

## CHAPTER 32

## ELECTRIC INDUSTRY RESTRUCTURING

**§3201. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1997, c. 316, §3 (NEW).]

**1. Affiliated interest.** "Affiliated interest" has the same meaning as provided in section 707, subsection 1, paragraph A.

[PL 1997, c. 316, §3 (NEW).]

**2. Aggregate.** "Aggregate" means to organize individual electricity consumers into a group or entity for the purpose of purchasing electricity on a group basis.

[PL 1997, c. 316, §3 (NEW).]

**3. Aggregator.** "Aggregator" means an entity that gathers individual consumers together for the purpose of purchasing electricity.

[PL 1999, c. 398, Pt. A, §72 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

**4. Broker.** "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity.

[PL 1997, c. 316, §3 (NEW).]

**5. Competitive electricity provider.** "Competitive electricity provider" means a marketer, broker, aggregator or any other entity selling electricity to the public at retail, but does not include an electric vehicle charging station or an entity that generates electricity solely for the use of:

A. The entity; [PL 2019, c. 205, §5 (NEW).]

B. The entity's tenants; or [PL 2019, c. 205, §5 (NEW).]

C. Commercial or industrial consumers located on:

(1) The property where the entity is located or on abutting property; or

(2) A commercial or industrial site that was served by the entity or its predecessor without using the transmission and distribution plant of a public utility prior to December 31, 2018.

[PL 2019, c. 205, §5 (NEW).]

[PL 2019, c. 205, §5 (AMD).]

**6. Consumer-owned transmission and distribution utility.** "Consumer-owned transmission and distribution utility" means any transmission and distribution utility wholly owned by its consumers, including its consumers served in the State. "Consumer-owned transmission and distribution utility" includes but is not limited to:

A. The transmission and distribution portion of a rural electrification cooperative organized under chapter 37; [PL 1997, c. 316, §3 (NEW).]

B. The transmission and distribution portion of an electrification cooperative organized on a cooperative plan under the laws of the State; [PL 1997, c. 316, §3 (NEW).]

C. A municipal or quasi-municipal transmission and distribution utility located in the State; [PL 2019, c. 311, §1 (AMD).]

D. The transmission and distribution portion of a municipal or quasi-municipal entity located in the State providing generation and other services; and [PL 2019, c. 311, §1 (AMD).]

E. A transmission and distribution utility wholly owned by a municipality located in the State. [PL 2019, c. 311, §1 (AMD).]  
[PL 2019, c. 311, §1 (AMD).]

**7. Divest.** "Divest" means to legally transfer ownership and control to an entity that is not an affiliated interest.  
[PL 1997, c. 316, §3 (NEW).]

**7-A. Efficient combined heat and power system.** "Efficient combined heat and power system" means a system that:

A. Produces heat and electricity from one fuel input, without restriction to specific fuel or generating technology; [PL 2009, c. 197, §1 (NEW).]

B. Has an electric generating capacity rating of at least one kilowatt and not more than 30 kilowatts and a fuel system efficiency of not less than 80% in the production of heat and electricity, or has an electric generating capacity of at least 31 kilowatts and a fuel system efficiency of not less than 65% in the production of heat and electricity; [PL 2009, c. 197, §1 (NEW).]

C. May work in combination with supplemental or parallel conventional heating systems; [PL 2009, c. 197, §1 (NEW).]

D. Is manufactured, installed and operated in accordance with applicable government and industry standards; and [PL 2009, c. 197, §1 (NEW).]

E. Is connected to the electric grid and operated in conjunction with the facilities of a transmission and distribution utility. [PL 2009, c. 197, §1 (NEW).]  
[PL 2009, c. 197, §1 (NEW).]

**8. Electric billing and metering services.** "Electric billing and metering services" means the following services:

A. Billing and collection; [PL 1997, c. 316, §3 (NEW).]

B. Provision of a meter; [PL 1997, c. 316, §3 (NEW).]

C. Meter maintenance and testing; and [PL 1997, c. 316, §3 (NEW).]

D. Meter reading. [PL 1997, c. 316, §3 (NEW).]  
[PL 1997, c. 316, §3 (NEW).]

**8-A. Eligible small generator.** "Eligible small generator" means a generator that has a generating capacity of 5 megawatts or less and generates electricity using:

A. A renewable resource, as defined in section 3210, subsection 2, paragraph C; or [PL 2009, c. 197, §2 (NEW).]

B. An efficient combined heat and power system. [PL 2009, c. 197, §2 (NEW).]  
[PL 2009, c. 197, §2 (NEW).]

**8-B. Electric vehicle charging station provider.** "Electric vehicle charging station provider" means a person selling electricity for the sole purpose of transferring electric energy between a charger and the battery or other energy storage device in an electric vehicle.  
[PL 2015, c. 29, §3 (NEW).]

**8-C. Employer and employee harmony agreement.** "Employer and employee harmony agreement" means an agreement between an employer and one or more labor organizations representing or seeking to represent the employer's employees that includes:

A. A guarantee against strikes, lockouts and similar disruptions; [PL 2023, c. 660, §2 (NEW).]

B. Mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work and safety and health; and [PL 2023, c. 660, §2 (NEW).]

C. Mutually binding procedures for resolving labor disputes. [PL 2023, c. 660, §2 (NEW).]  
[PL 2023, c. 660, §2 (NEW).]

**9. Entity.** "Entity" means a person or organization, including but not limited to any political, governmental, quasi-governmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization.  
[PL 1997, c. 316, §3 (NEW).]

**10. Generation assets.** "Generation assets" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the generation of electric power.  
[PL 1997, c. 316, §3 (NEW).]

**11. Generation service.** "Generation service" means the provision of electric power to a consumer through a transmission and distribution utility but does not encompass any activity related to the transmission or distribution of that power.  
[PL 1997, c. 316, §3 (NEW).]

**11-A. Investor-owned transmission and distribution utility.** "Investor-owned transmission and distribution utility" has the same meaning as in section 3104, subsection 1, paragraph A.  
[PL 2019, c. 478, Pt. A, §1 (NEW).]

**12. Large, investor-owned transmission and distribution utility.** "Large, investor-owned transmission and distribution utility" means an investor-owned transmission and distribution utility serving more than 50,000 retail customers.  
[PL 1997, c. 316, §3 (NEW).]

**13. Marketer.** "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail consumers.  
[PL 1999, c. 398, Pt. A, §72 (AMD); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

**13-A. Nameplate capacity.** "Nameplate capacity" means the installed or rated capacity of a power generator.  
[PL 2019, c. 478, Pt. A, §2 (NEW).]

**14. Public entity.** "Public entity" includes the State, any political subdivision of the State, a municipality and any quasi-municipal entity.  
[PL 1997, c. 316, §3 (NEW).]

**15. Qualifying facility.** "Qualifying facility" has the same meaning as provided in section 3303.  
[PL 1997, c. 316, §3 (NEW).]

**16. Small, investor-owned transmission and distribution utility.** "Small, investor-owned transmission and distribution utility" means an investor-owned transmission and distribution utility serving 50,000 or fewer retail customers.  
[PL 1997, c. 316, §3 (NEW).]

**17. Retail access.** "Retail access" means the right of a retail consumer of electricity to purchase generation service from a competitive electricity provider.  
[PL 1997, c. 316, §3 (NEW).]

**18. Transmission and distribution plant.**  
[PL 1999, c. 398, Pt. A, §73 (RP); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

**19. Transmission and distribution utility.**  
[PL 1999, c. 398, Pt. A, §73 (RP); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

## SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 398, §§A72,73 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 2009, c. 197, §§1, 2 (AMD). PL 2015, c. 29, §§2, 3 (AMD). PL 2019, c. 205, §5 (AMD). PL 2019, c. 311, §1 (AMD). PL 2019, c. 478, Pt. A, §§1, 2 (AMD). PL 2023, c. 660, §2 (AMD).

**§3202. Retail access; deregulation**

**1. Right to purchase generation.** Beginning on March 1, 2000, all consumers of electricity have the right to purchase generation services directly from competitive electricity providers, except as provided in subsection 7.

[PL 2007, c. 481, §1 (AMD).]

**2. Deregulation of generation services.** Except as otherwise provided in this chapter, competitive electricity providers are not subject to regulation under this Title on or after March 1, 2000.

[PL 1997, c. 316, §3 (NEW).]

**3. Aggregation permitted; limitation.** When retail access begins, consumers of electricity may aggregate their purchases of generation service in any manner they choose. If a public entity serves as an aggregator, it may not require consumers of electricity within its jurisdiction to purchase generation service from that entity.

[PL 1997, c. 316, §3 (NEW).]

**4. Electric billing and metering services.** The commission by rule may provide for competition in the provision of electric billing and metering services. The commission in its rules shall establish terms and conditions for such competition including which services are subject to competition and which customers will receive competitive services.

If the commission provides for competition for any billing or metering services, the commission shall:

A. Establish in its rules minimum standards necessary to protect consumers of such services and codes of conduct governing the relationship among transmission and distribution utilities providing such services, any affiliates of transmission and distribution utilities providing such services and providers of such services that are not affiliated with a transmission and distribution utility; and [PL 1999, c. 601, §1 (NEW).]

B. Determine each transmission and distribution utility's costs of providing such services as 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. [PL 1999, c. 601, §1 (NEW).]

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

[PL 1999, c. 601, §1 (RPR).]

**5. International transmission contracts.** Notwithstanding section 3204, transmission and distribution utilities, including consumer-owned utilities, that operate or manage a portion of the grid connected to the New England grid by transmission lines that pass through Canada may enter into commercially reasonable contracts with Canadian electric utilities for the purchase of back-up services, tie-line interruption services, ancillary services, transmission services or any other service that promotes effective retail electric competition in northern Maine. The transmission and distribution utilities shall make all such contract services available to competitive electricity providers at cost, on an equitable basis. Commission approval of such contracts is not required. Nothing in this subsection exempts from commission jurisdiction utility operations or activities undertaken pursuant to such contracts.

[PL 1999, c. 398, Pt. B, §1 (NEW).]

**6. Exception.** Notwithstanding any other provision of this chapter, an electric utility whose system is not physically connected to any transmission and distribution utility is exempt from this chapter. The commission shall ensure that such an electric utility's rates, including consideration of generation-related costs, are just and reasonable.

[PL 1999, c. 398, Pt. E, §1 (NEW).]

**7. Exception; load aggregation by consumer-owned utilities.** The commission may authorize a consumer-owned transmission and distribution utility to aggregate its load for the purpose of purchasing generation services on behalf of its customers. The commission shall adopt rules to implement the provisions of this subsection. The rules must specify the process and requirements for a consumer-owned transmission and distribution utility to obtain approval under this subsection and allowable exceptions under which customers of consumer-owned transmission and distribution utilities that have received such approval may continue to purchase generation services directly from competitive electricity providers. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2007, c. 481, §2 (NEW).]

**8. Separate charges.** A person who provides electric billing and metering services shall issue bills that clearly separate the charges for generation services and the charges for transmission and distribution services if charges for both types of services appear on the same bill.

[PL 2013, c. 116, §1 (NEW).]

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 398, §§B1,D1,E1 (AMD). PL 1999, c. 601, §1 (AMD). PL 2007, c. 481, §§1, 2 (AMD). PL 2013, c. 116, §1 (AMD).

#### §3203. Licensing of competitive electricity providers; consumer protections; enforcement

**1. Authority.** In order to provide effective competition in the market for the generation and sale of electricity in the State, the commission shall license competitive electricity providers in accordance with this section.

[PL 2021, c. 108, §5 (AMD).]

**2. Requirements.** A competitive electricity provider may not undertake the sale of electricity at retail in this State without first receiving a license from the commission. Before approving a license application, the commission must receive from the applicant:

A. Evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason; [PL 1997, c. 316, §3 (NEW).]

B. Evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities; [PL 1997, c. 316, §3 (NEW).]

C. Disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the commission in the 12 months prior to the date of license application; [PL 1997, c. 316, §3 (NEW).]

D. Evidence of the ability to satisfy the renewable resource portfolio requirement established under section 3210; [PL 1999, c. 398, Pt. J, §1 (AMD).]

E. Disclosure of the names and corporate addresses of all affiliates of the applicant; [PL 2021, c. 108, §5 (AMD).]

F. Evidence that the applicant is registered with the State Tax Assessor as a seller of tangible personal property pursuant to Title 36, section 1754-B, together with a statement that the applicant agrees to be responsible for the collection and remission of taxes in accordance with Title 36, Part 3 on all taxable sales of electricity made by the applicant to consumers located in this State; [PL 2021, c. 108, §5 (AMD).]

G. Disclosure of the names and corporate addresses of all 3rd-party sales agents proposed to be used by the applicant, in a form to be prescribed by the commission. The disclosure must include:

- (1) A sworn statement by each proposed 3rd-party sales agent attesting to the 3rd-party sales agent's understanding of its compliance obligations with the State's door-to-door sales law, the Maine Unfair Trade Practices Act and the applicable commission rules;
- (2) Any transient seller license number issued to each proposed 3rd-party sales agent by the Department of Professional and Financial Regulation pursuant to Title 32, chapter 128, subchapter 2;
- (3) All pending legal actions and customer complaints filed against each proposed 3rd-party sales agent at a regulatory body other than the commission in the 12 months prior to the date of the applicable license application; and
- (4) Any other information the commission determines is necessary; and [PL 2021, c. 108, §5 (NEW).]

H. An acknowledgement by each 3rd-party sales agent proposed to be used by the applicant of the 3rd-party sales agent's submission to the jurisdiction of the commission. [PL 2021, c. 108, §5 (NEW).]

A 3rd-party sales agent undertaking the retail sale or marketing of electricity in the State may not engage in any sales or marketing activity unless the 3rd-party sales agent has been registered by the commission as part of the licensing process of a competitive electricity provider in accordance with this subsection. The commission shall provide a registration number to a 3rd-party sales agent proposed to be used by a competitive electricity provider in the competitive electricity provider's application for a license.

The commission shall consider the need for requiring and, if it determines there is a need, may require a competitive electricity provider to file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service. [PL 2021, c. 108, §5 (AMD).]

**3. Filings; public information.** The commission shall establish by rule information disclosure and filing requirements for competitive electricity providers. The rules must require a competitive electricity provider to submit updated disclosures of 3rd-party sales agents prior to any agent undertaking any activities on behalf of the provider in order to maintain the accuracy of the information required pursuant to subsection 2, paragraphs G and H and to require the registration of a 3rd-party sales agent not already registered by the commission. The rules must require generation providers to file their generally available rates, terms and conditions with the commission. The commission, subject to appropriate protective orders, may require the submission of individual service contracts or any other confidential information from a competitive electricity provider.

The commission by rule shall establish standards for making available, through any means considered appropriate, information that enhances consumers' ability to effectively make choices in a competitive electricity market.

Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2021, c. 108, §5 (AMD).]

**4. Consumer protection provisions.** As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a residential consumer or to a small commercial consumer:

- A. May not terminate generation service without at least 30-day prior notice to the consumer; [PL 1999, c. 657, §18 (AMD).]

- B. Shall offer service to the consumer for a minimum period of 30 days; [PL 2021, c. 108, §5 (AMD).]
- C. Shall allow the consumer to rescind selection of the competitive electricity provider orally or in writing within 5 days of receipt of the first bill or invoice from the competitive electricity provider, which the consumer is responsible for paying in full; [PL 2021, c. 108, §5 (AMD).]
- D. Shall comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing; [PL 2021, c. 108, §5 (AMD).]
- E. Shall provide to the consumer within 30 days of contracting for retail service a disclosure of information provided to the commission pursuant to rules adopted under subsection 3 in a standard written format established by the commission; [PL 2021, c. 108, §5 (AMD).]
- F. Shall comply with any applicable standards or requirements adopted by the commission by rule or order; [PL 2021, c. 108, §5 (AMD).]
- G. [PL 2011, c. 284, §4 (RP).]

**REVISOR'S NOTE:** Paragraph G as enacted by PL 2021, c. 108, §5 is REALLOCATED TO TITLE 35-A, SECTION 3203, SUBSECTION 4, PARAGRAPH G-1

**G-1. (REALLOCATED FROM T. 35-A, §3203, sub-§4, ¶G)** May not enter, or allow any of the provider's 3rd-party sales agents on the provider's behalf, to enter into an agreement to provide service to a residential or small commercial consumer when that service is solicited using door-to-door sales without providing the consumer with a standard disclosure form that meets the requirements of this paragraph. The standard disclosure form requirements include, but are not limited to, the following:

- (1) A type size that is no less than 14 points;
- (2) Contact information, including the telephone numbers for the competitive electricity provider, the commission and the Office of the Public Advocate;
- (3) A telephone number and publicly accessible website where the consumer may obtain information on the current standard-offer service rate and expiration date and the publicly accessible website for electricity supply information available through the Office of the Public Advocate;
- (4) Information regarding the consumer's right to rescind service as provided in paragraph C;
- (5) The registration number of the 3rd-party sales agent issued by the commission pursuant to subsection 2 and any transient seller's license number issued by the Department of Professional and Financial Regulation pursuant to Title 32, chapter 128, subchapter 2; and
- (6) Any other information the commission determines is necessary; and [PL 2021, c. 108, §5 (NEW); RR 2021, c. 2, Pt. A, §123 (RAL).]

H. Shall comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation on door-to-door sales. [PL 2021, c. 108, §5 (NEW).]

For purposes of this subsection, "residential consumer" means a consumer defined as residential under the terms and conditions of the consumer's transmission and distribution utility. For purposes of this subsection, "small commercial consumer" means, in the case of a consumer served by an investor-owned transmission and distribution utility, a nonresidential consumer that meets the availability criteria to take service under a core customer class of the transmission and distribution utility that does not pay a demand charge to the transmission and distribution utility or, in the case of a consumer served by a consumer-owned transmission and distribution utility, a nonresidential consumer with a demand of 20 kilowatts or less.

[RR 2021, c. 2, Pt. A, §123 (COR).]

**4-A. General consumer protections.** As a condition of licensing, a competitive electricity provider:

A. Shall obtain a consumer's authorization before serving the consumer; [PL 1999, c. 657, §19 (NEW).]

B. May not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number, usage and historical payment information, without the consent of the customer; [PL 1999, c. 657, §19 (NEW).]

C. Shall comply with the provisions of the Maine Unfair Trade Practices Act; [PL 2021, c. 108, §5 (AMD).]

D. May not collect or seek to collect unreasonable costs from a customer who is in default; [PL 1999, c. 657, §19 (NEW).]

E. Shall comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f; [PL 2021, c. 108, §5 (AMD).]

F. Shall comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing; and [PL 2021, c. 108, §5 (AMD).]

G. [PL 2003, c. 558, §5 (RP).]

H. Shall comply with any other applicable standards or requirements established by the commission by rule. [PL 2021, c. 108, §5 (AMD).]

[PL 2021, c. 108, §5 (AMD).]

**4-B. Residential consumer protections.** As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a residential consumer:

A. Shall disclose, before entering into an agreement to provide service to a residential consumer, to the residential consumer where the residential consumer can obtain information with which to compare the service provided by the competitive electricity provider and the standard-offer service; [PL 2017, c. 74, §1 (NEW).]

B. May not renew a contract for generation service without providing a residential consumer with notice of renewal in advance by mail; [PL 2017, c. 74, §1 (NEW).]

C. May not renew a contract for generation service without the express consent of the residential consumer if the renewal rate is a fixed rate that is:

(1) Twenty percent or more above the contract rate in the expiring contract; or

(2) Greater than the fixed rate that would, at the time of the residential consumer's contract renewal, be offered by the competitive electricity provider to customers enrolling with the provider for an initial contract of a similar term and product offering; [PL 2023, c. 636, §1 (AMD).]

C-1. May not renew a contract for generation service at a variable rate without the express consent of the residential consumer if the expiring contract provided generation service at a fixed rate; [PL 2023, c. 636, §1 (NEW).]

D. May not renew a contract for generation service for a term that differs from the term of the expiring contract without the express consent of the residential consumer; and [PL 2023, c. 636, §1 (AMD).]

E. May not enter into or renew a contract for generation service that includes an early termination fee. [PL 2023, c. 375, §1 (AMD).]



If a residential consumer does not provide the express consent required by paragraphs C, C-1 and D, the residential consumer must be transferred to standard-offer service.

[PL 2023, c. 636, §1 (AMD).]

**4-C. Residential consumer protection through transmission and distribution utility bill information.** The monthly utility bill for a residential consumer that elects to receive generation service from a competitive electricity provider must contain the following:

A. A website address or other resource that residential consumers can access to obtain information that provides independent information as determined by the commission that allows residential consumers to compare terms, conditions and rates of electricity supply; and [PL 2017, c. 74, §1 (NEW).]

B. A statement that directs the residential consumer to the competitive electricity provider for more information on the residential consumer's contract, including its terms, and that provides the telephone number of the competitive electricity provider. [PL 2017, c. 74, §1 (NEW).]

[PL 2017, c. 74, §1 (NEW).]

**5. Licensing renewals and revocations.** Consistent with all applicable requirements of Title 5, chapter 375, the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.

[PL 1997, c. 316, §3 (NEW).]

**6. Consumer protection standards; rules.** The commission shall establish by rule consumer protection standards and standards to protect and promote market competition in order to protect retail consumers of electricity from fraud and other unfair and deceptive business practices. The commission shall prohibit, by rule, a competitive electricity provider or a 3rd-party sales agent from representing itself as an alternative to or affiliated in any way with a transmission and distribution utility. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, the commission may provide by rule that a competitive electricity provider or a 3rd-party sales agent may satisfy the requirements of subsection 4-A, paragraph A by obtaining from the customer oral authorization obtained by an independent 3rd party.

[PL 2021, c. 108, §5 (AMD).]

**7. Penalties.** The commission may impose administrative penalties upon a competitive electricity provider or a 3rd-party sales agent in accordance with chapter 15.

[PL 2021, c. 108, §5 (AMD).]

**8. Dispute resolution.** The commission shall resolve disputes between competitive electricity providers, including 3rd-party sales agents undertaking the retail sale or marketing of electricity on behalf of a provider, and retail consumers of electricity concerning standards or requirements established by or pursuant to subsection 4, 4-A, 4-B or 6.

[PL 2021, c. 108, §5 (AMD).]

**9. Additional actions.** The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider.

[PL 1997, c. 316, §3 (NEW).]

**10. Cease and desist orders.** The commission may issue a cease and desist order:

A. Following an adjudicatory hearing held in conformance with Title 5, chapter 375, subchapter 4, if the commission finds that a competitive electricity provider or transmission and distribution utility has engaged 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 Title 5, section 11004; or [PL 2021, c. 108, §5 (AMD).]

B. In an emergency, without hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider or a transmission and distribution utility 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 in force and effect until further order of 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. [PL 1997, c. 316, §3 (NEW).]

[PL 2021, c. 108, §5 (AMD).]

**11. Restitution.** The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.

[PL 1997, c. 316, §3 (NEW).]

**12. Enforcement.** The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it.

[PL 1997, c. 316, §3 (NEW).]

**13. Notice to Attorney General.** If the commission has reason to believe that a competitive electricity provider, 3rd-party sales agent or transmission and distribution utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

[PL 2021, c. 108, §5 (AMD).]

**13-A. Investigation.** The commission may investigate any matter relating to the provision of service by a competitive electricity provider or the actions of a 3rd-party sales agent undertaking the retail sale or marketing of electricity on behalf of a provider pursuant to this chapter. In conducting an investigation under this subsection, the commission shall use the procedures established under section 1303, subsection 2.

[PL 2021, c. 108, §5 (AMD).]

**14. Disconnection restricted.** A transmission and distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under section 3212.

[PL 1997, c. 316, §3 (NEW).]

**15. Standard billing.** The commission shall consider requiring standard billing information on bills for electric power service. If standard billing information is required, the commission shall investigate the possibility of adopting standards consistent with other New England states. The commission may not prohibit transmission and distribution utilities from contracting with generation service providers to include both entities' charges on a single bill. The commission may not preclude the inclusion of other information on bills for electric power service.

[PL 1997, c. 316, §3 (NEW).]

**16. 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 and distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.

[PL 1997, c. 316, §3 (NEW).]

**16-A. Customer information.** A transmission and distribution utility may not release any customer-specific information to a licensed competitive electricity provider unless the provider produces sufficient evidence, as defined by the commission by rule, that the provider has obtained the customer's authorization.

[PL 1999, c. 237, §1 (NEW).]

**17. Rules.** Except as otherwise provided in this section, rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[PL 2021, c. 108, §5 (AMD).]

**18. Confidentiality of consumer information.** Information concerning customers of a competitive electricity provider or customers contacted or enrolled by any of its 3rd-party sales agents is subject to the same confidentiality protections afforded utility customer information under section 704, subsection 5.

[PL 2021, c. 108, §5 (AMD).]

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 237, §1 (AMD). PL 1999, c. 398, §§A74,75,J1, 2 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 1999, c. 657, §§18-20 (AMD). PL 2001, c. 71, §1 (AMD). RR 2003, c. 2, §112 (COR). PL 2003, c. 505, §29 (AMD). PL 2003, c. 558, §§1-5 (AMD). PL 2011, c. 284, §§1-4 (AMD). PL 2017, c. 74, §1 (AMD). PL 2021, c. 108, §5 (AMD). RR 2021, c. 2, Pt. A, §123 (COR). PL 2023, c. 375, §1 (AMD). PL 2023, c. 636, §1 (AMD).

#### §3204. Divestiture of generation

**1. Divestiture required; exceptions.** Except as provided in subsection 3, on or before March 1, 2000, each investor-owned electric utility shall divest all generation assets and generation-related business activities other than any:

A. Contract with a qualifying facility, contract with a party other than a qualifying facility or affiliated interest entered into solely for the purpose of restructuring a contract with a qualifying facility or contract with a demand-side management or conservation provider, broker or host; [PL 1997, c. 558, §1 (AMD).]

B. Ownership interest in a nuclear power plant; [PL 1997, c. 316, §3 (NEW).]

C. Ownership interest in a facility located outside the United States; or [PL 1997, c. 316, §3 (NEW).]

D. Ownership interest in a generation asset that the commission determines is necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner. [PL 1997, c. 316, §3 (NEW).]

No later than January 1, 1999, 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. By July 1, 1999, the commission shall issue an order approving 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.

[PL 1997, c. 558, §1 (AMD).]

**2. Commission may require divestiture of Maine Yankee interests.** Notwithstanding any other provision of this chapter, the commission, if necessary to achieve the purposes of this chapter, may, in an adjudicatory proceeding, require any investor-owned transmission and distribution utility to divest its ownership interests in the Maine Yankee Atomic Power Company on or after January 1, 2009. The commission may order divestiture under this subsection only after notice to all interested parties and an opportunity for those parties to be heard.

[PL 1997, c. 316, §3 (NEW).]

**3. Extension; separation required.** An investor-owned electric utility may apply to the commission for an extension to permit the utility to divest one or more generation assets or generation-related business activities after March 1, 2000. The commission shall grant an extension if the commission finds that an extension would be likely to improve the sale value of those assets on the market or would be likely to reduce the level of the utility's stranded costs.

The commission by rule shall establish the procedure for granting extensions. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[PL 1999, c. 577, §1 (AMD).]

**4. Sale of capacity and energy required.** The commission by rule shall require each investor-owned electric utility after February 28, 2000 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 capacity and energy that the commission determines are necessary for the utility to perform its obligations as a transmission and distribution utility in an efficient manner.

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 a utility from re-negotiating, buying out or buying down a contract with a qualifying facility in accordance with applicable laws. The commission shall adopt all rules required under this subsection. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[PL 1999, c. 577, §2 (AMD).]

**5. Ownership of generation prohibited.** Except as otherwise permitted under this chapter, on or after March 1, 2000, an investor-owned transmission and distribution utility may not own, have a financial interest in or otherwise control generation or generation-related assets.

[PL 1997, c. 316, §3 (NEW).]

**6. Generation assets permitted.** On or after March 1, 2000, notwithstanding any other provision in this chapter, the commission may allow an investor-owned transmission and 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 and distribution utility in an efficient manner.

[PL 1997, c. 316, §3 (NEW).]

**7. Corporate law; exemptions.** An order of the commission directing or approving divestiture renders an electric utility and its directors, officers and shareholders exempt from Title 13-C, section 651 and from the Uniform Fraudulent Transfer Act, Title 14, chapter 504 for the matters addressed by the order. A divestiture pursuant to a commission order directing or approving the divestiture is not subject to limitations contained in the corporation's articles of incorporation and, notwithstanding Title 13-C, chapter 12, does not require shareholder approval.

[PL 2003, c. 344, Pt. D, §24 (AMD).]

**8. Authority to transfer title.** Except as otherwise expressly provided by law, a law of this State enacted prior to September 1, 1997, including any private and special law, that grants generation-asset-related rights, privileges or immunities to an investor-owned electric utility is deemed to grant

authorization to the investor-owned electric utility to convey or otherwise transfer those rights, privileges or immunities in accordance with this section only if:

- A. The investor-owned utility provides to the commission a copy of the law granting the rights, privileges or immunities and a description of the proposed transfer; and [PL 1997, c. 710, §9 (NEW).]
- B. The commission makes a written finding that the law grants rights, privileges or immunities that are generation assets required to be divested under this section or that are necessary to the ownership or operation of generation assets required to be divested under this section. [PL 1997, c. 710, §9 (NEW).]

Upon the issuance of a written finding by the commission under paragraph B, an electric utility is authorized to transfer those generation-asset-related rights, privileges and immunities identified in the written finding of the commission, provided that the electric utility complies with all other applicable requirements of law, including section 1101. The commission may issue a written finding under paragraph B in an order approving a divestiture of generation assets, pursuant to section 1101.

For purposes of this subsection, "generation-asset-related rights, privileges or immunities" means rights, privileges or immunities that constitute generation assets or that are necessary to the ownership or operation of generation assets, including water rights associated with hydro-electric facilities. For purposes of this subsection, the term "investor-owned electric utility" includes an affiliate of an investor-owned electric utility to the extent that the affiliate is transferring an asset that the affiliate is required to divest pursuant to this section.

Nothing in this subsection may be interpreted to permit the transfer of any rights, privileges or immunities that by law are expressly nontransferable or that are transferable only on condition, unless the condition is met. Nothing in this subsection may be interpreted as extinguishing or affecting any lawful rights, privileges or immunities that any person or entity or the public may have in any property held or transferred by an electric utility. Nothing in this section authorizes the sale or transfer of any right of eminent domain. Any right of eminent domain held by an investor-owned electric utility in relation to generation-asset-related rights, privileges or immunities terminates upon the divestiture of the generation-asset-related rights, privileges or immunities.

[PL 1997, c. 710, §9 (NEW).]

**9. Other regulatory approvals; limitation.** A transfer of interests or rights in real property necessary to consummate a divestiture pursuant to this section that results in a division of ownership of any lot or parcel of real property:

- A. Is exempt from municipal and state agency approval required pursuant to laws, ordinances or rules related to land use, zoning, shoreland zoning or subdivision of property; and [PL 1999, c. 43, §1 (NEW).]
- B. Does not constitute a violation of laws, ordinances or rules relating to land use, zoning, shoreland zoning or subdivision of property. [PL 1999, c. 43, §1 (NEW).]

Any subsequent regulated activity relating to any resulting parcel is subject to all applicable regulatory reviews and approvals by a municipality or state agency. A municipality or state agency, in its review of any subsequent regulated activity relating to any resulting parcel, may consider the division of ownership accomplished pursuant to the exemption granted under this subsection and may, in accordance with applicable standards established by law, rule or ordinance, deny or condition its approval based on the cumulative effect of that division of ownership and the subsequent regulated activity, as though both were occurring at the same time.

For purposes of this subsection, "subsequent regulated activity" means any activity occurring after a division of ownership accomplished pursuant to the exemption granted under this subsection that is subject to regulatory review by a municipality or state agency, including any change of use, division of

ownership or development. For purposes of this subsection, "resulting parcel" means a lot or parcel of real property resulting from a division of ownership accomplished pursuant to an exemption granted under this subsection.

[PL 1999, c. 43, §1 (NEW).]

**10. Retail contracts for bundled electricity service extending beyond March 1, 2000.** If a transmission and distribution utility has entered into a contract to provide bundled electricity service to a retail customer at a price other than the applicable tariffed rate for a term extending beyond March 1, 2000, the utility shall attempt to renegotiate and reform the contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the contract, except that an investor-owned transmission and distribution utility may not agree to provide directly or indirectly generation service to the customer on or after March 1, 2000.

The utility shall reform the contract so that the customer pays a total price for delivered electricity on an annual basis during the remaining term of the contract equal to the price contained in the contract. If the customer has exercised due diligence to obtain the lowest price from a competitive electricity provider for generation service for the remaining term of the contract, the utility shall reform the contract to provide a price for transmission and distribution services, stranded costs and all other applicable utility charges that is equal to the difference between the original contract price and the price for generation service obtained by the customer. If the customer has failed to exercise due diligence, the price must be equal to the difference between the original contract price and a reasonable market price for generation service for that customer.

If after good faith negotiations the contracting parties are unable to agree to a reformed contract, either party may petition the commission to resolve the dispute. The commission shall determine any unresolved issues and impose a reformed contract to preserve as nearly as possible the parties' benefits and burdens under the terms of the original contract. Prior to its final determination, the commission shall review updated information provided by the retail customer concerning the price of its generation service. The commission may not approve a retail contract with a price term longer than the expected duration of the retail customer's generation service contract. Changes to a contract reformed under this subsection take effect on March 1, 2000. A transmission and distribution utility shall ensure that any contract subject to this subsection has been reformed before that date.

[PL 1999, c. 398, Pt. K, §1 (NEW).]

**11. Affiliated generation outside service territory permitted.** Notwithstanding subsection 5, an affiliate of an investor-owned transmission and distribution utility may own generation or generation-related assets in accordance with standards of conduct adopted under this subsection as long as the generation or generation-related assets are not directly interconnected to the facilities owned or operated by that investor-owned transmission and distribution utility. The commission shall establish, by rule, standards of conduct governing the relationships permitted under this section between an investor-owned transmission and distribution utility and an affiliate of the investor-owned transmission and distribution utility that owns generation or generation-related assets that:

- A. Prohibit a transmission and distribution utility from taking any action that favors such an affiliate or adversely affects a competitor of such an affiliate in a manner that is unjust or unreasonable; [PL 2017, c. 287, §1 (NEW).]
- B. Ensure the separation and independence of such affiliates; and [PL 2017, c. 287, §1 (NEW).]
- C. Protect ratepayers. [PL 2017, c. 287, §1 (NEW).]

For purposes of this subsection, "affiliate" means a person who has any direct or indirect ownership interest in, or is a direct or indirect subsidiary of a person who has any ownership interest in, the investor-owned transmission and distribution utility, but does not include a wholly owned or partially owned direct or indirect subsidiary of the investor-owned transmission and distribution utility.

Any affiliate generation or generation-related assets permitted under this subsection that do not have a commission-approved long-term contract or term sheet under this Title as of July 1, 2017 are ineligible to participate in a long-term contract under this Title.

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

[PL 2017, c. 287, §1 (NEW).]

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1997, c. 558, §1 (AMD). PL 1997, c. 710, §9 (AMD). PL 1999, c. 43, §1 (AMD). PL 1999, c. 398, §§K1,N1 (AMD). PL 1999, c. 577, §§1,2 (AMD). PL 2003, c. 344, §D24 (AMD). PL 2017, c. 287, §1 (AMD).

#### §3205. Marketing; large utilities

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

A. "Affiliated competitive provider" means a competitive electricity provider whose relationship with a large investor-owned transmission and distribution utility qualifies it as an affiliated interest. [PL 1997, c. 316, §3 (NEW).]

B. "Distribution utility" means a large investor-owned transmission and distribution utility that has an affiliated competitive provider. [PL 1997, c. 316, §3 (NEW).]

C. "Purchasing entity" means a person that purchases 10% or more of the stock of a distribution utility on or after the effective date of this section. [PL 1997, c. 316, §3 (NEW).]

D. "Related entity" means:

(1) Any person who owns, directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of the purchasing entity;

(2) Any person 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1);

(3) Any person 10% or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;

(4) Any person, or group of persons 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 or group of persons beneficially owns more than 3% of the purchasing entity's voting securities; or

(5) Any purchasing entity of which any person defined in subparagraphs (1) to (4) is an affiliated interest. [PL 1997, c. 316, §3 (NEW).]

E. "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. [PL 1997, c. 316, §3 (NEW).]

[PL 1997, c. 316, §3 (NEW).]

**2. Marketing permitted.** On and after the beginning of retail access, a large investor-owned transmission and distribution utility may not sell electric energy or capacity to any retail consumer of electricity. Pursuant to the requirements of this section, on and after the beginning of retail access, an affiliated competitive provider may sell electric energy or capacity to retail consumers of electricity:

A. Outside the service territory of the distribution utility with which it is affiliated; and [PL 1997, c. 316, §3 (NEW).]

B. Within the service territory of the distribution utility with which it is affiliated, except that:

- (1) The affiliated competitive provider may not sell or contract to sell more than 33% of the total kilowatt hours sold within the service territory of the distribution utility, as determined by the commission by rule; and
- (2) In accordance with section 3212, the affiliated competitive provider may not at any one time provide or bid to provide standard-offer service for more than 20% of electric load within the territory of the transmission and distribution utility with which it is affiliated.

The marketing limitations in this paragraph do not apply to competitive electricity service or standard-offer service in the service territory or any portion of the service territory of a distribution utility that is located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine unless the commission finds that the level of competitive electricity service and standard-offer service competition in the area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine is substantially similar to the level of competitive electricity service and standard-offer service competition in the area of the State that is within the New England independent system operator control area. All kilowatt hours sales and electric load in any portion of a distribution utility's service territory that is located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine must be excluded from the calculation under this paragraph for those portions of the distribution utility's service territory that is not located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine. [PL 2013, c. 346, §1 (AMD).]

No later than January 1, 2005, 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 joint standing committee of the legislature having jurisdiction over utility matters.

[PL 2013, c. 346, §1 (AMD).]

**3. Standards of conduct.** The following provisions govern the conduct of a distribution utility and an affiliated competitive provider.

A. A distribution utility may not, through a tariff provision or otherwise, give its affiliated competitive provider or customers of its affiliated competitive provider preference over nonaffiliated competitive electricity providers or customers of nonaffiliated competitive electricity providers in matters relating to any regulated product or service. [PL 1997, c. 316, §3 (NEW).]

B. All regulated products and services offered by a 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. [PL 1997, c. 316, §3 (NEW).]

C. A distribution utility may not sell or otherwise provide regulated products or services to its affiliated competitive 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. [PL 1997, c. 316, §3 (NEW).]

D. A distribution utility shall process all similar requests for a regulated product or service in the same manner and within the same period of time. [PL 1997, c. 316, §3 (NEW).]

E. A distribution utility may not condition or tie the provision of any regulated product, service or rate agreement by the distribution utility to the provision of any product or service in which an affiliated competitive provider is involved. [PL 1997, c. 316, §3 (NEW).]



F. A distribution utility shall process all similar requests for information in the same manner and within the same period of time. A distribution utility may not provide information to an affiliated competitive provider without a request when information is made available to nonaffiliated competitive electricity providers only upon request. A distribution utility may not allow an affiliated competitive provider preferential access to any nonpublic information regarding the distribution system or customers taking service from the distribution utility that is not made available to nonaffiliated competitive electricity providers upon request, and a distribution utility shall instruct all of its employees not to provide affiliated competitive providers or nonaffiliated competitive electricity providers any preferential access to nonpublic information. [PL 1997, c. 316, §3 (NEW).]

G. Employees of a distribution utility may not share with any affiliated competitive provider or any nonaffiliated competitive electricity provider:

- (1) Any market information acquired from the affiliated competitive provider or from any nonaffiliated competitive electricity provider; or
- (2) Any market information developed by the distribution utility in the course of responding to requests for distribution service. [PL 1997, c. 316, §3 (NEW).]

H. A distribution utility shall keep a log of all requests for information made by the affiliated competitive provider and nonaffiliated competitive electricity providers and the date of the response to such requests and shall keep a log of any other transactions between the distribution utility and the affiliated provider that the commission may by rule require. 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. [PL 1999, c. 398, Pt. G, §1 (AMD).]

I. [PL 1999, c. 237, §2 (RP).]

J. A distribution utility shall refrain from giving any appearance of speaking on behalf of its affiliated competitive provider. Neither a distribution utility nor an affiliated competitive provider may in any way represent that any advantage accrues to customers or others in the use of the distribution utility's services as a result of that customer or others dealing with the affiliated competitive provider. A distribution utility may not engage in joint advertising or marketing programs of any sort with its affiliated competitive provider, nor may the distribution utility promote or market any product or service offered by its affiliated competitive provider. The commission shall maintain a current list of all competitive providers. If a customer requests information about competitive electricity providers, the distribution utility shall provide a copy of a list on which competitive electricity providers appear in random sequence and not in alphabetical order. The distribution utility may not in any manner promote its affiliated competitive provider. [PL 1997, c. 316, §3 (NEW).]

K. Employees of a 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 provider or nonaffiliated competitive electricity provider. [PL 1997, c. 316, §3 (NEW).]

L. Employees of a distribution utility may not be shared with, and must be physically separated from those of, an affiliated competitive provider. The commission may approve an exemption from these separation requirements upon a finding by the commission that:

- (1) Sharing employees or facilities would be in the best interest of the public;
- (2) Sharing employees or facilities would have no anticompetitive effect; and

(3) The costs of any shared employees or facilities can be fully and accurately allocated between the distribution utility and the affiliated competitive 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. [PL 1997, c. 316, §3 (NEW).]

M. A distribution utility and its affiliated competitive provider shall keep separate books of accounts and records, which are subject to review by the commission. [PL 1997, c. 316, §3 (NEW).]

N. A 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 complainant's right to file a complaint with the commission if not satisfied with the results of the investigation. The 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. [PL 1997, c. 316, §3 (NEW).]

O. A distribution utility shall maintain its books of account and records of its transmission and distribution operations separately from those of its affiliated competitive provider, and the transmission and distribution books of account and records must be available for commission inspection. [PL 1997, c. 316, §3 (NEW).]

P. A 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. [PL 1997, c. 316, §3 (NEW).]

Q. A distribution utility may not subsidize the business of its affiliated competitive provider at ratepayer expense in any manner not specifically authorized under this section. [PL 1999, c. 398, Pt. G, §2 (NEW).]

[PL 1999, c. 237, §2 (AMD); PL 1999, c. 398, Pt. G, §§1,2 (AMD).]

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

A. Rules governing the tracking of the amount of kilowatt-hour sales by any affiliated competitive provider compared to the total kilowatt-hour sales within the service territory of the affiliated distribution utility; [PL 1997, c. 316, §3 (NEW).]

B. Rules governing the procedure for divestiture; and [PL 1997, c. 316, §3 (NEW).]

C. Rules establishing standards of conduct for distribution utilities and affiliated competitive providers consistent with the requirements of this section. [PL 1997, c. 316, §3 (NEW).]

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

Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A and must be provisionally adopted by March 1, 1999.

[PL 1997, c. 316, §3 (NEW).]

**5. Penalties.**

[PL 1999, c. 398, Pt. G, §3 (RP).]

**6. Prohibition; divestiture.**

[PL 1999, c. 398, Pt. G, §3 (RP).]

**7. Effect of divestiture.**

[PL 1999, c. 398, Pt. G, §3 (RP).]

## SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 237, §2 (AMD). PL 1999, c. 398, §§G1-3 (AMD). PL 2013, c. 346, §1 (AMD).

**§3206. Marketing; small utilities**

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

[PL 1997, c. 316, §3 (NEW).]

**2. Rules of conduct.** By July 1, 1998, the commission shall open a rule-making 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 March 1, 1999, the commission shall provisionally adopt all rules required under this subsection. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. In adopting rules under this subsection, the commission shall consider all relevant issues, including, but not limited to:

A. Codes of conduct that may be required to ensure the effectiveness of the separation requirement; [PL 1997, c. 316, §3 (NEW).]

B. Restrictions on employee activities; [PL 1997, c. 316, §3 (NEW).]

C. Accounting standards; and [PL 1997, c. 316, §3 (NEW).]

D. Information and service comparability requirements. [PL 1997, c. 316, §3 (NEW).]

[PL 1997, c. 316, §3 (NEW).]

**3. Commission study.** The commission shall conduct a study to determine the most effective and efficient means of ensuring that the portions of this State that are currently connected to the New England electric grid through transmission lines that pass through Canada are connected to the grid in a manner that ensures that customers in those portions of the State are able to take full advantage of retail access. By January 1, 1999, the commission shall complete its study and report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over utility matters.

[PL 1997, c. 316, §3 (NEW).]

## SECTION HISTORY

PL 1997, c. 316, §3 (NEW).

**§3206-A. Marketing; investor-owned utilities; penalties**

**1. Penalties.** The commission shall require an investor-owned transmission and distribution utility to divest an affiliated competitive provider if the commission determines in an adjudicatory proceeding that:

A. The distribution utility or an affiliated competitive provider has knowingly violated section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections; and [PL 1999, c. 398, Pt. G, §4 (NEW).]

B. 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. [PL 1999, c. 398, Pt. G, §4 (NEW).]

The commission may impose administrative penalties of up to \$143,000 for a violation of section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections. Each day of a violation constitutes a separate offense. In addition, the commission may require disgorgement of profits or revenues realized as a result of a violation of section 3205 or section 3206 or any rule adopted by the commission pursuant to those sections.

[PL 2021, c. 318, §12 (AMD).]

**2. Prohibition; divestiture.** If, after the effective date of this section, 10% or more of the stock of an investor-owned transmission and distribution utility is purchased by an entity:

A. 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 [PL 1999, c. 398, Pt. G, §4 (NEW).]

B. If, in an adjudicatory proceeding, the commission determines that an affiliated competitive provider obtains an unfair market advantage as a result of the purchase, the commission shall order the investor-owned transmission and distribution utility to divest the affiliated competitive provider. [PL 1999, c. 398, Pt. G, §4 (NEW).]

If the commission orders a divestiture pursuant to this subsection, the distribution utility must complete the divestiture within 12 months of the order to divest, unless the commission grants an extension. Upon application by the 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 3204, subsection 4.

[PL 2023, c. 405, Pt. A, §126 (AMD).]

**3. Effect of divestiture.** If the commission orders an investor-owned transmission and distribution utility to divest an affiliated competitive provider pursuant to this section, the investor-owned transmission and distribution utility may not have an affiliated interest in a competitive electricity provider after the divestiture.

[PL 1999, c. 398, Pt. G, §4 (NEW).]

As used in this section, the term "affiliated competitive provider" means a competitive electricity provider whose relationship with an investor-owned transmission and distribution utility qualifies it as an affiliated interest. [PL 1999, c. 398, Pt. G, §4 (NEW).]

## SECTION HISTORY

PL 1999, c. 398, §G4 (NEW). PL 2003, c. 505, §30 (AMD). PL 2021, c. 318, §12 (AMD). PL 2023, c. 405, Pt. A, §126 (AMD).

### §3207. Marketing; consumer-owned utilities

**1. Consumer-owned utilities; limitations.** Consumer-owned transmission and distribution utilities:

A. May sell retail generation service only within their respective service territories, and are authorized to purchase electric power and energy at wholesale, provided that the consumer-owned transmission and distribution utility complies with the requirements of section 3203, subsection 3 and section 3210, subsection 3, and to purchase such transmission and related services as may be

required to effect the delivery of such power and energy to their respective service territories; and [PL 2003, c. 141, §1 (AMD).]

B. May not sell wholesale generation service except incidental sales necessary to reduce the cost of providing retail service. [PL 1997, c. 316, §3 (NEW).]  
[PL 2003, c. 141, §1 (AMD).]

**1-A. Consumer-owned utilities in the northern Maine independent system administrator's area.** Notwithstanding subsection 1, a consumer-owned transmission and distribution utility with service territory within an area administered as of January 1, 2009 by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine:

A. May sell retail generation service only within its service territory and is authorized to purchase electric power and energy at wholesale, as long as the consumer-owned transmission and distribution utility complies with the requirements of section 3203, subsection 3 and section 3210, subsection 3, and to purchase such transmission and related services as may be required to effect the delivery of such power and energy to its service territory; and [PL 2009, c. 108, §1 (NEW).]

B. May sell wholesale generation service in excess of its retail generation service as part of providing retail service in accordance with paragraph A. [PL 2009, c. 108, §1 (NEW).]  
[PL 2009, c. 108, §1 (NEW).]

**2. 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. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A [PL 1997, c. 316, §3 (NEW).]

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 2003, c. 141, §1 (AMD). PL 2009, c. 108, §1 (AMD).

#### §3208. Stranded cost recovery

**1. Stranded costs defined.** For the purposes of this section, the term "stranded costs" means a utility's legitimate, 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.

[PL 1997, c. 316, §3 (NEW).]

**2. 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:

A. The costs of a utility's regulatory assets related to generation; [PL 1997, c. 316, §3 (NEW).]

B. The difference between net plant investment associated with a utility's generation assets and the market value of the generation assets; and [PL 1997, c. 316, §3 (NEW).]

C. The difference between future contract payments and the market value of a utility's purchased power contracts. [PL 1997, c. 316, §3 (NEW).]

When determining the market value of generation assets and purchased power contracts, the commission shall rely to the greatest extent possible on market information, including, but not limited to, market valuations that become known as generation assets and the rights to power under contracts with qualifying facilities are sold.

[PL 1997, c. 316, §3 (NEW).]

**3. Exclusions.** Notwithstanding any other provision of this chapter, the commission may not include any costs for obligations incurred on or after April 1, 1995 in a utility's stranded costs, except that the commission may include:

A. Regulatory assets created after April 1, 1995 and prior to March 1, 2000 for:

- (1) The amortization of costs associated with the restructuring of a qualifying facility contract;
- (2) Costs deferred pursuant to rate plans; or
- (3) Energy conservation costs; [PL 1997, c. 316, §3 (NEW).]

B. Obligations incurred by a utility after April 1, 1995 and prior to March 1, 2000 that are beyond the control of the electric utility; and [PL 1997, c. 316, §3 (NEW).]

C. Obligations incurred by an electric utility after April 1, 1995 to reduce potential stranded costs. [PL 1997, c. 316, §3 (NEW).]

[PL 1997, c. 316, §3 (NEW).]

**4. 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.

[PL 1997, c. 316, §3 (NEW).]

**5. Stranded costs recoverable.** When retail access begins, the commission shall provide a transmission and distribution utility a reasonable opportunity to recover stranded costs through the rates of the transmission and distribution utility, as provided in this section. The opportunity must be comparable to the utility's opportunity to recover stranded costs before the implementation of retail access under this chapter. Nothing in this chapter may be construed to give a transmission and distribution utility a greater or lesser opportunity to recover stranded costs than existed prior to the implementation of retail access. 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.

[PL 1997, c. 316, §3 (NEW).]

**6. 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 transmission and distribution utility when retail access begins. In 2003 and every 3 years thereafter 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.

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

[PL 1997, c. 316, §3 (NEW).]

**7. 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.

[PL 1997, c. 316, §3 (NEW).]

**8. Proceedings.** The commission shall conduct separate adjudicatory proceedings to determine the stranded costs for each investor-owned utility and each consumer-owned utility. In the same proceedings, the commission shall establish the revenue requirements for each transmission and distribution utility and stranded costs charges to be charged by each transmission and distribution utility when retail access begins. The proceedings must be completed by December 1, 1999.

[PL 1999, c. 398, Pt. L, §1 (AMD).]

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 398, §L1 (AMD).

#### §3209. Rate design

The commission shall set charges and rates collected by transmission and distribution utilities in accordance with this section. [PL 1997, c. 316, §3 (NEW).]

**1. 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. The commission may continue to permit recovery, in transmission and distribution utility rates, of costs previously incurred by the utility when it was an integrated electric utility that are not included in the recovery of stranded costs pursuant to section 3208.

[PL 1997, c. 316, §3 (NEW).]

**2. Proceeding.** Following notice and hearing, the commission shall complete an adjudicatory proceeding on or before December 1, 1999 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.

[PL 1999, c. 398, Pt. L, §2 (AMD).]

**3. Exit fees.** A customer who significantly reduces or eliminates consumption of electricity due to self-generation, conversion to an alternative fuel or demand-side management may not be assessed an exit or reentry fee in any form for the reduction or elimination of consumption or reestablishment of service with a transmission and distribution utility.

[PL 1997, c. 316, §3 (NEW).]

**4. Decommissioning costs.** As required by federal law, rule or order, the commission shall include in the rates of a transmission and distribution utility decommissioning expenses associated with a nuclear unit.

[PL 1997, c. 316, §3 (NEW).]

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 398, §L2 (AMD).

#### §3209-A. Net energy billing

The commission may adopt or amend rules governing net energy billing. Rules adopted or amended under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2019, c. 478, Pt. A, §3 (AMD).]

**1. Definitions.** As used in this section, the following terms have the following meanings.

A. "Customer" means a customer of a transmission and distribution utility in the State. [PL 2019, c. 478, Pt. A, §3 (NEW).]

B. "Distributed generation resource" means an electric generating facility that uses a renewable fuel or technology under section 3210, subsection 2, paragraph B-3 and is located in the service territory of a transmission and distribution utility in the State. [PL 2019, c. 478, Pt. A, §3 (NEW).]

C. "Net energy billing" means a billing and metering practice under which a customer is billed on the basis of the difference between the kilowatt-hours delivered by a transmission and distribution utility to the customer over a billing period and the kilowatt-hours delivered by the customer to the transmission and distribution utility over the billing period, taking into account accumulated unused kilowatt-hour credits from the previous billing period. [PL 2019, c. 478, Pt. A, §3 (NEW).]

D. "Project sponsor" means an entity or its successor or assignee that solicits customers to participate in a net energy billing arrangement based upon a shared financial interest in a distributed generation resource. [PL 2021, c. 107, §1 (NEW).]

[PL 2021, c. 107, §1 (AMD).]

**2. Financial interest required.** The commission shall allow a customer to participate in net energy billing if the customer has a financial interest in a distributed generation resource or in a generation resource that has a net energy billing arrangement on the effective date of this section, including facility ownership, a lease agreement or a power purchase agreement.

[PL 2019, c. 478, Pt. A, §3 (NEW).]

**3. Shared financial interest for investor-owned utility customers; limitation.** Multiple customers of an investor-owned transmission and distribution utility that have distinct billing accounts with that utility may share a financial interest in a distributed generation resource under subsection 2. Any number of customers of an investor-owned transmission and distribution utility with a shared financial interest in a distributed generation resource may participate in net energy billing, except that the number of eligible customers or meters is limited to 10 for a shared financial interest in a distributed generation resource located in the service territory of an investor-owned transmission and distribution utility located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine unless the commission determines that the utility's billing system can accommodate more than 10 accounts or meters for the purpose of net energy billing.

[PL 2019, c. 478, Pt. A, §3 (NEW).]

**4. System size.** The nameplate capacity of a distributed generation resource that may be used for net energy billing must be less than 5 megawatts, except that, if a municipality is the customer participating in net energy billing, the nameplate capacity of a distributed generation resource located in that municipality that may be used for the net energy billing may be 5 megawatts or more, as long as less than 5 megawatts of metered electricity from the resource is used for net energy billing.

[PL 2019, c. 478, Pt. A, §3 (NEW).]

**5. Consumer protection.** To protect customers who participate in or are solicited to participate in a net energy billing arrangement based upon a shared financial interest in a distributed generation resource from fraud or unfair and deceptive business practices, a project sponsor:

A. Must obtain a customer's explicit affirmative authorization before serving the customer; [PL 2021, c. 107, §2 (NEW).]

B. Must provide to a residential customer such information as the commission may require by rule or order in a standard disclosure form before entering into an agreement with the residential customer to participate in a net energy billing arrangement based upon a shared financial interest in a distributed generation resource; [PL 2021, c. 107, §2 (NEW).]

C. Must allow a customer to rescind the customer's decision to participate in a net energy billing arrangement based upon a shared financial interest in a distributed generation resource, as long as the customer requests such rescission orally or in writing within 5 days of the customer's receipt of the first bill or invoice under the arrangement that the customer is responsible for paying in full; [PL 2021, c. 107, §2 (NEW).]



D. May not collect or seek to collect unreasonable costs from a customer who is in default; [PL 2021, c. 107, §2 (NEW).]

E. Must comply with any other applicable standards or requirements adopted by the commission by rule or order; [PL 2021, c. 107, §2 (NEW).]

F. May not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number and usage and historical payment information, without the explicit affirmative consent of the customer; [PL 2021, c. 107, §2 (NEW).]

G. Must comply with the Maine Unfair Trade Practices Act; [PL 2021, c. 107, §2 (NEW).]

H. Must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f; and [PL 2021, c. 107, §2 (NEW).]

I. Must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing. [PL 2021, c. 107, §2 (NEW).]  
[PL 2021, c. 107, §2 (NEW).]

**REVISOR'S NOTE:** (Subsection 5 as enacted by PL 2021, c. 370, §1 is REALLOCATED TO TITLE 35-A, SECTION 3209-A, SUBSECTION 7)

**6. Enforcement.** The commission, through its own counsel or through the Attorney General, may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to subsection 5, paragraphs A to E, and the court may issue any preliminary or final order that the court determines proper. The commission may impose administrative penalties under chapter 15 upon a project sponsor and may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to chapter 15. If the commission has reason to believe a project sponsor has violated subsection 5, paragraphs F to I, the commission shall report this information to the Attorney General for appropriate action. A violation of subsection 5 is a violation of the Maine Unfair Trade Practices Act.

[PL 2021, c. 107, §3 (NEW).]

**7. Applicability.** A distributed generation resource with a nameplate capacity of greater than 2 megawatts and not more than 5 megawatts may be used for net energy billing under this section only if the requirements of paragraph A, B or C are met and all the requirements of paragraphs D and E are met.

A. In order for a distributed generation resource to be used for net energy billing, one of the following must have been met on or before December 31, 2020:

(1) There is a signed interconnection agreement between the entity proposing the development of the distributed generation resource and a transmission and distribution utility governing the connection of the resource to the utility's system and the ongoing operation of the resource after it is connected to the system; or

(2) There is a net energy billing agreement between the entity proposing the development of the distributed generation resource and the transmission and distribution utility.

An amendment, revision or reissuance of an agreement under this paragraph that occurs after December 31, 2020 may not be interpreted to affect the date on which the initial agreement was signed. [PL 2021, c. 390, §1 (NEW).]

B. In order for a distributed generation resource to be used for net energy billing, one of the following must have been met on or before April 30, 2021:

- (1) A complete application for a customer net energy billing agreement has been submitted for the distributed generation resource and a customer has or customers have financial interest in 90% or more of the capacity of that distributed generation resource; or
- (2) There is a fully executed net energy billing agreement between a customer or sponsor of the distributed generation resource and the transmission and distribution utility for the distributed generation resource and a customer has or customers have financial interest in 90% or more of the capacity of that distributed generation resource. [PL 2021, c. 390, §1 (NEW).]
- C. In order for a distributed generation resource to be used for net energy billing, the following must have been met on or before June 1, 2021:
- (1) The interconnection study process has commenced for a distributed generation resource located in those portions of the service territory of an investor-owned transmission and distribution utility that are not connected to the ISO-NE region as defined in section 1902, subsection 3. [PL 2021, c. 390, §1 (NEW).]
- D. In order for a distributed generation resource to be used for net energy billing, all of the following must be met on or before December 31, 2021:
- (1) There is a fully executed interconnection agreement between the entity proposing the development of the distributed generation resource and the transmission and distribution utility;
- (2) The entity proposing the development of the distributed generation resource certifies to the commission that the entity has submitted all applicable permit applications to the Department of Environmental Protection and the department has accepted those applications for processing; and
- (3) The entity proposing the development of the distributed generation resource certifies to the commission that the entity has received all necessary local, nonministerial permits. For purposes of this subparagraph, "nonministerial permit" means a permit for which one or more officials consider various factors and exercise discretion in deciding whether to issue or deny the permit.
- An amendment, revision or reissuance of an agreement under this paragraph that occurs after December 31, 2021 may not be interpreted to affect the date on which the agreement was initially executed. [PL 2021, c. 390, §1 (NEW).]
- E. In order for a distributed generation resource to be used for net energy billing, the following must be met on or before December 31, 2024:
- (1) The proposed distributed generation resource must reach commercial operation by the date specified in the net energy billing agreement or by the date specified with an allowable modification to that agreement. [PL 2021, c. 390, §1 (NEW).]

An entity proposing the development of a distributed generation resource that does not meet one or more of the requirements of this subsection may petition the commission for a good-cause exemption due to external delays outside of the entity's control, which the commission may grant if it finds that, without the external delays, the entity could reasonably have been expected to meet the requirements.

The goal for development of commercially operational distributed generation resources under this subsection and section 3209-B, subsection 7 is 750 total megawatts. [PL 2021, c. 659, §17 (AMD).]

**REVISOR'S NOTE:** (Subsection 7 as enacted by PL 2021, c. 370, §1 and reallocated by RR 2021, c. 1, Pt. A, §37 is REALLOCATED TO TITLE 35-A, SECTION 3209-A, SUBSECTION 8)

**8. (REALLOCATED FROM TITLE 35-A, SECTION 3209-A, SUBSECTION 7) Unused kilowatt-hour credits; rules.** To the extent rules adopted under this section provide for the periodic

expiration of unused kilowatt-hour credits accumulated by a customer participating in a net energy billing arrangement, the commission shall require by rule that each transmission and distribution utility with a net energy billing arrangement shall account for and, on or before January 1st of each year, remit the value of all unused kilowatt-hour credits that were accumulated and that expired during the prior calendar year to the commission for the benefit of individuals receiving low-income assistance in accordance with section 3214, subsection 2. The rules adopted by the commission pursuant to this subsection must:

A. Establish the manner by which a transmission and distribution utility must account for unused kilowatt-hour credits that were accumulated by all customers of the utility with net energy billing arrangements during the prior calendar year and that expired during the prior calendar year; and [PL 2021, c. 370, §1 (NEW); RR 2021, c. 1, Pt. A, §37 (RAL); PL 2021, c. 659, §18 (RAL); PL 2021, c. 705, §13 (RAL).]

B. Establish the manner by which a transmission and distribution utility must remit the value of the unused and expired kilowatt-hour credits. [PL 2023, c. 230, §1 (AMD).]

Notwithstanding any provision of this section to the contrary, rules adopted by the commission pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 230, §1 (AMD).]

**9. Applicability to projects between one megawatt and 2 megawatts.** A distributed generation resource with a nameplate capacity of at least one megawatt and not more than 2 megawatts may be used for net energy billing under this section only if the requirements of paragraph A are met.

A. On or before December 31, 2024, the proposed distributed generation resource must reach commercial operation by the date specified in the net energy billing agreement or by the date specified with an allowable modification to that agreement. [PL 2023, c. 411, §2 (NEW).]

An entity proposing the development of a distributed generation resource that does not meet the requirement of this subsection may petition the commission for a good-cause exemption due to external delays outside of the entity's control, which the commission may grant if it finds that without the external delays the entity could reasonably have been expected to meet the requirement. [PL 2023, c. 411, §2 (NEW).]

#### SECTION HISTORY

PL 2011, c. 262, §1 (NEW). RR 2017, c. 1, §32 (COR). PL 2019, c. 16, §1 (AMD). PL 2019, c. 478, Pt. A, §3 (AMD). PL 2021, c. 107, §§1-3 (AMD). PL 2021, c. 370, §1 (AMD). PL 2021, c. 390, §1 (AMD). RR 2021, c. 1, Pt. A, §37 (COR). PL 2021, c. 659, §§17, 18 (AMD). PL 2021, c. 705, §13 (AMD). PL 2023, c. 230, §1 (AMD). PL 2023, c. 411, §2 (AMD).

#### §3209-B. Commercial and institutional net energy billing

The commission shall establish by rule, in accordance with this section, a net energy billing program for commercial and institutional customers of investor-owned utilities. [PL 2019, c. 478, Pt. A, §4 (NEW).]

**1. Definitions.** As used in this section, the following terms have the following meanings.

A. "Commercial and institutional net energy billing program" or "program" means the net energy billing program established pursuant to this section. [PL 2019, c. 478, Pt. A, §4 (NEW).]

B. "Commercial or institutional customer" or "customer" means a nonresidential customer of an investor-owned transmission and distribution utility in the State. [PL 2019, c. 478, Pt. A, §4 (NEW).]

C. "Distributed generation resource" has the same meaning as in section 3209-A, subsection 1, paragraph B. [RR 2019, c. 1, Pt. A, §51 (COR).]

D. "Net energy billing" means the system of bill credits available under the program as described in subsection 5. [PL 2019, c. 478, Pt. A, §4 (NEW).]  
[PL 2019, c. 478, Pt. A, §4 (NEW); RR 2019, c. 1, Pt. A, §51 (COR).]

**2. Financial interest.** The program must allow a commercial or institutional customer to participate in the program if the customer has a financial interest in a distributed generation resource, including facility ownership, a lease agreement or a power purchase agreement.  
[PL 2019, c. 478, Pt. A, §4 (NEW).]

**3. System size.** The nameplate capacity of a distributed generation resource that may be used for net energy billing under this section must be less than 5 megawatts.  
[PL 2019, c. 478, Pt. A, §4 (NEW).]

**4. Shared financial interest; limitation.** Multiple commercial or institutional customers that have distinct billing accounts with an investor-owned transmission and distribution utility may share a financial interest in a distributed generation resource under subsection 2. Any number of commercial or institutional customers may participate in net energy billing with a shared interest in a distributed generation resource, except that the number of customers or meters is limited to 10 for a shared interest in a distributed generation resource located in the service territory of an investor-owned transmission and distribution utility located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine unless the commission determines that the utility's billing system can accommodate more than 10 accounts or meters for the purpose of net energy billing.  
[PL 2019, c. 478, Pt. A, §4 (NEW).]

**5. Tariff rate; bill credits.** The commission shall establish by rule tariff rates for customers participating in the program. The initial tariff rate must be established no later than December 1, 2019.

A. The tariff rate for a customer participating in net energy billing with a distributed generation resource described in this paragraph must equal the standard-offer service rate established under section 3212 that is applicable to the customer receiving the credit plus 75% of the effective transmission and distribution rate for the rate class that includes the smallest commercial customers of the investor-owned transmission and distribution utility. The tariff rate under this paragraph applies to net energy billing with a distributed generation resource:

(1) With a nameplate capacity of greater than one megawatt if:

(a) The entity developing the distributed generation resource certifies by affidavit with accompanying documentation to the commission that the entity, before September 1, 2022, commenced on-site physical work of a significant nature on the distributed generation resource and the entity has made and will continue to make continuous on-site construction efforts to advance toward completion of the distributed generation resource. For the purpose of this paragraph, continuous on-site construction efforts include, but are not limited to, in the context of a solar facility, the continuous installation of racks or other structures to affix photovoltaic panels, collectors or solar cells to a site. The commission may share information contained in the affidavit submitted in accordance with this paragraph with a transmission and distribution utility, as necessary, to verify a distributed generation resource's compliance with this section. In administering this subsection, the commission may adopt rules including, but not limited to, requiring the entity that submits a sworn affidavit under this subparagraph to provide updated documentation to the commission after submission of the affidavit; or

(b) The distributed generation resource is collocated with a net energy billing customer that is or net energy billing customers that are subscribed to at least 50% of the facility's output; or

(2) With a nameplate capacity of one megawatt or less. [PL 2021, c. 659, §19 (AMD).]

A-1. The tariff rate for a customer participating in net energy billing under this section with a distributed generation resource not governed by paragraph A must:

(1) In 2022, equal the standard-offer service rate established pursuant to section 3212 that was applicable to the rate class of the customer receiving the credit on December 31, 2020 plus 75% of the effective transmission and distribution rate that was in effect on December 31, 2020 for the rate class that includes the smallest commercial customers of the investor-owned transmission and distribution utility; and

(2) Increase by 2.25% on January 1st of each subsequent year, beginning January 1, 2023. [PL 2021, c. 659, §19 (NEW).]

B. A customer participating in the program must receive for electricity delivered to the electric grid from a distributed generation resource in which the customer has a financial interest a bill credit based on the tariff rate to apply against the costs of electricity delivered to the customer by the investor-owned transmission and distribution utility. [PL 2019, c. 478, Pt. A, §4 (NEW).]

C. A bill credit under the program as described in paragraph B may be applied to any portion of a customer's electricity bill. Credits that remain unused at the end of any billing period may be carried forward for up to one year from the end of that billing period. [PL 2019, c. 478, Pt. A, §4 (NEW).]

D. A customer participating in the program who remains eligible to participate in the program must be allowed to receive a bill credit based on the tariff rate for a period of no less than 20 years from the date of first receiving the credit. [PL 2019, c. 478, Pt. A, §4 (NEW).]

[PL 2021, c. 659, §19 (AMD).]

**6. Rules.** The commission shall adopt rules to implement this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2019, c. 478, Pt. A, §4 (NEW).]

**7. Applicability.** The applicability of this section is limited by the requirements of section 3209-A, subsection 7 and subsection 9.

[PL 2023, c. 411, §3 (AMD).]

**8. Limitation.** After December 31, 2023, a distributed generation resource may be used for net energy billing under this section only if the distributed generation resource is collocated with all of the distributed generation resource's net energy billing customers and those customers are subscribed to 100% of the facility's output under this section. This limitation does not apply to a distributed generation resource with a net energy billing agreement that was executed on or before December 31, 2023. An amendment, revision or reissuance of an agreement under this subsection that occurs after December 31, 2023 may not be interpreted to affect the date on which the agreement was initially executed.

[PL 2023, c. 411, §4 (NEW).]

#### SECTION HISTORY

PL 2019, c. 478, Pt. A, §4 (NEW). RR 2019, c. 1, Pt. A, §51 (COR). PL 2021, c. 390, §2 (AMD). PL 2021, c. 659, §19 (AMD). PL 2023, c. 411, §§3, 4 (AMD).

#### §3209-C. Net energy billing cost recovery

The commission shall ensure that benefits of distributed generation under net energy billing are reported and net energy billing costs are allocated in accordance with this section. [PL 2023, c. 411, §5 (NEW).]

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

A. "Benefits of distributed generation under net energy billing" means all benefits determined by the commission to be reasonably attributable to distributed generation projects under sections 3209-A and 3209-B, including but not limited to:

- (1) Avoided energy and capacity costs. In determining avoided energy and capacity costs, the commission shall use reasonable estimates of energy and capacity market prices and account for transmission and distribution line losses. The commission may determine different avoided costs for different time periods, including, but not limited to, peak and off-peak periods and summer and winter periods;
- (2) Avoided transmission and distribution costs. In determining avoided transmission and distribution costs, the commission shall use estimates of the marginal transmission and distribution costs and may determine different avoided costs for different time periods;
- (3) Avoided fossil fuel costs. The commission shall determine avoided fossil fuel costs based on estimated reductions in oil, gas or other fossil fuel use and estimated market prices for these fuels;
- (4) Avoided transmission and distribution line losses;
- (5) Demand reduction induced price effects;
- (6) Transmission and distribution plant extensions or upgrades funded by net energy billing customers; and
- (7) Any other benefits identified by the commission. [RR 2023, c. 2, Pt. A, §55 (COR).]

B. "Net energy billing" means net energy billing arrangements under section 3209-A or 3209-B. [PL 2023, c. 411, §5 (NEW).]

C. "Net energy billing costs" means all legitimate and verifiable costs incurred by a transmission and distribution utility directly attributable to net energy billing. "Net energy billing costs" does not include any costs incurred by a project sponsor as defined in section 3209-A, subsection 1, paragraph D, a net energy billing customer or any other entity, as determined by the commission by rule. [PL 2023, c. 411, §5 (NEW).]

[RR 2023, c. 2, Pt. A, §55 (COR).]

**2. Determination of costs and benefits.** The commission annually shall determine the net energy billing costs and benefits of distributed generation under net energy billing for the previous year.

A. When determining the benefits of distributed generation under net energy billing, the commission shall use any available regional avoided energy supply cost study that the commission finds to be applicable to the determination and has been developed through a transparent process, with input from state agencies, public advocates and utilities or energy efficiency administrators from at least 3 other states in New England. When relevant information specific to this State is not provided in the regional study, the commission may use the regional information in the regional study or information from other sources supported by evidence in the commission's record. [PL 2023, c. 411, §5 (NEW).]

B. The commission shall allocate to each investor-owned transmission and distribution utility its pro rata share of net energy billing costs. If the commission finds that a benefit of distributed generation under net energy billing provides a monetized net financial benefit to an investor-owned transmission and distribution utility that the commission does not otherwise account for when setting rates for the utility, the net financial benefit must be applied to offset the net energy billing costs allocated under this paragraph. The allocation must be based on each utility's total retail kilowatt-hour energy sales to ratepayers that pay net energy billing costs. The commission may determine the means to be used for the allocation required under this subsection, and those means

may include the direct transfer of funds between transmission and distribution utilities. [PL 2023, c. 411, §5 (NEW).]  
[PL 2023, c. 411, §5 (NEW).]

**3. Reporting of costs and benefits.** The commission shall submit an annual report no later than March 31st to the joint standing committee of the Legislature having jurisdiction over utilities matters describing net energy billing costs and benefits of distributed generation under net energy billing determined by the commission under subsection 2. The report must include, but is not limited to, costs authorized to be collected by transmission and distribution utilities in rates and benefits directly received by ratepayers. The commission shall distinguish costs and benefits that are monetized from costs and benefits that are not monetized. If costs or benefits are monetized, the commission shall specify the entities to which the monetized value accrues, which may include, but are not limited to, electricity customers, electricity supply providers and transmission and distribution utilities.  
[PL 2023, c. 411, §5 (NEW).]

**4. Rules.** The commission shall adopt rules necessary to implement this section. Rules adopted by the commission under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.  
[PL 2023, c. 411, §5 (NEW).]

#### SECTION HISTORY

PL 2023, c. 411, §5 (NEW). RR 2023, c. 2, Pt. A, §55 (COR).

#### §3209-D. Distributed generation procurement

The commission may direct an investor-owned transmission and distribution utility to enter into one or more contracts for energy or renewable energy credits from distributed generation resources in accordance with this section. The commission may not require a distributed generation resource to contract for the sale of energy or renewable energy credits under this section. [PL 2023, c. 411, §6 (NEW).]

**1. Definition.** As used in this section, the following term has the following meaning.

A. "Distributed generation resource" means an electric generating facility that uses a renewable fuel or technology under section 3210, subsection 2, paragraph B-3, is located in the service territory of a transmission and distribution utility in the State and:

- (1) Has met or is reasonably likely to meet the requirements of section 3209-A, subsection 7, paragraph E, as determined by the commission; or
- (2) Has a nameplate capacity of at least one megawatt and not more than 2 megawatts and:
  - (a) Is a member of a cluster study conducted by the transmission and distribution utility with which the distributed generation resource is seeking to interconnect; or
  - (b) Is likely to receive required transmission approval from the New England independent system operator on or before April 30, 2024. [PL 2023, c. 411, §6 (NEW).]

[PL 2023, c. 411, §6 (NEW).]

**2. Competitive solicitations and initial procurement.** The commission may conduct one or more competitive solicitations in order to select distributed generation resources for contracts under this subsection.

A. No later than January 31, 2024, the commission shall determine whether to conduct a competitive solicitation pursuant to this subsection. [PL 2023, c. 411, §6 (NEW).]

B. If the commission conducts a competitive solicitation under paragraph A and determines that an initial procurement of energy or renewable energy credits is in the public interest, the

commission shall select distributed generation resources for contracts under this section. [PL 2023, c. 411, §6 (NEW).]  
[PL 2023, c. 411, §6 (NEW).]

**3. Additional contracting authority.** After conducting one or more competitive solicitations under subsection 2, the commission may direct an investor-owned transmission and distribution utility to enter into one or more additional contracts for energy or renewable energy credits from distributed generation resources if the commission finds that such contracts are in the public interest.

A. A contract for energy or renewable energy credits from a distributed generation resource under this subsection may not establish a price for such energy or renewable energy credits that is greater than the highest price established in the procurements under subsection 2. [PL 2023, c. 411, §6 (NEW).]  
[PL 2023, c. 411, §6 (NEW).]

**4. Contract terms.** A contract entered into pursuant to this section must be for a term of no more than 20 years unless the commission finds a contract for a longer term to be in the public interest. [PL 2023, c. 411, §6 (NEW).]

**5. Net energy billing agreement termination.** A distributed generation resource that is awarded a contract under this section is ineligible for net energy billing under section 3209-A or section 3209-B and the commission shall require all net energy billing arrangements or agreements be terminated as a condition of awarding a contract under this section. [PL 2023, c. 411, §6 (NEW).]

**6. Report.** The commission shall include in its biennial report required by section 3210-G, subsection 3 information regarding the status of contracts for energy or renewable energy credits from distributed generation resources pursuant to this section, including, but not limited to, the number of distributed generation resources that have been awarded contracts, the total capacity of those resources and the estimated ratepayer savings as a result of those contracts. [PL 2023, c. 411, §6 (NEW).]

## SECTION HISTORY

PL 2023, c. 411, §6 (NEW).

### §3209-E. Net energy billing cost management

**1. Definitions.** As used in this section, the following terms have the following meanings.

A. "Distributed generation resource" has the same meaning as in section 3209-D, subsection 1, paragraph A. [PL 2023, c. 411, §7 (NEW).]

B. "Net energy billing cost" means a cost borne by ratepayers that is determined by the commission to be reasonably attributable to distributed generation projects participating in net energy billing arrangements under section 3209-A and section 3209-B. [PL 2023, c. 411, §7 (NEW).]

C. "Opt-in program" means a program to reduce net energy billing costs in which a distributed generation resource may elect to participate. [PL 2023, c. 411, §7 (NEW).]  
[PL 2023, c. 411, §7 (NEW).]

**2. Opt-in programs.** The commission may develop and implement one or more opt-in programs in accordance with this section.

A. The commission shall conduct one or more proceedings to examine and evaluate opt-in program designs, including, but not limited to, designs that include long-term financial mechanisms and buy-down arrangements. In conducting an examination and evaluation in accordance with this paragraph, the commission shall consult with the Finance Authority of Maine and give preference



to designs that enable the continued development and operation of distributed generation resources. [PL 2023, c. 411, §7 (NEW).]

B. After examining and evaluating opt-in programs under paragraph A, if the commission finds the implementation of an opt-in program to be in the public interest, the commission shall establish and implement the opt-in program by rule. [PL 2023, c. 411, §7 (NEW).]

C. The commission may not require a distributed generation resource to participate in an opt-in program established in accordance with this section. [PL 2023, c. 411, §7 (NEW).]  
[PL 2023, c. 411, §7 (NEW).]

**3. Rules.** The commission may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 411, §7 (NEW).]

#### SECTION HISTORY

PL 2023, c. 411, §7 (NEW).

#### §3210. Renewable resources

#### (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

**1. Policy.** In order to ensure an adequate and reliable supply of electricity for Maine residents and to encourage the use of renewable, efficient and indigenous resources, it is the policy of this State to encourage the generation of electricity from renewable and efficient sources and to diversify electricity production on which residents of this State rely in a manner consistent with this section. [PL 1999, c. 398, Pt. I, §1 (AMD).]

**1-A. State goals for consumption of electricity from renewable resources.** The State's goals for increasing consumption of electricity in the State that comes from renewable resources are as follows:

A. By January 1, 2030, 80% of retail sales electricity in the State will come from renewable resources; and [PL 2019, c. 477, §1 (NEW).]

B. By January 1, 2050, 100% of retail sales electricity in the State will come from renewable resources. [PL 2019, c. 477, §1 (NEW).]

[PL 2019, c. 477, §1 (NEW).]

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

A. "Efficient resource" means a source of electrical generation that:

(1) Qualifies as a qualifying cogeneration facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997, was constructed prior to January 1, 1997 and meets the following efficiency standard:

(a) During any calendar year, the sum of the useful power output and the useful thermal energy output of the facility is no less than 60% of the total energy input to the facility.

For purposes of this paragraph, the term "useful power output" means the electrical or mechanical energy made available for use, exclusive of any energy used in the power production process. For purposes of this paragraph, the term "useful thermal energy" means heat energy made available to an industrial or commercial process, net of any heat contained in condensate return and makeup water, used in a heating application or used in a space cooling application. [PL 2019, c. 477, §1 (AMD).]

A-1. "Alternative compliance payment rate" means a certain dollar amount per kilowatt-hour set by the commission that a competitive electricity provider may pay to the commission to satisfy the portfolio requirements of subsections 3-A, 3-B and 3-C. [PL 2019, c. 477, §1 (AMD).]

A-2. "Class I resource" means a new renewable capacity resource. [PL 2019, c. 477, §1 (NEW).]

A-3. "Class IA resource" means a Class I resource other than a Class I resource that 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. [PL 2019, c. 477, §1 (NEW).]

B. "Eligible resource" or "Class II resource" means a source of electrical generation that:

(1) Generates power that can physically be delivered to the control region in which the New England Power Pool, or its successor as approved by the Federal Energy Regulatory Commission, has authority over transmission, or to the Maritimes Control Area; and

(2) Is either a renewable resource or an efficient resource. [PL 2019, c. 477, §1 (AMD).]

B-1. [PL 2009, c. 542, §1 (RP).]

B-2. "Renewable energy credit" means a tradable instrument that represents an amount of electricity generated from eligible resources or renewable capacity resources. [PL 2009, c. 542, §2 (AMD).]

B-3. "Renewable capacity resource" means a source of electrical generation:

(1) Whose total power production capacity does not exceed 100 megawatts and relies on one or more of the following:

(a) Fuel cells;

(b) Tidal power;

(d) Geothermal installations;

(e) Hydroelectric generators that meet all state and federal fish passage requirements applicable to the generator;

(f) Biomass generators that are fueled by wood, wood waste or landfill gas; or

(g) Anaerobic digestion of by-products of waste from animals or agricultural crops, food or vegetative material, algae or organic refuse; or

(2) That relies on wind power installations or solar power installations. [PL 2019, c. 477, §1 (AMD).]

B-4. "New" as applied to a renewable capacity resource means qualified hydroelectric output or a renewable 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. For the purposes of this subparagraph, "capacity resource" has the same meaning as in section 3210-C, subsection 1, paragraph A; or

(4) Was refurbished after September 1, 2005 and received certification from the commission:

(a) Before September 1, 2019 that it is operating beyond its previous useful life or is employing an alternate technology that significantly increases the efficiency of the generation process; or

(b) On or after September 1, 2019 that it is operating beyond its previous useful life as evidenced by a finding that the facility would be reasonably likely to cease operation if not for substantial capital investment made after September 1, 2018, except for capital investment required to meet state and federal fish passage standards.

For the purposes of this subparagraph, "refurbished" means an investment has been made in equipment or facilities, other than for routine maintenance and repair, to renovate, reequip or restore the renewable capacity resource. [PL 2019, c. 477, §1 (AMD).]

B-5. "Qualified hydroelectric output" means the following annual percentages of the total electrical output of a hydroelectric generator licensed by the Federal Energy Regulatory Commission that is a renewable capacity resource and that on January 1, 2019 had a total nameplate capacity of at least 25 megawatts, as specified in the license issued by the Federal Energy Regulatory Commission, is located outside of the historic freshwater range of the Gulf of Maine distinct population segment of Atlantic salmon as defined by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service in 74 Federal Register, 29299 (2009) and 29343 (2009), and is interconnected to an electric distribution system located in the State:

- (1) In 2020, 40%, not to exceed an aggregate of 200,000 megawatt-hours for all qualified hydroelectric output;
- (2) In 2021, 50%, not to exceed an aggregate of 250,000 megawatt-hours for all qualified hydroelectric output;
- (3) In 2022, 60%, not to exceed an aggregate of 300,000 megawatt-hours for all qualified hydroelectric output;
- (4) In 2023, 70%;
- (5) In 2024, 80%;
- (6) In 2025, 90%; and
- (7) In 2026 and each year thereafter, 100%. [PL 2019, c. 477, §1 (NEW).]

C. "Renewable resource" means a source of electrical generation:

- (1) That qualifies as a small power production facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997; or
- (2) Whose total power production capacity does not exceed 100 megawatts and that relies on one or more of the following:
  - (a) Fuel cells;
  - (b) Tidal power;
  - (c) Solar arrays and installations;
  - (d) Wind power installations;
  - (e) Geothermal installations;
  - (f) Hydroelectric generators;
  - (g) Biomass generators that are fueled by wood or wood waste, landfill gas or anaerobic digestion of agricultural products, by-products or wastes; or

(h) Generators fueled by municipal solid waste in conjunction with recycling. [PL 2009, c. 542, §5 (AMD).]

D. "Thermal energy" means heat, steam, hot water or another form of thermal energy:

- (1) Produced directly by a facility using sunlight, biomass, biogas or liquid biofuel or produced as a byproduct of electricity generated by a Class I or Class IA resource;
- (2) That begins operation after June 30, 2019, as certified by the commission;
- (3) Delivered to an end user in the State in a manner that can be verified by metering or other means certified by the commission to allow for auditable validation of useful thermal energy generated;
- (4) Used for heating, cooling, humidity control, process use or other end use to meet a need of the end user that would otherwise be met using another energy source such as electricity or an on-site thermal energy system; and
- (5) Generated or delivered in accordance with any efficiency performance standards established by the commission. [PL 2019, c. 477, §1 (NEW).]

E. "Thermal renewable energy credit" means a tradable instrument that represents an amount of thermal energy equivalent to a unit of electricity. A thermal renewable energy credit of one megawatt represents 3,412,000 British thermal units of thermal energy, as verified by the commission. [PL 2019, c. 477, §1 (NEW).]

The commission shall establish by rule or order standards and procedures necessary to implement any definition under this subsection, including but not limited to certifications and performance and verification standards necessary for purposes of paragraphs B-4, D and E. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2019, c. 477, §1 (AMD).]

**3. Portfolio requirements; Class II resources.** As a condition of licensing pursuant to section 3203, each competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that no less than 30% of its portfolio of supply sources for retail electricity sales in this State is accounted for by Class II resources. If a competitive electricity provider represents to a customer that the provider is selling to the customer a portfolio of supply sources that includes more than 30% Class II resources, the resources necessary to supply more than 30% of that customer's load may not be applied to meet the aggregate 30% portfolio requirement. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

A. **(TEXT EFFECTIVE UNTIL 1/1/27) (TEXT REPEALED 1/1/27)** For the purposes of meeting the portfolio requirement under this subsection, a 300% multiplier is applied to the output of a generator fueled by municipal solid waste in conjunction with recycling that has obtained a solid waste facility license from the Department of Environmental Protection.

This paragraph is repealed January 1, 2027. [PL 2023, c. 361, §1 (AMD).]  
[PL 2023, c. 361, §1 (AMD).]

**3-A. Portfolio requirements; Class I resources.** Portfolio requirements for Class I resources are governed by this subsection.

A. Except as provided in paragraph B, beginning January 1, 2008, as a condition of licensing pursuant to section 3203, each competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that the percentage of its portfolio of supply sources for retail electricity sales in this State accounted for by Class I resources is as follows:

- (1) One percent for the period from January 1, 2008 to December 31, 2008;
- (2) Two percent for the period from January 1, 2009 to December 31, 2009;

- (3) Three percent for the period from January 1, 2010 to December 31, 2010;
- (4) Four percent for the period from January 1, 2011 to December 31, 2011;
- (5) Five percent for the period from January 1, 2012 to December 31, 2012;
- (6) Six percent for the period from January 1, 2013 to December 31, 2013;
- (7) Seven percent for the period from January 1, 2014 to December 31, 2014;
- (8) Eight percent for the period from January 1, 2015 to December 31, 2015;
- (9) Nine percent for the period from January 1, 2016 to December 31, 2016; and
- (10) Ten percent for the period from January 1, 2017 to December 31, 2022 and each year thereafter.

Class I resources used to satisfy the requirements of this paragraph may not be used to satisfy the requirements of subsection 3 or 3-B. [PL 2019, c. 477, §1 (AMD).]

B. Suspensions of scheduled increases in the portfolio requirements as provided in paragraph A are governed by this paragraph.

(1) If by March 31st of the years 2010, 2012, 2014 and 2016 the commission determines that investment in Class I resources in the preceding 2 calendar years has not been sufficient for competitive electricity providers to meet the portfolio requirements under paragraph A and that the resulting use of renewable energy credits pursuant to subsection 8 or the alternative compliance payment mechanism pursuant to subsection 9, or both of these methods, has burdened electricity customers in the State without providing the benefits of Class I resources, the commission may suspend all or some of the future scheduled increases in the portfolio requirements under paragraph A.

(2) If the commission finds that alternative compliance payments are made pursuant to subsection 9 in 3 consecutive calendar years, the commission shall temporarily suspend all or some of the future scheduled increases in the portfolio requirements under paragraph A.

(3) If the commission suspends any scheduled increases in the portfolio requirements under paragraph A pursuant to subparagraph (1) or (2), the commission may resume increases, limited to no more than one percentage point per year over the previous year, in the portfolio requirements after a minimum of one year. [PL 2019, c. 477, §1 (AMD).]

C. No later than March 31, 2008 and annually thereafter, the commission shall submit a report regarding the status of Class I resources in the State and compliance with the portfolio requirements under paragraph A to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. The report must include, but is not limited to, a description of Class I resources available to meet the portfolio requirements under paragraph A, documentation of the loss of any existing renewable generation capacity in the State, the status of implementation of the portfolio requirements under paragraph A, including any suspensions pursuant to paragraph B, and recommendations to stimulate investment in Class I resources. [PL 2019, c. 477, §1 (AMD).]

D. Retail electricity sales pursuant to a supply contract or standard-offer service arrangement executed by a competitive electricity provider that is in effect on the effective date of this subsection is exempt from the requirements of this subsection until the end date of the current term of the supply contract or standard-offer service arrangement. [PL 2007, c. 403, §4 (NEW).]

The commission shall adopt rules to implement this subsection. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2019, c. 477, §1 (AMD).]

**3-B. Portfolio requirements; Class IA resources.** Portfolio requirements for Class IA resources are governed by this subsection.

A. Except as provided in paragraph B, beginning January 1, 2020, as a condition of licensing pursuant to section 3203, each competitive electricity provider in this State must demonstrate in a manner satisfactory to the commission that the percentage of its portfolio of supply sources for retail electricity sales in this State, other than to customers who have made an election pursuant to subsection 10 that is in effect with respect to this subsection, accounted for by Class IA resources is as follows:

- (1) Two and one-half percent for the period from January 1, 2020 to December 31, 2020;
- (2) Five percent for the period from January 1, 2021 to December 31, 2021;
- (3) Eight percent for the period from January 1, 2022 to December 31, 2022;
- (4) Eleven percent for the period from January 1, 2023 to December 31, 2023;
- (5) Fifteen percent for the period from January 1, 2024 to December 31, 2024;
- (6) Nineteen percent for the period from January 1, 2025 to December 31, 2025;
- (7) Twenty-three percent for the period from January 1, 2026 to December 31, 2026;
- (8) Twenty-seven percent for the period from January 1, 2027 to December 31, 2027;
- (9) Thirty-one percent for the period from January 1, 2028 to December 31, 2028;
- (10) Thirty-five percent for the period from January 1, 2029 to December 31, 2029; and
- (11) Forty percent for the period from January 1, 2030 to December 31, 2030 and each year thereafter.

Class IA resources used to satisfy the requirements of this paragraph may not be used to satisfy the requirements of subsection 3 or 3-A. [PL 2019, c. 477, §1 (NEW).]

B. Suspensions of scheduled increases in the portfolio requirements as provided in paragraph A are governed by this paragraph.

- (1) If by March 31st of the year 2022 and every 2 years thereafter the commission determines that investment in Class IA resources in the preceding 2 calendar years has not been sufficient for competitive electricity providers to meet the portfolio requirements under paragraph A and that the resulting use of renewable energy credits pursuant to subsection 8 or the alternative compliance payment mechanism pursuant to subsection 9, or both of these methods, has burdened electricity customers in the State without providing the benefits of new Class IA resources, the commission may suspend all or some of the future scheduled increases in the portfolio requirements under paragraph A.
- (2) If the commission finds that more than 10% of the obligations required to satisfy the portfolio requirements for Class IA resources under paragraph A are met through alternative compliance payments made pursuant to subsection 9 in 3 consecutive calendar years, the commission shall temporarily suspend all or some of the future scheduled increases in the portfolio requirements under paragraph A.
- (3) If the commission suspends any scheduled increases in the portfolio requirements under paragraph A pursuant to subparagraph (1) or (2), the commission shall report its rationale for suspension to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters, the Governor's Energy Office and the Office of the Public Advocate and make recommendations for modifications to the schedule of increases. The commission may resume increases, limited to no more than one percentage point per year over the previous year,

in the portfolio requirements after a minimum of one year unless otherwise directed by the Legislature. [PL 2019, c. 477, §1 (NEW).]

C. No later than March 31, 2021 and annually thereafter, the commission shall submit a report regarding the status of Class IA resources in the State and compliance with the portfolio requirements under paragraph A to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. The report must include, but is not limited to, a description of Class IA resources available to meet the portfolio requirements under paragraph A, documentation of the loss of any existing renewable generation capacity in the State, the status of implementation of the portfolio requirements under paragraph A, including any suspensions pursuant to paragraph B, and recommendations to stimulate investment in Class IA resources. If the commission has reliable information about benefits and costs of the portfolio requirements under paragraph A, over both the short and long terms with respect to the State's economy, environmental quality or electricity consumers, the commission shall include that information in the report. The report required under this paragraph may be submitted in conjunction with the report required under subsection 3-A, paragraph C. [PL 2019, c. 477, §1 (NEW).]

D. Retail electricity sales pursuant to a supply contract or standard-offer service arrangement executed by a competitive electricity provider that is in effect on the effective date of this subsection are exempt from the requirements of this subsection until the end date of the existing term of the supply contract or standard-offer service arrangement. [PL 2019, c. 477, §1 (NEW).]

The commission shall adopt rules to implement this subsection. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[PL 2019, c. 477, §1 (NEW).]

**3-C. Portfolio requirements; thermal renewable energy credits.** Each competitive electricity provider must, in addition to meeting the other portfolio requirements of subsections 3, 3-A and 3-B, demonstrate in a manner satisfactory to the commission that it has purchased thermal renewable energy credits in an amount at least equal to the following percentages of its portfolio of supply sources for retail electricity sales in this State other than to customers who have made an election pursuant to subsection 10 that is in effect with respect to this subsection:

A. For calendar year 2021, 0.4%; [PL 2019, c. 477, §1 (NEW).]

B. For calendar year 2022, 0.8%; [PL 2019, c. 477, §1 (NEW).]

C. For calendar year 2023, 1.2%; [PL 2019, c. 477, §1 (NEW).]

D. For calendar year 2024, 1.6%; [PL 2019, c. 477, §1 (NEW).]

E. For calendar year 2025, 2%; [PL 2019, c. 477, §1 (NEW).]

F. For calendar year 2026, 2.4%; [PL 2019, c. 477, §1 (NEW).]

G. For calendar year 2027, 2.8%; [PL 2019, c. 477, §1 (NEW).]

H. For calendar year 2028, 3.2%; [PL 2019, c. 477, §1 (NEW).]

I. For calendar year 2029, 3.6%; and [PL 2019, c. 477, §1 (NEW).]

J. For calendar year 2030, and each year thereafter, 4%. [PL 2019, c. 477, §1 (NEW).]

Retail electricity sales pursuant to a supply contract or standard-offer service arrangement executed by a competitive electricity provider that is in effect on September 19, 2019 are exempt from the requirements of this subsection until the end date of the existing term of the supply contract or standard-offer service arrangement.

[PL 2019, c. 576, §1 (AMD).]

#### 4. Report.

[PL 2019, c. 477, §1 (RP).]

**5. Funding for research and development; community demonstration projects.**

[PL 2009, c. 565, §1 (RPR); MRSA T. 35-A §3210, sub-§5 (RP).]

**6. Fund.**

[PL 2009, c. 565, §2 (RP); PL 2009, c. 565, §9 (AFF).]

**6-A. Renewable Resource Fund report.**

[PL 2009, c. 565, §3 (RP); PL 2009, c. 565, §9 (AFF).]

**7. Information.** To the extent that funding is available, the commission shall inform electricity consumers in this State of the benefits of electricity generated in this State using renewable resources and of the opportunities available in this State to purchase electricity that is generated using those resources, including, but not limited to, the green power offer and other green power supply products and renewable energy credit products certified under section 3212-A. The commission may not promote any renewable resources over others. The commission may apply for, receive and expend grant money from the United States Department of Energy and other government agencies for this purpose. The commission may create or cause to be created a brand or logo to identify Maine renewable resources, including the green power offer and other green power supply products and renewable energy credit products certified under section 3212-A, to consumers. The commission shall register any mark or logo created pursuant to this subsection with the United States Patent and Trademark Office or in accordance with Title 10, chapter 301-A, or both. Any brand or logo created pursuant to this subsection may only be used in accordance with the purposes of this subsection as approved by the commission.

[PL 2011, c. 283, §1 (AMD).]

**8. Credit trading.** The commission shall allow competitive electricity providers to satisfy the portfolio requirements of subsections 3, 3-A, 3-B and 3-C through the use of renewable energy credits if the commission determines that a reliable system of electrical attribute trading exists. When renewable energy credits are used to satisfy the portfolio requirements of subsections 3 and 3-A, the value of a renewable energy credit for electricity generated by a community-based renewable energy project, as defined in section 3602, that is participating in the community-based renewable energy pilot program established in section 3603 and elects the renewable energy credit multiplier under section 3605 is 150% of the amount of the electricity.

[PL 2019, c. 477, §1 (AMD).]

**9. Alternative compliance payment.** The commission shall allow competitive electricity providers to satisfy the portfolio requirements for Class I resources under subsection 3-A, Class IA resources under subsection 3-B, thermal renewable energy credits under subsection 3-C and Class II resources under subsection 3 through an alternative compliance payment mechanism in accordance with this subsection.

A. The commission shall set the alternative compliance payment rates by rule and shall publish the alternative compliance payment rates by January 31st of each year. In setting the rates, the commission shall take into account prevailing market prices, standard-offer service prices for electricity, reliance on alternative compliance payments to meet the requirements of subsections 3, 3-A, 3-B and 3-C and investment in Class I, Class IA and Class II resources and thermal renewable energy credits in the State during the previous calendar year.

(1) The alternative compliance payment rate for the requirements under subsections 3-A, 3-B and 3-C may not be greater than \$50.

(2) The alternative compliance payment rate for the requirement under subsection 3 may not be greater than \$10. [PL 2023, c. 361, §2 (AMD).]



B. The commission shall collect alternative compliance payments to meet the requirements of subsections 3, 3-A and 3-B made by competitive electricity providers and shall use all funds collected under this paragraph to provide financial assistance for low-income households in accordance with section 3214, subsection 2. [PL 2023, c. 306, §1 (AMD); PL 2023, c. 361, §2 (AMD).]

C. The commission shall collect alternative compliance payments to meet the requirements of subsection 3-C made by competitive electricity providers and shall deposit all funds collected under this paragraph in the Thermal Energy Investment Fund established under section 10128, subsection 2 to be used to fund incentives and low-interest or no-interest loans to businesses, municipalities, educational institutions and nonprofit entities in the State for the installation of new thermal energy-derived projects. [PL 2021, c. 199, §1 (NEW).]

The commission shall adopt rules to implement this subsection. Rules adopted to establish the alternative compliance payment rates governed by paragraph A, subparagraphs (1) and (2) routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 306, §1 (AMD); PL 2023, c. 361, §2 (AMD).]

**10. Transmission or subtransmission customer options.** A customer receiving service at a transmission or subtransmission voltage level, referred to in this subsection as "a large customer," may make an election under this subsection relating to Class IA resources portfolio requirements under subsection 3-B, the thermal renewable energy credit requirements under subsection 3-C and the costs and benefits resulting from Class IA resource contracts under section 3210-G. The election must be made no later than December 31, 2019. If a large customer makes an election under this paragraph, the following provisions apply.

A. With respect to Class IA resources portfolio requirements under subsection 3-B and the thermal renewable energy credit requirements under subsection 3-C:

(1) The election applies through December 31, 2027, unless rescinded earlier in accordance with this subsection. The customer may rescind an election in accordance with paragraph C. If the customer does not rescind an election in accordance with paragraph C, the customer may rescind its election solely with respect to Class IA resources portfolio requirements under subsection 3-B and the thermal renewable energy credit requirements under subsection 3-C by providing notice to the commission. The election with respect to Class IA resources portfolio requirements under subsection 3-B and the thermal renewable energy credit requirements under subsection 3-C is rescinded 6 months after the date of notice provided under this subparagraph. After December 31, 2027, the election with respect to Class IA resources portfolio requirements under subsection 3-B and the thermal renewable energy credit requirements under subsection 3-C is automatically terminated; and

(2) As long as the election remains in effect:

(a) All retail sales of electricity to that customer are exempt from the requirements of subsections 3-B and 3-C; and

(b) No electricity generation or renewable energy credits produced by the customer may be used or applied to satisfy the requirements of subsection 3-B or 3-C. [PL 2019, c. 477, §1 (NEW).]

B. With respect to the costs and benefits resulting from Class IA resource contracts under section 3210-G:

(1) The election may not be rescinded except as provided in paragraph C. Except as provided in paragraph C, if a large customer makes an election under this subsection, the commission shall ensure that the customer:

- (a) Does not pay any costs or receive any savings that the commission determines to result from contracts approved under section 3210-G; and
- (b) Is not allowed to bid on any solicitation or obtain a contract under any procurement under section 3210-G. [PL 2019, c. 477, §1 (NEW).]

C. A large customer may rescind an election in accordance with this paragraph. In order to rescind an election under this paragraph, the customer must provide notice to the commission no later than 30 days after the commission initiates the 2nd solicitation under section 3210-G. An election is rescinded 6 months after the date of notice provided under this paragraph. If an election is rescinded under this paragraph, it is rescinded with respect to Class IA resources portfolio requirements under subsection 3-B, the thermal renewable energy credit requirements under subsection 3-C and the costs and benefits resulting from Class IA resource contracts under section 3210-G, except that with respect to contracts under section 3210-G that are approved pursuant to the first solicitation before December 31, 2020, the commission shall continue to ensure that the customer does not pay any costs or receive any savings that the commission determines to result from those contracts, for the duration of those contracts. [PL 2019, c. 477, §1 (NEW).]

The commission shall review and report on the use of the election allowed under this subsection as part of its annual report on Class IA resource portfolio requirements under subsection 3-B, paragraph C. No later than January 1, 2027, the joint standing committee of the Legislature having jurisdiction over energy and utilities matters shall review the elections that have been made under this subsection and examine whether the December 31, 2027 date established in paragraph A, subparagraph (1) should be extended. The committee may report out a bill relating to the subject matter of this subsection to the First Regular Session of the 133rd Legislature.

[PL 2019, c. 477, §1 (NEW).]

**11. Report; renewable energy credit portfolio requirements.** By March 31, 2024 and every 3 years thereafter, the Governor's Energy Office shall submit a report to the joint standing committee of the Legislature having jurisdiction over energy matters based on a review, conducted in consultation with the commission, of the status and impacts of the implementation of the portfolio requirements under subsections 3, 3-A, 3-B and 3-C. The review must be completed through a public process and must include consideration of impacts of these renewable portfolio requirements on energy prices and assessment of benefits, including, but not limited to, on greenhouse gas emissions and the economy of the State. After reviewing the report required under this subsection, the committee may report out legislation regarding renewable portfolio requirements.

[PL 2023, c. 321, §1 (AMD).]

**12. Standard-offer service provider.** In accordance with section 3210-J, subsection 4, a standard-offer service provider may satisfy the requirements of this section using renewable energy credits procured pursuant to section 3210-J and assigned by the commission to that standard-offer service provider for the purposes of satisfying the requirements of this section.

[PL 2023, c. 321, §2 (NEW).]

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 372, §§1,2 (AMD). PL 1999, c. 398, §§11-3 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 665, §1 (AMD). PL 2005, c. 646, §2 (AMD). RR 2007, c. 2, §20 (COR). PL 2007, c. 18, §§1-3 (AMD). PL 2007, c. 403, §§1-7 (AMD). PL 2007, c. 644, §§1-3 (AMD). PL 2009, c. 329, Pt. A, §2 (AMD). PL 2009, c. 329, Pt. B, §1 (AMD). PL 2009, c. 372, Pt. K, §§1-3 (AMD). PL 2009, c. 372, Pt. K, §5 (AFF). PL 2009, c. 415, Pt. E, §2 (AFF). PL 2009, c. 542, §§1-5 (AMD). PL 2009, c. 565, §§1-4 (AMD). PL 2009, c. 565, §9 (AFF). PL 2011, c. 283, §1 (AMD). PL 2011, c. 314, §1 (AMD). PL 2011, c. 413, §1 (AMD). PL 2011, c. 637, §1 (AMD). PL 2015, c. 220, §1 (AMD). PL 2017, c. 291, §1 (AMD). PL 2019, c. 477, §1 (AMD). PL 2019, c. 576, §1 (AMD). PL 2021,

c. 199, §1 (AMD). PL 2023, c. 306, §1 (AMD). PL 2023, c. 321, §§1, 2 (AMD). PL 2023, c. 361, §§1, 2 (AMD).

### **§3210-A. Small generator aggregation**

**1. Standard-offer service provider purchase requirement.** In accordance with rules adopted pursuant to this section, the commission, at the request of the owner or operator of a generator with a capacity of 5 megawatts or less, shall:

A. If the generator is located in an area of this State within the New England independent system operator control area, require a standard-offer service provider that serves an area of this State within the New England independent system operator control area to purchase the output of that generator at applicable market clearing prices or at such other prices determined by the commission to be financially neutral to the standard-offer service provider; and [PL 2003, c. 555, §1 (NEW).]

B. If the generator is located in an area of this State in which the retail market is administered by the independent system administrator for northern Maine and the commission finds that the market design will accommodate purchases in a manner that is financially neutral to the standard-offer service provider, require a standard-offer service provider that serves that area of the State, or a portion of that area, to purchase the output of that generator at prices determined by the commission to be financially neutral to the standard-offer service provider. [PL 2003, c. 555, §1 (NEW).]

The requirements of this subsection apply only if they can be accomplished in a manner that is financially neutral to standard-offer service providers.

[PL 2003, c. 555, §1 (NEW).]

**2. Transmission and distribution utility administration.** Transmission and distribution utilities shall administer the purchase and sale of electricity to a standard-offer service provider required under subsection 1. Administrative costs incurred by a transmission and distribution utility under this subsection must be paid, in a manner established by the commission, by the generators of the electricity the purchase and sale of which the utility administers.

[PL 2009, c. 197, §3 (AMD).]

**2-A. Purchase by competitive electricity providers.** In addition to its obligations under subsection 2, a transmission and distribution utility may administer on behalf of any eligible small generator the purchase and sale of electricity to a competitive electricity provider. In carrying out this function, a transmission and distribution utility may in its discretion aggregate the output of multiple eligible small generators for the purpose of obtaining the most favorable purchase price on behalf of the generators. The parties to any resulting sale must be the eligible small generators and the competitive electricity provider.

If a transmission and distribution utility aggregates the output of eligible small generators under this subsection and is unable to sell the aggregated output to a competitive electricity provider, the transmission and distribution utility shall administer the purchase and sale of the aggregated output to a standard-offer service provider in accordance with the provisions of subsections 1 and 2.

[PL 2009, c. 197, §4 (NEW).]

**3. Rules.** The commission shall adopt rules to implement the provisions of subsections 1 and 2, including, but not limited to, rules identifying how the commission assigns purchasing obligations to particular standard-offer service providers and the timing and manner of such obligations. The commission may adopt rules and may amend any rules necessary to implement the requirements of subsection 2-A, including rules to allow a transmission and distribution utility to collect an administrative fee from participating eligible small generators to cover reasonable costs incurred by the transmission and distribution utility under subsection 2-A. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2009, c. 197, §5 (AMD).]

## SECTION HISTORY

PL 2003, c. 555, §1 (NEW). PL 2009, c. 197, §§3-5 (AMD).

**§3210-B. Electric utility and conservation benefits**

**(REPEALED)**

## SECTION HISTORY

PL 2003, c. 610, §2 (NEW). MRSA T. 35-A §3210-B, sub-§5 (RP).

**§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 interruptible, demand response or energy efficiency capacity resource. [PL 2007, c. 293, §1 (AMD).]

A-1. "Contract for differences" means a contractual arrangement between a buyer and a seller in which cash payments are made based on the actual or relative difference between a target price for energy or a capacity resource and the market value of the energy or capacity resource. Under a contract for differences, the seller pays to the buyer the positive difference between the market value and the target price and the buyer pays to the seller the negative difference between the market value and the target price. "Contract for differences" does not include a contract for the physical delivery of energy or capacity resources. [PL 2007, c. 656, Pt. B, §1 (NEW).]

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. [PL 2005, c. 677, Pt. C, §1 (NEW).]

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. [PL 2005, c. 677, Pt. C, §1 (NEW).]

D. "Nonrenewable capacity resource" means an electric generation resource other than a renewable capacity resource. [PL 2005, c. 677, Pt. C, §1 (NEW).]

E. "Renewable capacity resource" has the same meaning as in section 3210, subsection 2, paragraph B-3. [PL 2009, c. 542, §6 (AMD).]

F. "Renewable energy credit" means a tradable instrument that represents an amount of electricity generated from eligible resources as defined in section 3210, subsection 2, paragraph B or renewable capacity resources. [PL 2009, c. 518, §1 (NEW).]

F-1. "Term sheet" means a preliminary document that outlines the terms of a proposal accepted under a request for proposals that is not binding on the parties but assists the parties in drafting a final agreement based upon the accepted proposal. [PL 2017, c. 134, §1 (NEW).]

G. "Triennial plan" has the same meaning as in section 10102, subsection 9. [PL 2009, c. 518, §2 (NEW).]  
[PL 2017, c. 134, §1 (AMD).]

**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; [PL 2005, c. 677, Pt. C, §1 (NEW).]

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 [PL 2005, c. 677, Pt. C, §1 (NEW).]

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. [PL 2005, c. 677, Pt. C, §1 (NEW).]

[PL 2005, c. 677, Pt. C, §1 (NEW).]

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

A. Capacity resources; [PL 2009, c. 518, §3 (AMD).]

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 or lowering the cost of standard-offer service or otherwise lowering the cost of electricity for the ratepayers in the State. Available energy contracted pursuant to this subparagraph may be sold into the wholesale electricity market in conjunction with solicitations for standard-offer supply bids; [PL 2017, c. 134, §2 (AMD).]

C. Any available renewable energy credits associated with capacity resources contracted under paragraph A. The price paid by the investor-owned transmission and distribution utility for the renewable energy credits must be lower than the price received for those renewable energy credits at the time they are sold by the investor-owned transmission and distribution utility; and [PL 2017, c. 134, §2 (AMD).]

D. Transmission capacity, capacity resources, energy or renewable energy credits pursuant to a regional procurement process in conjunction with other states. [PL 2017, c. 134, §2 (NEW).]

The commission may permit, but may not require, investor-owned transmission and distribution utilities to enter into contracts for differences that are designed and intended to buffer ratepayers in the State from potential negative impacts from transmission development. To the greatest extent possible, the commission shall develop procedures for long-term contracts for investor-owned transmission and distribution utilities under this subsection having the same legal and financial effect as the procedures used for standard-offer service pursuant to section 3212 for investor-owned transmission and distribution utilities.

The commission may enter into contracts for interruptible, demand response or energy efficiency capacity resources. These contracts are not subject to the rules of the Chief Procurement Officer. In a competitive solicitation conducted pursuant to subsection 6, the commission shall allow transmission and distribution utilities to submit bids for interruptible or demand response 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, to meet the energy efficiency program budget allocations articulated in the triennial plan as approved by the commission pursuant to section 10104, subsection 4

or any annual update plan approved by the commission pursuant to section 10104, subsection 6 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.

The commission shall ensure that any long-term contract authorized under this subsection is consistent with Title 38, section 576-A and the regional greenhouse gas initiative as described in the state climate action plan required in Title 38, section 577.

By January 1st of each year, the commission shall submit a report to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters on the procurement of transmission capacity, capacity resources, energy and renewable energy credits in the preceding 12 months under this subsection and deep-water offshore wind energy pilot projects under Public Law 2009, chapter 615, Part A, section 6, as amended by Public Law 2013, chapter 369, Part H, sections 1 and 2 and chapter 378, sections 4 to 6. The report must contain information, including, but not limited to, the number of requests for proposals by the commission for long-term contracts, the number of responses to requests for proposals pursuant to which a contract has been finalized, the number of executed term sheets or contracts resulting from the requests for proposals, the commission's initial estimates of ratepayer costs or savings associated with any approved term sheet, actual ratepayer costs or savings for the previous year associated with any procurement, the total ratepayer costs or savings at the time of the report and the megawatt-hours, renewable energy credits or capacity produced or procured through contracts. The report must include actual ratepayer costs or savings for the previous year associated with any contract executed under the Community-based Renewable Energy Act. The report must also include a plan for the succeeding 12 months pertaining to the procurement of capacity resources, energy and renewable energy credits, including dates for requests for proposals, and types of resources to be procured.

[PL 2023, c. 516, Pt. B, §49 (AMD).]

**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 or terms. [PL 2007, c. 293, §3 (AMD).]

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. [PL 2005, c. 677, Pt. C, §1 (NEW).]

[PL 2007, c. 293, §3 (AMD).]

**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.

[PL 2005, c. 677, Pt. C, §1 (NEW).]

**6. Competitive solicitation process and contract negotiation.** Except as provided in paragraph A, 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.

A. The commission shall, for purposes of selecting energy efficiency capacity resources and available energy associated with such resources for contracting pursuant to subsection 3, conduct a competitive solicitation in accordance with this subsection or contract with the Efficiency Maine Trust established in section 10103 to deliver those resources through a competitive solicitation process administered by the trust. [PL 2009, c. 518, §4 (NEW).]

[PL 2009, c. 518, §4 (AMD).]

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

[PL 2009, c. 518, §5 (AMD).]

**8. Cost recovery.** The commission shall ensure that all costs and direct financial benefits associated with contracts entered into under this section are allocated to ratepayers in accordance with section 3210-F. 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 or any gains or losses derived from contracts for differences must be reflected in the amounts charged to ratepayers and may not be considered imprudent.

[PL 2013, c. 454, §1 (AMD).]

**9. Contract payments.** Except as provided in paragraphs A and B, contracts for capacity resources, related energy or renewable energy credits entered into pursuant to this section must provide that payments will be made only after contracted amounts of capacity resources, related energy or renewable energy credits have been provided.

A. Contracts with the Efficiency Maine Trust established in section 10103 for energy efficiency capacity resources and related energy entered into pursuant to this section may provide that up to 20% of the total payment be made at the start of the contract. Such contracts must provide that the remaining payments will be made only after the supplier has demonstrated, according to measurement and verification protocols specified in rules adopted by the Efficiency Maine Trust Board pursuant to section 10105, subsection 5, that physical installations have been completed and contracted amounts of capacity resources and related energy have been substantiated. [PL 2009, c. 518, §6 (NEW).]

B. Contracts with any entity other than the Efficiency Maine Trust established in section 10103 for energy efficiency capacity resources and related energy must provide that payments will be made only after the supplier has demonstrated, according to measurement and verification protocols specified in rules adopted by the Efficiency Maine Trust Board pursuant to section 10105, subsection 5, that physical installations have been completed and contracted amounts of capacity resources and related energy have been substantiated. [PL 2009, c. 518, §6 (NEW).]

[PL 2009, c. 518, §6 (AMD).]

**10. Rules.** The commission shall adopt rules to implement this section. In adopting rules, the commission shall consider the financial implications of this section for 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.

[PL 2011, c. 273, §2 (AMD); PL 2011, c. 273, §3 (AFF).]

**11. Customer benefits.** The commission may direct investor-owned transmission and distribution utilities to enter into contracts under this section only as agents for their customers and only when such contracts are in the best interest of customers and in accordance with this subsection. The commission shall adopt rules to ensure that:

A. To the extent the benefits to ratepayers of a long-term contract are projected to occur in the later years of the contract term, the commission shall ensure that adequate financial security is in place so that it is reasonably likely ratepayers will obtain the projected benefits of the long-term contract; and [PL 2011, c. 413, §3 (NEW).]

B. To the extent practicable, ratepayers obtain the benefit of lower cost capacity resources of energy associated with those resources or of any renewable energy credits that may exist after the term of primary financing or subsequent replacement financing necessary for the development and construction of a generation project is completed. [PL 2011, c. 413, §3 (NEW).]

[PL 2011, c. 413, §3 (NEW).]

**12. Triennial plan energy efficiency contracts.**

[PL 2013, c. 369, Pt. A, §2 (RP).]

#### SECTION HISTORY

PL 2005, c. 677, §C1 (NEW). PL 2007, c. 293, §§1-4 (AMD). PL 2007, c. 575, §§2-5 (AMD). PL 2007, c. 656, Pt. B, §§1-5 (AMD). PL 2009, c. 415, Pt. A, §§21-23 (AMD). PL 2009, c. 518, §§1-6 (AMD). PL 2009, c. 542, §6 (AMD). PL 2011, c. 273, §§1, 2 (AMD). PL 2011, c. 273, §3 (AFF). PL 2011, c. 413, §§2, 3 (AMD). PL 2013, c. 369, Pt. A, §2 (AMD). PL 2013, c. 424, Pt. A, §20 (AMD). PL 2013, c. 454, §1 (AMD). PL 2017, c. 134, §§1, 2 (AMD). PL 2019, c. 476, §2 (AMD). PL 2023, c. 77, §7 (AMD). PL 2023, c. 516, Pt. B, §49 (AMD).

#### §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. [PL 2005, c. 677, Pt. C, §1 (NEW).]

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. [PL 2005, c. 677, Pt. C, §1 (NEW).]

Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 677, Pt. C, §1 (NEW).]

#### SECTION HISTORY

PL 2005, c. 677, §C1 (NEW).

#### §3210-E. Electric utility and conservation benefits

**(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

**(WHOLE SECTION TEXT EFFECTIVE UNTIL 12/31/34)**

**(WHOLE SECTION TEXT REPEALED 12/31/34)**

**1. Discount rates.** Transmission and distribution utilities may offer discounted rates to qualified Pine Tree Development Zone businesses established under Title 30-A and qualified businesses with



respect to the Dirigo business incentives program established under Title 36, section 5219-AAA. If a transmission and distribution utility requires approval prior to offering any such rate, the transmission and distribution utility shall apply to the commission in accordance with applicable provisions of this Title, and the commission may approve the rate if it finds it to be in accord with applicable requirements of this Title, except that the commission may take into account the overall benefits to ratepayers resulting from state efforts to promote economic development.

[PL 2023, c. 412, Pt. J, §4 (AMD).]

**2. Line extensions.** When approving or authorizing line extension terms and conditions for qualified Pine Tree Development Zone businesses established under Title 30-A, the commission may take into account the overall benefits to ratepayers resulting from state efforts to promote economic development within Pine Tree Development Zones established pursuant to Title 30-A.

[PL 2009, c. 627, §5 (NEW); PL 2009, c. 627, §12 (AFF).]

**3. Conservation programs.**

[PL 2009, c. 627, §5 (NEW); PL 2009, c. 627, §12 (AFF); MRSA T. 35-A §3210-E, sub-§3 (RP).]

**4. Conservation programs.** Beginning July 1, 2010, in designing and implementing conservation programs pursuant to section 10110, the Efficiency Maine Trust may make available to qualified Pine Tree Development Zone businesses established under Title 30-A special programs of enhanced value to aid state efforts to promote economic development within Pine Tree Development Zones. A program made available pursuant to this subsection must be cost-effective as defined by the Efficiency Maine Trust by rule or order pursuant to section 10110.

[PL 2009, c. 627, §5 (NEW); PL 2009, c. 627, §12 (AFF).]

**5. Electricity sales.** Notwithstanding section 3210, the sale of electricity by a competitive electricity provider is exempt from the requirements of that section if the electricity is sold to:

A. A qualified Pine Tree Development Zone business established under Title 30-A; or [PL 2023, c. 412, Pt. J, §5 (NEW).]

B. A for-profit manufacturing or targeted technology business in this State engaged in or that will engage in a qualified business activity that will result in the addition of at least one qualified employee above its base level of employment in this State if:

(1) The business demonstrates that the establishment or expansion of operations within the State would not occur absent the availability of the benefits provided under this subsection and provides to the Department of Economic and Community Development, at a minimum, a signed and notarized statement to this effect. The department shall determine whether the business has met the requirements of this subparagraph; and

(2) The business has received a letter of certification from the Commissioner of Economic and Community Development that the business meets the qualifications of this subsection and that describes the qualified business activity of the business. The Commissioner of Economic and Community Development shall issue a certificate to a business after the commissioner has verified that the business met the requirements of this paragraph and has added at least one qualified employee above its base level of employment. A letter of certification is valid for 10 years. [PL 2023, c. 412, Pt. J, §5 (NEW).]

For the purposes of this subsection, "base level of employment" has the same meaning as in Title 30-A, section 5250-I, subsection 4; "qualified business activity" means a business activity conducted within a tier 1 Pine Tree Development Zone as described in Title 30-A, section 5250-J, subsection 3-A that is directly related to manufacturing or a targeted technology business for which the business receives a letter of certification from the Commissioner of Economic and Community Development pursuant to paragraph B, subparagraph (2); "qualified employee" means a qualified Pine Tree Development Zone

employee as defined in Title 30-A, section 5250-I, subsection 18; and "targeted technology business" means a business primarily involved in one or more targeted technologies as defined in Title 5, section 15301, subsection 2.

A business eligible for the exemption under this subsection may request that the commission waive the exemption for the sale of electricity to that business.

The commission may adopt routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A, to implement this subsection.

[PL 2023, c. 412, Pt. J, §5 (AMD).]

**6. Repeal.** This section is repealed December 31, 2034.

[PL 2023, c. 412, Pt. J, §6 (AMD).]

#### SECTION HISTORY

PL 2009, c. 627, §5 (NEW). PL 2009, c. 627, §12 (AFF). PL 2011, c. 413, §4 (AMD). PL 2017, c. 440, §6 (AMD). PL 2021, c. 398, Pt. IIII, §2 (AMD). PL 2023, c. 412, Pt. J, §§4-6 (AMD).

#### §3210-F. Allocation of costs and benefits of long-term energy contracts

The commission shall ensure that all eligible costs and benefits associated with a long-term energy contract are allocated to ratepayers in accordance with this section. [PL 2013, c. 454, §2 (NEW).]

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

A. "Eligible costs and benefits" means the net amount of all costs and direct financial benefits associated with long-term energy contracts entered into by investor-owned transmission and distribution utilities, including but not limited to any effects on a utility's cost of capital as a result of these contracts. [PL 2013, c. 454, §2 (NEW).]

B. "Long-term energy contract" means a contract with an investor-owned transmission and distribution utility entered into under section 3210-C or section 3604. [PL 2013, c. 454, §2 (NEW).]

[PL 2013, c. 454, §2 (NEW).]

**2. Eligible costs and benefits.** The commission shall determine the eligible costs and benefits of a long-term energy contract annually.

[PL 2013, c. 454, §2 (NEW).]

**3. Allocation of eligible costs and benefits.** The commission shall annually allocate to each investor-owned transmission and distribution utility its pro rata share of eligible costs and benefits as determined under subsection 2. The allocation must be based on each utility's total retail kilowatt-hour energy sales to ratepayers that receive the benefits and pay the costs of long-term energy contracts. The commission may determine the means to be used for the allocation required under this section, which may include the direct transfer of funds between investor-owned transmission and distribution utilities. [PL 2013, c. 454, §2 (NEW).]

**4. Rules.** The commission may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[PL 2013, c. 454, §2 (NEW).]

#### SECTION HISTORY

PL 2013, c. 454, §2 (NEW).

#### §3210-G. Renewable portfolio standard procurement

The commission shall direct investor-owned transmission and distribution utilities to enter into one or more contracts for energy or renewable energy credits from Class IA resources in accordance with

this section. Customers who have made an election pursuant to section 3210, subsection 10 are subject to prohibitions on bidding on or obtaining a contract under this section as provided in section 3210, subsection 10. For purposes of this section, "Class IA resource" and "renewable energy credit" have the same meanings as in section 3210, subsection 2. [PL 2019, c. 477, §2 (NEW).]

**1. Competitive procurement.** The commission shall conduct 2 competitive solicitations in order to select Class IA resources for contracts under this section.

A. Through competitive solicitations under this section, the commission shall procure an amount of energy or renewable energy credits from Class IA resources that is equal to 14% of retail electricity sales in this State for the period from January 1, 2018 to December 31, 2018, as determined by the commission.

(1) The commission shall initiate a first competitive solicitation and ensure that solicitation results in the approval of contracts by December 31, 2020 for energy or renewable energy credits equal to at least 7% of retail electricity sales for the period from January 1, 2018 to December 31, 2018, as determined by the commission. If the commission determines that contracts for an amount greater than 7% of retail electricity sales will provide financial benefits to ratepayers, it may approve contracts by December 31, 2020 for up to 10% of retail electricity sales.

(2) No later than January 15, 2021, the commission shall initiate a 2nd competitive solicitation for an amount of energy or renewable energy credits equal to the difference between 14% of retail electricity sales and the amount approved in contracts by December 31, 2020. [PL 2019, c. 477, §2 (NEW).]

B. To the extent sufficient resources are available, 75% of the energy or renewable energy credits contracted under this section must come from Class IA resources that begin commercial operations after June 30, 2019 and 25% must come from Class IA resources that began commercial operations on or prior to June 30, 2019. [PL 2019, c. 477, §2 (NEW).]

C. In conducting a solicitation and selecting Class IA resources for contracts under this section, the commission shall weigh the benefits to ratepayers and the benefits to the State's economy as follows:

(1) A weight of 70% must be given to the benefits to ratepayers; and

(2) A weight of 30% must be given to benefits to the economy, which may include, but are not limited to:

(a) Capital investments by the Class IA resource to improve long-term viability of an existing facility;

(b) Payments by the Class IA resource for the harvest of wood fuel;

(c) Employment resulting from the Class IA resource;

(d) Payments by the Class IA resource to a host community, whether or not required by law or rule;

(e) Excise, income, property and sales taxes paid by the Class IA resource;

(f) Purchases of goods and services by the Class IA resource;

(g) Avoided emissions resulting from the operation of the Class IA resource; and

(h) With respect to requests for bids or proposals for assisted projects, as defined in Title 26, section 1304, subsection 1-A:

(i) Whether the Class IA resource has entered into a project labor agreement with a labor organization to supply construction workers in all crafts needed for the assisted

project where the assisted project is located. For purposes of this subdivision, a project labor agreement must conform to the requirements of section 3210-H, subsection 2; and

(ii) Whether an entity is employee-owned, including but not limited to an entity that offers employee stock ownership plans or is structured as a worker cooperative. [PL 2021, c. 705, §14 (AMD).]

D. The commission shall, in accordance with this paragraph, allow energy storage systems to participate in solicitations or be awarded contracts under this section.

(1) The commission shall permit an energy storage system to bid on solicitations or to be contracted under this section only if the energy storage system is connected to the State's electricity grid, paired as a complementary resource with a Class IA resource and either:

(a) Colocated with the Class IA resource, whether metered jointly with or separately from the Class IA resource; or

(b) Located at a different location from the Class IA resource and the commission finds that inclusion of the energy storage system would result in a reduction in greenhouse gas emissions.

(2) A bid under this section that includes an energy storage system must include 2 separate bid proposals, one with the energy storage system and one without. The commission shall assess the bid proposals based on the benefits to ratepayers, which may include, but are not limited to:

(a) Reduction in costs;

(b) Decrease in peak electricity demand;

(c) Deferral of investments in the transmission and distribution system;

(d) Deferral of capital investments in new generating capacity;

(e) Increase in the electricity grid's overall flexibility, reliability and resiliency; and

(f) Reduction in greenhouse gas emissions.

(3) An energy storage system that is not colocated with a Class IA resource may receive renewable energy credits only for stored energy generated from a Class IA resource.

(4) If chosen for a contract under this section, an energy storage system must remain stationary and under the same ownership throughout the contract term.

(5) The commission may permit an energy storage system to be paired with and added to a Class IA resource after that resource has been awarded a contract.

For the purposes of this paragraph, "energy storage system" means a commercially available technology that uses mechanical, chemical or thermal processes for absorbing energy and storing it for a period of time for use at a later time. [PL 2019, c. 477, §2 (NEW).]

[PL 2021, c. 705, §14 (AMD).]

**2. Contract terms.** A contract entered into pursuant to this section must be for a term of 20 years, unless the commission finds a contract for a longer term to be prudent. If a Class IA resource offers to sell capacity, the commission may allow a contract with that resource to include the purchase of such capacity, but the commission may not require any Class IA resource to offer or sell capacity in order to participate in any solicitation or contract under this section.

[PL 2019, c. 477, §2 (NEW).]

**3. Report.** No later than March 31, 2023 and biennially thereafter, the commission shall submit a report regarding the status of contracts for Class IA resources under this section and the status of

contracts for energy or renewable energy credits from distributed generation resources under section 3209-D to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. The report must include, but is not limited to, a description of Class IA resources participating in competitive solicitations, information about the resources selected for contracts and the selection process, the benefits and costs of the contracts and recommendations about how to further stimulate investment in Class IA resources or achieve ratepayer benefits from Class IA resources. The report may include information about benefits and costs of the contracts to the State's economy, environmental quality or electricity consumers over both the short and long terms. Any analysis of the benefits or costs of the contracts must be based on a forecast of all avoided costs resulting from the contracts that is transparent and balanced over the long term.

[PL 2023, c. 411, §8 (AMD).]

#### SECTION HISTORY

PL 2019, c. 477, §2 (NEW). PL 2021, c. 705, §14 (AMD). PL 2023, c. 411, §8 (AMD).

#### §3210-H. Floating offshore wind research array; project labor agreements

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

A. "Floating offshore wind research array project" or "research array" means a project undertaken by an entity to develop a floating offshore wind energy system for the purpose of conducting research on such systems pursuant to 30 Code of Federal Regulations, Part 585 and is located seaward of territorial waters. [PL 2021, c. 327, §1 (NEW).]

B. "Labor organization" means an organization of any kind, or an agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. [PL 2021, c. 327, §1 (NEW).]

C. "Project labor agreement" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project or portion of a construction project, wherever such construction occurs, and is an agreement described in 29 United States Code, Section 158(f). [PL 2021, c. 327, §1 (NEW).]

[PL 2021, c. 327, §1 (NEW).]

**2. Project labor agreements.** When requiring the negotiation of, or directing an investor-owned transmission and distribution utility to enter into, a long-term contract pursuant to section 3210-C or any other provision of law with an entity for capacity, energy or renewable energy credits associated with the development of a floating offshore wind research array project, or obligating funds pursuant to such a contract, the commission shall require the use of a project labor agreement, to be negotiated and executed by the entity seeking the long-term contract in accordance with this section.

A. The project labor agreement must be negotiated in good faith and executed prior to the effective date of a long-term contract for a research array. [PL 2021, c. 327, §1 (NEW).]

B. A project labor agreement reached pursuant to this section must:

- (1) Bind all contractors and subcontractors to the terms of the agreement through the inclusion of appropriate provisions in all relevant solicitation and contract documents;
- (2) Provide for the invitation of all contractors and subcontractors to bid on contracts without regard to whether the employees of the contractor or subcontractor are members of a labor organization or parties to a collective bargaining agreement;
- (3) Contain guarantees against strikes, lockouts and similar disruptions;
- (4) Contain terms that are consistent with orders issued by the commission;

- (5) Set forth mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;
- (6) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety and health; and
- (7) Fully conform to all relevant state and federal statutes, rules and regulations. [PL 2021, c. 327, §1 (NEW).]

C. Nothing in this section may be construed to:

- (1) Require the commission to require a project labor agreement on projects or in connection with contracts not governed by this section;
- (2) Preclude the use of a project labor agreement in circumstances not covered by this section;
- (3) Require contractors or subcontractors to enter into a project labor agreement with any particular labor organization;
- (4) Impair or otherwise affect authority granted by law to the commission; or
- (5) Prohibit in a project labor agreement the reasonable use of key employees by contractors and subcontractors who are not members of a labor organization or parties to a collective bargaining agreement. [PL 2021, c. 327, §1 (NEW).]

D. Notwithstanding any provision of law to the contrary, agreements and contracts entered into pursuant to this section are not subject to the competitive bid requirements in Title 5, section 1825-B. [PL 2021, c. 327, §1 (NEW).]

E. This section must be implemented consistent with applicable law. This section does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State, its departments, agencies or entities or its officers, employees or agents. [PL 2021, c. 327, §1 (NEW).]

[PL 2021, c. 327, §1 (NEW).]

**REVISOR'S NOTE:** §3210-H. Northern Maine Renewable Energy Development Program (As enacted by PL 2021, c. 380, §1 is REALLOCATED TO TITLE 35-A, SECTION 3210-I)

#### SECTION HISTORY

PL 2021, c. 327, §1 (NEW).

#### **§3210-I. Northern Maine Renewable Energy Development Program (REALLOCATED FROM TITLE 35-A, SECTION 3210-H)**

**1. Program established.** The Northern Maine Renewable Energy Development Program, referred to in this section as "the program," is established to remove obstacles to the use of and to promote development of the substantial renewable energy resources in northern Maine. As used in this section, "northern Maine" means Aroostook County and any other area of the State in which the retail market is administered by the independent system administrator for northern Maine.

The commission shall administer the program in accordance with this section and shall ensure that such administration accounts for and is designed to advance the renewable energy and climate policies and goals of the State and to:

- A. Encourage the rapid development of renewable resources in northern Maine to achieve greenhouse gas emissions reductions in the State and realize direct and near-term economic benefits in northern Maine; [PL 2021, c. 380, §1 (NEW); RR 2021, c. 1, Pt. A, §38 (RAL).]

B. Plan for and develop the transmission infrastructure necessary for the State to expeditiously meet its renewable energy and climate goals using, to the extent practicable, renewable energy resources located in the State; [PL 2023, c. 660, §3 (AMD).]

C. Transition the State's mandated renewable energy purchasing through contracting approved and ordered by the commission in accordance with this section for the purchase of capacity, renewable energy and renewable energy credits, or any combination thereof, in a manner designed to most effectively account for the changing seasonal, time of day and other electricity usage characteristics associated with beneficial electrification as defined in section 10102, subsection 3-A over the duration of such contracts; [PL 2021, c. 380, §1 (NEW); RR 2021, c. 1, Pt. A, §38 (RAL).]

D. Promote energy equity, high-quality jobs and the development of a skilled workforce, with particular consideration given to the economic circumstances and opportunities in the State's socially vulnerable counties and communities. For the purposes of this paragraph, "socially vulnerable counties and communities" means those counties and communities in the State containing populations that are disproportionately burdened by existing social inequities or lack the capacity to withstand new or worsening burdens; [PL 2023, c. 660, §4 (AMD).]

E. Recognize that, in advancing the renewable energy and climate policies and goals of the State, the near-term development of the transmission and other infrastructure necessary to reduce greenhouse gas emissions is in the public interest; and [PL 2023, c. 660, §5 (AMD).]

F. In collaboration with the Governor's Energy Office, established in Title 2, section 9, seek to partner with other states, governmental entities or utilities within New England in the development of requests for proposals and the evaluation of proposals received in response to a request for proposals for a transmission line or lines under subsection 2 and renewable energy generation projects under subsection 3. [PL 2023, c. 660, §6 (NEW).]

[PL 2023, c. 660, §§3-6 (AMD).]

**2. Request for proposals; transmission line or lines.** The commission shall issue a request for proposals for the development and construction of a transmission line or lines necessary to connect at least 1,200 megawatts of renewable energy resources located in northern Maine and developed pursuant to subsection 3 with the electric grid operated by the New England independent system operator, referred to in this section as "the ISO-New England system." The commission may issue preliminary requests for information from utilities and private developers or release draft requests for proposals or draft transmission services agreements to gather information to inform the program.

A. The proposals must be required to cover a contract term of 30 years, except that the commission may, in its discretion, approve a contract term of a different duration, and must include provisions for the construction, development and subsequent commercial operation of the transmission line or lines described in this subsection. [PL 2023, c. 660, §7 (AMD).]

A-1. The commission may coordinate with other states, governmental entities or utilities within New England in the development of a request for proposals pursuant to this subsection and in the evaluation of proposals received in response to a request for proposals. The commission shall allow the Governor's Energy Office and the Office of the Public Advocate to review the proposals submitted pursuant to this subsection. The Governor's Energy Office and the Office of the Public Advocate may provide input to the commission upon review of the proposals, which may include an assessment as to whether any proposals submitted are consistent with the goals of the program as described in this section. If a proposal includes confidential or proprietary information, trade secrets or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26(c), the commission may issue appropriate protective orders in accordance with section 1311-A with respect to those portions of the proposal. [PL 2023, c. 660, §7 (NEW).]

B. The commission shall evaluate the proposals received based, at a minimum, on the following factors: cost, economic benefit to northern Maine, the qualifications of the bidder or bidders, the

long-term viability of each proposal and the anticipated contribution of each proposal toward the achievement by the State of its renewable energy goals under section 3210. The commission shall disqualify any proposal that, in the commission's determination, fails to demonstrate the bidder's technical and financial capacity to successfully construct, develop and operate the transmission line or lines described in this subsection and to pursue, negotiate and contract for its interconnection with the ISO-New England system. [PL 2023, c. 660, §7 (AMD).]

B-1. The commission may consider proposals that include mechanisms to mitigate and allocate risks associated with development and operation of any transmission line or lines and renewable energy generation project under subsection 3 to be developed under the program. [PL 2023, c. 660, §7 (NEW).]

C. The commission shall give preference to proposals that:

(1) In the commission's determination, in the aggregate with proposals received under subsection 3, demonstrate the most cost-effective and efficient transmission access to renewable energy resources in northern Maine in a manner that best supports the achievement of the State's renewable energy goals under section 3210 and that maximize benefits to the State;

(2) Provide community engagement plans and favor use, to the extent practicable, of existing utility and other rights-of-way and other existing transmission corridors in the construction of the transmission line or lines described in this subsection;

(3) In the commission's determination, are likely to provide a reduction in transmission costs and costs to ratepayers for electricity over time as more energy is transmitted using the transmission line or lines described in this subsection;

(4) Adequately demonstrate project viability within a commercially reasonable time frame; and

(5) Maximize federal tax credits by including agreements described in 29 United States Code, Section 158(f) and by committing to entering into an employer and employee harmony agreement with a labor organization seeking to represent the transmission line or lines operations and maintenance workers. An employer and employee harmony agreement must bind all contractors and subcontractors, other than employees who work on a temporary basis for the employer, to the terms of the agreement. The agreement must be designed to ensure that all work on the transmission line or lines, including but not limited to work performed in the manufacturing, fabrication or maintenance of the transmission line or lines or operations associated with the transmission line or lines, is uninterrupted, prompt and safe. [PL 2023, c. 660, §7 (AMD).]

D. The commission may consider and, in accordance with the applicable provisions of this subsection and subsection 3, select a proposal or proposals that include both the development and construction of the transmission line or lines described in this subsection and the development and construction of one or more qualified renewable energy generation projects described in subsection 3. [PL 2023, c. 660, §7 (AMD).]

D-1. The bidder that submits a proposal selected by the commission in accordance with this subsection must, upon the issuance by the commission of a certificate of public convenience and necessity in accordance with section 3132, be considered a transmission and distribution utility, except that the commission may limit the rights of the utility to the extent necessary to protect ratepayers from financial risks and such limitations must be specified in a contract executed pursuant to paragraph E. [PL 2023, c. 660, §7 (NEW).]

E. The commission shall approve a contract or contracts between one or more transmission and distribution utilities and the bidder of any proposal selected by the commission in accordance with



this subsection, except that, if at the close of the competitive bidding process the commission determines that no proposal meets the requirements of this subsection or that approval of a contract or contracts that otherwise meet the requirements of this subsection is not in the public interest, the commission may reject all proposals and may open a new competitive bidding process under this subsection. [PL 2023, c. 660, §7 (AMD).]

[PL 2023, c. 660, §7 (AMD).]

**3. Request for proposals; renewable energy generation projects.** The commission shall issue a request for proposals for the development and construction of qualified renewable energy generation projects in northern Maine designed to connect to and transmit generated power using the transmission line or lines to be constructed pursuant to subsection 2. The commission shall make every effort to ensure that the competitive bidding process directed by this subsection results in the approval of contracts pursuant to paragraph E. As part of the request for proposals under this subsection, the commission shall make available to potential bidders any relevant information submitted to the commission by the bidder or bidders whose proposal or proposals were approved for contracting under subsection 2. Except as provided in paragraph B, subparagraph (2), renewable energy generation projects on which construction commenced prior to July 31, 2024 are not qualified for the purposes of this subsection.

A. The proposals must be required to cover a contract term of 20 years, except that the commission may, in its discretion, approve a contract term of a different duration, and must include provisions for the construction, development and subsequent commercial operation of one or more qualified renewable energy generation projects in northern Maine that will be designed to connect to and transmit generated power using the transmission line or lines to be constructed pursuant to subsection 2. The commission may consider only proposals for the construction of Class I and Class IA resources, as defined in section 3210, subsection 2, and energy storage systems, except that the commission may not consider proposals for the construction of biomass generators fueled by landfill gas or by anaerobic digestion of agricultural products, by-products or waste, or waste-to-energy generation facilities fueled by municipal solid waste. For the purposes of this section, "energy storage system" means a commercially available technology that uses mechanical, chemical or thermal processes for absorbing energy and storing it for a period of time for use at a later time. [PL 2023, c. 660, §8 (AMD).]

A-1. The commission may coordinate with other states, governmental entities or utilities within New England in the development of a request for proposals pursuant to this subsection and in the evaluation of proposals received in response to a request for proposals. The commission shall allow the Governor's Energy Office and the Office of the Public Advocate to review the proposals submitted pursuant to this subsection. The Governor's Energy Office and the Office of the Public Advocate may provide input to the commission upon review of the proposals, which may include an assessment as to whether any proposals submitted are consistent with the goals of the program as described in this section. If a proposal includes confidential or proprietary information, trade secrets or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26(c), the commission may issue appropriate protective orders in accordance with section 1311-A with respect to those portions of the proposal. [PL 2023, c. 660, §8 (NEW).]

B. The commission may, in its discretion, consider and select in accordance with the applicable requirements of this subsection:

- (1) One or more contracts for capacity, renewable energy or renewable energy credits, or any combination thereof, from a qualified renewable energy generation project described in this subsection; or
- (2) One or more contracts for renewable energy generation projects on which construction commenced prior to July 31, 2024, if the commission determines that:

- (a) Such a project or projects otherwise meets the requirements of this subsection;
- (b) Additional line capacity remains available on the transmission line or lines to be constructed pursuant to subsection 2; and
- (c) There are no commercially viable proposals remaining for consideration for qualified renewable energy generation projects on which construction commenced or will commence on or after July 31, 2024. [PL 2023, c. 660, §8 (AMD).]

C. The commission shall evaluate the proposals received based, at a minimum, on the following factors: cost, economic benefit to northern Maine, the qualifications of the bidder or bidders and, as determined by the commission, the short-term, medium-term and long-term viability of the proposals. [PL 2021, c. 380, §1 (NEW); RR 2021, c. 1, Pt. A, §38 (RAL).]

C-1. The commission may consider proposals that include mechanisms to mitigate and allocate risks associated with development and operations of any transmission line or lines under subsection 2 and renewable energy generation project to be developed under the program. [PL 2023, c. 660, §8 (NEW).]

D. The commission shall give greatest preference to proposals that:

(1) In the commission's determination, in the aggregate with proposals received under subsection 2, demonstrate the most cost-effective and efficient development of renewable energy resources in northern Maine in a manner that best supports the achievement of the State's renewable energy goals under section 3210 and maximize benefits to the State; and

(2) Maximize federal tax credits by including agreements described in 29 United States Code, Section 158(f) and by committing to entering into an employer and employee harmony agreement with a labor organization seeking to represent the project's operations and maintenance workers. An employer and employee harmony agreement must bind all contractors and subcontractors, other than employees who work on a temporary basis for the employer, to the terms of the agreement. The agreement must be designed to ensure that all work on the renewable energy generation project, including but not limited to work performed in the manufacturing, fabrication or maintenance of the project or operations associated with the project, is uninterrupted, prompt and safe. [PL 2023, c. 660, §8 (AMD).]

E. The commission shall approve a contract or contracts between one or more investor-owned transmission and distribution utilities and the bidder of any proposal selected by the commission in accordance with this subsection. If at the close of the competitive bidding process the commission determines that no proposal meets the requirements of this subsection, that additional line capacity remains available or that approval of a contract or contracts that otherwise meet the requirements of this subsection is not in the public interest, the commission may reject all proposals and may open a new competitive bidding process under this subsection. [PL 2021, c. 380, §1 (NEW); RR 2021, c. 1, Pt. A, §38 (RAL).]

F. In selecting contracts pursuant to this subsection, the commission shall make every effort to ensure that at least one such contract supports the construction and development in northern Maine of a biomass generator fueled by wood or wood waste. In considering any proposal under this subsection for a qualified renewable energy generation project that is a biomass generator fueled by wood or wood waste, the commission shall consider the waste reduction benefits to the State's forest products industry associated with the operation of the biomass generator, including, but not limited to, the avoidance of methane emissions. [PL 2021, c. 380, §1 (NEW); RR 2021, c. 1, Pt. A, §38 (RAL).]

G. In selecting contracts pursuant to this subsection, the commission shall consider the effect of a contract or contracts selected on the viability of the transmission line or lines to be developed and

constructed pursuant to subsection 2 and the effect on the success of the program. [PL 2023, c. 660, §8 (NEW).]

Notwithstanding any provision of law to the contrary, the commission may in its discretion approve and order a contract or contracts under this subsection for the purchase, beginning on or after January 1, 2024, of capacity, renewable energy or renewable energy credits, or any combination thereof, in an amount that is at least 18% of the retail electric load in the State for the period from January 1, 2019 to December 31, 2019. To the extent practicable, the commission shall approve and order such contract or contracts on a staggered basis consistent with its expectations for the development during the years of 2024 to 2045 of beneficial electrification as defined in section 10102, subsection 3-A and climate mitigation activities in the State and shall ensure the purchase of capacity, renewable energy or renewable energy credits necessary to achieve beneficial electrification from facilities and technology that are located in the State.

[PL 2023, c. 660, §8 (AMD).]

**3-A. Requests for proposals; additional generation capacity.** The commission shall issue a request for proposals for the development and construction of renewable energy generation projects in northern Maine, in addition to those selected under subsection 3, in order to maximize the utilization of the capacity of the transmission line proposal selected under subsection 2. The commission shall:

A. Approve a contract as long as the commission evaluates the contract in accordance with subsection 3, paragraph C and determines that the contract is in the public interest; and [PL 2023, c. 371, §1 (NEW).]

B. Consider bids in any previous request for proposals issued under subsection 3 by:

(1) Providing those bidders with an opportunity to submit updated proposals that account for any previous contract awards in order to ensure that proposals are expeditiously received and most cost-effective in consideration of those previous awards; and

(2) Applying evaluation criteria set forth in this subsection, except that the commission shall give greatest preference to any proposal that:

(a) Demonstrates the greatest likelihood of ensuring the success of the program by contributing to the likelihood of successful completion of the transmission line proposal selected under subsection 2 and other generation proposals selected under subsection 3;

(b) Is submitted by a bidder that demonstrates significant experience in the successful completion of renewable energy generation projects similar to that proposal; and

(c) Complements the proposals previously selected under subsection 3, but mitigates overall risk to the success of the program by diversifying bidder selection and economic development opportunities in northern Maine. [PL 2023, c. 371, §1 (NEW).]

If a selected proposal under this subsection is unable, at any time after selection and before commercial operation, to fulfill the obligations of the contract, the commission may consider other proposals received under this subsection or subsection 3 to ensure the successful implementation of the program. If the commission finds that a proposal or proposals, whether in whole or in part, received under this subsection or subsection 3 would support the overall successful implementation of the program, the commission shall approve and order a contract or contracts accordingly.

[PL 2023, c. 371, §1 (NEW).]

**3-B. Term sheet award; effect.** Notwithstanding any provision of law that requires a developer of a proposed transmission line or lines under subsection 2 or a renewable energy generation project under subsection 3 to demonstrate title, right or interest before a permitting agency will accept and begin processing an application for any permit or approval required for such a project, a term sheet awarded by the commission to a bidder for such a project must be considered sufficient title, right or

interest for the permitting agency to accept and begin processing the application. Nothing in this subsection may be construed to except a transmission line or lines or a renewable energy generation project awarded a term sheet by the commission from any requirement for title, right or interest necessary for the issuance of such a permit or approval or to deem such requirements for title, right or interest satisfied by the award of a term sheet.

In an order awarding a term sheet to a bidder selected under subsection 2, the commission shall provide an explanation of the commission's considerations and findings regarding the costs and benefits associated with the development and construction of the transmission line or lines.

[PL 2023, c. 660, §9 (NEW).]

**4. Regional electric grid integration and development.** In implementing and administering the program under this section, the commission shall:

A. Make every effort to facilitate the construction and development of the line or lines described in subsection 2, including, but not limited to, participating in any regional or federal proceeding relating to the line or lines; [PL 2021, c. 380, §1 (NEW); RR 2021, c. 1, Pt. A, §38 (RAL).]

B. Participate in proceedings involving the inclusion or integration of the line or lines described in subsection 2 and any associated upgrades by the New England power pool as defined in section 4103, or its successor as approved by the Federal Energy Regulatory Commission, and the ISO-New England system into the ISO-New England system's transmission plan, bulk power system and pool transmission facilities, as that term is defined in the ISO-New England system's open access transmission tariff; and [PL 2021, c. 380, §1 (NEW); RR 2021, c. 1, Pt. A, §38 (RAL).]

C. At its discretion, consistent with this section, use or direct one or more transmission and distribution utilities as contracting parties under this section to participate in a regional or multistate competitive market or solicitation. [PL 2021, c. 380, §1 (NEW); RR 2021, c. 1, Pt. A, §38 (RAL).]

Where authorized and as practicable, the Office of the Public Advocate may engage in the activities and proceedings described in paragraph A, B or C.

The commission, the Office of the Public Advocate and the Office of the Attorney General may, separately or in combination, obtain any technical or legal assistance necessary to ensure regional and federal interconnection and grid reliability standards are not employed directly or indirectly to discourage the development of the renewable energy resources in northern Maine under the program.

[PL 2021, c. 380, §1 (NEW); RR 2021, c. 1, Pt. A, §38 (RAL).]

**5. Public involvement and coordination.** The commission and the Department of Environmental Protection shall ensure coordinated public notification and opportunities for public participation, including explanation of all public participation procedures, in connection with regulatory approvals and permitting under this Title and Title 38 for a transmission line or lines and renewable energy generation projects under the program.

[PL 2023, c. 660, §10 (NEW).]

#### SECTION HISTORY

PL 2021, c. 380, §1 (NEW). RR 2021, c. 1, Pt. A, §38 (RAL). PL 2023, c. 371, §1 (AMD). PL 2023, c. 660, §§3-10 (AMD).

#### §3210-J. Renewable energy procurement; reuse of contaminated lands

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

A. "Combined project" means an eligible Class IA resource paired and collocated with an energy storage system connected to the State's electricity grid, whether metered jointly or separately from the eligible Class IA resource. [PL 2023, c. 321, §3 (NEW).]

B. "Contaminated land" means agricultural land contaminated by perfluoroalkyl and polyfluoroalkyl substances as defined in Title 38, section 1614, subsection 1, paragraph F that may no longer be used for its current or historical agricultural purposes as determined by the Department of Agriculture, Conservation and Forestry in accordance with applicable state and federal food safety standards. [PL 2023, c. 321, §3 (NEW).]

C. "Eligible Class IA resource" means a Class IA resource, as defined in section 3210, subsection 2, paragraph A-3:

(1) That begins commercial operation on or after September 19, 2023; and

(2) For which a system impact study required by the New England independent system operator has been filed. [PL 2023, c. 321, §3 (NEW).]

D. "Energy storage system" has the same meaning as in section 3481, subsection 6. [PL 2023, c. 321, §3 (NEW).]

[PL 2023, c. 321, §3 (NEW).]

**2. Competitive procurement.** The commission shall direct investor-owned transmission and distribution utilities to enter into one or more contracts for energy and renewable energy credits from eligible Class IA resources or combined projects in accordance with this section. Customers who have made an election pursuant to section 3210, subsection 10 are subject to prohibitions on bidding on or obtaining a contract under this section as provided in section 3210, subsection 10 for contracts under section 3210-G.

A. The commission shall initiate competitive solicitations for contracts under this paragraph for energy and renewable energy credits equal to 5% of the retail electricity sales in this State for the period from January 1, 2021 to December 31, 2021 plus any amount determined pursuant to paragraph B. [PL 2023, c. 321, §3 (NEW).]

B. The commission shall determine the amount of energy or renewable energy credits from Class IA resources selected for contracts pursuant to section 3210-G that have not been fulfilled and shall add this amount to the amount of energy and renewable energy credits to be contracted under paragraph A. [PL 2023, c. 321, §3 (NEW).]

C. The commission shall initiate the first competitive solicitation to select eligible Class IA resources or combined projects for contract under this section by January 1, 2024. [PL 2023, c. 321, §3 (NEW).]

D. For any amount of energy or renewable energy credits required to be procured under paragraph A that are not procured in the first competitive solicitation, the commission shall initiate a 2nd competitive solicitation within 12 months of the conclusion of the first solicitation. The commission shall initiate additional solicitations in the same manner until contracts have been approved to procure eligible Class IA resources or combined projects in accordance with paragraph A. [PL 2023, c. 321, §3 (NEW).]

E. The commission shall require each bidder to demonstrate in the bid proposal the economic and community benefits the proposal will provide, including but not limited to:

(1) Jobs that will be created;

(2) Excise, income, property and sales taxes that will be paid; and

(3) Goods and services that will be purchased. [PL 2023, c. 321, §3 (NEW).]

F. In conducting a solicitation and selecting eligible Class IA resources or combined projects for contracts under this section, the commission shall:

(1) Consider the expected effect of eligible Class IA resources on other renewable resources, as defined in section 3210, subsection 2, paragraph C, due to congestion and curtailment;

(2) Select only those eligible Class IA resources or combined projects for contracts that will benefit ratepayers; and

(3) Of those eligible Class IA resources or combined projects that benefit ratepayers, give preference to eligible Class IA resources or combined projects as follows:

(a) Primary preference to those eligible Class IA resources or combined projects that are located on contaminated land; and

(b) Secondary preference to those eligible Class IA resources or combined projects that minimize use of farmland that is not contaminated land and minimize use of forested land. [PL 2023, c. 321, §3 (NEW).]

G. In conducting a solicitation and selecting combined projects for contracts under this section, the commission shall:

(1) Require 2 separate bid proposals, one with the energy storage system and one without; and

(2) Require an energy storage system selected for a contract to remain stationary and under the same ownership throughout the contract term. [PL 2023, c. 321, §3 (NEW).]

H. The commission may establish a process by rule to allow an energy storage system to apply to the commission to be paired with and added to a contract awarded to an eligible Class IA resource after that resource has been awarded a contract. [PL 2023, c. 321, §3 (NEW).]

[PL 2023, c. 321, §3 (NEW).]

**3. Contract terms.** A contract entered into pursuant to this section must be for a term of no more than 20 years, unless the commission finds a contract for a longer term to be prudent.

[PL 2023, c. 321, §3 (NEW).]

**4. Renewable energy credits.** The commission shall by rule establish a process to assign renewable energy credits procured pursuant to subsection 2 to a standard-offer service provider in order to satisfy that standard-offer service provider's renewable resource portfolio requirements under section 3210.

[PL 2023, c. 321, §3 (NEW).]

**5. Rules.** The commission shall adopt rules to implement this section. Rules adopted in accordance with this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 321, §3 (NEW).]

#### SECTION HISTORY

PL 2023, c. 321, §3 (NEW).

#### §3211. Conservation programs

**(REPEALED)**

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 336, §3 (RPR). PL 2001, c. 624, §3 (RP).

#### §3211-A. Conservation programs

**(REPEALED)**

#### SECTION HISTORY

PL 2001, c. 624, §4 (NEW). PL 2003, c. 217, §1 (AMD). PL 2003, c. 219, §1 (AMD). PL 2003, c. 275, §§1,2 (AMD). PL 2003, c. 487, §§2,3 (AMD). PL 2005, c. 459, §1 (AMD). PL 2005, c. 569, §§1-6 (AMD). PL 2007, c. 317, §§3-13 (AMD). PL 2009, c. 372, Pt. A, §6 (RP). PL 2009, c. 372, Pt. A, §10 (AFF).

**§3211-B. Additional energy conservation programs****(REPEALED)**

**REVISOR'S NOTE:** §3211-B. Solar energy rebate program; fund (As enacted by PL 2005, c. 459, §2 is REALLOCATED TO TITLE 35-A, SECTION 3211-C)

## SECTION HISTORY

PL 2003, c. 20, §RR10 (NEW). PL 2003, c. 20, §RR18 (AFF). PL 2003, c. 644, §8 (RP). PL 2003, c. 688, §G1 (AFF). RR 2005, c. 1, §17 (RAL). PL 2005, c. 459, §2 (NEW).

**§3211-C. Solar and wind energy rebate program; fund****(REPEALED)****(REALLOCATED FROM TITLE 35-A, SECTION 3211-B)**

## SECTION HISTORY

RR 2005, c. 1, §17 (RAL). PL 2007, c. 29, §1 (AMD). PL 2007, c. 158, §§1-4 (AMD). PL 2007, c. 493, §§1-3 (AMD). PL 2007, c. 661, Pt. D, §1 (AMD). PL 2009, c. 88, §1 (AMD). PL 2009, c. 372, Pt. A, §7 (RP). PL 2009, c. 372, Pt. A, §10 (AFF).

**§3212. Standard offer**

Except as provided in subsection 6, when retail access begins, the commission shall ensure that standard-offer service is available to all consumers of electricity. [PL 1997, c. 638, §1 (AMD).]

**1. Establishment of terms and conditions.** The commission shall open a rule-making proceeding no later than October 1, 1997 to establish terms and conditions for standard-offer service that include, but are not limited to:

- A. Entry and exit restrictions; [PL 1997, c. 316, §3 (NEW).]
- B. Protection against a standard-offer service provider's failure to provide service as contracted for; [PL 1997, c. 316, §3 (NEW).]
- C. Appropriate rate design issues; [PL 1997, c. 316, §3 (NEW).]
- D. Retaining averaged prices for all customers in the same class; and [PL 1997, c. 316, §3 (NEW).]
- E. Credit, collection and disconnection practices. [PL 1997, c. 316, §3 (NEW).]

The commission shall adopt rules establishing terms and conditions for standard-offer service. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[PL 1999, c. 577, §3 (AMD).]

**2. Selection of standard-offer service providers.** After terms and conditions for standard-offer service have been established under subsection 1, the commission shall administer a bid process to select a standard-offer service provider for that transmission and distribution utility's service territory. By December 1, 1999, the commission shall review the bid submissions for each transmission and distribution utility and select the standard-offer service provider or providers for that utility's service territory.

- A. The commission shall determine the general credit data and specific information from general load and usage data that transmission and distribution utilities must provide to potential standard-offer service bidders, including, but not limited to, monthly demand and energy consumption and the number of customers in each customer class. The commission shall ensure that individual customer confidentiality is preserved in this process and that a transmission and distribution utility releases customer-specific data only with the customer's permission. If the transmission and

distribution utility incurs additional costs to develop and produce the required data, the commission shall permit that utility to recover those costs through transmission and distribution rates. [PL 1997, c. 316, §3 (NEW).]

B. The commission shall establish the maximum duration of a standard-offer service contract after considering all relevant factors, including, but not limited to, market risks and the need for price stability and contract flexibility. [PL 1997, c. 316, §3 (NEW).]

C. A competitive electricity provider that is an affiliate of a large investor-owned transmission and distribution utility may submit bids to provide standard-offer service for up to 20% of the electric load within the service territory of the large investor-owned transmission and distribution utility with which it is affiliated. To prevent the unfair use of information possessed by a large investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders. [PL 1997, c. 316, §3 (NEW).]

D. A consumer-owned transmission and distribution utility and a small investor-owned transmission and distribution utility may submit bids to provide standard-offer service for that utility's service territory. To prevent the unfair use of information possessed by a consumer-owned transmission and distribution utility or a small investor-owned transmission and distribution utility, the commission shall ensure that a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders. [PL 1997, c. 316, §3 (NEW).]

The commission shall adopt rules establishing a methodology for structuring the bidding process for standard-offer service in order to implement the provisions of this subsection. In adopting rules, the commission shall consider methods to ensure, to the extent possible, at least 3 providers of standard-offer service in each transmission and distribution utility service territory, as long as the method does not result in any significant adverse impacts on rates paid by consumers. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

Notwithstanding any other provision of this Title, the commission may, in the event of a default by a standard-offer service provider, require the transmission and distribution utility in whose service territory the provider was providing standard-offer service to arrange and to provide for default service. Notwithstanding any other provision of this Title, the commission may, in the event that the commission receives no bids to provide standard-offer service in a transmission and distribution utility's territory or the commission determines that the bids it receives are inadequate or unacceptable, require the transmission and distribution utility to arrange and to provide for default service. Notwithstanding any other provision of this Title, the commission may require a transmission and distribution utility to provide default service to its customers that are not located within either the New England independent system operator control area or the Maritimes control area; and default service pursuant to this sentence must be provided to customers at the same price and on the same terms and conditions as standard-offer service is provided to the customers of the transmission and distribution utility in the standard-offer class in which the customer is eligible to receive service. The arrangement and provision of such default service by a transmission and distribution utility does not constitute selling electric energy or capacity at retail for purposes of section 3205, subsection 2.

Notwithstanding Title 5, section 1831, the commission is not subject to rules adopted by the Chief Procurement Officer in conducting the competitive bidding process required under this section. [PL 2023, c. 516, Pt. B, §50 (AMD).]

**3. Price cap; investigation.** If the qualifying bids under subsection 2 for standard-offer service in any service territory, when combined with the regulated rates of transmission and distribution service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission shall investigate whether the implementation of retail



access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place. Pursuant to section 3217, the commission shall notify the Legislature of the results of its investigation and its determination.  
[PL 1997, c. 316, §3 (NEW).]

**4. Implementation period and investigation.** Standard-offer service must be available until March 1, 2005. By August 1, 2002, the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and in the public interest and, if so, how best to make such service available after March 1, 2005. The commission shall conclude the investigation by December 1, 2002 and report its results and recommendations to the Legislature pursuant to section 3217. In its investigation, the commission shall solicit the input of all interested parties and consider the questions in paragraphs A to D in addition to other issues the commission determines appropriate.

A. Are the goals of this chapter best fulfilled if standard-offer service ceases altogether on March 1, 2005 or at a date certain after March 1, 2005? [PL 2001, c. 528, §1 (NEW).]

B. Should opportunities for retail aggregators be changed to ensure greater participation in competitive markets by residential and small commercial customers, beginning March 1, 2005? [PL 2001, c. 528, §1 (NEW).]

C. Beginning March 1, 2005, should any standard-offer provider selected by the commission pursuant to subsection 2 be required to offer at least one standard-offer service that is composed entirely of renewable resources as defined in section 3210? [PL 2001, c. 528, §1 (NEW).]

D. Should this chapter be amended to enable aggregators, beginning March 1, 2005, automatically to receive by contract, for a term designated in that contract, the designation as competitive electricity provider for all the electric accounts in a given municipality if:

(1) That municipality adopts a "negative-option" form of municipal aggregation, following notice and opportunity for hearing, by means of a recorded vote of the municipal officers or the appropriate governing body; and

(2) All customers in that municipality reserve the right to leave the municipal aggregation and designate a different provider, in writing, within a time period established by legislative enactment? [PL 2001, c. 528, §1 (NEW).]

[PL 2001, c. 528, §1 (AMD).]

**4-A. Renewables; hedging.**

[PL 2005, c. 677, Pt. B, §1 (RP).]

**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.

[PL 2005, c. 677, Pt. B, §2 (NEW).]

**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.

[PL 2005, c. 677, Pt. B, §2 (NEW).]

**4-D. Community-based renewable energy.** The commission may incorporate energy generated by community-based renewable energy projects as defined in section 3602, subsection 1 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 energy from community-based renewable energy projects pursuant to this subsection.

[PL 2009, c. 329, Pt. A, §3 (NEW).]

**4-E. Combined heat and power energy.** The commission may incorporate energy generated by combined heat and power projects as defined in section 3622, subsection 1 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 energy from combined heat and power projects pursuant to this subsection.

[PL 2021, c. 604, §2 (NEW).]

**5. Territorial and rate class application.** Nothing in this section precludes the commission from permitting or requiring different terms and conditions for standard-offer service in different utility service territories or for different customer classes.

[PL 1997, c. 316, §3 (NEW).]

**6. Consumer-owned utilities.** Notwithstanding any other provision of this section, the commission is not required to conduct a competitive bidding process or select a standard-offer service provider or providers for the territory of a consumer-owned transmission and distribution utility if the consumer-owned transmission and distribution utility chooses one or more standard-offer service providers for its territory through a competitive bidding process conducted in accordance with the commission's rules governing the selection and criteria for approval of a standard-offer service provider, or if the consumer-owned transmission and distribution utility enters into one or more contracts to purchase power at wholesale for the purpose of providing retail generation service within its service territory. Selection of a standard-offer service provider or providers and agreements with or purchases from a standard-offer service provider or providers or other wholesale power supply providers are not subject to the approval requirements of section 3133 or 3133-A. A consumer-owned transmission and distribution utility may choose a single standard-offer service provider. A consumer-owned transmission and distribution utility that intends to choose a standard-offer service provider or providers, or to enter into a wholesale power purchase contract for the purpose of providing retail generation service within its service territory, in accordance with this subsection shall notify the commission.

[PL 2003, c. 141, §2 (AMD).]

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1997, c. 638, §§1,2 (AMD). PL 1997, c. 691, §§6,7 (AMD). PL 1999, c. 398, §F1 (AMD). PL 1999, c. 577, §§3,4 (AMD). PL 1999, c. 578, §1 (AMD). PL 2001, c. 528, §1 (AMD). PL 2003, c. 141, §2 (AMD). PL 2003, c. 665, §2 (AMD). PL 2005, c. 677, §§B1,2 (AMD). PL 2009, c. 329, Pt. A, §3 (AMD). PL 2021, c. 604, §2 (AMD). PL 2023, c. 516, Pt. B, §50 (AMD).

#### §3212-A. Green power options

**(REPEALED)**

#### SECTION HISTORY

PL 2007, c. 403, §8 (NEW). PL 2009, c. 329, Pt. B, §§2-5 (AMD). PL 2009, c. 542, §7 (AMD). PL 2015, c. 25, §1 (AMD). MRSA T. 35-A §3212-A, sub-§3 (RP).

#### §3212-B. Green power options

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

A. "Green power supply" means electricity or renewable energy credits for electricity generated from renewable capacity resources as defined in section 3210, subsection 2, paragraph B-3, including electricity generated by community-based renewable energy projects as defined in section 3602, subsection 1. [PL 2021, c. 40, §1 (NEW).]

B. "Renewable energy credit" has the same meaning as in section 3210, subsection 2, paragraph B-2. [PL 2021, c. 40, §1 (NEW).]  
[PL 2021, c. 40, §1 (NEW).]

**1-A. Green power offer.** The commission shall arrange for a green power offer that is composed of green power supply in accordance with this subsection. Except as provided in this subsection, the commission shall ensure that the green power offer is available to all residential and small commercial electricity customers, as defined by the commission by rule, and shall administer a competitive bid process to select a green power offer provider or providers for the service territory of a transmission and distribution utility.

A. The green power offer must be in addition to existing standard-offer service under section 3212. [PL 2021, c. 40, §1 (NEW).]

B. The commission shall, to the maximum extent possible:

(1) Incorporate green power supply from community-based renewable energy projects, as defined in section 3602, subsection 1, into the green power offer; and

(2) Encourage entities based in this State to provide green power supply from community-based renewable energy projects, as defined in section 3602, subsection 1, for the green power offer pursuant to this subsection. [PL 2021, c. 40, §1 (NEW).]

C. The green power offer may include incidental amounts of electricity supply that do not meet the definition of green power supply, if the commission determines that including such electricity supply is necessary to ensure that a green power offer provider can meet its retail load obligation. [PL 2021, c. 40, §1 (NEW).]

D. The commission shall, in accordance with section 3210, subsection 7, inform residential and small commercial consumers of electricity in this State of the opportunity to purchase the green power offer. [PL 2021, c. 40, §1 (NEW).]

E. The commission is not required to arrange for a green power offer in the event that the commission receives no bids to provide the green power offer in a transmission and distribution utility's territory, determines that the bids it receives are inadequate or unacceptable or determines, based on prior experience arranging for a green power offer in a utility's territory, that it is reasonably likely that it will not receive any adequate or acceptable bids. [PL 2021, c. 40, §1 (NEW).]

F. The commission is not required to arrange for a green power offer for the territory of a consumer-owned transmission and distribution utility. If the commission arranges standard-offer service for a consumer-owned transmission and distribution utility, the consumer-owned transmission and distribution utility may elect to have the commission arrange a green power offer in accordance with this subsection. A consumer-owned transmission and distribution utility may establish a green power offer through a competitive bidding process conducted in accordance with the commission's rules governing the selection of a green power offer provider under this subsection. [PL 2021, c. 40, §1 (NEW).]

The commission shall adopt rules to implement this subsection. Rules adopted under this subsection are routine technical rules as defined in Title 5 chapter 375, subchapter 2-A.

[PL 2021, c. 40, §1 (NEW).]

**2. Certification; information in bill inserts.** Information regarding the availability of the green power offer and of green power supply products and renewable energy credit products that are certified by the commission may, at the option of the provider of the offer or the product and with the cooperation of the transmission and distribution utility, be presented through inserts in customer bills issued by transmission and distribution utilities. The costs of the inserts, including but not limited to printing and postage costs, are the responsibility of the provider of the offer or product. The commission may define the criteria for certification of green power supply products and renewable energy credit products by order or by rule, and the commission may limit the criteria for certification for consumer protection and eligibility verification purposes. Rules adopted to implement this subsection are routine technical rules as defined in Title 5 chapter 375, subchapter 2-A.

[PL 2021, c. 40, §1 (NEW).]

#### SECTION HISTORY

PL 2021, c. 40, §1 (NEW).

#### §3213. Bill unbundling; consumer education

**(REPEALED)**

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1997, c. 691, §8 (AMD). PL 2013, c. 116, §2 (RP).

#### §3214. Needs-based low-income assistance

**(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

**1. 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 to which all residents of the State should have access, it is the policy of the State to ensure adequate provision of financial assistance.

[PL 1997, c. 316, §3 (NEW).]

**2. Low-income assistance.** In order to continue existing levels of financial assistance for low-income households and to meet future increases in need caused by economic exigencies, the commission shall:

A. Receive funds collected by all transmission and distribution utilities in the State at a rate set by the commission in periodic rate cases; [PL 2023, c. 306, §2 (AMD); PL 2023, c. 361, §3 (AMD).]

A-1. Receive funds collected by the commission for alternative compliance payments in accordance with section 3210, subsection 9, paragraph B; and [PL 2023, c. 306, §3 (NEW); PL 2023, c. 361, §4 (NEW).]

B. Set initial funding for programs based on an assessment of aggregate customer need in periodic rate cases. The funding formula may not result in 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; and [PL 2023, c. 230, §2 (AMD).]

C. Receive funds remitted by transmission and distribution utilities with net energy billing arrangements for expired kilowatt-hour credits in accordance with section 3209-A, subsection 8. [PL 2023, c. 230, §2 (NEW).]

The commission may use funds available under this subsection to provide financial assistance to low-income households in emergency situations as determined by the commission in a proceeding or by rule.

The commission may adopt rules to implement this subsection. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 201, §1 (AMD); PL 2023, c. 230, §2 (AMD); PL 2023, c. 306, §§2, 3 (AMD); PL 2023, c. 361, §§3-5 (AMD).]

**2-A. (TEXT EFFECTIVE UNTIL 9/30/28) (TEXT REPEALED 9/30/28) Arrearage management program.** Each investor-owned transmission and distribution utility shall implement pursuant to this subsection an arrearage management program to assist eligible low-income residential customers who are in arrears on their electricity bills. An arrearage management program implemented pursuant to this subsection is a plan under which a transmission and distribution utility works with an eligible low-income residential customer to establish an affordable payment plan and provide credit to that customer toward the customer's accumulated arrears as long as that customer remains in compliance with the terms of the program. If a consumer-owned transmission and distribution utility elects to implement an arrearage management program, it must do so in accordance with this subsection and rules adopted pursuant to this subsection. The commission shall establish requirements relating to the arrearage management programs by rule. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

In adopting rules regarding arrearage management programs, the commission shall:

A. Consider best practices as developed and implemented in other states or regions; [PL 2013, c. 556, §1 (NEW).]

B. Require that an arrearage management program include an electricity usage assessment at no cost to the participant; [PL 2013, c. 556, §1 (NEW).]

C. [PL 2017, c. 414, §1 (RP).]

D. Ensure that a transmission and distribution utility develops terms and conditions for its arrearage management program in a manner that is consistent with the program's objectives and is in the best interests of all ratepayers; [PL 2021, c. 101, §1 (AMD).]

D-1. Ensure that if a transmission and distribution utility produces any materials, either written or electronic, regarding the arrearage management program offered by the utility, those materials must state in plainly worded language and in a type size that is no less than 12 points that state law requires the utility to offer an arrearage management program to its customers and that costs described in paragraph E are not paid for by the utility; and [PL 2021, c. 101, §1 (NEW).]

E. Ensure that a transmission and distribution utility recovers in rates all reasonable costs of arrearage management programs, including:

(1) Incremental costs;

(2) Reconnection fees;

(3) Administrative costs;

(4) Marketing costs;

(5) Costs for any 3rd-party assistance it receives in administering its arrearage management program; and

(6) Costs for providing financial and budgetary guidance to participants whether provided directly or through a 3rd party contracted by the transmission and distribution utility to provide that guidance.

The amount of any arrearage forgiven that is treated as bad debt for purposes of cost recovery by the transmission and distribution utility may not be included as a reasonable cost under this paragraph. [PL 2017, c. 414, §1 (AMD).]

The Efficiency Maine Trust shall work with investor-owned transmission and distribution utilities, consumer-owned transmission and distribution utilities that elect to participate in an arrearage management program and other stakeholders to provide access to a complementary low-income energy efficiency program for participants in arrearage management programs in order to help reduce participants' energy consumption.

No later than January 28, 2028, the commission shall prepare a report assessing the effectiveness of arrearage management programs from October 1, 2024 through September 30, 2027, including the number of participants enrolled in the programs, the number of participants completing the programs, the number of participants who have failed to complete the programs, the dollar amount of arrears forgiven, the impact on any participating transmission and distribution utility's bad debt as a result of the programs, the costs and benefits to all ratepayers associated with the programs and recommendations for ways in which the programs might be improved or continued for the benefit of all ratepayers. In preparing its report, the commission shall hold at least one formal stakeholder meeting involving affected parties, including the Office of the Public Advocate and the participating transmission and distribution utilities. Parties must also be provided an opportunity to submit written comments to the commission regarding the performance of the programs.

The joint standing committee of the Legislature having jurisdiction over utilities matters may report out a bill relating to the commission report to the Second Regular Session of the 133rd Legislature.

This subsection is repealed September 30, 2028.

[PL 2023, c. 534, §§1-3 (AMD).]

**3. Special rate.** 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 in effect as of the effective date of this chapter, subject to the approval of the commission.

[PL 1997, c. 316, §3 (NEW).]

**4. Financial support.** If the Legislature appropriates from the General Fund financial support for households and individuals receiving assistance under this section, the commission may not terminate the assistance provided by transmission and distribution utilities unless the General Fund source has completely replaced such assistance. The commission may adjust the assistance provided pursuant to this section based on the amount of any financial support from the General Fund and may reinstitute assistance subsequent to any termination of assistance if the commission finds that the General Fund source no longer completely replaces such assistance.

[PL 1997, c. 316, §3 (NEW).]

**5. Ensuring equitable treatment for persons with certain disabilities.** If the commission establishes or approves one or more low-income assistance programs under subsection 2 or 3 that result in similarly situated persons receiving different levels of assistance depending solely upon which transmission and distribution utility service territory they reside in, the commission shall by rule establish an equitable-treatment program consistent with this subsection.

A. The equitable-treatment program must be available to any person who:

- (1) Is eligible for benefits under the transmission and distribution utility's low-income assistance program established in accordance with subsection 2; and
- (2) Provides documentation from a doctor that the person for health reasons needs an oxygen pump or ventilator at least 8 hours each day. [PL 2007, c. 97, §1 (AMD).]

B. The equitable-treatment program must be designed to ensure that the low-income assistance benefits provided under this section to persons who qualify under paragraph A mitigate, to an extent that is reasonably equivalent in each transmission and distribution utility territory, electric charges associated with the operation of an oxygen pump or ventilator. The commission may not reduce any assistance provided under any low-income assistance program established under subsection 2 in order to satisfy the requirements of this paragraph. [PL 2007, c. 97, §2 (AMD).]

C. The commission shall establish an administratively simple and inexpensive method of administering the equitable-treatment program. [PL 2005, c. 132, §1 (NEW).]

D. Reasonable costs incurred by a transmission and distribution utility in implementing any program established by the commission under this subsection are just and reasonable expenses for rate-making purposes. [PL 2005, c. 132, §1 (NEW).]

E. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 132, §1 (NEW).]  
[PL 2007, c. 97, §§1, 2 (AMD).]

**6. Annual report.** The commission shall include in its annual report pursuant to section 120, subsection 7 a report on low-income assistance programs established or approved under subsection 2 or 3 and any equitable-treatment program established pursuant to subsection 5. The report must, at a minimum, include:

A. For each month of the program year, the number of participants enrolled in low-income assistance programs, the number receiving oxygen pump benefits and the number receiving ventilator benefits; [PL 2007, c. 97, §3 (NEW).]

B. For each month of the program year, the dollar amount of low-income assistance program benefits, the dollar amount of oxygen pump benefits and the dollar amount of ventilator benefits; [PL 2023, c. 201, §2 (AMD).]

C. An assessment of the effectiveness of the oxygen pump benefit and the ventilator benefit with regard to covering only those electric charges directly related to use of an oxygen pump or ventilator by the program participant; and [PL 2023, c. 201, §2 (AMD).]

D. An identification of the sources of funds used for low-income assistance program benefits for the program year. [PL 2023, c. 201, §2 (NEW).]  
[PL 2023, c. 201, §2 (AMD).]

## SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 2005, c. 132, §1 (AMD). PL 2007, c. 97, §§1-3 (AMD). PL 2009, c. 122, §14 (AMD). PL 2013, c. 556, §1 (AMD). PL 2017, c. 414, §1 (AMD). PL 2019, c. 608, §1 (AMD). PL 2021, c. 101, §1 (AMD). PL 2023, c. 201, §§1, 2 (AMD). PL 2023, c. 230, §2 (AMD). PL 2023, c. 306, §§2, 3 (AMD). PL 2023, c. 361, §§3-5 (AMD). PL 2023, c. 534, §§1-3 (AMD).

### §3215. Commission authority and responsibility

**1. Authority.** Without limiting the commission's authority under any other provision of law, the commission may:

A. 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. When intervening or participating in proceedings under this paragraph, the commission shall promote system reliability, the reduction of the cost of electricity to ratepayers in the State and long-term sustainable resource planning; and [PL 2011, c. 109, §1 (AMD).]

B. Monitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or to any federal agency regarding:

(1) The safety and economic effects or potential effects of market competition on nuclear units; and

(2) The effects or potential effects of market competition on Maine's air quality. [PL 1997, c. 316, §3 (NEW).]

[PL 2011, c. 109, §1 (AMD).]

**2. 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 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 Maine ratepayers in any proceeding at the Federal Energy Regulatory Commission involving the development, governance, operations or conduct of an independent system operator.

[PL 1997, c. 316, §3 (NEW).]

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 2011, c. 109, §1 (AMD).

#### §3216. Transition; utility employees

**(REPEALED)**

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 398, §§M1,2 (AMD). PL 1999, c. 398, §M3 (AFF). PL 2013, c. 116, §3 (RP).

#### §3217. Reports

##### 1. Annual restructuring report.

[PL 2023, c. 77, §8 (RP).]

**2. Proposed changes.** If the commission determines, after providing interested parties an opportunity to be heard, that any provision in this chapter is not in the public interest, the commission shall present a report to the joint standing committee of the Legislature having jurisdiction over utility matters stating the basis for the commission's conclusion and including draft legislation designed to modify this chapter consistent with the public interest.

[PL 1997, c. 316, §3 (NEW).]

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

A. The development of an independent system operator with responsibility for transmission reliability; [PL 1997, c. 316, §3 (NEW).]

B. The management of competitive access to the regional transmission system; and [PL 1997, c. 316, §3 (NEW).]

C. Rights to negotiate potential contracts between sellers and buyers of electricity. [PL 1997, c. 316, §3 (NEW).]

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

[PL 1997, c. 316, §3 (NEW).]

**4. Direct sales.** Beginning in 2022 and every 3 years thereafter, the commission shall include in its report pursuant to section 120, subsection 7, information regarding the incidence of direct sales of electricity by an entity that generates electricity to commercial or industrial consumers located on the property where the entity that generates the electricity is located or on abutting property or on a commercial or industrial site that was served by the entity that generates the electricity or its predecessor without using the transmission and distribution plant of a public utility prior to December 31, 2018.

[PL 2019, c. 205, §6 (NEW).]

#### SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 2001, c. 528, §2 (AMD). PL 2009, c. 122, §15 (AMD). PL 2019, c. 205, §6 (AMD). PL 2023, c. 77, §8 (AMD).

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