**An Act To Ensure Transmission and Distribution Utility Accountability**

L.D. 1959

Date: (Filing No. S- )

**Energy, Utilities and Technology**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE**

**SENATE**

**130th Legislature**

**Second Regular Session**

COMMITTEE AMENDMENT “      ” to S.P. 697, L.D. 1959, “An Act To Ensure Transmission and Distribution Utility Accountability”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'**Sec. 1. 35-A MRSA §301, sub-§1-A** is enacted to read:

**1-A. Minimum service standards and report card for transmission and distribution utilities.**  The commission shall adopt rules in accordance with this subsection governing the evaluation of transmission and distribution utility service, which must take into account the specific characteristics of each utility and its service territory. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. The rules must include specific, quantitative metrics pertaining to utility operations and activities relating to each of the following categories:

(1) Service quality, including but not limited to reliability of service and timeliness of restoring service after outages;

(2) Customer service, including but not limited to timeliness and accuracy of bills;

(3) Field services, including but not limited to communication with and responsiveness to municipalities, businesses and individuals; and

(4) Distributed energy resources interconnection.

B. The commission shall consider the cost impacts and benefits to ratepayers when establishing each service standard and metric pursuant to paragraph A and shall ensure that the performance of each service standard and metric may be measured using reliable and objective methods and information.

C. The commission shall set reporting requirements for each metric, including data specifications and reporting periods, adequate to track progress in areas of performance.

D. The commission shall designate service standards based on thresholds of performance.

E. For each service standard, the commission shall require quarterly filing of quantifiable data sufficient for the commission to calculate and publish a quantitative score for the service standard.

F. The commission shall impose administrative penalties for designated thresholds of poor performance for service standards in accordance with section 1508-A, subsection 1, paragraph E unless the utility demonstrates good cause for its failure to meet the standard.

G. The commission shall publish quarterly reports containing scores for each service standard for each utility.

**Sec. 2. 35-A MRSA §301, sub-§5** is enacted to read:

**5. Transmission and distribution utility report required; audits.**  If the commission has not made a rate determination within the preceding 5 years for a transmission and distribution utility that serves more than 50,000 customers, the utility shall submit a report to the commission that includes a comparison of the utility's actual costs with cost estimates used in the utility's most recent rate case to set rates. Upon a finding of the commission that there was a difference of more than 10% between the transmission and distribution utility's actual costs and estimated costs, the commission may:

A. Require an audit of the transmission and distribution utility in accordance with section 113; or

B. Disallow cost recovery in the transmission and distribution utility's future rate cases.

This subsection takes effect January 15, 2024.

**Sec. 3. 35-A MRSA §301, sub-§6** is enacted to read:

**6. Investor-owned transmission and distribution utility expenditures; comparison.**  No later than November 1, 2022, the commission shall initiate a proceeding to conduct a detailed comparison of the annual expenditures of each investor-owned transmission and distribution utility in the State with the annual expenditures of other comparable investor-owned transmission and distribution utilities located in the United States. When conducting this analysis, the commission shall identify specific categories in which spending by an investor-owned transmission and distribution utility significantly deviated from those expenditures of comparable investor-owned transmission and distribution utilities. The commission may use the results of this analysis in future rate cases involving an investor-owned transmission and distribution utility. The commission may undertake a new comparison or update an existing one in accordance with this subsection at any time the commission determines is necessary. For purposes of this subsection, a comparable investor-owned transmission and distribution utility is one that provides electricity delivery in a service territory in a northern climate that is primarily wooded and includes urban and rural areas.

**Sec. 4. 35-A MRSA §1316,** as amended by PL 1999, c. 398, Pt. A, §21 and affected by §§104 and 105, is further amended to read:

**§1316. Testimony presented by employees of public utilities ~~or~~, competitive ~~service~~ electricity providers, affiliated interests or utility contractors to legislative committees ~~and to~~, the Public Utilities Commission and the Public Advocate**

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

A. "Employee" means a person who currently performs or formerly performed a service for wages or other remuneration under a contract of hire, expressed or implied, ~~but does not include an independent contractor~~ for a public utility, competitive electricity provider, affiliated interest or utility contractor.

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

B. "Employer" means a public utility ~~or~~, competitive ~~service~~ electricity provider, affiliated interest or utility contractor licensed to do business in this State with one or more employees.

C. "Legislative committee" means a joint standing committee or a joint select committee of the Legislature, a task force, commission or council or any other committee established by the Legislature and composed wholly or partly of Legislators for the purpose of conducting legislative business.

D. "Own time" means an employee's vacation or personal time, earned as a condition of employment.

E. "Utility contractor" means a person that provides goods or services to a public utility or competitive electricity provider.

**2. Right of employees to provide testimony.**  Employees ~~of a public utility or competitive service provider~~ have the right to represent themselves and to testify before or provide information to a legislative committee ~~or~~, the commission or the Public Advocate on their own time. An employee ~~of a public utility or competitive service provider~~ who complies with this section may not be denied the right to testify before or provide information to a legislative committee ~~or~~, the commission or the Public Advocate.

**2-A. Right of utility contractors to provide testimony.**  A utility contractor has the right to testify before or provide information to a legislative committee, the commission or the Public Advocate.

**3. Discharge of, threats to or discrimination against employees ~~of utility service providers~~ for testimony presented to legislative committees ~~or~~, the commission or the Public Advocate.**  ~~Unless otherwise provided for, a~~ A supervisor may not discharge, threaten or otherwise discriminate against an employee ~~of a public utility or competitive service provider~~ regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee, in compliance with this section, in good faith testifies before or provides information to a legislative committee ~~or to~~, the commission or the Public Advocate regarding the operation of the business of a public utility or competitive ~~service~~ electricity provider or because the employee brings the subject matter of the testimony or information to the attention of a person having supervisory authority.

This subsection does not apply to an employee who has testified before or provided information to a legislative committee ~~or to~~, the commission or the Public Advocate unless the employee has first brought the subject matter of the testimony or information in writing to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable time to address the subject matter of the testimony or information. If appropriate, the employer shall respond in writing.

**4. Exceptions.**  The ~~protection~~ protections created in ~~subsection~~ subsections 3 ~~does~~ and 9 do not apply to testimony or information that, upon reasonable inquiry by the employee or utility contractor, would be found to be false~~, slanderous, libelous or defamatory or to testimony that violates a term or condition of a collectively bargained agreement or to testimony that discloses trade secrets or corporate strategy, the disclosure of which would result in harm to the employer~~ or consist of information about critical energy infrastructure, personally identifiable information, customer-specific information or other information that is confidential by law.

**5. Civil actions for injunctive relief or other remedies by employees.**  An employee ~~of a public utility or competitive service provider~~ who alleges a violation of rights under this section and who has made reasonable efforts to exhaust all grievance procedures, as provided for in the contract of employment or ~~which~~ that otherwise may be available at the employee's place of employment, may bring a civil action, including an action for injunctive relief, within 90 days after the occurrence of that alleged violation or after the grievance procedure or similar process terminates. The action may be brought in the Superior Court for the county where the alleged violation occurred, the county where the complainant resides or the county where the person against whom the civil complaint is filed resides. An employee must establish each ~~and every~~ element of the employee's case by a preponderance of the evidence.

**5-A. Civil actions for injunctive relief or other remedies by utility contractors.**  A utility contractor that alleges a violation of rights under this section may bring a civil action, including an action for injunctive relief, within 90 days after the occurrence of that alleged violation. The action may be brought in the Superior Court for the county where the alleged violation occurred, the county where the complainant resides or the county where the person against whom the civil complaint is filed resides. A utility contractor must establish each element of the utility contractor's case by a preponderance of the evidence.

**6. Remedies ordered by court.**  A court, in rendering a judgment in an action brought pursuant to this section, may order reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights or any combination of these remedies. ~~A~~ If an employee or utility contractor is the prevailing party, a court ~~may also~~ shall award the ~~prevailing party~~ employee or utility contractor all or a portion of the costs of litigation, including reasonable ~~attorneys'~~ attorney's fees and witness fees~~, if the court determines that the award is appropriate~~.

**7. Collective bargaining rights.**  This section does not diminish or impair the rights of a person under any collective bargaining agreement. A public utility, competitive electricity provider or affiliated interest may not enter into a collective bargaining agreement for the sole purpose of preventing employees from exercising their rights to testify before or provide information to a legislative committee, the commission or the Public Advocate pursuant to this section.

**8. Jury trial; common-law rights.**  Any action brought under this section may be heard by a jury. Nothing in this section derogates any common-law rights of an employee or employer.

**9. Contracts with utility contractors.**  If a utility contractor, in compliance with this section and in good faith, testifies before or provides information to a legislative committee, the commission or the Public Advocate, a public utility or competitive electricity provider may not respond to such action by the utility contractor by:

A. Terminating or threatening to terminate a contract with the utility contractor; or

B. Harming or threatening to harm the utility contractor financially.

**10. Notice of rights required.**  A public utility and a competitive electricity provider shall notify the public utility's and the competitive electricity provider's employees, affiliated interests and utility contractors of their rights under this section.

**11. Penalties.**  The commission may impose penalties for violations of this section. This subsection does not apply in the case of an employee of a utility contractor alleging a violation under subsection 3.

**12. Rulemaking.**  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.

**Sec. 5. 35-A MRSA §1508-A, sub-§1, ¶E** is enacted to read:

E. In accordance with section 301, subsection 1-A, paragraph F, the commission shall impose an administrative penalty on a transmission and distribution utility in an amount that does not exceed $1,000,000 or 10% of its annual gross revenue received from ratepayers in the State, whichever amount is lower, that fails for any rolling 18-consecutive-month period or otherwise consistently fails to meet a standard established by the commission pursuant to section 301, subsection 1-A, paragraph A. In determining the amount of an administrative penalty under this paragraph, in addition to the factors in subsection 2, the commission shall take into account the severity of the noncompliance, the harm, if any, to ratepayers, whether the noncompliance was the result of events or actions within the utility’s control and such other factors as the commission determines appropriate. The commission shall use the proceeds from the administrative penalty assessed under this paragraph to reduce energy costs for low-income customers.

**Sec. 6. 35-A MRSA §1513** is enacted to read:

**§1513. Divestiture of underperforming investor-owned transmission and distribution utility**

The commission shall initiate an adjudicatory proceeding in accordance with this section and section 708, subsection 2, paragraph A, subparagraph (8) to determine whether divestiture of an investor-owned transmission and distribution utility is warranted if the utility consistently fails to meet the service standards established in section 301, subsection 1-A, consistently fails to meet the requirements of section 301, subsection 1 or is unable to fulfill its statutory duties as a public utility because it is financially impaired. If, at the conclusion of the adjudicatory proceeding, the commission determines that divestiture of an investor-owned transmission and distribution utility is warranted, the following procedures apply.

**1. Consideration of proposals to acquire the utility or its assets.** The commission shall request proposals from qualified buyers interested in acquiring the investor-owned transmission and distribution utility or its assets.

**2. Determination by the commission.** The commission shall order the owner of the investor-owned transmission and distribution utility to divest the utility if a proposal from a qualified buyer:

A. Will result, over the long term, in net benefits to ratepayers in the form of lower rates or better service than the rates and service provided by the investor-owned transmission and distribution utility;

B. Is for a fair and reasonable purchase price that ensures that the owners of the investor-owned transmission and distribution utility receive just compensation for the sale of the utility or its assets; and

C. Demonstrates that the buyer has sufficient financial and technical capability, expertise and experience to own and operate the utility and the ability to comply with all of the legal requirements, including but not limited to compliance with Title 38, section 576-A and section 577, subsection 1, for an investor-owned transmission and distribution utility.

If more than one proposal meets the criteria established in this subsection, the commission shall order divestiture in accordance with the proposal that results in the greatest net benefits to ratepayers.

**3. Superior Court review.** Notwithstanding any other provision of this Title, an investor-owned transmission and distribution utility may apply by petition to the Superior Court of Kennebec County to determine whether the divestiture price determined by the commission under subsection 2 provides just compensation. The court shall hold a hearing on the petition in which the parties are permitted to present factual and expert testimony and other evidence concerning the value of the utility or its assets and shall render a decision on whether the divestiture price determined by the commission provides just compensation. The decision of the Superior Court may be appealed to the Supreme Judicial Court sitting as the Law Court in the same manner as an appeal taken from a judgment of the Superior Court in a civil action.

**Sec. 7. 35-A MRSA §3146** is enacted to read:

**§3146. Climate change protection plan**

No later than December 31, 2023, and every 3 years thereafter, an investor-owned transmission and distribution utility shall submit to the commission a 10-year plan that includes specific actions for addressing the expected effects of climate change on the utility's assets needed to transmit and distribute electricity to its customers. As part of the plan, the transmission and distribution utility shall include estimates of the costs associated with implementing and failing to implement the identified actions. The commission shall request input from interested parties on the transmission and distribution utility's plan and shall order the transmission and distribution utility to take any action the commission determines is reasonable, cost-effective and necessary to ensure that the utility will be able to continue to meet the requirements of section 301, subsection 1 for the foreseeable future. A transmission and distribution utility's prudently incurred costs in taking any action ordered by the commission in accordance with this section are just and reasonable operating costs for rate-making purposes and must be reflected in the transmission and distribution utility's rates.

**Sec. 8. 35-A MRSA §3210, sub-§2, ¶B-3,** as amended by PL 2019, c. 477, §1, is further amended by amending subparagraph (1) to read:

(1) ~~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;

(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

**Sec. 9. 35-A MRSA §3210, sub-§2, ¶C,** as amended by PL 2009, c. 542, §5, is further amended by amending subparagraph (2) to read:

(2) ~~Whose total power production capacity does not exceed 100 megawatts and that~~ 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.

**Sec. 10.** **Adoption of rules by Public Utilities Commission establishing minimum requirements.** No later than June 30, 2023, the Public Utilities Commission shall adopt the rules required by the Maine Revised Statutes, Title 35-A, section 301, subsection 1-A.

**Sec. 11. Appropriations and allocations.**  The following appropriations and allocations are made.

**PUBLIC UTILITIES COMMISSION**

**Public Utilities - Administrative Division 0184**

Initiative: Provides allocations for one Staff Attorney position, one Utility Analyst position and associated All Other costs.

|  |  |  |
| --- | --- | --- |
| **OTHER SPECIAL REVENUE FUNDS** | **2021-22** | **2022-23** |
| POSITIONS - LEGISLATIVE COUNT | 0.000 | 2.000 |
| Personal Services | $0 | $307,938 |
| All Other | $0 | $25,592 |
|   | \_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_ |
| OTHER SPECIAL REVENUE FUNDS TOTAL | $0 | $333,530 |

**Public Utilities - Administrative Division 0184**

Initiative: Provides allocations for contracted services.

|  |  |  |
| --- | --- | --- |
| **OTHER SPECIAL REVENUE FUNDS** | **2021-22** | **2022-23** |
| All Other | $0 | $400,000 |
|   | \_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_ |
| OTHER SPECIAL REVENUE FUNDS TOTAL | $0 | $400,000 |

|  |  |  |
| --- | --- | --- |
| **PUBLIC UTILITIES COMMISSION** |   |   |
| **DEPARTMENT TOTALS** | **2021-22** | **2022-23** |
|   |   |   |
| **OTHER SPECIAL REVENUE FUNDS** | **$0** | **$733,530** |
|   | \_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_ |
| **DEPARTMENT TOTAL - ALL FUNDS** | **$0** | **$733,530** |

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Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

This amendment replaces the bill. This amendment:

1. Requires the Public Utilities Commission to adopt rules governing the evaluation of transmission and distribution utility performance and establishing metrics for utility operations and activities related to service quality, customer service, field services and distributed energy resources interconnection. The commission must publish quarterly report cards on utility performance and must impose administrative penalties for a utility’s poor performance unless the utility demonstrates good cause for its failure to meet the service standards;

2. Authorizes the commission to perform audits and disallow cost recovery for certain transmission and distribution utilities when the commission has not made a rate determination in the preceding 5 years;

3. Requires the commission to conduct a detailed expenditure analysis for certain transmission and distribution utilities;

4. Clarifies and adds protections for employees of utilities, competitive electricity providers, affiliated interests and utility contractors that provide testimony to legislative committees, the commission or the Public Advocate;

5. Establishes a new administrative penalty provision specific to violations of the service standard requirements;

6. Provides for a process to determine whether an underperforming investor-owned utility should be required to divest its utility assets to a qualified buyer;

7. Requires transmission and distribution utilities to develop and submit to the commission a 10-year plan including specific actions for addressing the expected effects of climate change;

8. Repeals the 100-megawatt cap for electrical generation sources in the definitions of "renewable capacity resource" and "renewable resource"; and

9. Requires the commission to adopt rules to implement the service standard requirements no later than June 30, 2023.

The amendment adds an appropriations and allocations section.

**FISCAL NOTE REQUIRED**

**(See attached)**