

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

—
S.P. 697 - L.D. 1959

**An Act Regarding Utility Accountability and Grid Planning for Maine's
Clean Energy Future**

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

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 for utilities with over 50,000 customers 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.

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

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

F. Annually, the commission shall evaluate the data provided by a transmission and distribution utility in accordance with paragraph E for the prior calendar year to determine if the standards established by the commission pursuant to this section have been met.

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

H. The commission shall publish quarterly reports containing scores for each service standard for each utility.

I. The commission may audit the data reported by a utility for each standard.

Nothing in this subsection prohibits the commission from establishing service quality standards for transmission and distribution utilities with fewer than 50,000 customers.

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

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

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

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

This subsection takes effect January 15, 2024.

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

6. Investor-owned transmission and distribution utility expenditures; comparison. No later than November 1, 2022, the commission shall initiate a proceeding to conduct a detailed comparison of the annual expenditures of each investor-owned transmission and distribution utility in the State with the annual expenditures of other comparable investor-owned transmission and distribution utilities located in the United States. When conducting this analysis, the commission shall identify specific categories in which spending by an investor-owned transmission and distribution utility significantly deviated from those expenditures of comparable investor-owned transmission and distribution utilities. The commission may use the results of this analysis in future rate cases involving an investor-owned transmission and distribution utility. The commission may undertake a new comparison or update an existing one in accordance with this subsection at any time the commission determines is necessary. For purposes of this subsection, a comparable investor-owned transmission and distribution utility is one that

provides electricity delivery in a service territory in a northern climate that is primarily wooded and includes urban and rural areas.

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

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

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

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

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

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

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

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

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

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

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

3. Discharge of, threats to or discrimination against employees of utility service providers for testimony presented to legislative committees ~~or~~, the commission or the Public Advocate. ~~Unless otherwise provided for, a A supervisor may not discharge, threaten or otherwise discriminate against an employee of a public utility or competitive service provider regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee, in compliance with this section, in good faith testifies before or provides information to a legislative committee ~~or to~~, the commission or the Public Advocate regarding the operation of the business of a public~~

utility or competitive service provider or because the employee brings the subject matter of the testimony or information to the attention of a person having supervisory authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. In accordance with section 301, subsection 1-A, paragraph G, the commission shall impose an administrative penalty on a transmission and distribution utility in an amount that does not exceed \$1,000,000 or 10% of its annual gross revenue received from ratepayers in the State, whichever amount is less, that fails to meet a standard established by the commission pursuant to section 301, subsection 1-A in the previous calendar year. Each calendar year that the transmission and distribution utility fails to meet the standard constitutes a separate offense. The commission shall use the proceeds from the penalty imposed under this paragraph to assist low-income customers.

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

§1513. Divestiture of underperforming transmission and distribution utility

The commission shall initiate an adjudicatory proceeding, on its own motion or at the request of the Public Advocate, in accordance with this section to determine whether divestiture of an investor-owned transmission and distribution utility is warranted if the utility consistently fails to meet the service standards established in section 301, subsection 1-A, consistently fails to meet the requirements of section 301, subsection 1 or is unable to fulfill its statutory duties as a public utility because it is financially impaired. If, at the conclusion of the adjudicatory proceeding, the commission determines that divestiture of a transmission and distribution utility is warranted, the commission shall order divestiture of or by the utility in accordance with this section.

1. Determination by the commission. The commission shall order the owner of the transmission and distribution utility to divest the utility if the acquisition of the utility from a qualified buyer:

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

B. Is for a fair and reasonable purchase price negotiated by a qualified buyer and the transmission and distribution utility or as determined by the Superior Court in accordance with subsection 2;

C. Demonstrates that the qualified buyer has sufficient financial and technical capability, expertise and experience to own and operate the utility and the ability to comply with all of the legal requirements, including but not limited to achievement of policies pursuant to Title 38, section 576-A and section 577, subsection 1, of a transmission and distribution utility; and

D. Will benefit ratepayers as determined in accordance with section 708, subsection 2, paragraph C, subparagraph (2).

2. Superior Court review. Notwithstanding any other provision of this Title, a transmission and distribution utility may apply by petition to the Superior Court of Kennebec County to determine a fair and reasonable price that provides just compensation for the sale of the transmission and distribution utility or its assets if the qualified buyer and transmission and distribution utility are unable to negotiate a price. The court shall hold a hearing on the petition in which the parties are permitted to present factual and expert testimony and other evidence concerning the value of the utility or its assets and shall render a decision. The decision of the Superior Court may be appealed to the Supreme Judicial Court sitting as the Law Court in the same manner as an appeal taken from a judgment of the Superior Court in a civil action.

3. More than one buyer. If more than one qualified buyer proposes to acquire the transmission and distribution utility or its assets, the commission shall order divestiture to the qualified buyer that will provide the greatest net benefits to ratepayers.

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

§3146. Climate change protection plan

No later than December 31, 2023, and every 3 years thereafter, a transmission and distribution utility shall submit to the commission a 10-year plan that includes specific actions for addressing the expected effects of climate change on the utility's assets needed to transmit and distribute electricity to its customers. The commission shall provide a process to allow for the input from interested parties on the transmission and distribution utility's plan. The commission may use the plan and the input received from interested parties in rate cases or other proceedings involving the transmission and distribution utility.

Sec. 8. 35-A MRSA §3147 is enacted to read:

§3147. Integrated grid planning

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

A. "Covered utility" means a large investor-owned transmission and distribution utility as defined in section 3201, subsection 12.

B. "Environmental justice" means the fair treatment and meaningful involvement of all persons regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, rules, regulations and policies.

C. "Grid plan" means a 10-year integrated grid plan developed in accordance with this section designed to improve system reliability and resiliency and enable the cost-effective achievement of the greenhouse gas reduction obligations and climate policies pursuant to Title 38, section 576-A and section 577, subsection 1.

D. "Hosting capacity" means a threshold at a circuit at which new distributed energy resources will trigger upgrades or changes to the electrical distribution system and cost considerations of related upgrades and changes.

2. Priorities identified; stakeholder input. Beginning November 1, 2022, then every 5 years thereafter, the commission shall initiate a proceeding to identify the priorities to be addressed in a filing by a covered utility regarding a grid plan that will assist in the cost-effective transition to a clean, affordable and reliable electric grid. The commission shall hold technical conferences or stakeholder workshops before the filing to identify priorities, assumptions, goals, methods and tools that will assist the covered utility in developing a grid plan.

3. Commission order. At the conclusion of the technical conferences and stakeholder workshops held under subsection 2, the commission shall issue an order directing a covered utility to submit a filing to the commission that addresses the priorities identified in the proceeding initiated pursuant to subsection 2 and includes the additional components identified in subsection 4.

4. Additional components; submission. A covered utility shall submit a filing to the commission within 18 months of the issuance of an order by the commission pursuant to subsection 3. In addition to addressing the priorities specified in the commission order, the filing must:

A. Assess the electric system of the covered utility and its relationship to the regional grid;

B. For elements of the filing related to customer energy consumption and usage characteristics, reference and incorporate relevant elements of the Efficiency Maine Trust triennial plan developed under section 10104, subsection 4, including all of the trust's analysis of cost-effective energy efficiency potential and plans to implement energy efficiency programs, demand management programs, beneficial electrification programs such as heat pump and electric vehicle initiatives, energy storage initiatives and analysis of nonwires alternatives;

C. Include at least 2 potential planning scenarios, at a minimum, a baseline scenario and a scenario of high-penetration distributed energy resources and end-use electrification. When applicable, the planning scenarios must incorporate mechanisms for achieving the priorities established pursuant to subsection 2, including, but not limited to, cost-effective policies, programs, rates, use of software or technology and infrastructure planning, including nonwires alternatives;

D. Include, at a minimum, the following:

(1) Forecasts of projected load, including forecasts of end-use electrification, energy efficiency and distributed energy resources;

(2) Baseline energy supply data and assessments, including but not limited to planned generation retirements; new generation that is planned or needed, including generation of electricity from renewable sources; and energy storage installations;

(3) Analysis of hosting capacity, including locational benefits of distributed energy resources and areas of existing or potential system congestion;

(4) Analysis of available and emerging technologies necessary to enable load management and flexibility;

(5) An assessment of the environmental, equity and environmental justice impacts of grid plans; and

(6) An identification of cost-effective near-term grid investments and operations needed to achieve the priorities identified in subsection 2; and

E. Reference and incorporate, as appropriate, all relevant analysis conducted as part of the State's climate action plan under Title 38, section 577 and relevant information from reports and analysis completed by other state agencies and quasi-independent state entities.

The commission shall make the filing for each covered utility available for public comment for a period of no less than 60 days. The commission may order a covered utility to revise the filing to address any deficiencies. The commission may use the filing and the input received from interested parties in rate cases or other proceedings involving the covered utility.

5. Access to information. Consistent with section 1311-A, a covered utility shall ensure to the greatest extent practicable that any information related to the filing is provided in a forum accessible to interested parties and all relevant data and distribution planning modeling tools are available to interested parties.

Nothing in this section prohibits the commission from holding additional proceedings if the commission determines it is necessary to meet the purposes of this section.

Sec. 9. Plan status to committee. No later than October 15, 2023, the Public Utilities Commission shall provide an interim report regarding the status of the development of an integrated grid plan as required by the Maine Revised Statutes, Title 35-A, section 3147 to the joint standing committee of the Legislature having jurisdiction over energy and utility matters. No later than July 15, 2024, the commission shall submit a final report on the development of grid plans to the committee. The joint standing committee of the Legislature having jurisdiction over energy and utility matters may report out a bill in connection with the interim report provided by the commission to the Second Regular Session of the 131st Legislature and the final report provided by the commission to the First Regular Session of the 132nd Legislature.

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

Sec. 11. Assessment of resources needs at Public Utilities Commission. No later than December 1, 2022, the Public Utilities Commission shall provide to the joint standing committee of the Legislature having jurisdiction over energy and utility matters a report that includes an assessment of staffing and resources that may be necessary to comply with the integrated grid planning provisions of the Maine Revised Statutes, Title 35-A, section 3147. After receiving the report, the committee may report out legislation on the subject matter of the report to the 131st Legislature in 2023.

Sec. 12. Competitive procurement inquiry. By October 1, 2022, the Public Utilities Commission shall initiate an inquiry to assess the use of competitive procurement methods for purchases by transmission and distribution utilities, as defined in the Maine Revised Statutes, Title 35-A, section 102, subsection 20-B, of specific goods and services of a quantity that in the aggregate could reasonably impose significant costs to ratepayers. The inquiry must consider the activities for which competitive procurement methods may apply, exceptions to competitive procurement methods, the cost-effectiveness of requiring the use of competitive procurement methods and any other considerations the commission finds are necessary to assess the use of competitive procurement methods. Upon the conclusion of the inquiry, the commission may adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A regarding competitive procurement methods for transmission and distribution utilities. On or before February 27, 2023, the commission shall submit a report regarding the inquiry to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters. The committee may report out a bill to the 131st Legislature in 2023.

Sec. 13. Appropriations and allocations. The following appropriations and allocations are made.

PUBLIC UTILITIES COMMISSION

Public Utilities - Administrative Division 0184

Initiative: Provides allocations for one Staff Attorney position and 2 Utility Analyst positions and associated All Other funding.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
POSITIONS - LEGISLATIVE COUNT	0.000	3.000
Personal Services	\$0	\$464,348
All Other	\$0	\$34,680
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$499,028

Public Utilities - Administrative Division 0184

Initiative: Provides one-time allocation for contracted services to study similar investor-owned utilities and regulatory efforts.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
All Other	\$0	\$400,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$400,000

PUBLIC UTILITIES COMMISSION

DEPARTMENT TOTALS	2021-22	2022-23
OTHER SPECIAL REVENUE FUNDS	\$0	\$899,028
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$899,028