CHAPTER 19

THE MAINE ENERGY COST REDUCTION ACT

§1901. Short title

This chapter may be known and cited as "the Maine Energy Cost Reduction Act." [PL 2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW).

§1902. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2013, c. 369, Pt. B, §1 (NEW).]

1. Basis differential. "Basis differential" means the difference between the so-called Henry Hub spot price for natural gas and the corresponding cash spot price for natural gas in New England.
[PL 2013, c. 369, Pt. B, §1 (NEW).]

2. Energy cost reduction contract. "Energy cost reduction contract" means a contract executed in accordance with this chapter to procure capacity on a natural gas transmission pipeline, including, when applicable, compression capacity.
[PL 2015, c. 445, §1 (AMD).]

3. ISO-NE region. "ISO-NE region" means the region in which the New England bulk power system operated by the independent system operator of the New England bulk power system or a successor organization is located.
[PL 2013, c. 369, Pt. B, §1 (NEW).]

3-A. Liquefied natural gas storage capacity. "Liquefied natural gas storage capacity" means storage capacity for liquefied natural gas installed in the State on or after January 1, 2016 that will benefit the State's energy consumers during times of regional supply constraint due to capacity limitations of interstate or intrastate pipelines or local distribution systems.
[PL 2015, c. 445, §2 (NEW).]

3-B. Physical energy storage capacity. "Physical energy storage capacity" means liquefied natural gas storage capacity.
[PL 2015, c. 445, §2 (NEW).]

3-C. Physical energy storage contract. "Physical energy storage contract" means a contract executed in accordance with this chapter for physical energy storage capacity.
[PL 2015, c. 445, §2 (NEW).]

4. Pipeline capacity holder. "Pipeline capacity holder" means any person owning rights to natural gas pipeline capacity.
[PL 2013, c. 369, Pt. B, §1 (NEW).]

5. Trust fund. "Trust fund" means the Energy Cost Reduction Trust Fund established under section 1907, subsection 1.
[PL 2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW). PL 2015, c. 445, §§1, 2 (AMD).

§1903. Legislative findings

The Legislature finds that: [PL 2013, c. 369, Pt. B, §1 (NEW).]

1. Electricity prices. It is in the public interest to decrease prices of electricity and natural gas for consumers in this State;
[PL 2015, c. 445, §3 (AMD).]

2. Natural gas expansion. The expansion of natural gas transmission capacity into this State and other states in the ISO-NE region could result in lower natural gas prices and, by extension, lower electricity prices for consumers in this State; and
[PL 2015, c. 445, §3 (AMD).]

3. Storage. Liquefied natural gas storage located in this State, under certain circumstances, may offer the potential to decrease energy costs by providing a hedge against gas price volatility caused by gas supply constraints, which in turn may lower natural gas prices and, by extension, lower electricity prices for consumers in this State.
[PL 2015, c. 445, §4 (NEW).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW). PL 2015, c. 445, §§3, 4 (AMD).

§1904. Energy cost reduction contracts; physical energy storage contracts

The commission in consultation with the Public Advocate and the Governor's Energy Office may execute an energy cost reduction contract or a physical energy storage contract, or both, in accordance with this section. In no event may the commission execute energy cost reduction contracts for the transmission of greater than a cumulative total of 200,000,000 cubic feet of natural gas per day. In no event may the commission execute physical energy storage contracts for a total amount that exceeds $25,000,000 annually, and in no event may the total amount of all contracts entered into under this section exceed $75,000,000 annually. [PL 2015, c. 445, §5 (AMD).]

1. Prior to executing an energy cost reduction contract. Before executing an energy cost reduction contract, the commission shall:

A. Pursue, in appropriate regional and federal forums, market and rule changes that will reduce the basis differential for gas coming into New England and increase the efficiency with which gas brought into New England and Maine is transmitted, distributed and used. If the commission concludes that those market or rule changes will, within the same time frame, achieve substantially the same cost reduction effects for Maine electricity and gas customers as the execution of an energy cost reduction contract, the commission may not execute an energy cost reduction contract; [PL 2015, c. 329, Pt. E, §1 (AMD).]

B. Explore all reasonable opportunities for private participation in securing additional gas pipeline capacity that would achieve the objectives in subsection 2. If the commission concludes that private transactions, within the same time frame, achieve substantially the same cost reduction effects for Maine electricity and gas customers as the execution of an energy cost reduction contract, the commission may not execute an energy cost reduction contract; and [PL 2015, c. 329, Pt. E, §1 (AMD).]

C. In consultation with the Public Advocate and the Governor's Energy Office, hire a consultant with expertise in natural gas markets to make recommendations regarding the execution of an energy cost reduction contract. The commission shall consider those recommendations as part of an adjudicatory proceeding under subsection 2. [PL 2013, c. 369, Pt. B, §1 (NEW).]
[PL 2015, c. 329, Pt. E, §1 (AMD).]

1-A. Prior to executing a physical energy storage contract. Before executing a physical energy storage contract, the commission shall:

A. Pursue, in appropriate regional and federal forums, market and rule changes that will reduce the reliability risk faced by off-system natural gas users or on-system consumers and will provide a physical hedge to higher priced on-peak, winter period natural gas supplies. If the commission concludes that those market or rule changes will, within the same time frame, achieve substantially the same cost reduction effects for the State's electricity and gas customers as the execution of a physical energy storage contract, the commission may not execute a physical energy storage contract; and [PL 2015, c. 445, §5 (NEW).]

B. Explore all reasonable opportunities for private participation that would achieve the objectives in subsection 2-A. If the commission concludes that private transactions, within the same time frame, achieve substantially the same cost reduction effects for the State's electricity and gas customers as the execution of a physical energy storage contract, the commission may not execute a physical energy storage contract. [PL 2015, c. 445, §5 (NEW).]

[PL 2015, c. 445, §5 (NEW).]

2. Commission determination of benefits for an energy cost reduction contract. After satisfying the requirements of subsection 1, the commission may execute or direct one or more transmission and distribution utilities, gas utilities or natural gas pipeline utilities to execute an energy cost reduction contract if the commission has determined, in an adjudicatory proceeding, that the agreement is commercially reasonable and in the public interest and that the contract is reasonably likely to:

A. Materially enhance natural gas transmission capacity into the State or into the ISO-NE region and that additional capacity will be economically beneficial to electricity consumers, natural gas consumers or both in the State and that the overall costs of the energy cost reduction contract are outweighed by its benefits to electricity consumers, natural gas consumers or both in the State; and [PL 2015, c. 445, §5 (AMD).]

B. Enhance electrical and natural gas reliability in the State. [PL 2013, c. 369, Pt. B, §1 (NEW).]

[PL 2015, c. 445, §5 (AMD).]

2-A. Commission determination of benefits for a physical energy storage contract. After satisfying the requirements of subsection 1-A, the commission may execute or direct one or more transmission and distribution utilities, gas utilities or natural gas pipeline utilities to execute a physical energy storage contract if the commission has determined, in an adjudicatory proceeding, that the physical energy storage contract is commercially reasonable and in the public interest and that the contract is reasonably likely to:

A. Materially enhance liquefied natural gas storage capacity in the State or the ISO-NE region and ensure that additional physical energy storage capacity will be economically beneficial to electricity consumers, natural gas consumers or both in the State and that the overall costs of the contract are outweighed by its benefits to electricity consumers, natural gas consumers or both in the State; [PL 2015, c. 445, §5 (NEW).]

B. Provide the opportunity for access to lower cost natural gas at times of regional peak demand for natural gas supplies or in the event of upstream natural gas infrastructure disruption; and [PL 2015, c. 445, §5 (NEW).]

C. Enhance electrical and natural gas reliability in the State. [PL 2015, c. 445, §5 (NEW).]

[PL 2015, c. 445, §5 (NEW).]

3. Parties to an energy cost reduction contract or a physical energy storage contract. The commission may execute, or direct to be executed, an energy cost reduction contract or a physical energy storage contract, or both, that contain the following provisions.

A. The commission may direct one or more transmission and distribution utilities, gas utilities or natural gas pipeline utilities to be a counterparty to an energy cost reduction contract or a physical

energy storage contract, or both. In determining whether and to what extent to direct a utility to be a counterparty to one or more contracts under this subsection, the commission shall consider the anticipated reduction in the price of gas or electricity or a reduction in the on-peak winter period price of gas or electricity, as applicable, accruing to the customers of the utility as a result of one or more contracts as determined by the commission in an adjudicatory proceeding.

Any economic loss, including but not limited to any effects on the cost of capital resulting from an energy cost reduction contract or a physical energy storage contract for a transmission and distribution utility, a gas utility or a natural gas pipeline utility, is deemed to be prudent and the commission shall allow full recovery through the utility's rates. [PL 2015, c. 445, §5 (AMD).]

B. If the commission concludes that an energy cost reduction contract or a physical energy storage contract can be achieved with the participation of other entities, the commission may contract jointly with other entities, including other state agencies and instrumentalities, governments in other states and nations, utilities and generators. [PL 2015, c. 445, §5 (AMD).]

C. The commission may execute an energy cost reduction contract or a physical energy storage contract as a principal and counterparty. [PL 2015, c. 445, §5 (AMD).]

[PL 2015, c. 445, §5 (AMD).]

4. Approval by the Governor. The commission may not execute or direct the execution of an energy cost reduction contract or a physical energy storage contract unless the Governor has in writing approved the execution of the energy cost reduction contract or a physical energy storage contract.
[PL 2015, c. 445, §5 (AMD).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW). PL 2015, c. 329, Pt. E, §1 (AMD). PL 2015, c. 445, §5 (AMD).

§1905. Funding of an energy cost reduction contract or a physical energy storage contract

Contracts under this chapter may be funded in accordance with this section. [PL 2015, c. 445, §6 (AMD).]

1. Assessments on ratepayers. The commission may direct one or more transmission and distribution utilities, gas utilities or natural gas pipeline utilities to collect an assessment from ratepayers for the following purposes:

A. To finance the participation of a transmission and distribution utility, a gas utility or a natural gas pipeline utility in an energy cost reduction contract or a physical energy storage contract; and [PL 2015, c. 445, §6 (AMD).]

B. To pay the costs of energy cost reduction contract or physical energy storage contract evaluation and administration under section 1906, subsection 2. [PL 2015, c. 445, §6 (AMD).]

All assessments must be just and reasonable as determined by the commission and must be identified as an energy cost reduction contract charge or a physical energy storage contract charge on a ratepayer's utility bill. When determining just and reasonable assessments, the commission shall consider the anticipated reduction in the price of gas or electricity, as applicable, accruing to different categories of ratepayers as a result of the contract.
[PL 2015, c. 445, §6 (AMD).]

2. Assessments on utilities. If the commission is the principal and counterparty on an energy cost reduction contract or a physical energy storage contract, the commission may:

A. Assess one or more transmission and distribution utilities, gas utilities and natural gas pipeline utilities in proportion to the anticipated reduction in the price of gas or electricity, as applicable, accruing as a result of an energy cost reduction contract or a physical energy storage contract to the

customers of the utility for any and all net costs to the commission of the commission's performance of the contract as determined by the commission in an adjudicatory proceeding. The cost to the utility of the assessment may be recovered by the utility in rates in the same manner as any other prudently incurred cost. [PL 2015, c. 445, §6 (AMD).]

[PL 2015, c. 445, §6 (AMD).]

3. Volumetric fee. The commission may establish and direct the payment to the trust fund of a volumetric fee on the use of gas by a consumer of natural gas obtained from a source other than a gas utility or a natural gas pipeline utility of this State in proportion to the anticipated reduction in the price of gas accruing to that consumer as a result of an energy cost reduction contract or a physical energy storage contract as determined by the commission in an adjudicatory proceeding.

[PL 2015, c. 445, §6 (AMD).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW). PL 2015, c. 445, §6 (AMD).

§1906. Contract resale and administration

The following provisions govern the resale and evaluation and administration of an energy cost reduction contract or a physical energy storage contract. [PL 2015, c. 445, §6 (AMD).]

1. Resale of natural gas pipeline capacity. The commission may negotiate and enter into contracts for the resale of all or a portion of the reserved natural gas transmission pipeline capacity acquired through an energy cost reduction contract. All of the revenue received as a result of the resale must be deposited into the trust fund.

[PL 2013, c. 369, Pt. B, §1 (NEW).]

1-A. Resale of physical energy storage capacity. The commission may negotiate and enter into contracts for the resale of all or a portion of the physical energy storage capacity acquired through a physical energy storage contract. All of the revenue received as a result of the resale must be deposited into the trust fund.

[PL 2015, c. 445, §6 (NEW).]

2. Contract evaluation and administration. The commission is responsible for assessing, analyzing, negotiating, implementing and monitoring compliance with energy cost reduction contracts and physical energy storage contracts. The commission may use funds for this purpose from the trust fund or may collect funds for this purpose through just and reasonable assessments placed on a transmission and distribution utility, a gas utility or a natural gas pipeline utility pursuant to section 1905, subsection 1, paragraph B.

[PL 2015, c. 445, §6 (AMD).]

Nothing in this section precludes a transmission and distribution utility, gas utility or natural gas pipeline utility from taking or having an interest in any facility subject to an energy cost reduction contract or a physical energy storage contract. [PL 2015, c. 445, §6 (NEW).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW). PL 2015, c. 445, §6 (AMD).

§1907. Revenues from energy cost reduction contracts and physical energy storage contracts

Revenues received from the resale of natural gas pipeline capacity acquired through an energy cost reduction contract or physical energy storage capacity acquired through a physical energy storage contract must be used in accordance with this section. [PL 2015, c. 445, §6 (AMD).]

1. Establishment of Energy Cost Reduction Trust Fund. The Energy Cost Reduction Trust Fund is established as a nonlapsing fund administered by the commission for the purposes of this chapter. The commission is authorized to receive and shall deposit in the trust fund and expend in

accordance with this section revenues received from an energy cost reduction contract and revenues received from the resale of natural gas pipeline capacity acquired through an energy cost reduction contract. The commission is authorized to receive and shall deposit in the trust fund and expend in accordance with this section revenues received from a physical energy storage contract and revenues received from the resale of physical energy storage capacity acquired through a physical energy storage contract.

The funds in the trust fund are held in trust for the purpose of reducing the energy costs of consumers in the State and may not be used for any other purpose, except as described in subsection 2. [PL 2015, c. 445, §6 (AMD).]

2. Distribution of funds. The commission shall distribute funds in the trust fund in the following order of priority:

A. As a first priority, to the costs of monitoring and administering a contract pursuant to section 1906, subsection 2; and [PL 2013, c. 369, Pt. B, §1 (NEW).]

B. As a 2nd priority, to utilities and other entities to reduce energy costs for electricity and natural gas ratepayers and consumers subject to a volumetric fee under section 1905, subsection 3. The commission may distribute funds to benefit ratepayers of one or more transmission and distribution utilities, gas utilities or natural gas pipeline utilities or consumers subject to a volumetric fee under section 1905, subsection 3 in a manner that the commission finds is equitable, just and reasonable. [PL 2013, c. 369, Pt. B, §1 (NEW).]

[PL 2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW). PL 2015, c. 445, §6 (AMD).

§1908. Exemption from State Purchasing Agent rules

Notwithstanding any other provision of law, agreements and contracts entered into pursuant to this chapter are not subject to the competitive bid requirements of the State Purchasing Agent. [PL 2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW).

§1909. Market power investigation

The commission may on its own motion, with or without notice, summarily investigate the exercise of market power by a gas utility, natural gas pipeline utility or pipeline capacity holder. If, after the summary investigation, the commission determines it to be necessary, it may hold a public hearing in accordance with section 1304. Notwithstanding section 1304 and Title 5, section 9052, the commission shall notify the utility under investigation in writing of the matter under investigation and 7 days after the commission has given notice the commission may set the time and place for the public hearing. [PL 2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW).

§1910. Rulemaking

The commission may adopt rules to implement this chapter. When adopting rules, the commission shall consider the financial implications of this chapter for transmission and distribution utilities, gas utilities and natural gas pipeline utilities. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2013, c. 369, Pt. B, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW).

§1911. Reports

The commission shall include in its annual report under section 120, subsection 3 a description of its efforts to pursue, in appropriate regional and federal forums, market and rule changes that will reduce the basis differential for natural gas coming into New England and data and analysis regarding leak emissions of greenhouse gases from liquefied natural gas storage that has been contracted for through a physical energy storage contract. [PL 2015, c. 445, §7 (AMD).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW). PL 2015, c. 445, §7 (AMD).

§1912. Limitation

The commission may not execute under this chapter a physical energy storage contract after June 1, 2017 or an energy cost reduction contract after December 31, 2020. The commission may continue to administer existing physical energy storage contracts and enter into agreements regarding the resale of physical energy storage capacity purchased through a physical energy storage contract after June 1, 2017. The commission may continue to administer existing energy cost reduction contracts and enter into agreements regarding the resale of natural gas pipeline capacity purchased through an energy cost reduction contract after December 31, 2020. [PL 2017, c. 22, §1 (AMD).]

SECTION HISTORY

PL 2013, c. 369, Pt. B, §1 (NEW). PL 2015, c. 445, §7 (AMD). PL 2017, c. 22, §1 (AMD).

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