

CHAPTER 33

SMALL POWER PRODUCTION AND COGENERATION

§3301. Title**(REPEALED)**

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A76 (RP). PL 1999, c. 398, §§A104,105 (AFF).

§3302. Purpose

The Legislature finds that it is in the best interest of the State to reduce the State's dependence upon fossil fuels for its energy needs. It is necessary to diversify energy producing systems and energy sources to ensure an adequate and reliable supply of energy for Maine citizens. The Legislature further finds that the development of small energy production facilities using renewable resources and cogeneration facilities will have a significant and beneficial effect upon this State. The Legislature further finds that the replacement of fossil fuels by municipal solid waste reduces dependence upon fossil fuels, diversifies energy sources, reduces municipal costs and reduces the negative environmental effects of solid waste disposal. [PL 1987, c. 141, Pt. A, §6 (NEW).]

The Legislature intends through this legislation to: [PL 1987, c. 141, Pt. A, §6 (NEW).]

1. Encourage development. Encourage the development of energy producing systems using renewable resources, particularly abundant, indigenous, renewable resources or resources in close proximity to Maine; [PL 2001, c. 76, §1 (AMD).]

2. Promote existing use. Promote the more efficient use of existing energy systems particularly, through the cogeneration of power; and [PL 2001, c. 76, §1 (AMD).]

3. Meet goals. Require, whenever the interests of competition, consumers of electricity and economic development in this State are not adversely affected, that the commission ensure that the goals of this section will be met following the restructuring of the electric utility industry by:

A. Proposing market rules and transmission pricing policies and practices at the regional and federal levels that encourage the generation and sale of electricity from the State's renewable power producers and cogenerators; [PL 2001, c. 76, §2 (NEW).]

B. Opposing market rules and proposed transmission pricing policies and practices that place the State's renewable power producers and cogenerators at a competitive disadvantage compared with nonrenewable power generators; and [PL 2001, c. 76, §2 (NEW).]

C. Implementing the State's electric industry restructuring laws and other provisions of this Title in a manner that promotes generation of electricity from the State's indigenous renewable resources and cogeneration. [PL 2001, c. 76, §2 (NEW).]

[PL 2001, c. 76, §2 (NEW).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 2001, c. 76, §§1,2 (AMD).

§3303. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1987, c. 141, Pt. A, §6 (NEW).]

1. Associate. "Associate" means any person other than a transmission and distribution utility that substantially participates in the ownership or operation of a cogeneration or small power production facility or any person that contracts to receive the thermal output of a cogeneration facility. [PL 1999, c. 398, Pt. A, §77 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

1-A. Affiliate. "Affiliate" means any person who, as determined by the commission:

A. Directly controls, is controlled by or is under common control with an electric generation enterprise; or [PL 1987, c. 769, Pt. A, §143 (NEW).]

B. Substantially owns, is substantially owned by or is substantially under common ownership with, an electric generation enterprise. [PL 1987, c. 769, Pt. A, §143 (NEW).]
[PL 1987, c. 769, Pt. A, §143 (NEW).]

2. Cogenerator. "Cogenerator" means a municipality or person:

A. Owning or operating a facility that generates electricity and steam or other useful forms of energy that are used for commercial, industrial, heating or cooling purposes; and [PL 1999, c. 398, Pt. A, §77 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. Not primarily engaged in the generation or sale of electricity, other than the electricity generated at the cogeneration facility. [PL 1987, c. 141, Pt. A, §6 (NEW).]

For purposes of this chapter, a cogenerator is considered not primarily engaged in the generation or sale of electricity if 50% or less of the equity interest in the cogeneration facility is owned by a transmission and distribution utility, a subsidiary of a transmission and distribution utility or an affiliate of a transmission and distribution utility.

[PL 1999, c. 398, Pt. A, §77 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

3. Existing transmission and distribution line improvement costs.

[PL 1999, c. 398, Pt. A, §77 (RP); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

4. Interconnection costs.

[PL 1999, c. 398, Pt. A, §77 (RP); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

5. Municipal solid waste. "Municipal solid waste" means solid waste emanating from domestic and commercial sources within the State over which municipalities are authorized to exercise control. [PL 1987, c. 141, Pt. A, §6 (NEW).]

6. Municipal solid waste energy recovery facility. "Municipal solid waste energy recovery facility" means a small power producer that depends upon municipal solid waste for at least 50% of its energy.

[PL 1999, c. 398, Pt. A, §77 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

7. Qualifying facility. "Qualifying facility" means any small power producer or cogenerator as defined in this chapter.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

8. Renewable resources. "Renewable resources" means resources that are capable of being reproduced, replenished or restored following the use of these resources and resources that are inexhaustible. Renewable resources include biomass, wood, water, waste, solid waste, as defined by Title 38, section 1303, solar energy and wind, but do not include nuclear fuel sources, coal and oil.

[PL 1999, c. 398, Pt. A, §77 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

9. Small power producer. "Small power producer" means a municipality or person owning or operating a power production facility with a power production capacity that, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and that depends upon

renewable resources for its primary source of energy. For purposes of this chapter, a power producer is not considered a "small power producer" if more than 50% of the equity interest in the power production facility is owned by a transmission and distribution utility, a subsidiary of a transmission and distribution utility or an affiliate of a transmission and distribution utility.

[PL 1999, c. 398, Pt. A, §77 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1987, c. 769, §A143 (AMD). PL 1999, c. 398, §A77 (AMD). PL 1999, c. 398, §§A104,105 (AFF).

§3304. Control and regulation of generating facilities

(REPEALED)

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1987, c. 613, §4 (AMD). PL 1999, c. 398, §A78 (RP). PL 1999, c. 398, §§A104,105 (AFF).

§3305. Sale of electricity

1. Authorized markets for electricity.

[PL 1999, c. 398, Pt. A, §79 (RP); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

2. Use of electricity by the producer or cogenerator. Any small power producer or cogenerator may generate or distribute electricity through that producer's or cogenerator's private property solely for that producer's or cogenerator's own use, the use of that producer's or cogenerator's tenants or the use of, or sale to, that producer's or cogenerator's associates in a small power production or cogeneration facility and not for the use of or sale to others without approval or regulation by the commission.

[RR 2021, c. 1, Pt. B, §413 (COR).]

3. Interconnections and existing transmission line improvements.

[PL 1999, c. 398, Pt. A, §79 (RP); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A79 (AMD). PL 1999, c. 398, §§A104,105 (AFF). RR 2021, c. 1, Pt. B, §413 (COR).

§3306. Transactions

1. Rate. The small power producer or cogenerator and the transmission and distribution utility shall determine the rate paid by the transmission and distribution utility for the purchase of electricity as described in this section.

[PL 1999, c. 398, Pt. A, §80 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

2. Small power producer or cogenerator and public utility unable to agree. In the event that the small power producer or cogenerator and the transmission and distribution utility are unable to agree to a contract for electricity, or to a price for the electricity purchased by the utility, or to an equitable apportionment of existing transmission and distribution line improvement costs, the commission shall require the utility to purchase the power at such rates and under such terms as the commission establishes by rule or order.

[PL 1999, c. 398, Pt. A, §80 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

3. Competing petitions filed by small power producers. In the event competing petitions are filed by small power producers or cogenerators that are otherwise equivalent with respect to the standards set forth in former section 3307, and implementing rules adopted by the commission, the commission may give preference to any facility that is fueled primarily by municipal solid waste.

[PL 1999, c. 398, Pt. A, §80 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

4. Apportionment of transmission and distribution line improvement costs. The commission shall base the equitable apportionment of existing transmission and distribution line improvement costs upon the benefits to the small power producer or cogenerator and the transmission and distribution utility.

[PL 1999, c. 398, Pt. A, §80 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

5. Commission decision on petition. The commission shall issue a decision within 6 months from receipt of a petition signed by a small power producer, cogenerator or transmission and distribution utility for commission intercession.

[PL 1999, c. 398, Pt. A, §80 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

6. Filing fee. The petitioner or petitioners requesting commission intercession shall pay to the commission an amount equal to \$1,600 per megawatt of capacity of the facility in issue. The petitioner or petitioners may request the commission to waive all or part of the filing fee. The commission shall rule on the request for waiver within 30 days. Filing fees paid as required in this subsection must be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from any petitioner or petitioners and is not expended by the commission to process the request for intercession must be returned to the petitioner or petitioners.

[PL 2021, c. 318, §13 (AMD).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1987, c. 490, §A7 (AMD). PL 1999, c. 398, §A80 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 2021, c. 318, §13 (AMD).

§3307. Review of rates

(REPEALED)

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A81 (RP). PL 1999, c. 398, §§A104,105 (AFF).

§3308. Energy and capacity purchases from small power producers and cogenerators by transmission and distribution utilities affected by the filing of a petition in bankruptcy or for reorganization

1. Establishment of a purchase price for energy or energy and capacity delivered to a trustee or reorganized utility. If a transmission and distribution utility that has entered into a power purchase contract with a small power producer or cogenerator for the purchase of energy or energy and capacity pursuant to former section 3305, subsection 1 or section 3306, files for bankruptcy or for reorganization under the bankruptcy laws of the United States and, if the trustee in bankruptcy or debtor, receiver, examiner or any other party in possession and control of the assets of the transmission and distribution utility rejects that power purchase contract pursuant to the United States Bankruptcy Code or any similar power or law, the trustee, debtor, receiver, examiner or other party in possession and control of the assets of the transmission and distribution utility is obligated to continue to purchase without interruption from the small power producer or cogenerator whose contract was rejected any energy or energy and capacity that the small power producer or cogenerator makes available to it. If the power purchase contract is rejected, the avoided cost for the energy or energy and capacity for the time period commencing on the date of the rejection and ending on the original expiration date of the rejected contract must be the avoided cost determined for the period as if the determination were being made on the date on which the transmission and distribution utility and small power producer or cogenerator entered into the rejected contract.

[PL 1999, c. 398, Pt. A, §82 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

2. Nature of capacity contract. If a small power producer or cogenerator contracts to provide a transmission and distribution utility with electric generating capacity, that portion of the power purchase contract that requires the delivery of the capacity may not be executory in nature under the laws of the State once the small power producer or cogenerator has first made available to the transmission and distribution utility the electric generating capacity. This section may not be interpreted to mean that any other sections of such a contract are executory in nature.

[PL 1999, c. 398, Pt. A, §82 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

3. Commission approval of rates of reorganized utility. At any time that the commission is requested or required to approve rates for a transmission and distribution utility that has rejected a power purchase contract with a small power producer or cogenerator as a result of a bankruptcy or reorganization proceeding, or to approve rates of a person controlling and in possession of the assets of a transmission and distribution utility that was a party to such a rejected contract, it may not grant any rate approval unless the transmission and distribution utility or person seeking the rates includes within the rates provision for payment for all energy and capacity made available by a small power producer or cogenerator, either at the original contract rate or at the rate specified in subsection 1.

[PL 1999, c. 398, Pt. A, §82 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

Any person who is obligated to comply with this section may not be permitted to operate as a transmission and distribution utility in the State, unless it is in full compliance with this section. [PL 1999, c. 398, Pt. A, §82 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A82 (AMD). PL 1999, c. 398, §§A104,105 (AFF).

§3309. Performance of contracts; commercially reasonable business practices

In the performance or enforcement of any contract for the purchase of energy resources by a transmission and distribution utility, all parties shall act in good faith and observe reasonable commercial standards of fair dealing. Conformance to this standard does not constitute imprudent utility behavior. [PL 1999, c. 398, Pt. A, §83 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY

PL 1993, c. 712, §7 (NEW). PL 1999, c. 398, §A83 (AMD). PL 1999, c. 398, §§A104,105 (AFF).

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