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House of Representatives, March 26, 2013

An Act To Create the Maine Energy Cost Reduction Authority

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FREDETTE of Newport.
Cosponsored by Senator CLEVELAND of Androscoggin and
Representatives: CHASE of Wells, HARVELL of Farmington.

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

2 **Sec. 1. 35-A MRSA c. 49** is enacted to read:

3 **CHAPTER 49**

4 **MAINE ENERGY COST REDUCTION AUTHORITY**

5 **§4901. Short title**

6 This chapter may be known and cited as "the Maine Energy Cost Reduction
7 Authority Act."

8 **§4902. Definitions**

9 As used in this chapter, unless the context otherwise indicates, the following terms
10 have the following meanings.

11 **1. Authority.** "Authority" means the Maine Energy Cost Reduction Authority
12 established in section 4903.

13 **2. Firm transportation service.** "Firm transportation service" means transportation
14 services for which facilities have been designed, installed and dedicated to an identified
15 natural gas quantity.

16 **3. Fund.** "Fund" means the Maine Energy Cost Reduction Authority Fund
17 established in section 4906.

18 **4. ISO-NE.** "ISO-NE" means the independent system operator of the New England
19 bulk power system or a successor organization.

20 **5. Long-term contract.** "Long-term contract" means a contract with a term of at
21 least 5 years but no more than 20 years.

22 **6. Reserved pipeline capacity.** "Reserved pipeline capacity" means a portion of the
23 carrying capacity of a natural gas pipeline.

24 **§4903. Maine Energy Cost Reduction Authority**

25 **1. Establishment.** There is established the Maine Energy Cost Reduction Authority,
26 which is a body corporate and politic and a public instrumentality of the State. The
27 authority consists of 3 commissioners.

28 **2. Governance; commissioners.** The Governor shall appoint 3 commissioners to
29 the authority subject to review by the joint standing committee of the Legislature having
30 jurisdiction over public utilities matters and to confirmation by the Legislature. The
31 commissioners serve terms of 6 years and must devote full time to their duties. At least
32 one of the commissioners must be a lawyer.

1 **3. Administration of the authority.** The commissioners may appoint an executive
2 director and such other staff as the commissioners consider necessary to carry out the
3 functions of the authority.

4 **4. Rules.** The authority may adopt rules regarding its responsibilities under this
5 chapter. Rules adopted pursuant to this subsection are routine technical rules as defined
6 in Title 5, chapter 375, subchapter 2-A.

7 **§4904. Powers and duties**

8 The authority has the following powers and duties.

9 **1. Purchase and resale of reserved pipeline capacity.** The authority has the
10 following powers with regard to the purchase and resale of reserved pipeline capacity.

11 A. The authority may negotiate and enter into firm transportation service agreements
12 with natural gas pipeline companies for the acquisition of reserved pipeline capacity
13 for transportation rights of natural gas through natural gas pipelines if the agreement
14 is commercially reasonable and is in the public interest, the price paid for the firm
15 transportation service is not above average prevailing rates for such agreements in the
16 State or the ISO-NE region and the agreement is reasonably likely to:

17 (1) Materially enhance natural gas transmission opportunities in the State or the
18 ISO-NE region;

19 (2) Increase the availability of natural gas in the State;

20 (3) Lead to the development, expansion or continued operation of a natural gas
21 pipeline that will have the effect of reducing electric rates or other relevant
22 energy prices or costs for residents and businesses within the State relative to the
23 expected value of those electric rates or other energy prices or costs but for the
24 proposed natural gas pipeline development or firm transportation service
25 agreement; or

26 (4) Increase the energy reliability, security and independence of the State or the
27 ISO-NE region.

28 B. The authority may negotiate and enter into agreements for the resale of all or a
29 portion of reserved pipeline capacity acquired through the firm transportation service
30 agreements executed pursuant to paragraph A.

31 (1) The selection of the party or parties to whom the reserved pipeline capacity
32 may be resold must be determined through a request for bid process.

33 (2) The authority shall adopt rules setting forth the request for bid process by
34 which it may resell its reserved pipeline capacity.

35 (3) The authority shall select the bid or a combination of bids for reserved
36 pipeline capacity based upon the objective of obtaining the best overall package
37 that presents the highest price for the capacity in order to offset, to the greatest
38 extent possible, the price paid by the authority pursuant to the firm transportation
39 service agreement pursuant to paragraph A.

1 (4) The authority may enter into agreements to resell the reserved pipeline
2 capacity without conducting a request for bid process if the authority finds that
3 the request for bid process is not reasonably likely to provide the highest price for
4 the resale of reserved pipeline capacity or that another reasonable basis in the
5 public interest exists for reselling the capacity without a request for bid process.

6 (5) Revenues received by the authority from the resale of reserved pipeline
7 capacity under this section must be applied toward lowering or stabilizing
8 electricity costs for ratepayers in the State, consistent with the manner set forth in
9 rules adopted by the authority.

10 **2. Purchase and sale of energy and capacity.** The authority has the following
11 powers with regard to the purchase and sale of energy and capacity.

12 A. The authority may enter into a long-term contract for the purchase of energy and
13 capacity if the authority determines that the long-term contract is reasonably likely to:

14 (1) Reduce electric rates or other relevant energy prices or costs within the State
15 relative to the expected cost of those electric rates or other energy prices or costs
16 but for the proposed long-term contract;

17 (2) Materially enhance natural gas transmission opportunities in the State or the
18 ISO-NE region;

19 (3) Increase the availability of natural gas in the State; or

20 (4) Increase the energy reliability and security and the energy independence of
21 the State or the ISO-NE region.

22 B. The authority shall conduct a request for bid process for long-term contracts for
23 the purchase of energy and capacity.

24 C. The authority may negotiate and enter into agreements for the resale of all or a
25 portion of the energy and capacity acquired through a long-term contract pursuant to
26 paragraph A.

27 (1) The selection of the party or parties to whom the energy and capacity may be
28 resold must be determined through a request for bid process.

29 (2) The authority shall adopt rules setting forth the request for bid process by
30 which it may resell its energy and capacity.

31 (3) The authority shall select the bid or a combination of bids for energy and
32 capacity based upon the objectives of obtaining the best overall package that
33 presents the highest price for the energy and capacity in order to offset, to the
34 greatest extent possible, the price paid by the authority pursuant to the long-term
35 contract executed pursuant to paragraph A.

36 (4) The authority may enter into agreements to resell the energy and capacity
37 without conducting a request for bid process if the authority finds that the request
38 for bid process is not reasonably likely to provide the highest price for the resale
39 of energy and capacity or that another reasonable basis in the public interest
40 exists for reselling the capacity without a request for bid process.

1 D. With the consent of the authority, the commission may include the energy and
2 capacity from the long-term contracts executed pursuant to paragraph A in the
3 commission's solicitation process for obtaining bids for standard-offer supply service.

4 E. Revenues received by the authority from the resale of energy and capacity under
5 this section must be applied toward lowering or stabilizing electricity and natural gas
6 costs for ratepayers in the State, consistent with the manner set forth in rules adopted
7 by the authority.

8 **3. Designation of natural gas pipeline corridors.** The authority has the following
9 powers with regard to the designation of natural gas pipeline corridors.

10 A. The authority may designate natural gas pipeline corridors for the location of
11 natural gas pipelines.

12 B. In designating a natural gas pipeline corridor, the authority shall limit the
13 geographic area of the proposed corridor to an area no greater than is necessary to
14 achieve the purposes of this subsection.

15 C. The authority may designate a natural gas pipeline corridor only if the authority
16 finds that the corridor is reasonably likely to:

17 (1) Be in the public interest. To determine whether the natural gas pipeline
18 corridor is in the public interest, the authority shall consider, but is not limited to
19 the consideration of, factors such as whether the corridor is reasonably likely to:

20 (a) Materially enhance natural gas transmission opportunities in the State;

21 (b) Efficiently use existing energy infrastructure;

22 (c) Limit or mitigate impacts on the landscape; and

23 (d) Increase the energy reliability, security and independence of the State or
24 the ISO-NE region; and

25 (2) Be consistent with the environmental and land use laws and rules of the
26 State. In making a determination under this subparagraph, the authority shall
27 provide notification and an opportunity for consultation as provided in paragraph
28 D. A finding by the authority that the natural gas pipeline corridor is reasonably
29 likely to be consistent with the environmental and land use laws and rules of the
30 State under this subsection has no evidentiary value in a subsequent
31 environmental or land use permit proceeding under other applicable provisions of
32 law.

33 D. Prior to designating a natural gas pipeline corridor under this subsection, the
34 authority shall notify, consult with and accept comments from:

35 (1) The Department of Environmental Protection;

36 (2) A state agency that owns or controls land or assets within the proposed
37 corridor;

38 (3) The Department of Transportation regarding potential use of abandoned
39 railroad corridors owned or controlled by the department;

1 (4) Appropriate state and federal energy and natural resources protection
2 agencies, as specified by rule;

3 (5) The municipalities in which the proposed corridor would be located;

4 (6) The Maine Land Use Planning Commission and the counties in which the
5 proposed corridor would be located, if the proposed corridor, or any portion of
6 the proposed corridor, would be located within the commission's jurisdiction; and

7 (7) An Indian tribe, if the proposed corridor, or any portion of the proposed
8 corridor, would be located on land of the tribe not excluded under paragraph E.

9 E. The authority may not designate a natural gas pipeline corridor in any of the
10 following lands:

11 (1) Houlton Band Trust Land, as defined in Title 30, section 6203, subsection
12 2-A;

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

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

16 (4) Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection
17 2;

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

20 (6) Federally owned land; and

21 (7) The Maine Turnpike, as defined in Title 23, section 1964, subsection 9,
22 unless consent is given by the Maine Turnpike Authority.

23 **4. Agreements for the use of a natural gas pipeline corridor.** The authority has
24 the following powers with regard to the use of a natural gas pipeline corridor.

25 A. The authority shall establish and implement a process for soliciting, accepting and
26 evaluating proposals for the use of a natural gas pipeline corridor designated by the
27 authority through the development of a natural gas pipeline within the corridor. As
28 part of this process, the authority shall provide public notice of the availability of the
29 natural gas pipeline corridor for development of a natural gas pipeline and the
30 opportunity for potential developers to submit proposals for use of the corridor
31 consistent with the purposes of this section.

32 B. The authority shall evaluate and render a decision on a proposal for the
33 development of a natural gas pipeline within a designated natural gas pipeline
34 corridor in accordance with its evaluation of the criteria set forth in paragraph D.

35 C. If a proposal for development of a natural gas pipeline is accepted, the authority
36 may enter into negotiations with the potential pipeline developer who submitted the
37 proposal for a long-term contract with the State for use of the natural gas pipeline
38 corridor in accordance with this subsection.

1 D. The authority may enter into a long-term contract for the use of a natural gas
2 pipeline with the developer who submitted the proposal if the authority finds that the
3 agreement:

4 (1) Is consistent with the purposes set forth in this section;

5 (2) Is not adverse to the public interest;

6 (3) Is reasonably likely to lead to the development of a natural gas pipeline that
7 will have the effect of reducing electric rates or other relevant energy prices or
8 costs for residents and businesses within the State relative to the expected electric
9 rates or other energy prices or costs but for the proposed natural gas pipeline
10 development;

11 (4) Increases long-term economic benefits for the State, including but not limited
12 to direct financial benefits, employment opportunities and economic
13 development; and

14 (5) Is reasonably likely to increase the energy reliability, security and
15 independence of the State or the ISO-NE region.

16 E. Any funds received by the authority pursuant to an agreement for the use of a
17 natural gas pipeline corridor must be applied to lower or stabilize electricity or
18 natural gas costs for ratepayers in the State.

19 **5. Acquire or dispose of interest in certain lands for a natural gas pipeline**
20 **corridor.** The authority may purchase, lease as lessee or lessor, sell, assign, convey,
21 mortgage, pledge or otherwise dispose of or convey or acquire interest in real property to
22 accomplish the purposes for which the authority is established.

23 **6. Bonding authority.** The authority may issue bonds from time to time for any of
24 the purposes set forth in this chapter. The bonds may be sold at public or private sale.
25 Notwithstanding any other provision of law, any bonds issued under this chapter must be
26 fully negotiable.

27 **7. Eminent domain.** The authority may take and hold by right of eminent domain
28 lands and easements within that corridor necessary for the proper location of a natural gas
29 pipeline in the same manner and under the same conditions as provided for a natural gas
30 utility under section 4710. The right of eminent domain granted in this subsection does
31 not apply to:

32 A. Lands or easements located within 300 feet of an inhabited dwelling;

33 B. Lands or easements on or adjacent to any developed or undeveloped water power;

34 C. Lands or easements so closely paralleling existing wire lines of other utilities or
35 existing energy transport pipelines that the proposed natural gas pipeline would
36 substantially interfere with service rendered over the existing lines or pipelines,
37 except with the consent of the owners;

38 D. Lands or easements owned or used by railroad corporations, except with the
39 consent of the owners;

1 E. Lands or easements owned by the State or an agency or authority of the State,
2 except with consent of the State, state agency or state authority; and

3 F. A transmission and distribution plant that is owned, controlled, operated or
4 managed by a transmission and distribution utility on the effective date of this
5 section.

6 **8. Exemption from certain purchasing requirements.** Agreements and contracts
7 negotiated or entered into pursuant to this chapter are not subject to the competitive bid
8 requirements set forth in the statutes and rules of the Department of Administrative and
9 Financial Services, Bureau of General Services under Title 5, chapter 155.

10 **§4905. Natural gas pipeline corridors are not energy infrastructure corridors;**
11 **collocation**

12 A natural gas pipeline corridor designated by the authority pursuant to this chapter is
13 not an energy infrastructure corridor pursuant to section 122 and is not subject to the
14 requirements of that section. A natural gas pipeline corridor established pursuant to this
15 chapter may subsequently be designated as an energy infrastructure corridor by the
16 Interagency Review Panel pursuant to section 122. A natural gas pipeline may be
17 collocated with another form of energy infrastructure in the natural gas pipeline corridor
18 where such collocation is in the public interest and subject to approval by the authority
19 and the commission and the satisfaction of all applicable state and federal safety
20 requirements.

21 **§4906. Maine Energy Cost Reduction Authority Fund**

22 **1. Establishment.** The Maine Energy Cost Reduction Authority Fund is established
23 as a nonlapsing fund, under the jurisdiction of the authority, that must be used to carry out
24 this chapter.

25 **2. Sources of fund.** The following must be paid into the fund:

26 A. All money appropriated for inclusion in the fund to implement the provisions of
27 this chapter; and

28 B. All money received from bonds issued by the authority pursuant to this chapter.

29 **3. Application of fund.** The authority may apply money in the fund for the
30 purposes authorized in this chapter. Money in the fund may be invested by the fund as
31 provided by law.

32 **4. Administrative costs and fees.** Administrative costs of the authority may be paid
33 from the money in the fund pursuant to allocation approved by the Legislature.

34 **SUMMARY**

35 This bill establishes the Maine Energy Cost Reduction Authority for the purpose of
36 entering into contracts to procure and resell natural gas pipeline capacity and electric
37 energy and capacity, to identify and designate corridors the construction of natural gas

1 transmission pipelines and to enter into long-term contracts for the use of natural gas
2 pipeline corridors through the development of natural gas pipelines.