

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-824

June 29, 1999

PUBLIC UTILITIES COMMISSION  
Sale of Capacity and Energy of  
Undivested Generation Assets;  
Extension of Divestiture Deadline  
(Chapter 307)

ORDER FINALLY  
ADOPTING RULE AND  
STATEMENT OF  
POLICY BASIS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, we finally adopt a rule implementing the requirements for the utility sale of capacity and energy from undivested generation assets and extensions of the deadline for the divestiture of generation assets.

On February 22, 1999, the Commission provisionally adopted a rule governing the sale of power from undivested assets and divestiture extensions. Because the rule was denominated as a "major substantive" rule by 35-A M.R.S.A. § 3204(3) and (4), it required legislative approval under 5 M.R.S.A. §§ 8071-8074. In compliance with those provisions, the Commission submitted the rule to the Legislature for its approval. On May 18, 1999, Governor King signed into law Resolves 1999, ch. 38, which authorizes final adoption of the sale of capacity and energy and divestiture extension rule.

Although Chapter 38, which became effective on May 18, 1999,<sup>1</sup> authorizes the final adoption of the rule, it also requires that the following three changes be made to the language of the rule when finally adopted:

1. Amend section 4, paragraph C, subparagraph (1) to provide that a purchaser of capacity and energy has no recourse against a utility in the event the owner or operator of the generation asset does not provide the expected amount of capacity or energy or otherwise defaults;
2. Amend section 6, paragraph B, subparagraph (2) to define the on-peak period as Monday through Friday from 7 a.m. to 11 p.m., except for holidays recognized by the New England independent system operator or the equivalent entity in the Maritimes Control Area; and
3. Amend section 6, paragraph B, subparagraph (2) to require that a utility, to the extent it has actual knowledge at the time it issues a request for bids, provide for each facility whose output is subject to the bidding requirements a description of any contractual provision or other factor that will have the effect of substantially changing the amount of output of a

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<sup>1</sup> Section 8072(8) of Title 5 requires agencies to finally adopt major substantive rules within 60 days of the effective date of the legislation approving the rule.

facility during the bid period and a description of any subsequent divestiture that may apply during the bid period.

These changes have been made in the final rule.

In addition, Public Law 1999, ch. 398, Part N, directs that the following two modifications be made to Chapter 307:

1. Change the rule to provide that the Commission shall grant an extension of the divestiture deadline if it finds that the 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; and
2. Delete section 10, subsection B of the rule that requires that if the Commission grants an extension, the utility shall transfer to a distinct corporate entity by March 1, 2000 the generation assets to which the extension applies.

Chapter 398, however, will not take effect until September 18, 1999. After that date, we will issue a supplemental order finally adopting rule that make the changes required by Chapter 398.

Accordingly, we

#### O R D E R

1. That the attached Chapter 307, Sale of Capacity and Energy; Extensions for Divestiture of Assets is hereby finally adopted; and
2. That the Administrative Director shall file the finally adopted rule and related materials with the Secretary of State; and
3. That the Administrative Director shall send copies of this Order and attached rule to:
  - A. All electric utilities in the State;
  - B. All persons who have filed with the Commission within the past year a written request for notices of rulemakings;
  - C. All persons on the Commission's list of persons who wish to receive notice of all electric restructuring proceedings;
  - D. All persons who have filed comments in Docket No. 98-824; and
  - E. The Executive Director of the Legislative Council (20 copies).



## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.