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Date: (Filing No. S- )

**ENERGY, UTILITIES AND TECHNOLOGY**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE  
SENATE  
130TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 697, L.D. 1959, “An Act To Ensure Transmission and Distribution Utility Accountability”

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

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

**1-A. Minimum service standards and report card for transmission and distribution utilities.** The commission shall adopt rules in accordance with this subsection governing the evaluation of transmission and distribution utility service, which must take into account the specific characteristics of each utility and its service territory. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. The rules must include specific, quantitative metrics pertaining to utility operations and activities relating to each of the following categories:

- (1) Service quality, including but not limited to reliability of service and timeliness of restoring service after outages;
- (2) Customer service, including but not limited to timeliness and accuracy of bills;
- (3) Field services, including but not limited to communication with and responsiveness to municipalities, businesses and individuals; and
- (4) Distributed energy resources interconnection.

B. The commission shall consider the cost impacts and benefits to ratepayers when establishing each service standard and metric pursuant to paragraph A and shall ensure that the performance of each service standard and metric may be measured using reliable and objective methods and information.

C. The commission shall set reporting requirements for each metric, including data specifications and reporting periods, adequate to track progress in areas of performance.

**COMMITTEE AMENDMENT**

1           D. The commission shall designate service standards based on thresholds of  
2           performance.

3           E. For each service standard, the commission shall require quarterly filing of  
4           quantifiable data sufficient for the commission to calculate and publish a quantitative  
5           score for the service standard.

6           F. The commission shall impose administrative penalties for designated thresholds of  
7           poor performance for service standards in accordance with section 1508-A, subsection  
8           1, paragraph E unless the utility demonstrates good cause for its failure to meet the  
9           standard.

10          G. The commission shall publish quarterly reports containing scores for each service  
11          standard for each utility.

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

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

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

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

23          This subsection takes effect January 15, 2024.

24          **Sec. 3. 35-A MRSA §301, sub-§6** is enacted to read:

25           **6. Investor-owned transmission and distribution utility expenditures;**  
26           **comparison.** No later than November 1, 2022, the commission shall initiate a proceeding  
27           to conduct a detailed comparison of the annual expenditures of each investor-owned  
28           transmission and distribution utility in the State with the annual expenditures of other  
29           comparable investor-owned transmission and distribution utilities located in the United  
30           States. When conducting this analysis, the commission shall identify specific categories in  
31           which spending by an investor-owned transmission and distribution utility significantly  
32           deviated from those expenditures of comparable investor-owned transmission and  
33           distribution utilities. The commission may use the results of this analysis in future rate  
34           cases involving an investor-owned transmission and distribution utility. The commission  
35           may undertake a new comparison or update an existing one in accordance with this  
36           subsection at any time the commission determines is necessary. For purposes of this  
37           subsection, a comparable investor-owned transmission and distribution utility is one that  
38           provides electricity delivery in a service territory in a northern climate that is primarily  
39           wooded and includes urban and rural areas.

40          **Sec. 4. 35-A MRSA §1316**, as amended by PL 1999, c. 398, Pt. A, §21 and affected  
41          by §§104 and 105, is further amended to read:

1       **§1316. Testimony presented by employees of public utilities ~~or~~, competitive service**  
2       **electricity providers, affiliated interests or utility contractors to legislative**  
3       **committees ~~and to~~, the Public Utilities Commission and the Public Advocate**

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

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

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

12          B. "Employer" means a public utility ~~or~~, competitive service electricity provider,  
13          affiliated interest or utility contractor licensed to do business in this State with one or  
14          more employees.

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

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

21          E. "Utility contractor" means a person that provides goods or services to a public utility  
22          or competitive electricity provider.

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

29       **2-A. Right of utility contractors to provide testimony.** A utility contractor has the  
30       right to testify before or provide information to a legislative committee, the commission or  
31       the Public Advocate.

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

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

7 **4. Exceptions.** ~~The protection~~ protections created in ~~subsection~~ subsections 3 ~~does~~  
8 and 9 do not apply to testimony or information that, upon reasonable inquiry by the  
9 employee or utility contractor, would be found to be false, ~~slanderous, libelous or~~  
10 ~~defamatory or to testimony that violates a term or condition of a collectively bargained~~  
11 ~~agreement or to testimony that discloses trade secrets or corporate strategy, the disclosure~~  
12 ~~of which would result in harm to the employer~~ or consist of information about critical  
13 energy infrastructure, personally identifiable information, customer-specific information or  
14 other information that is confidential by law.

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

26 **5-A. Civil actions for injunctive relief or other remedies by utility contractors.** A  
27 utility contractor that alleges a violation of rights under this section may bring a civil action,  
28 including an action for injunctive relief, within 90 days after the occurrence of that alleged  
29 violation. The action may be brought in the Superior Court for the county where the alleged  
30 violation occurred, the county where the complainant resides or the county where the  
31 person against whom the civil complaint is filed resides. A utility contractor must establish  
32 each element of the utility contractor's case by a preponderance of the evidence.

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

40 **7. Collective bargaining rights.** This section does not diminish or impair the rights  
41 of a person under any collective bargaining agreement. A public utility, competitive  
42 electricity provider or affiliated interest may not enter into a collective bargaining  
43 agreement for the sole purpose of preventing employees from exercising their rights to  
44 testify before or provide information to a legislative committee, the commission or the  
45 Public Advocate pursuant to this section.

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

4           **9. Contracts with utility contractors.** If a utility contractor, in compliance with this  
5 section and in good faith, testifies before or provides information to a legislative committee,  
6 the commission or the Public Advocate, a public utility or competitive electricity provider  
7 may not respond to such action by the utility contractor by:

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

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

10          **10. Notice of rights required.** A public utility and a competitive electricity provider  
11 shall notify the public utility's and the competitive electricity provider's employees,  
12 affiliated interests and utility contractors of their rights under this section.

13          **11. Penalties.** The commission may impose penalties for violations of this section.  
14 This subsection does not apply in the case of an employee of a utility contractor alleging a  
15 violation under subsection 3.

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

19          **Sec. 5. 35-A MRSA §1508-A, sub-§1, ¶E** is enacted to read:

20          E. In accordance with section 301, subsection 1-A, paragraph F, the commission shall  
21 impose an administrative penalty on a transmission and distribution utility in an amount  
22 that does not exceed \$1,000,000 or 10% of its annual gross revenue received from  
23 ratepayers in the State, whichever amount is lower, that fails for any rolling 18-  
24 consecutive-month period or otherwise consistently fails to meet a standard established  
25 by the commission pursuant to section 301, subsection 1-A, paragraph A. In  
26 determining the amount of an administrative penalty under this paragraph, in addition  
27 to the factors in subsection 2, the commission shall take into account the severity of the  
28 noncompliance, the harm, if any, to ratepayers, whether the noncompliance was the  
29 result of events or actions within the utility's control and such other factors as the  
30 commission determines appropriate. The commission shall use the proceeds from the  
31 administrative penalty assessed under this paragraph to reduce energy costs for low-  
32 income customers.

33          **Sec. 6. 35-A MRSA §1513** is enacted to read:

34          **§1513. Divestiture of underperforming investor-owned transmission and distribution**  
35          **utility**

36          The commission shall initiate an adjudicatory proceeding in accordance with this  
37 section and section 708, subsection 2, paragraph A, subparagraph (8) to determine whether  
38 divestiture of an investor-owned transmission and distribution utility is warranted if the  
39 utility consistently fails to meet the service standards established in section 301, subsection  
40 1-A, consistently fails to meet the requirements of section 301, subsection 1 or is unable to  
41 fulfill its statutory duties as a public utility because it is financially impaired. If, at the  
42 conclusion of the adjudicatory proceeding, the commission determines that divestiture of

1 an investor-owned transmission and distribution utility is warranted, the following  
2 procedures apply.

3 **1. Consideration of proposals to acquire the utility or its assets.** The commission  
4 shall request proposals from qualified buyers interested in acquiring the investor-owned  
5 transmission and distribution utility or its assets.

6 **2. Determination by the commission.** The commission shall order the owner of the  
7 investor-owned transmission and distribution utility to divest the utility if a proposal from  
8 a qualified buyer:

9 A. Will result, over the long term, in net benefits to ratepayers in the form of lower  
10 rates or better service than the rates and service provided by the investor-owned  
11 transmission and distribution utility;

12 B. Is for a fair and reasonable purchase price that ensures that the owners of the  
13 investor-owned transmission and distribution utility receive just compensation for the  
14 sale of the utility or its assets; and

15 C. Demonstrates that the buyer has sufficient financial and technical capability,  
16 expertise and experience to own and operate the utility and the ability to comply with  
17 all of the legal requirements, including but not limited to compliance with Title 38,  
18 section 576-A and section 577, subsection 1, for an investor-owned transmission and  
19 distribution utility.

20 If more than one proposal meets the criteria established in this subsection, the commission  
21 shall order divestiture in accordance with the proposal that results in the greatest net  
22 benefits to ratepayers.

23 **3. Superior Court review.** Notwithstanding any other provision of this Title, an  
24 investor-owned transmission and distribution utility may apply by petition to the Superior  
25 Court of Kennebec County to determine whether the divestiture price determined by the  
26 commission under subsection 2 provides just compensation. The court shall hold a hearing  
27 on the petition in which the parties are permitted to present factual and expert testimony  
28 and other evidence concerning the value of the utility or its assets and shall render a  
29 decision on whether the divestiture price determined by the commission provides just  
30 compensation. The decision of the Superior Court may be appealed to the Supreme Judicial  
31 Court sitting as the Law Court in the same manner as an appeal taken from a judgment of  
32 the Superior Court in a civil action.

33 **Sec. 7. 35-A MRSA §3146** is enacted to read:

34 **§3146. Climate change protection plan**

35 No later than December 31, 2023, and every 3 years thereafter, an investor-owned  
36 transmission and distribution utility shall submit to the commission a 10-year plan that  
37 includes specific actions for addressing the expected effects of climate change on the  
38 utility's assets needed to transmit and distribute electricity to its customers. As part of the  
39 plan, the transmission and distribution utility shall include estimates of the costs associated  
40 with implementing and failing to implement the identified actions. The commission shall  
41 request input from interested parties on the transmission and distribution utility's plan and  
42 shall order the transmission and distribution utility to take any action the commission  
43 determines is reasonable, cost-effective and necessary to ensure that the utility will be able  
44 to continue to meet the requirements of section 301, subsection 1 for the foreseeable future.

1 A transmission and distribution utility's prudently incurred costs in taking any action  
2 ordered by the commission in accordance with this section are just and reasonable operating  
3 costs for rate-making purposes and must be reflected in the transmission and distribution  
4 utility's rates.

5 **Sec. 8. 35-A MRSA §3210, sub-§2, ¶B-3**, as amended by PL 2019, c. 477, §1, is  
6 further amended by amending subparagraph (1) to read:

7 (1) ~~Whose total power production capacity does not exceed 100 megawatts and~~  
8 That relies on one or more of the following:

- 9 (a) Fuel cells;
- 10 (b) Tidal power;
- 11 (d) Geothermal installations;
- 12 (e) Hydroelectric generators that meet all state and federal fish passage
- 13 requirements applicable to the generator;
- 14 (f) Biomass generators that are fueled by wood, wood waste or landfill gas; or
- 15 (g) Anaerobic digestion of by-products of waste from animals or agricultural
- 16 crops, food or vegetative material, algae or organic refuse; or

17 **Sec. 9. 35-A MRSA §3210, sub-§2, ¶C**, as amended by PL 2009, c. 542, §5, is  
18 further amended by amending subparagraph (2) to read:

19 (2) ~~Whose total power production capacity does not exceed 100 megawatts and~~  
20 ~~that~~ That relies on one or more of the following:

- 21 (a) Fuel cells;
- 22 (b) Tidal power;
- 23 (c) Solar arrays and installations;
- 24 (d) Wind power installations;
- 25 (e) Geothermal installations;
- 26 (f) Hydroelectric generators;
- 27 (g) Biomass generators that are fueled by wood or wood waste, landfill gas or
- 28 anaerobic digestion of agricultural products, by-products or wastes; or
- 29 (h) Generators fueled by municipal solid waste in conjunction with recycling.

30 **Sec. 10. Adoption of rules by Public Utilities Commission establishing**  
31 **minimum requirements.** No later than June 30, 2023, the Public Utilities Commission  
32 shall adopt the rules required by the Maine Revised Statutes, Title 35-A, section 301,  
33 subsection 1-A.

34 **Sec. 11. Appropriations and allocations.** The following appropriations and  
35 allocations are made.

36 **PUBLIC UTILITIES COMMISSION**

37 **Public Utilities - Administrative Division 0184**

1 Initiative: Provides allocations for one Staff Attorney position, one Utility Analyst position  
 2 and associated All Other costs.

3	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
4	POSITIONS - LEGISLATIVE COUNT	0.000	2.000
5	Personal Services	\$0	\$307,938
6	All Other	\$0	\$25,592
7			
8	OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$333,530

9 **Public Utilities - Administrative Division 0184**

10 Initiative: Provides allocations for contracted services.

11	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
12	All Other	\$0	\$400,000
13			
14	OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$400,000

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16 **PUBLIC UTILITIES COMMISSION**  
 17 **DEPARTMENT TOTALS**

18		<b>2021-22</b>	<b>2022-23</b>
19	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$733,530</b>
20			
21	<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$733,530</b>

22

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

25

**SUMMARY**

26 This amendment replaces the bill. This amendment:

27 1. Requires the Public Utilities Commission to adopt rules governing the evaluation  
 28 of transmission and distribution utility performance and establishing metrics for utility  
 29 operations and activities related to service quality, customer service, field services and  
 30 distributed energy resources interconnection. The commission must publish quarterly  
 31 report cards on utility performance and must impose administrative penalties for a utility's  
 32 poor performance unless the utility demonstrates good cause for its failure to meet the  
 33 service standards;

34 2. Authorizes the commission to perform audits and disallow cost recovery for certain  
 35 transmission and distribution utilities when the commission has not made a rate  
 36 determination in the preceding 5 years;

37 3. Requires the commission to conduct a detailed expenditure analysis for certain  
 38 transmission and distribution utilities;

39 4. Clarifies and adds protections for employees of utilities, competitive electricity  
 40 providers, affiliated interests and utility contractors that provide testimony to legislative  
 41 committees, the commission or the Public Advocate;

**COMMITTEE AMENDMENT**

