existing assets, so long as net costs are not shifted between customer classes as a result of such application;\(^7\)

(ii) voluntary write-offs of above-market generation assets;\(^8\)

(iii) the decision to retire uneconomical generation assets;\(^8\)

\(^7\) Connecticut's original language would make it permissive for a utility to try to get the best price for the output of its generation assets not used for own-load supply. It should be mandatory, not permissive, so the language is moved to the mandatory subdivision of the subsection.

\(^7\) Again, appropriate and timely maintenance to maximize operating efficiency is a baseline requirement of sound utility management, and should not be permissive. As with the other items of sound utility management that the language in the Connecticut statute makes permissive, the better course is not only to require such behavior, but to reduce stranded cost recovery by the extent of costs incurred that would have been avoided by such sound practices. For this reason, such steps are mandatory in the model draft.

\(^7\) Connecticut leaves open the question of whether the commission can require that such offsets be done, or whether it is up to the utility. It would be preferable to require that such offsets be made, except where and to the extent the result is cost shifting between classes.

\(^8\) As noted by Tellus Institute in their white paper for AARP, *Stranded Costs and Market Structures in the Electric Industry*, 1997, voluntary write-offs amount to a sharing of stranded costs between stockholders and ratepayers.

\(^8\) The impact such retirement will have on rates will vary based on the state's treatment of the underdepreciated costs of retired uneconomic plant. Typically, utilities have not received 100 percent recovery under monopoly regulation for the underdepreciated costs of such plant, but rather some sharing has been imposed. One typical formula is amortization (recovery over time) of the underdepreciated costs, without any return, which means the utility loses the expected profits and time value of money related to the underdepreciated portion of the plant. In such a scenario, a 10-year recovery period would cause the utility to recover approximately 50 percent of the net present value of the underdepreciated amount.
(iv) efforts to divest generating sites at market prices reflective of best use of sites.\(^2\)

(5) Cost reduction and rate impact mitigation measures shall not include any expenditures to restart a nuclear generation asset that was not operating for reasons other than scheduled maintenance or refueling at the time such expenditure was made.

(6) Any such cost reduction and rate impact mitigation efforts shall be subject to approval by the commission.

(7) The commission shall allow the cost of such cost reduction and rate impact mitigation measures to be included in the calculation of stranded costs to the extent that such costs are reasonable relative to the amount of the reduction in stranded costs resulting from the measures.

F. 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 distribution utility when retail access begins. Every three years, 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.\(^3\)

For purposes of this subsection, “adjustable stranded costs” means stranded costs other than stranded costs associated with divested generation assets.

\(^2\) See note above about offsets by proceeds of sales.

\(^3\) See Appendix II for Connecticut’s more detailed language on computation of stranded costs, particularly in light of divestiture requirements. Note also that Connecticut requires retrospective true-up of stranded costs associated with assets that were not divested.
G. 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. Cost recovery among customer classes and among customers shall be based on class use of each stranded asset and collected on a per-kilowatt-hour-use basis.

H. Ratepayer Equity Plan. A utility that is allowed to recover uneconomic costs pursuant to this Section XXX-19 shall establish a Ratepayer Equity Plan before implementing any charge therefor. The purpose of the plan shall be to compensate ratepayers with shares of common stock equal in value to the amount of cost recovery charges collected thereunder. The plan shall be filed with the commission, which shall approve or modify the plan so that the plan shall require the utility to do the following:

(1) calculate the total amount of costs recovered by the utility for each fiscal quarter of the recovery period;
(2) determine the market value of the stock of the utility as indicated by the last trading price on a public exchange market as of the last date of each fiscal quarter (if the stock is held by a holding company, the holding company’s stock shall be used to determine market value);
(3) deposit with the State Treasurer stock certificates for the utility or holding company’s stock for which the total market value determined under item (2) is equal to the cost recovery.


85 This version requires warrants for all stranded costs recovered from ratepayers. Another formulation would not require warrants for stranded costs unless extraordinary costs were permitted (for example, all costs above those implied in the sharing mechanism of Section XXX-19XXX, above) in order to preserve the “financial integrity” of the utility (essentially, in order to keep it out of bankruptcy). Permitting ordinary recovery of the utility’s “share” of stranded costs, while requiring warrants in return for a fiscal “bail-out” would be in keeping with the model statute’s overall sharing of the risks and rewards of restructuring. Again, the version in the model statute is the stricter requirement of warrants in exchange for all stranded cost recovery.
calculated under item (1) within 15 days of the end of the fiscal quarter; and

(4) distribute all proceeds from the sale of the stock by the State Treasurer to all customers who have paid the cost recovery charge through a reduction in or elimination of the monthly customer charge. Customers who have not paid the cost recovery charge shall not receive any of the proceeds.

H. [ALTERNATIVE to H above] Ratepayer Parity Trust Fund.46

(1) Fund established. There shall be established as a trust fund within the treasury of the state, the Ratepayer Parity Trust Fund, to which shall be credited all personal and corporate tax revenues attributable to the sale of assets relative to Section XXX-14 of this chapter, any appropriations made for the purposes of providing extraordinary assistance to utilities in achieving the rate reductions required by this chapter and any income derived from investments of amounts credited to said fund. Amounts credited to said fund shall be received and held in trust and shall be used solely for the purpose of providing extraordinary assistance in achieving the required rate reduction pursuant to Section XXX-5(C) of this chapter, subject to appropriation for said purposes. Prior to any such appropriation being made by the Legislature, the commission shall file with the [Secretary of Administration and Finance, or comparable state official] a request for distribution of such monies in said fund as may be available for appropriation.

(2) Payments from the fund: conditions. If the distribution utility claims that it is unable to meet a price reduction of 25 percent it shall petition the commission to explore any and all mechanisms, including authorizing an alternate generation company or provider to provide the standard offer, and receipt of funds authorized by the commission from the Ratepayer Parity Trust Fund.47

46 If this alternative (a tax-based fund for uneconomic cost recovery by the utilities) is adopted, the language in Section XXX-15 regarding commission provisions for stranded cost recovery through distribution rates would have to be amended for consistency.

(3) Payments from the fund; warrants. In the event and to the extent that a distribution utility receives payments from the Ratepayer Parity Trust Fund, the utility shall execute and deliver to the treasury of the state, to be held in trust, warrants in the face amount of the receipts from the fund for the purchase of stock in the utility (or its parent in the case of a subsidiary not publicly traded) at the price of the stock of the utility (or its said parent) at the time of the receipt of payment from the fund.

(4) Option to redeem warrants. In the event the price of the stock for which warrants were issued pursuant to this section exceeds the price of the stock at the time of receipt of payment from the fund by 20 percent or more, the Treasurer of the state may exercise the warrants. If the warrants are so exercised, the utility must forthwith purchase the stock from the Treasurer at the price at the time the Treasurer notified the utility of the redemption of the warrants, less 5 percent.

I. Proceedings. The commission shall conduct separate adjudicatory proceedings to determine the stranded costs for each investor-owned distribution utility and each consumer-owned distribution utility. In the same proceedings, the commission shall establish the revenue requirements for each distribution utility and stranded costs charges to be charged by each distribution utility when retail access begins. The proceedings must be completed by [six months from date of enactment].

SEC. XXX-20. RATE DESIGN

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

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88 Me. Statute, § 3209.

89 Some restructuring statutes explicitly encourage or require a commission to use so-called “alternative forms of regulation” (such as price caps or “performance-based ratemaking”) to set rates for the parts of the industry that will continue to function as regulated monopolies. There are a number of problems with such methods, depending on how they are done. These issues are beyond the scope of this model statute. For further information on performance-based ratemaking and the vulnerable consumer, contact Jerrold Oppenheim, National Consumer Law Center, Boston, MA.
A. 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.

B. Proceeding. Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before [pick a date that gives the commission sufficient time but is prior to the opening of the market] 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.50

C. System benefits charge; limit on rate spread.91 The commission shall establish a systems benefit charge to be imposed against all retail usage.92 The systems benefit charge shall be determined by the commission in a general and equitable manner and shall be imposed on all end-use sales at a uniform rate that is applied equally to all customers of the same class regardless of which electric company served an individual customer on [date prior to passage of legislation]. On and after [date five years later], the commission shall allocate the rate of the systems benefit charge in accordance with methods in effect on [date prior to passage of legislation], for allocation of electric company generation among classes of customers, provided the price differential between industrial customers and residential customers shall not exceed the average price differential for electric service between industrial and residential rates in effect during calendar year [same year as in Section XXX-6]. The systems benefit charge shall be rolled into distribution rates and recovered as part of distribution rates.

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50 Provision barring exit fees deleted.


92 Maine statute imposes charge on all end-use customers. Note that it would also be possible to impose the charge on competitive electricity providers, as an access fee, although no jurisdiction has done so yet. This would be somewhat similar to the recovery of telephone universal service charges from all interexchange carriers.
SEC. XXX-21. RENEWABLE RESOURCES

A. Policy. In order to ensure an adequate and reliable supply of electricity for [Name of State] residents and to encourage the use of renewable and indigenous resources, it is the policy of this state to encourage the generation of electricity from renewable sources and to diversify electricity production on which residents of this state rely in a manner consistent with this section.

B. Definition. As used in this section, the term "renewable resource" means a source of electrical generation that generates power that can physically be delivered to the control region in which the regional independent service operator or similar body, or its successor as approved by the Federal Energy Regulatory Commission, has authority over rates for transmission services and:

(1) whose total power production capacity does not exceed [detail to be filled in on state-by-state basis] megawatts and that relies on one or more of the following sources of energy: [detail to be filled in on state-by-state basis].

C. Portfolio requirements. As a condition of licensing pursuant to Section XXX-8, each competitive electricity provider in this state must demonstrate in a manner satisfactory to the commission that no less than [detail to be filled in on state-by-state basis] percent of its portfolio of supply sources for retail electricity sales in this state

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93 Maine Revised Statutes, Title 35-A, § 3210.

94 Maine provision includes cogenerators and small power producers licensed under the Public Utility Regulatory Policies Act of 1978 (PURPA).

95 Maine statute's threshold is 100 megawatts. It may be desirable to use a lower threshold, to encourage decentralized renewable resources.

96 It is beyond the scope of this model statute to resolve the numerous conceptual and practical questions about what types of power should be considered renewable, and in need of a market assist. You will want to consult the environmental groups in your state, and/or national groups such as the Union of Concerned Scientists (Cambridge, MA), Natural Resources Defense Council (New York and San Francisco), and Sierra Club (various locations) to discuss resource types, as well as other questions raised by this section.
are accounted for by renewable resources. By [one year after effective date], the commission shall provisionally adopt rules establishing reasonable procedures for implementing this requirement.

D. Report. In view of property tax benefits, developments in other states and the development of a market for tradable credits for satisfying renewable resource requirements, the commission shall review the [detail to be filled in on state-by-state basis] percent portfolio requirement and make a recommendation for any change to the committee of the Legislature having jurisdiction over utilities and energy matters no later than [five] years after the beginning of retail competition.

E. Funding for research and development. 97

F. Net metering authorized. 98

SEC. XXX-22. ENERGY EFFICIENCY 99

A. Energy-efficiency programs required. The commission shall require distribution utilities to implement energy-conservation programs and include the cost of any such programs in the rates of distribution utilities. 100

B. Funding. 101 Beginning on [transition date], the commission is authorized and directed to require a mandatory charge per kilowatt-

97 Connecticut and Massachusetts have valuable model language on this issue.

98 For net metering model language, consult Union of Concerned Scientists, Cambridge, MA.

99 Maine Revised Statutes, Title 35-A, § 3211.

100 Maine provides that “the commission shall require transmission and distribution utilities to select energy-efficiency service providers through periodic competitive bidding.” Competitive bidding can have counter-intuitive and counterproductive results in utility-funded energy-efficiency programs, unless done right, and for this reason, the absolute requirement is deleted from the model statute. For more information on ways to conduct competitive bidding in energy-efficiency programs, consult Energy Efficiency Institute, Colchester, Vermont.

101 This section is based on Ma. Stat. 1997 c. 164, § 19. Maine left funding to commission discretion. Model statute follows Massachusetts in setting out specific mill

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hour for all consumers in the state to fund energy-efficiency activities including, but not limited to, demand-side management programs. Said charge shall be in the following amount: 3.3 mills ($0.0033) per kilowatt-hour, and further provided that in authorizing such activities the commission shall ensure that they are delivered in a cost-effective and cost-efficient manner.

C. Rulemaking. By [date one year after passage], the commission shall commence a rule-making proceeding on energy conservation programs. By [date one year later], the commission shall provisionally adopt rules establishing energy conservation programs in compliance with this subsection.

D. Low-income energy efficiency. At least 20 percent of the amount expended for residential demand-side management programs by each distribution utility in any year, and in no event less than the amount funded by a charge of 0.25 mills per kilowatt-hour, which charge shall also be continued in the years subsequent to 2002, shall be spent on comprehensive low-income residential demand-side management and education programs. The low-income residential demand-side management and education programs shall

rate (tenths of a cent per kilowatt-hour) charge to fund energy efficiency, but deletes sunset provision (applied in Massachusetts statute to non-low-income energy efficiency), and exemption for customers of municipal power departments.

Massachusetts statute sunsets non-low-income energy-efficiency and fixed low-income program mill rate by statute.

Cost-effectiveness tests generally refer to a comparison of program benefits to program costs, measured from a variety of perspectives. Cost-efficiency is a term coined by Harlan Lachman and Paul Cillo of the Energy Efficiency Institute, Colchester, Vermont, to refer to the choice of the most effective measures and programs over those that produce lower levels of savings for the same funding, albeit cost-effectively.

Maine language ("On March 1, 2001, the division of energy resources shall, in order to determine if energy investments shall continue beyond that time, review then-current market barriers, experience with competitive markets, and related environmental and economic goals") deleted. No sunset, or assumption that market transformation will solve all efficiency problems.

be coordinated with all gas distribution companies in the state with the objective of standardizing implementation.106

SEC. XXX-23. CONSUMER EDUCATION

A. Consumer education advisory board; rules. The commission shall adopt rules implementing a consumer education program, which should be in compliance with this subsection.

(1) 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. However, the commission may reimburse members for their reasonable costs of attending board meetings, in the case of members who otherwise would be unable to participate on account of financial hardship.

(2) In its recommendations, the advisory board shall address:
   (i) the level of funding necessary for adequate educational efforts and the appropriate source of that funding;
   (ii) the aspects of retail access on which consumers need education;
   (iii) the most effective means of accomplishing the education of consumers;
   (iv) the appropriate entities to conduct the education effort; and
   (v) any other issue relevant to the education of consumers regarding the implementation of retail access and its impact on consumers.

(3) The commission shall consider the recommendations of the advisory board when adopting rules to implement a consumer education program.

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106 Massachusetts language providing that such work “shall be implemented through the low-income weatherization and fuel assistance program network” is deleted. Volunteers will need to decide on a state-by-state basis if this is the best approach.
SEC. XXX-24. NEEDS-BASED, AFFORDABLE RATES FOR LOW-INCOME CUSTOMERS

A. 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 and all residents of the state should be able to afford essential electricity supplies, it is the policy of the state to ensure that bills for low-income consumers are affordable. For the purposes of this chapter, a bill is affordable if the burden it places on the household is no greater than two times the burden, expressed as a percentage of income, that is borne by the national average residential customer of median income. Bills may be rendered affordable by energy-efficiency improvements in the building and appliances of customers’ dwellings, and by reducing rates for such customers.

B. Low-income assistance. To the extent that energy-efficiency assistance for low-income customers, as provided for under Section XXX-22, is not expected to reduce a low-income customer’s bill below the threshold of affordability as set forth herein, rate reduction assistance shall be made available under this section. In order to meet the needs for bill assistance of low-income consumers in the state, and to meet future increases in need caused by economic exigencies, the commission shall:

(1) receive funds collected by all distribution utilities in the state at a rate set by the commission in periodic rate cases; and
(2) set initial funding in generic proceedings or in periodic rate cases for low-income affordability rates based on an assessment

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107 Maine Revised Statutes, Title 35-A, § 3214. Changed header to reflect issue of affordability.

108 Maine language “adequate provision of financial assistance” replaced with reference to affordable bills.

109 This definition of affordability is added to provide a benchmark for evaluating the success of affordability efforts.

110 Maine language on “continue existing levels of financial assistance for low-income households” replaced by generic language that does not assume any particular level of existing assistance.
of the aggregate of low-income customers' needs for bill reductions sufficient to render the resulting bills affordable. The funding mechanism may not result in bill affordability 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.

C. Further assistance authorized. 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 specifically required by this chapter, subject to the approval of the commission.

D. Backstop for net incremental credit risk of serving low-income customers. Each distribution utility shall guarantee payment to the generation supplier for all power sold to low-income customers at said affordability rates.

E. Eligibility. Eligibility for the affordability rates established herein shall be extended to low-income customers who have qualified in the preceding 12 months for any means-tested public benefit including, but not limited to, Transitional Assistance for Needy Families (TANF), Supplemental Security Income (SSI), food stamps, Medicaid, general assistance (if in the state), means-tested Veteran's Benefits, Low-Income Home Energy Assistance (LIHEAP) or any other means-tested program for which eligibility does not exceed 175 percent of the federal poverty level, or whose annualized household income does not exceed 175 percent of the federal poverty level.

111 Maine-specific provision calling for legislative study of mechanisms to fund low-income energy bill assistance deleted, along with Maine-specific reference to levels of support presently in rates.


113 Me. Stat. 1997, c. 164, § 193, § 1F(4)(c), restoring original intent of drafters to extend eligibility to working poor who do not receive any means-tested benefits, but whose incomes are at or below 175 percent of the federal poverty level.
F. Outreach. Each distribution utility shall conduct substantial outreach efforts and shall report to the commission, at least annually, as to its outreach activities and results. Outreach must include establishing an automated program of matching customer accounts with lists of recipients of said means-tested public benefits programs and based on the results of said matching program, to presumptively offer a low-income discount rate to eligible customers so identified. The [insert names of welfare and LIHEAP agencies of state] shall cooperate with the commission in facilitating the establishment of such automatic enrollment process.

SEC. XXX-25. COMMISSION PARTICIPATION IN FEDERAL AND INTERNATIONAL PROCEEDINGS

A. Authority. Without limiting the commission’s authority under any other provision of law, the commission may:

(1) 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

(2) monitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or to any federal agency regarding:

(i) the safety and economic effects or potential effects of market competition on nuclear units; and

(ii) the effects or potential effects of market competition on [Name of State]'s air quality.

B. 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


115 Maine Revised Statutes, Title 35-A, § 3215.
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 [Name of State] ratepayers in any proceeding at the Federal Energy Regulatory Commission involving the development, governance, operations or conduct of an independent system operator.

SEC. XXX-26. TRANSITION; UTILITY EMPLOYEES

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

(1) "Eligible employees" means all employees of an electric utility:

   (i) who are not officers of the utility;
   (ii) who are employed by the utility on [date three years after passage]; and
   (iii) who are laid off due to retail competition.

Absent other just cause, a layoff after [transition date] 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.

(2) "Retail competition" means:

   (i) retail access; or
   (ii) the sale or merger of any generation asset that occurs prior to [transition date].

B. 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:

   (1) include a program to assist eligible employees in maintaining fringe benefits and obtaining employment that makes use of their potential;
   (2) for two years after the beginning of retail access, provide to eligible employees retraining services and out-placement

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116 Maine Revised Statutes, Title 35-A, § 3216.
services and benefits, including intensive vocational-interests-
and-aptitude screening;
(3) provide full tuition for two years at the University of [Name of
State] or a vocational or technical school in the state or other
reasonable retraining services of value equal to full in-state
tuition for two years at the University of [Name of State], at
the discretion of the eligible employee;
(4) for 24 months or until permanent replacement coverage is
obtained through re-employment, whichever comes first,
provide continued health care insurance at the benefit and
contribution levels existing during employment with the utility;
and
(5) provide severance pay equal to two weeks of base pay for each
year of full-time employment.

The plan may include provisions for providing early retirement
benefits.

C. 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.

D. 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.

E. 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 on a per kilowatt-hour basis. 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.

F. Rules. The commission shall adopt rules necessary to implement this section.

SEC. XXX-27. REPORTS

A. Annual restructuring report. On November fifteenth 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, and evaluating the

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117 Maine Revised Statutes, Title 35-A, § 3217.

118 The "power year" in the electricity industry traditionally has been November 1 through October 31. Also, many legislatures go into session around the turn of the year, and some require bills to be filed early in December. Whatever date is chosen, it would be helpful to have it correspond to occasions during the year when the recommendations can be (a) complete and (b) useful to ongoing policymaking.

AARP Model State Legislation on Electric Utility Restructuring
effectiveness of competition in achieving the purposes of this statute. Said report shall contain, but is not limited to:119

(1) electricity spot price information for the previous calendar year, including, but not limited to, the average regional monthly spot price;

(2) a determination of whether all customer classes and market segments, including low-usage, low-income and other vulnerable customers, are being adequately served by competitive energy markets;

(3) a determination of the competitiveness of energy markets, including a determination whether the electric industry is providing consumers with the lowest prices possible and the optimal level of service quality, within a restructured, competitive retail marketplace;

(4) identification of any substantial fluctuation or pricing differences in the cost of electricity available to consumers, especially with respect to geographic regions and low- and moderate-income customers;

(5) an analysis of the reliability of the provision and distribution of electricity in the state in the prior year, and a forecast of reliability for the next five years; and

(6) recommendations for improving any deficiencies so identified in electricity energy, including drafts of legislation.120

B. Independent system operator. The commission shall monitor events in the region pertaining to:

119 Maine provision on identifying costs of administration of competition removed:

"(7) 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, together with 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."

120 Enumerated list to this point largely from Me. Stat. 1997 c. 164, § 50; c.25A, § 11E.
the development of an independent system operator with
responsibility for transmission reliability;
(2) the management of competitive access to the regional
transmission system; and
(3) rights to negotiate potential contracts between sellers and
buyers of electricity.

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 transmission or distribution utility, or if it determines
any other problem threatens regional transmission reliability, the
commission shall provide a report to the 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.

SEC. XXX-28. INTERVENOR COMPENSATION

A. Intervenor Compensation Fund established. The commission
shall establish an Intervenor Compensation Fund, to which shall be
credited all receipts of civil penalties levied by the commission
pursuant to Sections XXX-10 and 12, such other funds as the
commission may direct distribution utilities to collect from all
customers for that purpose and the income from the investment of
balances in the fund.

B. Scope. The Intervenor Compensation Fund shall be used to
provide funding to entities that intervene in adjudications or
rulemaking proceedings before the commission on issues involving
the interpretation and implementation of this chapter on behalf of
residential customers. The funds may be used to obtain legal
assistance, administrative assistance and expert assistance. No funds
may be used in any way for lobbying or publicity. Funds shall be
awarded for the presentation of any responsible position, regardless
of the likelihood of its adoption, so long as its adoption is not
precluded by clear precedent, law or constitutional restriction.

C. Entities that may obtain compensation. Intervenor compensation
shall be available only to entities that would experience financial
hardship in presenting their case without such funding. Such
entities may be individuals or organizations. The fact that an entity
receives funds that may be used for intervention does not per se disqualify the entity from receiving intervenor compensation.

D. Supplement to other public representation. It shall be no barrier to the receipt of intervenor compensation from this fund that a public advocate, consumer counsel or other representative of utility consumers has been funded to intervene and has intervened in the case for participation in which funding is sought. The commission may for purposes of administrative economy ord the consolidation of like presentations.

E. Process. Entities that seek intervenor compensation from this fund shall submit a written application to the commission in the form it prescribes, providing information sufficient to establish eligibility for funding under this Section XXX-28, and including a proposed itemized budget and a statement of the issues to be presented, and the nature of any legal representation or consulting assistance proposed to be obtained. The commission shall by rule prescribe a process for consideration of such applications. An application may be made before a formal case is filed, if it is reasonably likely that a formal case will be filed. Funds shall be awarded no later than three weeks before the date on which testimony or formal written comments must be filed by intervenors at the commission in the case in question. Recipients must periodically, and at the conclusion of the case, file reports documenting the use of the funds for the purposes set forth in the approved application. The commission may by rule determine further specifics of the process for obtaining, using and accounting for such funds.
SEC. 3. CONFORMING AMENDMENTS
By December 31, [next date six months after passage of bill], the Public Utilities Commission shall identify and submit to the committee having jurisdiction over utilities and energy matters legislation proposing amendments required to conform other statutes to the provisions of this Act.
SEC. 4. [REPEAL CONTRARY EXISTING STATUTES]
APPENDIX I: RETAIL MARKETING AREA LANGUAGE

SEC. XXX-#. RETAIL MARKETING AREAS²¹

A. Until [three years after transition date], this state shall be divided pursuant to this section into retail marketing areas (RMAs) under the authority of Section 722(g) of the "Energy Policy Act of 1991," 106 Stat. 2776, 16 U.S.C. 824(k)(g). A retail marketing area under this section is not a reseller of electricity, but rather is a geographic designation for the purpose of aggregating retail electric service customers. In each retail marketing area, electric generation service shall be aggregated and bid out for all retail customers in the area that choose not to opt out of the aggregated pool, as further provided in subdivision (c) of this section.

B. Retail marketing areas shall cease to exist three years after [the end of the transition period], for the purposes of subsections A to J of this section. Retail marketing areas shall be rebid halfway through the transition period in accordance with subsections H and I of this section.

C. Any customer may opt out of the aggregated retail marketing area pool at any time. To define the aggregated pool for the purposes of the first and second rounds of bidding, the public utilities commission shall set a date by which any customer who wishes to opt out of the aggregated pool for that bidding round must do so, and shall establish procedures providing for an affirmative indication by a customer that the customer is opting out of the pool. Any customer that, after acceptance of the bid for a retail marketing area, moves into that area or initiates service for the first time within that retail marketing area may choose any competitive electric company to supply the customer's generation service, including the winning bidder for the retail marketing area.

D. A distribution utility in this state may impose a reasonable switching fee on any customer that cancels service with the provider providing service to the retail marketing area. A switching fee may be imposed by the winning bidder of a retail marketing

²¹ Section 4922.33 [Proposed Ohio Retail Marketing Area Language].
area on any customer who opts out of the retail marketing area bid pool after the opt-out date set by the commission under subsection C of this section, with the exception of a customer who moves outside the retail marketing area. Such a switching fee may also be imposed by the winning bidder on a customer entering the retail marketing area bid pool after the opt-out date, including a customer who previously had opted out of the pool. The amount of any such switching fees for customers opting out of or into a retail marketing area bid pool shall be disclosed and considered in the retail marketing area bid selection process under this section. The switching fee shall not exceed a nominal charge covering only the administrative costs of the utility or company, as the case may be.

Retail electric generation service shall be provided to a customer entering the bid pool after the opt-out date at the prevailing rate for the retail marketing area.

E. Except as otherwise provided in subsection F of this section, the basic mapping units for retail marketing areas shall be subunits of monopoly service territories as those territories exist on the effective date of this section. To facilitate the mapping process, incumbent electric utilities shall file plans with the commission proposing to divide their service territories in a manner that allows for reliable and efficient delivery of power to discrete geographic areas by use of the existing transmission and distribution networks. The plans shall be in such form and include such information as the commission shall prescribe by rule initially adopted not later than 45 days after the effective date of this section.

F. (1) In fixing the boundaries of each retail marketing area, the commission shall consider the plans submitted under subsection E of this section, and may make such modifications as it considers necessary to such proposed boundaries. The commission shall determine the boundaries of each retail marketing area, and approve final boundaries, pursuant to all of the following criteria.

(i) Each retail marketing area is a feasible size and has a diverse mix of customers, including low-income customers, based on customer class, socioeconomic, geographic and load characteristics; and each RMA is reasonably comparable in customer mix to all other RMAs.
(ii) The boundaries do not result in an electric transmission or distribution service bottleneck to the advantage of a particular provider of electric generation service.

(iii) Each RMA consists of territory that is contiguous geographically and contiguous in terms of electric transmission and distribution services.

(2) The commission may change a RMA boundary for the purpose of the second round of bidding if it determines that the change was necessary to comply with the criteria specified in subsection F(1) of this section.

(3) A distribution utility shall provide the commission with such information as the commission considers necessary to establish RMA boundaries. The commission shall take such measures as it considers necessary to protect the confidentiality of that information.

G. Notwithstanding the criteria specified in subsections E and F(1) of this section:

(1) the service territory of an incumbent electric cooperative, as that territory exists on the date boundaries are approved under this section, shall not be its own RMA and shall not be part of any other RMA; and

(2) territory and retail electric service customers within the boundaries of a municipal corporation that, on the effective date of this section, transmits or distributes electricity through facilities owned or operated by an incumbent municipal electric utility, including facilities jointly owned or operated with one or more other municipal electric utilities, shall be excluded from any RMA. However, the legislative authority of such municipal corporation may opt into the RMA process prescribed in this section, for all or part of its territory, by a filing with the commission by such date and pursuant to such filing procedures as the commission shall prescribe by rule.

H. The commission shall issue the request for proposals for each RMA and shall oversee the RMA bidding process. For this purpose, the commission shall adopt bidding rules that include all of the following:

(1) a requirement that a bidder demonstrate a minimum financial and capacity commitment for the particular service bid upon;
(2) an open, fair and unbiased process for submitting bids and selecting winning bids;
(3) any price or non-price factors the commission shall use to evaluate bids and choose a winning bid. Price factors shall include, but not be limited to, the rate reduction objective specified in [Sections XXX-5 and XXX-6].
(4) Non-price factors may include, but are not limited to, service reliability, customer service quality, assurance of supply, performance guarantees, financial viability and such other factors as the commission considers appropriate;
(4) contracting criteria and standard contract provisions, including a requirement that the winning bidder must supply electric generation service to any new retail customer that joins or rejoins the marketing pool after the award of the bid;
(5) other relevant rules to ensure fair and unbiased bidding and fair and unbiased selection of winning bids by the commission, and to ensure performance by the winning bidder; and
(6) except as otherwise provided in this section, initial rules under this section shall be adopted not later than 275 days after the effective date of this section.

I. Selection of RMA providers.

(1) The commission shall select the winning bidder or bidders for each RMA, except that an electric cooperative may choose between participating in the commission's bidding process or that of the cooperative issuing the request for proposals.

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122 This provision is moved up from later position in Ohio proposal, and edited to reflect model statute's requirement of rate reduction.

123 Added customer service quality to list of criteria.

124 Deleted language in Ohio proposal adding new criteria for awarding bids: "The general criteria for selecting any winning bid shall be whether the bid achieves the policy of promoting effective retail electric generation service competition in this state and promotes the availability of adequate, reliable, and reasonably priced electric generation serve to consumers in the RMA."

125 Ohio proposal appears to call for one winning bidder per RMA. It might make sense to permit more than one, depending on the size and density of the RMAs, and the different objectives that various bidders can help the state achieve.
overseeing the bidding process and conducting the bidding for its own RMA. A winning bid may include a bid by the incumbent electric utility or its affiliate, subject to the limitations of [Sections XXX-14, XXX-16 and XXX-17]. The selection of a winning bid under this section shall not be subject to legal action absent actual fraud.

(2) In either round of bidding under this section, the commission, or the electric cooperative in the case of an electric cooperative that conducts its own bidding as approved in division I(1) of this section, may let a RMA out for rebid if the commission or cooperative, respectively, determines that a request for bids for the RMA was substantially technically deficient. Such a determination shall not be subject to legal action absent actual fraud.

J. If the commission determines that no acceptable bid has been submitted for a particular RMA, the electric distribution utility in the RMA shall procure electric generation service for each of its distribution service customers in the RMA for the time prior to [cross reference date three years after transition date], or until such time as a RMA provider is selected in the case of a RMA rebid under division I(2) of this section. Such generation service shall be provided at not greater than the standard-offer rate.