

**CHAPTER 677**

**H.P. 1439 - L.D. 2041**

**An Act To Enhance Maine's Energy Independence and Security**

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

**PART A**

**Sec. A-1. 36 MRSA §3203, sub-§1-A** is enacted to read:

**1-A. Special biodiesel rate.** Notwithstanding subsection 1, the rate for distillates containing 2% or more of biodiesel fuel by volume is 20¢ per gallon. This subsection is repealed 90 days after the adjournment of the First Regular Session of the 123rd Legislature.

**Sec. A-2. Study group.** The Department of the Secretary of State, Bureau of Motor Vehicles shall convene a study group consisting of the Bureau of Motor Vehicles; Office of Energy Independence and Security; the Department of Transportation; and the Department of Administrative and Financial Services, Bureau of Revenue Services. The study group shall consider the revenue impacts of a differential tax on biodiesel, the impacts on tax administration and compliance and alternatives to a differential tax including a refund process.

By March 15, 2007, the Department of the Secretary of State, Bureau of Motor Vehicles shall report the findings and recommendations of the study group, including any necessary implementing legislation, to the joint standing committee of the

Legislature having jurisdiction over utilities matters and the joint standing committee of the Legislature having jurisdiction over transportation matters. Either the joint standing committee of the Legislature having jurisdiction over utilities matters or the joint standing committee of the Legislature having jurisdiction over transportation matters, after consultation between the committees, may report out legislation on the subject matter of the report to the First Regular Session of the 123rd Legislature.

**Sec. A-3. Transfer from General Fund to Highway Fund.** The State Controller shall transfer \$20,000 from the General Fund unappropriated surplus to the Highway Fund unappropriated surplus no later than June 30, 2007.

## PART B

**Sec. B-1. 35-A MRSA §3212, sub-§4-A,** as enacted by PL 2003, c. 665, §2, is repealed.

**Sec. B-2. 35-A MRSA §3212, sub-§§4-B and 4-C** are enacted to read:

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

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

**Sec. B-3. Review of authority to establish various contract lengths and terms.** By January 15, 2008, the Public Utilities Commission shall report to the joint standing committee of the Legislature having jurisdiction over utilities matters on its use of the authority granted under the Maine Revised Statutes, Title 35-A, section 3212, subsection 4-C to establish various

standard-offer service contract lengths and terms for residential

and small commercial standard-offer service. The joint standing committee of the Legislature having jurisdiction over utilities matters may report out legislation to the Second Regular Session of the 123rd Legislature on the subject matter of Title 35-A, section 3212, subsection 4-C.

**Sec. B-4. Demand response programs.** The Public Utilities Commission, pursuant to the Maine Revised Statutes, Title 35-A, section 3211-A, shall consider developing one or more demand response programs for medium nonresidential customers.

## PART C

**Sec. C-1. 35-A MRSA §§3210-C and 3210-D** are enacted to read:

### §3210-C. Capacity resource adequacy

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

A. "Capacity resource" means any renewable capacity resource, nonrenewable capacity resource or new interruptible, demand response or energy efficiency capacity resource.

B. "Interruptible, demand response or energy efficiency capacity resource" means a resource that has demand response, interruptible or energy efficiency capacity recognized by the commission.

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

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

employing an alternate technology that significantly increases the efficiency of the generation process.

D. "Nonrenewable capacity resource" means an electric generation resource other than a renewable capacity resource.

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

(1) A generator fueled by municipal solid waste in conjunction with recycling; or

(2) A hydroelectric generator unless it meets all state and federal fish passage requirements.

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

A. That the share of new renewable capacity resources as a percentage of the total capacity resources in this State on December 31, 2007 increase by 10% by 2017 and that, to the extent possible, the increase occur in uniform annual increments;

B. To reduce electric prices and price volatility for the State's electricity consumers and to reduce greenhouse gas emissions from the electricity generation sector; and

C. To develop new capacity resources to reduce demand or increase capacity so as to mitigate the effects of any regional or federal capacity resource mandates.

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

A. Capacity resources; and

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

(1) To the extent necessary to fulfill the policy of subsection 2, paragraph A; or

(2) If the commission determines appropriate for purposes of supplying standard-offer service pursuant to section 3212. If contracts are entered into pursuant to this subparagraph, the contracts must be

treated as standard-offer service contracts pursuant to section 3212.

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

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

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

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

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

A. The commission shall select capacity resources that are competitive and the lowest price when compared to other available offers for capacity resources of the same or similar contract duration. The commission shall consider the cost of the capacity and the cost of related energy. The commission shall, by rules adopted pursuant to subsection 10, establish a methodology for calculating and considering the cost of related energy for capacity-only offers.

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

(1) New interruptible, demand response or energy efficiency capacity resources located in this State;

(2) New renewable capacity resources located in this State;

(3) New capacity resources with no net emission of greenhouse gases;

(4) New nonrenewable capacity resources located in this State. The commission shall give preference to new nonrenewable capacity resources with no net emission of greenhouse gases;

(5) Capacity resources that enhance the reliability of the electric grid of this State. The commission shall give preference to capacity resources with no net emission of greenhouse gases; and

(6) Other capacity resources.

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

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

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

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

**9. Contract payments.** Contracts for capacity and related

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

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

**§3210-D. Resource plan**

The commission shall adopt by rule a long-term plan for electric resource adequacy for this State to ensure grid reliability and the provision or availability of electricity to consumers at the lowest cost.

After final adoption of rules under this section, the commission shall take any necessary action within its authority under this Title to support achievement of the objectives of the plan.

Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. C-2. 37-B MRSA §742, sub-§2, ¶B,** as amended by PL 2001, c. 353, §5, is further amended to read:

B. Upon the issuance of an energy emergency proclamation and after consulting with the Executive Department, State Planning Office, the Governor may exercise all the powers granted in this chapter, except as specifically limited by paragraph C. The powers of the Governor include, without limitation, the authority to:

- (1) Establish and implement programs, controls, standards, priorities and quotas for the allocation, conservation and consumption of energy resources;
- (2) Regulate the hours and days during which nonresidential buildings may be open and the temperatures at which they may be maintained;
- (3) Regulate the use of gasoline and diesel-powered land vehicles, watercraft and aircraft;

- (4) After consulting, when appropriate, with the New England governors and upon the recommendations of the ~~Maine~~ Public Utilities Commission, regulate the generation, distribution and consumption of electricity;
- (5) Establish temporary state and local boards and agencies;
- (6) Establish and implement programs and agreements for the purposes of coordinating the emergency energy response of the State with those of the Federal Government and of other states and localities;
- (7) Temporarily suspend truck weight and size regulations, but not in conflict with federal regulations; ~~and~~
- (8) Regulate the storage, distribution and consumption of home heating oil; and
- (9) If the energy emergency was caused by a lack of electric grid reliability in this State resulting from insufficient capacity resources, take appropriate action, in consultation with the Public Utilities Commission, to procure sufficient capacity resources including generation capacity and interruptible, demand response or energy efficiency capacity resources.

**Sec. C-3. Public Utilities Commission resource plan.** The Public Utilities Commission shall adopt the resource plan required under the Maine Revised Statutes, Title 35-A, section 3210-D in accordance with the following schedule.

**1. Outline and strategy.** By March 1, 2007, the commission shall establish an outline or procurement strategy for the resource plan and provide the outline or procurement strategy to the joint standing committee of the Legislature having jurisdiction over utilities matters for its review and comment.

**2. Final resource plan.** By March 1, 2008, the commission shall submit to the Legislature provisionally adopted rules establishing the resource plan.

## PART D

### Sec. D-1. Maine Energy Council.

**1. Council established.** The Maine Energy Council, referred to in this section as "the council," is established to evaluate matters affecting electricity supply and costs to consumers in this State and to provide recommendations to the Governor, the Public Utilities Commission, other appropriate state agencies and the Legislature regarding these matters.

**2. Membership.** The council consists of 17 members. Appointing authorities shall seek to ensure representation of all areas of the State. Members are appointed as follows:

A. Two members of the Senate, appointed by the President of the Senate, one of whom must be a member of the political party holding the largest number of seats in the Senate and one of whom must be a member of the political party holding the 2nd-largest number of seats in the Senate;

B. Two members of the House of Representatives, appointed by the Speaker of the House of Representatives, one of whom must be a member of the political party holding the largest number of seats in the House and one of whom must be a member of the political party holding the 2nd-largest number of seats in the House;

C. The chair of the Public Utilities Commission or the chair's designee;

D. The Public Advocate or the Public Advocate's designee;

E. The Commissioner of Environmental Protection or the commissioner's designee;

F. One member representing the Governor's office, appointed by the Governor; and

G. Nine persons appointed by the Governor, including:

(1) One member from the University of Maine System who has expertise in energy issues;

(2) One member representing electricity generators with a capacity in excess of 100 megawatts;

(3) One member representing electricity generators that rely on renewable energy resources;

(4) One member representing competitive electricity providers;

(5) One member representing residential users of electricity;

(6) One member representing large industrial users of electricity;

(7) One member representing small commercial users of electricity;

(8) One member representing investor-owned transmission and distribution utilities; and

(9) One member representing consumer-owned transmission and distribution utilities.

The Governor shall request a list of names from organizations or entities identified in paragraph G from which to make appointments.

**3. Chairs.** The first-named Senate member and the first-named House member serve as cochairs of the council.

**4. Appointments; convening of council.** All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. Within 15 days after appointment of all members, the chairs shall call and convene the first meeting of the council.

**5. Compensation.** The legislative members of the council are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the council. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the council.

**6. Staffing.** The staff of the Public Utilities Commission shall, within existing resources, provide assistance to the council in carrying out its functions and duties.

**7. Duties.** The council shall:

A. Advise the Governor, the Public Utilities Commission, other appropriate state agencies and the Legislature on matters affecting electricity supply and costs to consumers in this State;

B. As resources permit, undertake studies, develop findings and make recommendations to the Governor and to the joint standing committee of the Legislature having jurisdiction over utilities matters on issues affecting electricity supply or costs to consumers in this State; and

C. Undertake an examination of the feasibility and appropriate means of studying the impacts of electric industry restructuring in this State.

**8. Authority.** As resources permit, the council may:

A. Conduct public hearings, conferences, workshops and other meetings to obtain information about and discuss and publicize the needs of and solutions to issues facing electricity consumers in this State; and

B. At the request of the joint standing committee of the Legislature having jurisdiction over utilities matters, examine specific issues affecting electricity consumers in this State.

**9. Report.** No later than January 15, 2007, the council shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the joint standing committee of the Legislature having jurisdiction over utilities matters and the Legislative Council. The council is not authorized to introduce legislation. Following receipt and review of the report, the joint standing committee of the Legislature having jurisdiction over utilities matters may report out a bill to the First Regular Session of the 123rd Legislature.

**10. Extension.** If the council requires a limited extension of time to complete its study and make its report, it may apply to the Legislative Council, which may grant an extension.

**11. Council budget.** The chairs of the council, with assistance from the council staff, shall administer the council's budget. Within 10 days after its first meeting, the council shall present a work plan and proposed budget to the Legislative Council for its approval. The council may not incur expenses that would result in the council's exceeding its approved budget. Upon request from the council, the Executive Director of the Legislative Council shall promptly provide the council chairs and staff with a status report on the council budget, expenditures incurred and paid and available funds.