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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. 1119, L.D. 1511, “An Act To Finance Distribution Investments at the Lowest Cost to Customers and To Encourage Utility Performance”

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

'PART A

Sec. A-1. 35-A MRSA §3131, sub-§1, as amended by PL 1999, c. 398, Pt. A, §45 and affected by §§104 and 105, is further amended to read:

1. Domestic transmission and distribution utility. "Domestic transmission and distribution utility" means any entity organized under the laws of this State to transmit or distribute electricity, except for a tax-exempt 3rd-party entity under section 3132-E.

Sec. A-2. 35-A MRSA §3131, sub-§4-E is enacted to read:

4-E. Tax-exempt 3rd-party entity. "Tax-exempt 3rd-party entity" means a tax-exempt entity capable of financing and owning facilities used or useful for the transmission and delivery of electricity, other than a domestic transmission and distribution utility.

Sec. A-3. 35-A MRSA §3132-E is enacted to read:

§3132-E. Tax-exempt 3rd-party entity

1. Tax-exempt 3rd-party entity. The commission shall establish and administer a process to approve a tax-exempt 3rd-party entity to finance and own a distribution project that is subject to investigation by the nonwires alternative coordinator under section 3132-B, subsection 2. The commission shall approve a tax-exempt 3rd-party entity to finance and own a distribution project under this subsection if:

A. Prior to the issuance of recommendations for nonwires alternatives under section 3132-B, subsection 4, the tax-exempt 3rd-party entity submits a request to the commission for the opportunity to submit a proposal to finance and own the

COMMITTEE AMENDMENT

1 distribution project if a nonwires alternative is not determined to be appropriate and
 2 the commission grants the request;

3 B. The result of the nonwires alternatives investigation for any petition received is the
 4 determination by the commission that a nonwires alternative to the distribution project
 5 is not appropriate;

6 C. The tax-exempt 3rd-party entity submits a proposal to the commission to finance
 7 and own the distribution project within 90 days of the determination under paragraph
 8 B; and

9 D. The commission determines that it is in the interest of ratepayers to approve the
 10 proposal submitted under paragraph C.

11 **2. Operations.** Upon a finding by the commission that a distribution project should
 12 be owned by a tax-exempt 3rd-party entity, the utility that initially proposed the distribution
 13 project shall facilitate the project’s planning, development, 3rd-party financing and
 14 completion, shall promptly and collaboratively negotiate reasonable terms and conditions
 15 with the tax-exempt 3rd-party entity and shall operate and maintain the project.

16 **3. Rate design.** The commission shall approve a rate design for a distribution project
 17 approved under subsection 1 that minimizes the cost to ratepayers, compensates the tax-
 18 exempt 3rd-party entity in accordance with the proposal approved under subsection 1 and
 19 compensates the utility an amount based upon the utility’s performance in planning,
 20 development, operation and maintenance of the project and service to ratepayers in the
 21 project's service area. A rate design under this subsection must provide for a payment in
 22 lieu of taxes to a municipality, county or other political subdivision in the same amount as
 23 the taxes that would have been paid if a domestic transmission and distribution utility
 24 owned the distribution project.

25 **4. Rules.** The commission shall adopt rules to carry out the purposes of this section.
 26 Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter
 27 375, subchapter 2-A.

28 **Sec. A-4. Appropriations and allocations.** The following appropriations and
 29 allocations are made.

30 **PUBLIC UTILITIES COMMISSION**

31 **Public Utilities - Administrative Division 0184**

32 Initiative: Provides one-time funding for contracted services and related STA-CAP
 33 expenses.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
All Other	\$0	\$200,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$200,000

38 **Public Utilities - Administrative Division 0184**

39 Initiative: Provides funding for one Staff Attorney position, 2 Utility Analyst positions and
 40 associated position costs.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
POSITIONS - LEGISLATIVE COUNT	0.000	2.000

1	Personal Services	\$0	\$435,936
2	All Other	\$0	\$26,991
3			
4	OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$462,927
5			
6	PUBLIC UTILITIES COMMISSION		
7	DEPARTMENT TOTALS	2021-22	2022-23
8			
9	OTHER SPECIAL REVENUE FUNDS	\$0	\$662,927
10			
11	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$662,927

12 **PART B**

13 **Sec. B-1. 5 MRSA §12021, sub-§6, ¶D-1** is enacted to read:

14 D-1. An investor-owned public utility under Title 35-A, section 113, subsection 6;

15 **Sec. B-2. 5 MRSA §12025** is enacted to read:

16 **§12025. Exception for investor-owned public utility**

17 Notwithstanding any provision of this subchapter to the contrary, an investor-owned
 18 public utility under Title 35-A, section 113, subsection 6 is not subject to any of the
 19 requirements of this subchapter except for section 12022, subsection 3.

20 **Sec. B-3. 35-A MRSA §113, sub-§6** is enacted to read:

21 **6. Investor-owned utility selection of vendors.** An investor-owned public utility
 22 shall, no later than November 1, 2022, comply with the requirements of Title 5, section
 23 12022, subsection 3 to ensure that the utility secures the best value in its procurements. For
 24 the purposes of this subsection, “investor-owned public utility” means a public utility that
 25 operates as a for-profit corporation owned by shareholders and is not wholly owned by its
 26 customers. The commission by rule may define when competitive procurement by an
 27 investor-owned utility under Title 5, section 12022, subsection 3 may be waived, including
 28 when the utility is responding to emergencies or in other situations in which the commission
 29 determines competitive procurement is impractical. Rules adopted under this subsection
 30 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

31 **Sec. B-4. Public Utilities Commission; report.** The Public Utilities Commission
 32 shall review laws and rules within its authority for requirements applicable to public
 33 utilities that are substantially similar to the requirements for a governing body of an entity
 34 under the Maine Revised Statutes, Title 5, section 12022, other than subsection 3 of that
 35 section. By January 1, 2023, the commission shall provide the joint standing committee of
 36 the Legislature having jurisdiction over energy and utility matters with a report that
 37 includes the following:

- 38 1. Identification of the laws and rules applicable to public utilities that the commission
- 39 finds to be substantially similar to Title 5, section 12022; and
- 40 2. Consideration of the feasibility of requiring investor-owned utilities to comply with
- 41 the requirements of Title 5, section 12022, if those requirements are not otherwise
- 42 established by laws and rules that are substantially similar.

1 After reviewing the report, the joint standing committee may report out related
2 legislation to the 131st Legislature in 2023.'

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

5 **SUMMARY**

6 This amendment replaces the bill, which is a concept draft.

7 Part A directs the Public Utilities Commission to allow a tax-exempt 3rd-party entity
8 other than a domestic transmission and distribution utility to finance and own an electric
9 distribution project and directs that the rate design for the project minimize the cost to
10 ratepayers and compensate the tax-exempt 3rd-party entity an amount based upon the
11 entity's performance in planning, development, operation and maintenance of the project
12 and service to ratepayers in the project's service area. The rate design must provide for a
13 payment in lieu of taxes to a municipality, county or other political subdivision in the same
14 amount as the taxes that would have been paid if a domestic transmission and distribution
15 utility owned the distribution project. Part A includes an appropriations and allocations
16 section.

17 Part B provides that investor-owned public utilities are reporting entities for the
18 purpose of the Maine Revised Statutes, Title 5, section 12022, subsection 3. It also
19 provides that an investor-owned utility must comply with the competitive procurement
20 requirements of that subsection by November 1, 2022. It authorizes the Public Utilities
21 Commission to exempt by rule investor-owned utilities from the competitive procurement
22 requirement with respect to procurements that are needed in responding to emergencies
23 such as storm damage or other situations in which the commission determines competitive
24 procurement is impractical. Part B also directs the commission to review the laws and rules
25 within its regulatory authority for laws and rules that impose requirements on public
26 utilities substantially similar to those contained in Title 5, section 12022, other than
27 subsection 3. After completing its review, the commission is required to provide a report
28 to the joint standing committee of the Legislature having jurisdiction over energy and utility
29 matters.

30 **FISCAL NOTE REQUIRED**

31 **(See attached)**