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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.

COMMITTEE AMENDMENT

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

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

6 F. The commission shall impose administrative penalties for designated thresholds of
7 poor performance for service standards in accordance with section 1508-A, subsection
8 1, paragraph E unless the utility demonstrates good cause for its failure to meet the
9 standard.

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

12 H. Once every 3 years, the commission may audit the data reported by a utility for
13 each standard.

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

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

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

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

25 This subsection takes effect January 15, 2024.

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

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

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

1 **§1316. Testimony presented by employees of public utilities ~~or~~, competitive service**
2 **electricity providers, affiliated interests or utility contractors to legislative**
3 **committees ~~and to~~, the Public Utilities Commission and the Public Advocate**

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

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

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

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

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

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

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

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

29 **2-A. Right of utility contractors to provide testimony.** A utility contractor has the
30 right to testify before or provide information to a legislative committee, the commission or
31 the Public Advocate.

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

42 This subsection does not apply to an employee who has testified before or provided
43 information to a legislative committee ~~or to~~, the commission or the Public Advocate unless

1 the employee has first brought the subject matter of the testimony or information in writing
2 to the attention of a person having supervisory authority with the employer and has allowed
3 the employer a reasonable time to address the subject matter of the testimony or
4 information. If appropriate, the employer shall respond in writing.

5 **4. Exceptions.** ~~The protection protections created in subsection subsections 3 does~~
6 ~~and 9 do not apply to testimony or information that, upon reasonable inquiry by the~~
7 ~~employee or utility contractor, would be found to be false, slanderous, libelous or~~
8 ~~defamatory or to testimony that violates a term or condition of a collectively bargained~~
9 ~~agreement or to testimony that discloses trade secrets or corporate strategy, the disclosure~~
10 ~~of which would result in harm to the employer.~~

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

22 **5-A. Civil actions for injunctive relief or other remedies by utility contractors.** A
23 utility contractor that alleges a violation of rights under this section may bring a civil action,
24 including an action for injunctive relief, within 90 days after the occurrence of that alleged
25 violation. The action may be brought in the Superior Court for the county where the alleged
26 violation occurred, the county where the complainant resides or the county where the
27 person against whom the civil complaint is filed resides. A utility contractor must establish
28 each element of the utility contractor's case by a preponderance of the evidence.

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

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

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

44 **9. Contracts with utility contractors.** If a utility contractor, in compliance with this
45 section and in good faith, testifies before or provides information to a legislative committee,

1 the commission or the Public Advocate, a public utility or competitive electricity provider
2 may not respond to such action by the utility contractor by:

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

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

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

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

11 **12. Rulemaking.** The commission may adopt rules to implement this section. Rules
12 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
13 375, subchapter 2-A.

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

15 E. In accordance with section 301, subsection 1-A, paragraph F, the commission shall
16 impose an administrative penalty on a transmission and distribution utility in an amount
17 that does not exceed \$1,000,000 or 10% of its annual gross revenue received from
18 ratepayers in the State, whichever amount is lower, that fails for 2 consecutive calendar
19 quarters or otherwise consistently fails to meet a standard established by the
20 commission pursuant to section 301, subsection 1-A, paragraph A. Each calendar
21 quarter that the transmission and distribution utility fails to meet the standard
22 constitutes a separate offense. The commission shall use the proceeds from the penalty
23 imposed under this paragraph to reduce energy costs for low-income customers.

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

25 **§1513. Divestiture of underperforming transmission and distribution utility**

26 The commission shall initiate an adjudicatory proceeding in accordance with this
27 section and section 708, subsection 2, paragraph A, subparagraph (8) to determine whether
28 divestiture of an investor-owned transmission and distribution utility is warranted if the
29 utility consistently fails to meet the service standards established in section 301, subsection
30 1-A, consistently fails to meet the requirements of section 301, subsection 1 or is unable to
31 fulfill its statutory duties as a public utility because it is financially impaired or if a
32 proceeding is requested by the Public Advocate. If, at the conclusion of the adjudicatory
33 proceeding, the commission determines that divestiture of an investor-owned transmission
34 and distribution utility is warranted, the following procedures apply.

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

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

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

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

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

12 D. Will benefit ratepayers as determined in accordance with section 708, subsection 2,
13 paragraph C, subparagraph (2).

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

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

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

28 **§3146. Climate change protection plan**

29 No later than December 31, 2023, and every 3 years thereafter, a transmission and
30 distribution utility shall submit to the commission a 10-year plan that includes specific
31 actions for addressing the expected effects of climate change on the utility's assets needed
32 to transmit and distribute electricity to its customers. The commission shall request input
33 from interested parties on the transmission and distribution utility's plan and shall order the
34 transmission and distribution utility to take any action the commission determines is
35 reasonable and necessary to ensure that the utility will be able to continue to meet the
36 requirements of section 301, subsection 1 for the foreseeable future. A transmission and
37 distribution utility's prudently incurred costs in taking any action ordered by the
38 commission in accordance with this section are just and reasonable operating costs for rate-
39 making purposes.

40 **Sec. 8. 35-A MRSA §3147** is enacted to read:

41 **§3147. Integrated grid planning**

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

1 A. "Covered utility" means a large, investor-owned transmission and distribution utility
2 as defined in section 3201, subsection 12.

3 B. "Environmental justice" means the fair treatment and meaningful involvement of all
4 persons regardless of race, color, national origin or income with respect to the
5 development, implementation and enforcement of environmental laws, rules,
6 regulations and policies.

7 C. "Grid plan" means a 10-year integrated grid plan for a covered utility developed in
8 accordance with this section designed to improve system reliability and resiliency and
9 enable cost-effective compliance with the greenhouse gas reduction obligations and
10 climate policies pursuant to Title 38, section 576-A and section 577, subsection 1.

11 D. "Hosting capacity" means a threshold at a circuit at which new distributed energy
12 resources will result in upgrades or changes to the electrical distribution system and
13 require cost considerations of related upgrades and changes.

14 **2. Plan development.** The commission shall develop and implement grid plans for
15 covered utilities in order to transition to a clean, affordable and reliable electric grid in a
16 cost-effective manner. The commission may contract with an independent organization to
17 assist in development of a grid plan and shall hold technical conferences or stakeholder
18 workshops before the grid plan is developed to define requirements and inform data,
19 assumptions, methodologies and tools that will assist the commission in determining what
20 actions if any it will direct a covered utility to take. Covered utilities shall provide the
21 information requested by the commission in order to develop a grid plan. In developing the
22 grid plan, the commission shall solicit input from regional transmission entities with respect
23 to transmission system planning and experts in distribution system design with respect to
24 distribution system planning.

25 **3. Plan submission.** No later than December 15, 2023, and every 3 years thereafter,
26 the commission shall seek public comment on grid plans developed in accordance with this
27 section. The commission shall open an adjudicatory proceeding or proceedings on each
28 covered utility's grid plan and shall ensure to the greatest extent practicable that any
29 information related to the grid plan is provided in a form accessible to interested parties
30 and all relevant data and distribution planning modeling tools are available to stakeholders
31 subject to commercial nondisclosure requirements, confidential energy infrastructure
32 requirements, codes of conduct and other commercial requirements, commission
33 requirements and Federal Energy Regulatory Commission requirements. The commission
34 shall require each covered utility to implement the grid plan. For the initial grid plan, the
35 commission may provide a phase-in schedule to allow a covered utility to comply with
36 components incrementally. The commission shall develop reporting metrics, establish
37 baselines and track progress in implementing the grid plan.

38 **4. Plan revision and enforcement.** The commission may, at any time as it determines
39 necessary, revise a grid plan to address any deficiencies in the grid plan and may order a
40 covered utility to take any reasonable actions to align its business, programs, operations,
41 and investments with the plan. The commission may assess administrative penalties in
42 accordance with section 1508-A for any failure by a covered utility to follow any
43 commission order to align its business, programs, operations and investments with the plan.

44 **5. Contents of plan.** A grid plan developed under this section must:

1 A. Describe how the covered utility's assets and operations will be used to achieve the
2 goals and implement the strategies of the State's climate action plan under Title 38,
3 section 577 with specific reference to the climate action plan and incorporate relevant
4 information from reports and analysis completed by other state agencies and quasi-
5 independent state entities;

6 B. Evaluate the electric system of the covered utility and its relationship to the regional
7 grid;

8 C. Include a 3-year action plan to optimize near-term grid investments and operations
9 consistent with the grid plan;

10 D. For strategies related to customer energy consumption and usage characteristics,
11 reference and incorporate all relevant elements of the Efficiency Maine Trust triennial
12 plan developed under section 10104, subsection 4, including all of the trust's analysis
13 of cost-effective potential for energy efficiency savings; plans to implement energy
14 efficiency programs, demand management programs, beneficial electrification
15 programs such as heat pump and electric vehicle initiatives and energy storage
16 initiatives; and analysis of nonwires alternative opportunities;

17 E. Include more than one planning scenario and mechanisms for achieving grid plan
18 goals, which may include, but are not limited to, policies, programs, rates, use of
19 software or technology and infrastructure planning, including nonwires alternatives;
20 and

21 F. Include, at a minimum, the following:

22 (1) Forecasts of projected load, including forecasts of end-use electrification,
23 energy efficiency and distributed energy resources;

24 (2) Baseline energy supply data and assessments, including but not limited to
25 planned generation retirements and new generation that is planned or needed
26 including generation of electricity from renewable sources and from energy storage
27 installations;

28 (3) An analysis of hosting capacity, including locational benefits of distributed
29 energy resources and areas of existing or potential system congestion;

30 (4) An analysis of available and emerging technologies necessary to enable load
31 management and flexibility; and

32 (5) An assessment of the environmental, equity and environmental justice effects
33 of the grid plan.

34 **6. Costs.** A covered utility's prudently incurred costs in taking any action ordered by
35 the commission in accordance with this section are just and reasonable operating costs for
36 rate-making purposes.

37 **Sec. 9. Plan status to committee.** No later than October 15, 2023, the Public
38 Utilities Commission shall provide an interim report regarding the status of the
39 development of grid plans under the Maine Revised Statutes, Title 35-A, section 3147 to
40 the joint standing committee of the Legislature having jurisdiction over energy and utility
41 matters. No later than July 15, 2024, the commission shall submit a final report on the
42 development of grid plans to the committee. The joint standing committee of the
43 Legislature having jurisdiction over energy and utility matters may report out a bill in

1 connection with the interim report provided by the commission to the Second Regular
2 Session of the 131st Legislature and the final report provided by the commission to the
3 First Regular Session of the 132nd Legislature.

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

8 **Sec. 11. Assessment of resources needs at Public Utilities Commission.** No
9 later than December 1, 2022, the Public Utilities Commission shall provide to the joint
10 standing committee of the Legislature having jurisdiction over energy and utility matters a
11 report that includes an assessment of staffing and resources that may be necessary to
12 implement the Maine Revised Statutes, Title 35-A, section 3147. After receiving the report,
13 the committee may report out legislation on the subject matter of the report to the 131st
14 Legislature in 2023.

15 **Sec. 12. Appropriations and allocations.** The following appropriations and
16 allocations are made.

17 **PUBLIC UTILITIES COMMISSION**

18 **Public Utilities - Administrative Division 0184**

19 Initiative: Provides allocations for 5 Staff Attorney positions, 6 Utility Analyst positions
20 and associated All Other costs.

21 OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
22 POSITIONS - LEGISLATIVE COUNT	0.000	11.000
23 Personal Services	\$0	\$590,546
24 All Other	\$0	\$102,245
25		
26 OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$692,791

27
28 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
29 number to read consecutively.

30 **SUMMARY**

31 This amendment replaces the bill. This amendment:

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

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

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

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

6 5. Establishes a new administrative penalty provision specific to violations of the
7 service standard requirements in the Maine Revised Statutes, Title 35-A, section 301,
8 subsection 1-A;

9 6. Provides for a process for divesting an underperforming investor-owned utility of
10 its utility assets to a qualified buyer;

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

14 8. Requires the commission to develop integrated grid plans for certain transmission
15 and distribution utilities using information provided by the transmission and distribution
16 utilities. The grid plan must be designed to improve system reliability and resiliency and
17 enable cost-effective achievement of greenhouse gas reduction and climate policy goals;

18 9. Requires the commission to provide reports to the joint standing committee of the
19 Legislature having jurisdiction over energy and utility matters regarding the status of the
20 development of grid plans no later than October 15, 2023 and July 15, 2024;

21 10. Requires the commission to adopt rules to implement the requirements of Title
22 35-A, section 301, subsection 1-A no later than June 30, 2023; and

23 11. Requires the commission to provide a report to the joint standing committee of the
24 Legislature having jurisdiction over energy and utility matters including an assessment of
25 staffing and resources that may be necessary to implement the integrated grid planning
26 provisions in Title 35-A, section 3147.

27 The amendment adds an appropriations and allocations section.

28 **FISCAL NOTE REQUIRED**

29 **(See attached)**