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Date: (Filing No. H- )

**ENERGY, UTILITIES AND TECHNOLOGY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
130TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 764, L.D. 1026, “An Act To Update the Regulation of Public Utility Monopolies”

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

**'An Act To Reduce Energy Costs and Provide for Utility Customer Choice '**

Amend the bill by striking out everything after the enacting clause 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 A, §3 and affected by §§104 and 105, is repealed.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

**COMMITTEE AMENDMENT**

1 D. Be a member of a firm that renders service against any such public utility or  
2 competitive ~~service~~ electricity provider.

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

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

8 **Sec. 6. 35-A MRSA §1316, sub-§1, ¶B**, as amended by PL 1999, c. 398, Pt. A,  
9 §21 and affected by §§104 and 105, is further amended to read:

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

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

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

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

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

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

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

40 **5. Civil actions for injunctive relief or other remedies.** An employee of a public  
41 utility or competitive ~~service~~ electricity provider who alleges a violation of rights under  
42 this section and who has made reasonable efforts to exhaust all grievance procedures, as  
43 provided for in the contract of employment or which otherwise may be available at the

1 employee's place of employment, may bring a civil action, including an action for  
2 injunctive relief, within 90 days after the occurrence of that alleged violation or after the  
3 grievance procedure or similar process terminates. The action may be brought in the  
4 Superior Court for the county where the alleged violation occurred, the county where the  
5 complainant resides or the county where the person against whom the civil complaint is  
6 filed resides. An employee must establish each and every element of the employee's case  
7 by a preponderance of the evidence.

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

10 **§1321. Orders altered or amended**

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

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

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

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

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

37 **Sec. 13. 35-A MRSA §1702, sub-§1, ¶B**, as amended by PL 1999, c. 398, Pt. A,  
38 §24 and affected by §§104 and 105, is further amended to read:

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

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

1           **3. Petition to initiate proceedings.** The Public Advocate may petition the  
2 commission to initiate proceedings to review, investigate and take appropriate action with  
3 respect to the rates or service of any public utility or competitive service electricity provider  
4 when determined necessary by the Public Advocate.

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

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

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

15           **§1709. Conflicts of interest**

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

22           **Sec. 17. 35-A MRSA §2102, sub-§1, ¶B** is enacted to read:

23           B. For a municipal power district created under chapter 39 or a cooperative created  
24 under chapter 37, the commission’s approval required under this subsection is limited  
25 to a determination that the procedures prescribed in chapter 39 for the creation of a  
26 municipal power district or chapter 37 for the creation of a cooperative have been  
27 complied with. This paragraph applies only if the public utility furnishing or authorized  
28 to furnish a similar service in or to the municipality is an investor-owned transmission  
29 and distribution utility.

30           **Sec. 18. 35-A MRSA §3209-A, sub-§7**, as enacted by PL 2021, c. 390, §1 and c.  
31 370, §1 and reallocated by RR 2021, c. 1, Pt. A, §37, is repealed and the following enacted  
32 in its place:

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

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

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

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

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

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

9                   (1) A complete application for a customer net energy billing agreement has been  
10                  submitted for the distributed generation resource and a customer has or customers  
11                  have financial interest in 90% or more of the capacity of that distributed generation  
12                  resource; or

13                  (2) There is a fully executed net energy billing agreement between a customer or  
14                  sponsor of the distributed generation resource and the transmission and distribution  
15                  utility for the distributed generation resource and a customer has or customers have  
16                  financial interest in 90% or more of the capacity of that distributed generation  
17                  resource.

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

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

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

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

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

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

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

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

1           (1) The proposed distributed generation resource must reach mechanical  
2           completion by the date specified in the net energy billing agreement or by the date  
3           specified with an allowable modification to that agreement. For the purposes of  
4           this subparagraph, "mechanical completion" means all mechanical and physical  
5           aspects of the distributed generation resource have been constructed and installed  
6           in accordance with design specifications such that the distributed generation  
7           resource may commence commercial operation upon receipt of permission to  
8           operate from the utility.

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

14           An entity proposing the development of a distributed generation resource that has met the  
15           requirements of paragraph A, B or C and the requirements of paragraph D may petition the  
16           commission for a good-cause exemption from the requirement of paragraph E due to the  
17           inability of the distributed generation resource to interconnect with existing transmission  
18           and distribution utility infrastructure if the delay is due to the failure of timely completion  
19           of transmission and distribution utility upgrades. The commission shall grant a good-cause  
20           exemption upon receipt and review of a completed petition.

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

23           **Sec. 19. 35-A MRSA §3209-A, sub-§8** is enacted to read:

24           **8. Unused kilowatt-hour credits; rules.** To the extent rules adopted under this  
25           section provide for the periodic expiration of unused kilowatt-hour credits accumulated by  
26           a customer participating in a net energy billing arrangement, the commission shall require  
27           by rule that, no earlier than April 1, 2022, each transmission and distribution utility with a  
28           net energy billing arrangement that has implemented or elected to implement an arrearage  
29           management program pursuant to section 3214, subsection 2-A shall account for and, on  
30           or before January 1st of each year, apply all unused kilowatt-hour credits that were  
31           accumulated and that expired during the prior calendar year for the benefit of participants  
32           in the utility's arrearage management program. The rules adopted by the commission  
33           pursuant to this subsection must:

34           A. Establish the manner by which a transmission and distribution utility must account  
35           for unused kilowatt-hour credits that were accumulated by all customers of the utility  
36           with net energy billing arrangements during the prior calendar year and that expired  
37           during the prior calendar year; and

38           B. Establish the manner by which a transmission and distribution utility must apply  
39           such unused kilowatt-hour credits for the benefit of participants in the utility's  
40           arrearage management program, which must be designed to result in each such  
41           participant receiving as close to an equal amount of those credits except when the  
42           credited amount would exceed the amount of a participant's arrearage.

1 Notwithstanding any provision of this section to the contrary, rules adopted by the  
2 commission pursuant to this subsection are routine technical rules as defined in Title 5,  
3 chapter 375, subchapter 2-A.

4 **Sec. 20. 35-A MRSA §3209-B, sub-§5**, as enacted by PL 2019, c. 478, Pt. A, §4,  
5 is amended to read:

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

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

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

17 (a) The entity developing the distributed generation resource certifies by  
18 sworn affidavit with accompanying documentation to the commission that the  
19 entity, before September 1, 2022, commenced physical work of a significant  
20 nature, as described in Internal Revenue Service Notice 2013-29, Section 4.02;  
21 or

22 (b) The distributed generation resource is collocated with a net energy billing  
23 customer that is or net energy billing customers that are subscribed to at least  
24 50% of the facility's output; or

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

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

28 (1) In 2022, equal the standard-offer service rate established under section 3212  
29 that was applicable to the rate class of the customer receiving the credit on  
30 December 31, 2020 plus 75% of the effective transmission and distribution rate  
31 that was in effect on December 31, 2020 for the rate class that includes the smallest  
32 commercial customers of the investor-owned transmission and distribution utility;  
33 and

34 (2) Be adjusted for inflation based on the Consumer Price Index, as defined in  
35 Title 5, section 17001, subsection 9.

36 A-2. Notwithstanding paragraphs A and A-1, a distributed generation resource may  
37 make a one-time election in accordance with this paragraph on behalf of a customer  
38 participating in net energy billing under this section with that distributed generation  
39 resource. If the customer would be subject to the tariff rate described in paragraph A,  
40 the distributed generation resource may elect on behalf of that customer to have the  
41 tariff rate described in paragraph A-1 apply by notifying the investor-owned  
42 transmission and distribution utility no later than December 31, 2022.

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

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

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

13 **Sec. 21. 35-A MRSA §3756** is enacted to read:

14 **§3756. Transfer of property; payment of just compensation**

15 When a cooperative is created under this chapter and approved by the commission  
16 under section 2102, the investor-owned transmission and distribution utility furnishing  
17 service to the cooperative's members shall facilitate the transfer of property in accordance  
18 with the commission's approval. The cooperative shall pay the investor-owned  
19 transmission and distribution utility just compensation, as determined by the commission,  
20 for the property of the investor-owned transmission and distribution utility.

21 **Sec. 22. 35-A MRSA §3903, sub-§4**, as enacted by PL 1987, c. 141, Pt. A, §6, is  
22 amended to read:

23 **4. Favorable vote.** If a majority of the legal votes cast on this question favor  
24 incorporation, a municipal power district may be created for that municipality under this  
25 chapter upon declaration of the vote by the municipal officers, ~~provided that~~ as long as the  
26 total number of votes cast for and against the incorporation equals or exceeds 40% of the  
27 total votes cast in that municipality for all candidates for Governor at the previous  
28 gubernatorial election. If not, the proposed district is not created at that time. Upon  
29 certification of a favorable vote by the municipal officers, the commission shall approve  
30 formation of the district if the commission finds that formation would be in conformance  
31 with the requirements of this ~~Title~~ chapter. Upon approval by the commission, the district  
32 is created and the commission shall file certification of that approval with the Secretary of  
33 State.

34 **Sec. 23. 35-A MRSA §3903, sub-§5** is enacted to read:

35 **5. Transfer of property; payment of just compensation.** When a municipal power  
36 district is created under this section and approved by the commission under this section and  
37 section 2102, the investor-owned transmission and distribution utility furnishing service in  
38 that municipality shall facilitate the transfer of property in accordance with the  
39 commission's approval. The municipal power district shall pay the investor-owned  
40 transmission and distribution utility just compensation, as determined by the commission,  
41 for the property of the investor-owned transmission and distribution utility.

42 **Sec. 24. 35-A MRSA §3904, sub-§4**, as enacted by PL 1987, c. 141, Pt. A, §6, is  
43 amended to read:





1 that a municipal power district was created in conformance with Title 35-A, chapter 39 or,  
2 in the case of a cooperative, Title 35-A, chapter 37. The determination only applies to  
3 situations in which the electric utility that is already furnishing service is an investor-owned  
4 transmission and distribution utility. The amendment specifies that the investor-owned  
5 transmission and distribution utility furnishing service in the municipality or municipalities  
6 where a municipal power district or cooperative is approved by the commission must  
7 facilitate the transfer of property and be provided just compensation, as determined by the  
8 commission, for that property.

9 The amendment makes changes to the residential net energy billing program. It  
10 replaces the term "commercial operation" with the term "mechanical completion" and  
11 defines "mechanical completion." It also establishes a good-cause exemption from the  
12 requirement of Title 35-A, section 3209-A, subsection 7, paragraph E due to the inability  
13 of the distributed generation resource to interconnect with existing transmission and  
14 distribution utility infrastructure if the delay is due to the failure of timely completion of  
15 transmission and distribution utility upgrades.

16 The amendment establishes a tariff rate applicable to distributed generation resources  
17 that do not qualify for the tariff rate under Title 35-A, section 3209-B, subsection 5,  
18 paragraph A. The amendment limits the applicability of the tariff rate under paragraph A  
19 to distributed generation resources with a nameplate capacity of one megawatt or less and  
20 distributed generation resources with a nameplate capacity over one megawatt that are  
21 collocated with net energy billing customers subscribed to at least 50% of the facility's  
22 output or that have certified that the resources have commenced physical work of a  
23 significant nature before September 1, 2022. The amendment provides that a distributed  
24 generation resource that is eligible for the tariff rate in paragraph A may make a one-time  
25 election to receive the tariff rate in Title 35-A, section 3209-B, subsection 5, paragraph  
26 A-1. It also provides that the tariff rate in paragraph A-1 must be adjusted based upon the  
27 Consumer Price Index.

28 The amendment changes the way that the minimum nameplate capacity for a  
29 distributed generation resource used in connection with residential net energy billing is  
30 stated from at least 2 megawatts to greater than 2 megawatts.

31 The amendment also adds an appropriations and allocations section.

32 **FISCAL NOTE REQUIRED**

33 **(See attached)**