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Date: (Filing No. H-)

ENERGY, UTILITIES AND TECHNOLOGY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
132ND LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1188, L.D. 1777, “An Act to Clarify
Tariff Rates for Nonresidential Customers Participating in Net Energy Billing with a
Distributed Generation Resource”

Amend the bill by striking out the title and substituting the following:

**'An Act to Reduce Costs and Increase Customer Protections for the State's Net
Energy Billing Programs'**

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

'Sec. 1. 35-A MRSA §3209-A, sub-§1, ¶B-1 is enacted to read:

B-1. "Mechanical completion" means, with respect to a distributed generation
resource, fully physically constructed and ready for operation.

Sec. 2. 35-A MRSA §3209-A, sub-§2-A is enacted to read:

2-A. Billing term length. An amendment, revision or reissuance of a net energy
billing agreement made after June 1, 2025 may not include an end date that is later than the
end date provided for in the agreement that is subject to the amendment, revision or
reissuance.

Sec. 3. 35-A MRSA §3209-A, sub-§10 is enacted to read:

10. Applicability; mechanical completion. A distributed generation resource that is
interconnected to the distribution grid on the grid side of a customer's meter may not be
used for net energy billing under this section unless the distributed generation resource
reaches mechanical completion by June 1, 2026.

Sec. 4. 35-A MRSA §3209-A, sub-§11 is enacted to read:

11. Distributed energy resource program. Notwithstanding any provision of this
section to the contrary, beginning on the date the commission implements a distributed
energy resource program pursuant to section 3209-I, the commission may not allow a
transmission and distribution utility to enter into a net energy billing agreement with a

COMMITTEE AMENDMENT

1 distributed generation resource that is interconnected to the distribution grid on the grid
2 side of a customer's meter.

3 **Sec. 5. 35-A MRSA §3209-B, sub-§5**, as amended by PL 2021, c. 659, §19, is
4 further amended to read:

5 **5. Tariff rate; bill credits.** The commission shall establish by rule tariff rates for
6 customers participating in the program. ~~The initial tariff rate must be established no later~~
7 ~~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, until December 31, 2025, must equal
10 the standard-offer service rate established under section 3212 that is applicable to the
11 customer receiving the credit plus 75% of the effective transmission and distribution
12 rate for the rate class that includes the smallest commercial customers of the investor-
13 owned transmission and distribution utility. The tariff rate under this paragraph applies
14 to net 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 After December 31, 2025, the tariff rate must be calculated in accordance with
37 paragraph A-2.

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

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

1 commercial customers of the investor-owned transmission and distribution utility;
2 and

3 (2) Increase by 2.25% on January 1st of each subsequent year, beginning January
4 1, 2023.

5 A-2. Beginning January 1, 2026, the commission shall establish the tariff rate for a
6 customer participating in net energy billing under this section with a distributed
7 generation resource described in paragraph A in accordance with this paragraph.

8 (1) For a distributed generation resource with a nameplate capacity of 3 megawatts
9 or more and less than 5 megawatts, the tariff rate must:

10 (a) Equal the tariff rate calculated under paragraph A-1 applicable in 2026;
11 and

12 (b) Increase by 2.25% on January 1st of each year, beginning January 1, 2027.

13 (2) For a distributed generation resource with a nameplate capacity of less than 3
14 megawatts, the tariff rate must:

15 (a) Equal the standard-offer service rate established pursuant to section 3212
16 that was applicable to the rate class of the customer receiving the credit on
17 December 31, 2024 plus 75% of the effective transmission and distribution rate
18 that was in effect on December 31, 2024 for the rate class that includes the
19 smallest commercial customers of the investor-owned transmission and
20 distribution utility; and

21 (b) Increase by 2.25% on January 1st of each year, beginning January 1, 2027.

22 B. A customer participating in the program must receive for electricity delivered to
23 the electric grid from a distributed generation resource in which the customer has a
24 financial interest a bill credit based on the tariff rate to apply against the costs of
25 electricity delivered to the customer by the investor-owned transmission and
26 distribution utility.

27 C. A bill credit under the program as described in paragraph B may be applied to any
28 portion of a customer's electricity bill. Credits that remain unused at the end of any
29 billing period may be carried forward for up to one year from the end of that billing
30 period.

31 D. A customer participating in the program who remains eligible to participate in the
32 program must be allowed to receive a bill credit based on the tariff rate for a period of
33 no less than 20 years from the date of first receiving the credit.

34 The commission shall publish the tariff rates established in accordance with this subsection
35 on its publicly accessible website.

36 **Sec. 6. 35-A MRSA §3209-B, sub-§7**, as amended by PL 2023, c. 411, §3, is
37 further amended to read:

38 **7. Applicability.** The applicability of this section is limited by the requirements of
39 section 3209-A, ~~subsection 7 and subsection 9~~ subsections 7, 9 and 10.

40 **Sec. 7. 35-A MRSA §3209-B, sub-§9** is enacted to read:

1 **9. Distributed energy resource program.** Notwithstanding any provision of this
2 section to the contrary, beginning on the date the commission implements a distributed
3 energy resource program pursuant to section 3209-I, the commission may not allow a
4 transmission and distribution utility to enter into a net energy billing agreement with a
5 distributed generation resource that is interconnected to the distribution grid on the grid
6 side of a customer's meter.

7 **Sec. 8. 35-A MRSA §3209-D**, as enacted by PL 2023, c. 411, §6, is repealed.

8 **Sec. 9. 35-A MRSA §3209-E, sub-§1, ¶A**, as enacted by PL 2023, c. 411, §7, is
9 amended to read:

10 A. "Distributed generation resource" has the same meaning as in section 3209-D,
11 subsection 1, paragraph A. means an electric generating facility that uses a renewable
12 fuel or technology under section 3210, subsection 2, paragraph B-3, is located in the
13 service territory of a transmission and distribution utility in the State and:

14 (1) Has met or is reasonably likely to meet the requirements of section 3209-A,
15 subsection 7, paragraph E, as determined by the commission; or

16 (2) Has a nameplate capacity of at least one megawatt and not more than 2
17 megawatts and:

18 (a) Is a member of a cluster study conducted by the transmission and
19 distribution utility with which the distributed generation resource is seeking to
20 interconnect; or

21 (b) Is likely to receive required transmission approval from the New England
22 independent system operator on or before April 30, 2024.

23 **Sec. 10. 35-A MRSA §3209-F** is enacted to read:

24 **§3209-F. Net energy billing project charge for certain distributed generation projects**

25 **1. Net energy billing project charge defined.** As used in this section, "net energy
26 billing project charge" means a monthly fee determined by the commission by rule in
27 accordance with this section that a transmission and distribution utility must use to offset
28 distribution costs associated with net energy billing arrangements under sections 3209-A
29 and 3209-B that would otherwise be paid by ratepayers, as determined by the commission.

30 **2. Net energy billing project charge; applicability.** Except as provided in subsection
31 5, the commission shall require a transmission and distribution utility to assess each
32 distributed generation resource participating in net energy billing with a shared financial
33 interest customer in accordance with section 3209-A, subsection 3. The commission shall
34 adopt rules to determine the net energy billing project charges applicable to distributed
35 generation resources described in subsection 3 and establish a process by which a
36 transmission and distribution utility must apply net energy billing project charges against
37 costs associated with net energy billing.

38 **3. Initial net energy billing project charge.** Beginning January 1, 2026, the initial
39 monthly net energy billing project charge established by the commission must be:

40 A. For a distributed generation resource with a nameplate capacity of 3 megawatts or
41 more and less than 5 megawatts, \$6.00 multiplied by the nameplate capacity of the
42 distributed generation resource in kilowatts;

1 B. For a distributed generation resource with a nameplate capacity of one megawatt or
2 more and less than 3 megawatts, \$2.80 multiplied by the nameplate capacity of the
3 distributed generation resource in kilowatts; and

4 C. For a distributed generation resource with a nameplate capacity of less than one
5 megawatt, zero.

6 **4. Adjustment of net energy billing project charge; compensation.** The commission
7 shall periodically by rule increase the initial net energy billing project charge to account
8 for increases in transmission and distribution rates. Compensation to a distributed
9 generation resource related to transmission and distribution rate credits may not increase
10 by more than 2.25% per year.

11 **5. Exceptions.** A distributed generation resource is exempt from the net energy billing
12 project charge established in this section if the distributed generation resource demonstrates
13 in a manner satisfactory to the commission that the distributed generation resource is:

14 A. Wholly owned by the customer or customers receiving the net energy billing credits
15 associated with the output of the distributed generation resource; or

16 B. Wholly owned by a cooperative corporation organized under Title 13, chapter 85.

17 **6. Rules.** The commission shall adopt rules to implement this section. Rules adopted
18 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
19 subchapter 2-A.

20 **Sec. 11. 35-A MRS §3209-G** is enacted to read:

21 **§3209-G. Net energy billing cost rate year adjustment**

22 **1. Adjustment of net energy billing cost rate year.** The commission shall require a
23 transmission and distribution utility to reconcile costs associated with net energy billing
24 under sections 3209-A and 3209-B, as determined by the commission, in a rate year to
25 begin on January 1st of each year, starting in 2026.

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

29 **Sec. 12. 35-A MRS §3209-H** is enacted to read:

30 **§3209-H. Net energy billing project procurement**

31 **1. Definitions.** As used in this section, the following terms have the following
32 meanings.

33 A. "Distributed generation resource" has the same meaning as in section 3209-A,
34 subsection 1, paragraph B.

35 B. "Eligible resource" means a distributed generation resource:

36 (1) That reaches commercial operation before November 1, 2025;

37 (2) That is participating in net energy billing pursuant to section 3209-A or 3209-B;
38 and

39 (3) For which 75% or less of the bill credits associated with the distributed
40 generation resource are allocated to a customer of or subscriber to the resource.

1 **2. Competitive procurement.** The commission shall direct investor-owned
2 transmission and distribution utilities to enter into one or more contracts for energy or
3 renewable energy credits or both from eligible resources in accordance with this section.
4 The commission may not require a distributed generation resource to contract for the sale
5 of energy or renewable energy credits under this section.

6 A. By November 1, 2025, the commission shall initiate a competitive solicitation for
7 contracts under this section for energy or renewable energy credits or both in an amount
8 determined by the commission.

9 B. The commission may initiate additional competitive solicitations in its sole
10 discretion after consultation with the Governor's Energy Office.

11 C. The commission may not award a contract to an eligible resource participating in
12 net energy billing pursuant to section 3209-A at a rate that exceeds the tariff rate
13 calculated under section 3209-B, subsection 5, paragraph A-1 applicable on November
14 1, 2025 to medium commercial customers as defined in section 3106, subsection 1,
15 paragraph B or industrial customers in the transmission and distribution service
16 territory in which the eligible resource is located.

17 D. The commission may not award a contract to an eligible resource participating in
18 net energy billing pursuant to section 3209-B at a rate that exceeds 70% of the tariff
19 rate calculated under section 3209-B, subsection 5, paragraph A-1 applicable on
20 November 1, 2025 to medium commercial customers as defined in section 3106,
21 subsection 1, paragraph B or industrial customers in the transmission and distribution
22 service territory in which the eligible resource is located.

23 **3. Contract terms.** A contract entered into pursuant to this section must be for a term
24 of no more than 20 years or the remainder of the eligible resource's net energy billing
25 agreement with a transmission and distribution utility, whichever is shorter, unless the
26 commission finds a contract for a longer term to be prudent.

27 **4. Rules.** The commission may adopt rules to implement this section. Rules adopted in
28 accordance with this subsection are routine technical rules as defined in Title 5, chapter
29 375, subchapter 2-A.

30 **Sec. 13. 35-A MRSA §3209-I** is enacted to read:

31 **§3209-I. Distributed energy resource program**

32 **1. Distributed energy resource defined.** As used in this section, "distributed energy
33 resource" means an electric generating facility that uses a renewable fuel or technology
34 under section 3210, subsection 2, paragraph B-3, is located in the service territory of a
35 transmission and distribution utility in the State and is interconnected to the distribution
36 grid on the grid side of a customer's meter.

37 **2. Program design; implementation.** The Governor's Energy Office shall design a
38 program or programs to encourage the development of distributed energy resources in the
39 State and submit the proposed program or programs to the commission. If the commission
40 finds that a program or programs proposed by the office provides benefits to ratepayers in
41 the State in excess of the costs to ratepayers, the commission shall by rule implement the
42 program or programs.

1 **3. Program implementation; net energy billing.** After the commission implements
2 the program or programs under subsection 2, the commission may not permit a
3 transmission and distribution utility to enter into a net energy billing agreement with a
4 distributed energy resource under section 3209-A or 3209-B.

5 **4. Rules.** The commission may adopt rules to implement this section. Rules adopted or
6 amended under this subsection are routine technical rules as defined in Title 5, chapter 375,
7 subchapter 2-A.

8 **Sec. 14. 35-A MRSA §3210-G, sub-§3,** as amended by PL 2023, c. 411, §8, is
9 further amended to read:

10 **3. Report.** No later than March 31, 2023 and biennially thereafter, the commission
11 shall submit a report regarding the status of contracts for Class IA resources under this
12 section and the status of contracts for energy or renewable energy credits from distributed
13 generation resources under section ~~3209-D~~ 3209-H to the joint standing committee of the
14 Legislature having jurisdiction over utilities and energy matters. The report must include,
15 but is not limited to, a description of Class IA resources participating in competitive
16 solicitations, information about the resources selected for contracts and the selection
17 process, the benefits and costs of the contracts and recommendations about how to further
18 stimulate investment in Class IA resources or achieve ratepayer benefits from Class IA
19 resources. The report may include information about benefits and costs of the contracts to
20 the State's economy, environmental quality or electricity consumers over both the short and
21 long terms. Any analysis of the benefits or costs of the contracts must be based on a forecast
22 of all avoided costs resulting from the contracts that is transparent and balanced over the
23 long term.

24 **Sec. 15. Distributed energy resource program; development.** By September
25 30, 2026 and in accordance with the Maine Revised Statutes, Title 35-A, section 3209-I,
26 subsection 2, the Governor's Energy Office, referred to in this section as "the office," shall
27 design and submit to the Public Utilities Commission, referred to in this section as "the
28 commission," a proposed distributed energy resource program or programs to succeed the
29 net energy billing programs established in Title 35-A, sections 3209-A and 3209-B for
30 distributed energy resources. For the purposes of this section, "distributed energy resource"
31 has the same meaning as in Title 35-A, section 3209-I, subsection 1.

32 In designing the program or programs, the office shall consider:

- 33 1. The marginal benefit to ratepayers in the State of the time value of generation and
34 the location of generation;
- 35 2. Reasonable compensation rates specific to a distributed energy resource's size and
36 generation type;
- 37 3. The development and use of a compensation model based on the value of distributed
38 energy resources;
- 39 4. Opportunities for a load reducer program for commercial customers;
- 40 5. Incentivizing energy storage that provides benefits to ratepayers in the State; and
- 41 6. Necessary changes to utility rate structure, billing systems, data collection or
42 metering to implement the program.

1 The office may consider other factors the office determines appropriate and shall solicit
2 public input prior to the submission of a program design to the commission.

3 To support the office's development of the program, the office may request funds from
4 the commission for the office's administrative costs, which may include, but are not limited
5 to, costs associated with hiring consultants and office personnel and contracting for
6 technical analysis in the design of the program or programs. Notwithstanding Title 35-A,
7 section 117, if the office requests funding in accordance with this section, the commission
8 may provide funding, to the extent available, from the Public Utilities Commission
9 Reimbursement Fund under Title 35-A, section 117. If the Public Utilities Commission
10 Reimbursement Fund does not have sufficient funding, notwithstanding Title 35-A, section
11 116, subsection 4, the commission may provide funding in accordance with this section
12 from the Public Utilities Commission Regulatory Fund.

13 In accordance with Title 35-A, section 3209-I, the commission shall approve or reject
14 the proposed program or programs submitted by the office pursuant to this section as
15 expeditiously as possible, but no later than 120 calendar days after the commission receives
16 the design from the office unless otherwise requested by the office. If the commission finds
17 that the program provides benefits to ratepayers in the State in excess of the costs to
18 ratepayers, the commission shall implement the program by rule.

19 **Sec. 16. Net energy billing; consumer protections.** In accordance with the
20 Maine Revised Statutes, Title 35-A, section 3209-A, subsection 5, paragraph E, by
21 November 1, 2025, the Public Utilities Commission shall initiate rulemaking to establish
22 consumer protection standards for customers participating in net energy billing pursuant to
23 Title 35-A, section 3209-A. The rules must:

24 1. Require that a distributed generation resource providing service to a customer
25 participating in a net energy billing arrangement based upon a shared financial interest in
26 the distributed generation resource establish a subscription size for a customer that is based
27 on historical customer usage, while taking into account anticipated increases in usage, and
28 require a project sponsor to adjust the customer's subscription size as needed to match
29 changes in usage;

30 2. Prohibit project sponsors or operators of distributed generation resources from
31 retaining customer payment for unused kilowatt-hour credits that have expired;

32 3. For a customer participating in net energy billing, require a transmission and
33 distribution utility to provide the relevant project sponsor or owner of a distributed
34 generation resource with the customer's usage and billing information, including net energy
35 billing data needed to administer a customer's net energy billing arrangement; and

36 4. Prohibit residential customers from simultaneously participating in more than one
37 net energy billing arrangement pursuant to Title 35-A, section 3209-A, subsection 3.

38 Notwithstanding any provision of Title 35-A, section 3209-A to the contrary, rules
39 adopted by the commission pursuant to this section are routine technical rules as defined
40 in Title 5, chapter 375, subchapter 2-A.'

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

SUMMARY

This amendment, which is the majority report of the committee, replaces the bill and changes the title. The amendment does the following.

1. It prohibits a distributed generation resource that is interconnected to the distribution grid on the grid side of a customer's meter from being used for the kilowatt-hour credit and commercial and institutional net energy billing programs unless the distributed generation resource reaches mechanical completion by June 1, 2026.

2. It requires the Governor's Energy Office to design and submit to the Public Utilities Commission a proposed distributed energy resource program or programs to succeed the net energy billing programs for front-of-the-meter distributed generation resources.

3. For both the kilowatt-hour credit and commercial and institutional net energy billing programs, it requires the commission to prohibit a transmission and distribution utility from entering into a net energy billing agreement with a distributed generation resource that is interconnected to the distribution grid on the grid side of a customer's meter beginning on the date the commission implements a distributed energy resource program to succeed the net energy billing programs for front-of-the-meter distributed generation resources pursuant to the Maine Revised Statutes, Title 35-A, section 3209-I.

4. It directs the commission to require transmission and distribution utilities to reconcile costs associated with net energy billing in a rate year beginning on January 1, 2026.

5. It establishes an end date for the tariff rate received by certain distributed generation resources participating in the commercial and institutional net energy billing program effective January 1, 2026 and establishes new tariff rates effective January 1, 2026 that apply to certain distributed generation resources participating in the commercial and institutional net energy billing program.

6. It repeals a section of law requiring the commission to conduct competitive solicitations for the procurement of energy or renewable energy credits from distributed generation resources and requires instead that the commission conduct competitive solicitations for the procurement of energy or renewable energy credits or both from distributed generation resources participating in net energy billing for which 75% or less of the bill credits associated with the resource are not allocated to a customer of or subscriber to the resource.

7. It requires certain distributed generation resources participating in the kilowatt-hour credit net energy billing program to pay a monthly fee determined by the commission that must be used to offset distribution costs associated with net energy billing arrangements that would otherwise be paid by ratepayers.

8. It requires the commission to adopt rules establishing consumer protections related to the kilowatt-hour credit net energy billing program.

FISCAL NOTE REQUIRED

(See attached)