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Legislative Document

No. 1959

S.P. 697

In Senate, February 7, 2022

**An Act To Ensure Transmission and Distribution Utility
Accountability**

Received by the Secretary of the Senate on February 3, 2022. Referred to the Committee on Energy, Utilities and Technology pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BRENNER of Cumberland. (GOVERNOR'S BILL)
Cosponsored by Senators: LAWRENCE of York, STEWART of Aroostook, VITELLI of
Sagadahoc, Representatives: Speaker FECTEAU of Biddeford, WADSWORTH of Hiram.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 35-A MRSA §301, sub-§1-A** is enacted to read:

3 **1-A. Performance report card for transmission and distribution utilities.** The
4 commission shall adopt rules to establish minimum requirements for a transmission and
5 distribution utility to ensure that the transmission and distribution utility meets the
6 requirements of subsection 1. Rules adopted pursuant to this subsection are routine
7 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

8 A. The rules must include specific, quantitative planning and operational standards for
9 a transmission and distribution utility that reflect standard industry practices, including,
10 but not limited to, standards for the following operations and activities:

11 (1) Reliability of service;

12 (2) Timeliness and responsiveness to customer requests for information or service;

13 (3) Frequency of customer complaints;

14 (4) Timeliness and accuracy of bills;

15 (5) Responsiveness to requests for interconnection by generators; and

16 (6) Timeliness of restoring service after storms.

17 B. Each calendar quarter, a transmission and distribution utility shall file with the
18 commission quantifiable data sufficient for the commission to calculate and publish a
19 quantitative score for each standard established by the commission pursuant to
20 paragraph A.

21 C. The commission shall enforce this subsection and rules adopted pursuant to this
22 subsection by initiating an adjudicatory proceeding to consider whether to impose an
23 administrative penalty in accordance with section 1508-A, subsection 1, paragraph E.

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

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

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

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

35 This subsection takes effect January 15, 2024.

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

38 **§1316. Testimony presented by employees of public utilities ~~or~~, competitive service**
39 **providers, affiliated interests or utility contractors to legislative committees**
40 **and to, the Public Utilities Commission and the Public Advocate**

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

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

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

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

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

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

17 E. "Utility contractor" means a person that provides goods or services to a public utility
18 or competitive service provider.

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

25 **2-A. Right of utility contractors to provide testimony.** A utility contractor has the
26 right to testify before or provide information to a legislative committee, the commission or
27 the Public Advocate.

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

38 This subsection does not apply to an employee who has testified before or provided
39 information to a legislative committee ~~or to,~~ the commission or the Public Advocate unless
40 the employee has first brought the subject matter of the testimony or information in writing
41 to the attention of a person having supervisory authority with the employer and has allowed
42 the employer a reasonable time to address the subject matter of the testimony or
43 information. If appropriate, the employer shall respond in writing.

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

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

18 **5-A. Civil actions for injunctive relief or other remedies by utility contractors.** A
19 utility contractor that alleges a violation of rights under this section may bring a civil action,
20 including an action for injunctive relief, within 90 days after the occurrence of that alleged
21 violation. The action may be brought in the Superior Court for the county where the alleged
22 violation occurred, the county where the complainant resides or the county where the
23 person against whom the civil complaint is filed resides. A utility contractor must establish
24 each element of the utility contractor's case by a preponderance of the evidence.

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

32 **7. Collective bargaining rights.** This section does not diminish or impair the rights
33 of a person under any collective bargaining agreement. ~~A public utility, competitive service~~
34 ~~provider or affiliated interest may not enter into a collective bargaining agreement for the~~
35 ~~sole purpose of preventing employees from exercising their rights to testify before or~~
36 ~~provide information to a legislative committee, the commission or the Public Advocate~~
37 ~~pursuant to this section.~~

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

41 **9. Contracts with utility contractors.** If a utility contractor, in compliance with this
42 section and in good faith, testifies before or provides information to a legislative committee,
43 the commission or the Public Advocate, a public utility or competitive service provider
44 may not respond by:

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

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

2 **10. Notice of rights required.** A public utility and a competitive service provider
3 shall notify the public utility's and the competitive service provider's employees, affiliated
4 interests and utility contractors, respectively, of their rights under this section.

5 **11. Penalties.** The commission may impose penalties pursuant to violations of this
6 section. This subsection does not apply in the case of an employee of a utility contractor
7 alleging a violation under subsection 3.

8 **12. Rulemaking.** The commission may adopt rules to implement this section. Rules
9 adopted pursuant to this section are routine technical rules as defined in Title 5, chapter
10 375, subchapter 2-A.

11 **Sec. 4. 35-A MRSA §1508-A, sub-§1, ¶E** is enacted to read:

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

21 **Sec. 5. 35-A MRSA §1513** is enacted to read:

22 **§1513. Divestiture of underperforming transmission and distribution utility**

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

31 **1. Consideration of proposals to acquire the utility or its assets.** The commission
32 shall request proposals from qualified buyers interested in acquiring the transmission and
33 distribution utility or its assets and shall consider proposals to create a consumer-owned
34 quasi-municipal corporation to acquire the utility or its assets.

35 **2. Committee to develop proposal for consumer-owned quasi-municipal**
36 **corporation.** Within 30 days from the date the commission requests proposals from
37 qualified buyers to purchase the transmission and distribution utility or its assets, a
38 committee of 5 members must be appointed in accordance with this subsection to develop
39 a proposal on behalf of a potential consumer-owned quasi-municipal corporation. The
40 Governor shall appoint 3 members of the committee and the Public Advocate shall appoint
41 2 members of the committee. The commission shall provide the committee with sufficient
42 financial support to retain lawyers, investment bankers or consultants, as needed, to prepare
43 a proposal to purchase the utility or its assets.

1 **3. Determination by the commission.** The commission shall order the owner of the
2 transmission and distribution utility to divest the utility if a proposal from a qualified buyer
3 or a proposal to create a consumer-owned quasi-municipal corporation:

4 A. Will result, over the long term, in net benefits to ratepayers in the form of lower
5 rates or better service than the rates and service provided by the transmission and
6 distribution utility;

7 B. Is for a fair and reasonable purchase price; and

8 C. Demonstrates, if the divestiture includes a sale of the transmission and distribution
9 utility's assets, that the qualified buyer or consumer-owned quasi-municipal
10 corporation will have at completion of divestiture sufficient financial and technical
11 capability, expertise and experience to own and operate the utility and the ability to
12 comply with all of the legal requirements of a transmission and distribution utility.

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

15 **Sec. 6. 35-A MRSA §3146** is enacted to read:

16 **§3146. Climate change protection plan**

17 No later than July 1, 2023, and every 2 years thereafter, a transmission and distribution
18 utility shall submit to the commission a 10-year plan for addressing the expected effect of
19 climate change on the utility's assets needed to transmit and distribute electricity to its
20 customers. The commission shall request input from interested parties on the transmission
21 and distribution utility's plan and shall order the transmission and distribution utility to take
22 any action the commission determines is reasonable and necessary to ensure that the utility
23 will be able to continue to meet the requirements of section 301, subsection 1 for the
24 foreseeable future.

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

29 **SUMMARY**

30 The purpose of this bill is to create greater accountability of transmission and
31 distribution utilities to their ratepayers in order to ensure that the utilities are fulfilling their
32 duties to provide safe, reasonable and adequate service at just and reasonable rates. This
33 bill accomplishes the following.

34 1. It establishes administrative penalties for poor service to consumers and
35 interconnecting generators.

36 2. It authorizes the Public Utilities Commission to perform audits of transmission and
37 distribution utilities or disallow cost recovery under certain circumstances.

38 3. It requires transmission and distribution utilities to prepare and file plans with the
39 Public Utilities Commission for addressing the expected effect of climate change.

40 4. It provides a mechanism for a transmission and distribution utility to sell the utility
41 to a qualified buyer as a consequence of consistently poor service.

1 5. It clarifies and adds protections for utility contractors and certain employees of a
2 public utility, competitive service provider, affiliated interest or utility contractor who
3 testify before or provide information to a legislative committee, the Public Utilities
4 Commission or the Public Advocate.