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Date: (Filing No. S-)

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STATE OF MAINE
SENATE
130TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT “ ” to COMMITTEE AMENDMENT “A” to S.P. 248, L.D. 634, “An Act To Cap the Value of Contracts for Renewable Resources and Distributed Generation Resources”

Amend the amendment by striking out the substitute title and replacing it with the following:

'An Act To Reduce Volatility in the Net Energy Billing Program and To Define "Competitive Electricity Provider" '

Amend the amendment by striking out sections 1 to 3 and inserting the following:

'Sec. 1. 35-A MRSA §102, sub-§2-A, as enacted by PL 1999, c. 398, Pt. A, §3 and affected by §§104 and 105, is repealed.

Sec. 2. 35-A MRSA §102, sub-§2-B is enacted to read:

2-B. Competitive electricity provider. "Competitive electricity provider" has the same meaning as in section 3201, subsection 5.

Sec. 3. 35-A MRSA §103, sub-§2, ¶C, as enacted by PL 1999, c. 398, Pt. A, §10 and affected by §§104 and 105, is amended to read:

C. The commission shall oversee the activities of competitive ~~service~~ electricity providers to the extent provided in this Title.

Sec. 4. 35-A MRSA §109, sub-§1, as amended by PL 1999, c. 398, Pt. A, §11 and affected by §§104 and 105, is further amended to read:

- 1. Public utilities.** A member or employee of the commission may not:
 - A. Have any official or professional connection or relation with any public utility or competitive ~~service~~ electricity provider operating within this State;
 - B. Hold any stock or securities in any public utility or competitive ~~service~~ electricity provider operating within this State;
 - C. Render a professional service against any such public utility or competitive ~~service~~ electricity provider; or
 - D. Be a member of a firm that renders service against any such public utility or competitive ~~service~~ electricity provider.

SENATE AMENDMENT

1 **Sec. 5. 35-A MRSA §1316**, as amended by PL 1999, c. 398, Pt. A, §21 and affected
2 by §§104 and 105, is further amended by amending the section headnote to read:

3 **§1316. Testimony presented by employees of public utilities or competitive ~~service~~**
4 **electricity providers to legislative committees and to the Public Utilities**
5 **Commission**

6 **Sec. 6. 35-A MRSA §1316, sub-§1, ¶B**, as amended by PL 1999, c. 398, Pt. A,
7 §21 and affected by §§104 and 105, is further amended to read:

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

10 **Sec. 7. 35-A MRSA §1316, sub-§2**, as amended by PL 1999, c. 398, Pt. A, §21
11 and affected by §§104 and 105, is further amended to read:

12 **2. Right to provide testimony.** Employees of a public utility or competitive ~~service~~
13 electricity provider have the right to represent themselves and to testify before a legislative
14 committee or the commission on their own time. An employee of a public utility or
15 competitive ~~service~~ electricity provider who complies with this section may not be denied
16 the right to testify before a legislative committee or the commission.

17 **Sec. 8. 35-A MRSA §1316, sub-§3**, as amended by PL 1999, c. 398, Pt. A, §21
18 and affected by §§104 and 105, is further amended to read:

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

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

36 **Sec. 9. 35-A MRSA §1316, sub-§5**, as amended by PL 1999, c. 398, Pt. A, §21
37 and affected by §§104 and 105, is further amended to read:

38 **5. Civil actions for injunctive relief or other remedies.** An employee of a public
39 utility or competitive ~~service~~ electricity provider who alleges a violation of rights under
40 this section and who has made reasonable efforts to exhaust all grievance procedures, as
41 provided for in the contract of employment or which otherwise may be available at the
42 employee's place of employment, may bring a civil action, including an action for
43 injunctive relief, within 90 days after the occurrence of that alleged violation or after the

1 grievance procedure or similar process terminates. The action may be brought in the
2 Superior Court for the county where the alleged violation occurred, the county where the
3 complainant resides or the county where the person against whom the civil complaint is
4 filed resides. An employee must establish each and every element of the employee's case
5 by a preponderance of the evidence.

6 **Sec. 10. 35-A MRSA §1321**, as amended by PL 1999, c. 398, Pt. A, §22 and
7 affected by §§104 and 105, is further amended to read:

8 **§1321. Orders altered or amended**

9 The commission may at any time rescind, alter or amend any order it has made
10 including an order fixing any rate or rates, tolls, charges or schedules of a public utility or
11 an order relating to matters within the jurisdiction of the commission with respect to a
12 competitive ~~service~~ electricity provider only if it gives the public utility or competitive
13 ~~service~~ electricity provider and all parties to the original proceeding, to the extent practical,
14 written notice and after opportunity for those parties to present evidence or argument, as
15 determined appropriate by the commission. Certified copies of amended orders must be
16 served and take effect as provided for original orders. Nothing in this section is intended
17 to grant to the commission authority to establish or approve the rates charged by
18 competitive ~~service~~ electricity providers.

19 **Sec. 11. 35-A MRSA §1322, sub-§1**, as amended by PL 1999, c. 398, Pt. A, §23
20 and affected by §§104 and 105, is further amended to read:

21 **1. Orders temporarily amended.** When the commission finds it necessary to prevent
22 injury to a public utility's business or to the interest of the people, or if the commission
23 finds there is an emergency, it may temporarily alter, amend or, with the public utility's
24 consent, suspend existing rates, schedules or orders affecting the public utility. When the
25 commission finds it necessary to prevent injury to a competitive ~~service~~ electricity
26 provider's business or to the interest of the people, or if the commission finds there is an
27 emergency, it may temporarily alter, amend or, with the competitive ~~service~~ electricity
28 provider's consent, suspend existing orders affecting the competitive ~~service~~ electricity
29 provider.

30 **Sec. 12. 35-A MRSA §1322, sub-§3**, as enacted by PL 1999, c. 398, Pt. A, §23
31 and affected by §§104 and 105, is amended to read:

32 **3. Limitation of authority.** Nothing in this section is intended to grant the
33 commission authority to establish or approve the rates charged by competitive ~~service~~
34 electricity providers.

35 **Sec. 13. 35-A MRSA §1702, sub-§1, ¶B**, as amended by PL 1999, c. 398, Pt. A,
36 §24 and affected by §§104 and 105, is further amended to read:

37 B. The reasonableness and adequacy of the service furnished or proposed to be
38 furnished by any public utility or competitive ~~service~~ electricity provider;

39 **Sec. 14. 35-A MRSA §1702, sub-§3**, as amended by PL 1999, c. 398, Pt. A, §25
40 and affected by §§104 and 105, is further amended to read:

41 **3. Petition to initiate proceedings.** The Public Advocate may petition the
42 commission to initiate proceedings to review, investigate and take appropriate action with

1 respect to the rates or service of any public utility or competitive ~~service~~ electricity provider
2 when determined necessary by the Public Advocate.

3 **Sec. 15. 35-A MRSA §1702, sub-§5**, as amended by PL 2019, c. 71, §1, is further
4 amended to read:

5 **5. Intervention on behalf of public.** The Public Advocate may, on behalf of the using
6 and consuming public, or any particular group of consumers, petition to initiate, or
7 intervene and appear in, any proceedings before the commission, appeals from orders of
8 the commission, or proceedings before state and federal agencies and courts in which the
9 subject matter of the action affects the customers of any utility or competitive ~~service~~
10 electricity provider doing business in this State.

11 **Sec. 16. 35-A MRSA §1709**, as amended by PL 1999, c. 398, Pt. A, §28 and
12 affected by §§104 and 105, is further amended to read:

13 **§1709. Conflicts of interest**

14 In addition to the limitations of Title 5, section 18, the Public Advocate or any
15 employee of the Public Advocate may not have any official or professional connection or
16 relation with, or hold any stock or securities in, any public utility or competitive ~~service~~
17 electricity provider operating within this State; render any professional service against any
18 such public utility or competitive ~~service~~ electricity provider; or be a member of a firm that
19 renders any such service.

20 **Sec. 17. 35-A MRSA §3209-A, sub-§7**, as enacted by PL 2021, c. 390, §1, is
21 amended to read:

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

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

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

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

35 An amendment, revision or reissuance of an agreement under this paragraph that occurs
36 after December 31, 2020 may not be interpreted to affect the date on which the initial
37 agreement was signed.

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

40 (1) A complete application for a customer net energy billing agreement has been
41 submitted for the distributed generation resource and a customer has or customers

1 have financial interest in 90% or more of the capacity of that distributed generation
2 resource; or

3 (2) There is a fully executed net energy billing agreement between a customer or
4 sponsor of the distributed generation resource and the transmission and distribution
5 utility for the distributed generation resource and a customer has or customers have
6 financial interest in 90% or more of the capacity of that distributed generation
7 resource.

8 C. In order for a distributed generation resource to be used for net energy billing, the
9 following must have been met on or before June 1, 2021:

10 (1) The interconnection study process has commenced for a distributed generation
11 resource located in those portions of the service territory of an investor-owned
12 transmission and distribution utility that are not connected to the ISO-NE region
13 as defined in section 1902, subsection 3.

14 D. In order for a distributed generation resource to be used for net energy billing, all
15 of the following must be met on or before December 31, 2021:

16 (1) There is a fully executed interconnection agreement between the entity
17 proposing the development of the distributed generation resource and the
18 transmission and distribution utility;

19 (2) The entity proposing the development of the distributed generation resource
20 certifies to the commission that the entity has submitted all applicable permit
21 applications to the Department of Environmental Protection and the department
22 has accepted those applications for processing; and

23 (3) The entity proposing the development of the distributed generation resource
24 certifies to the commission that the entity has received all necessary local,
25 nonministerial permits. For purposes of this subparagraph, "nonministerial permit"
26 means a permit for which one or more officials consider various factors and
27 exercise discretion in deciding whether to issue or deny the permit.

28 An amendment, revision or reissuance of an agreement under this paragraph that occurs
29 after December 31, 2021 may not be interpreted to affect the date on which the
30 agreement was initially executed.

31 E. In order for a distributed generation resource to be used for net energy billing, the
32 following must be met on or before December 31, 2024:

33 (1) The proposed distributed generation resource must reach commercial operation
34 by the date specified in the net energy billing agreement or by the date specified
35 with an allowable modification to that agreement.

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

41 The goal for development of commercially operational distributed generation resources
42 under this subsection and section 3209-B, subsection 7 is 750 total megawatts.

1 **Sec. 18. 35-A MRSA §3209-A, sub-§7**, as enacted by PL 2021, c. 370, §1 and
2 reallocated by RR 2021, c. 1, Pt. A, §37, is reallocated to 35-A MRSA §3209-A, sub-§8.

3 **Sec. 19. 35-A MRSA §3209-B, sub-§5**, as enacted by PL 2019, c. 478, Pt. A, §4,
4 is amended to read:

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

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

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

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

32 (b) The distributed generation resource is collocated with a net energy billing
33 customer that is or net energy billing customers that are subscribed to at least
34 50% of the facility's output; or

35 (2) With a nameplate capacity of one megawatt or less.

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

38 (1) In 2022, equal the standard-offer service rate established pursuant to section
39 3212 that was applicable to the rate class of the customer receiving the credit on
40 December 31, 2020 plus 75% of the effective transmission and distribution rate
41 that was in effect on December 31, 2020 for the rate class that includes the smallest
42 commercial customers of the investor-owned transmission and distribution utility;
43 and

