

Committee: EUT  
Date: 03/16/22

Proposed sponsor amendment  
Offered by Senator Brenner

## An Act To Ensure Transmission and Distribution Utility Accountability

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. PerformanceMinimum service standards and report card for transmission and distribution utilities.** ~~The commission shall adopt rules to establish minimum requirements for a transmission and distribution utility to ensure that the evaluate transmission and distribution utility meets the requirements~~service, considering the specific characteristics of subsection 1each 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 planning and operational standards for a transmission and distribution metrics pertaining to utility that reflect standard industry practices, including, but not limited to, standards for the following~~operations and activities: within each of the following categories;

~~(1) Reliability of service;~~

~~(1) Service Quality, including but not limited to reliability of service and timeliness of restoring service after outages;~~

~~(2) Timeliness~~Customer Service, including but not limited to timeliness and accuracy of bills;

~~(3) Field Services, including but not limited to communication and responsiveness to customer requests for information or service~~municipalities, businesses and individuals;

~~(3) Frequency of customer complaints;~~

~~(4) Timeliness and accuracy of bills;~~

~~(5) Responsiveness to requests for Distributed Energy Resources interconnection by generators;~~ and;

~~(6) Timeliness of restoring service after storms.~~

~~B. Each calendar quarter, a transmission and distribution utility shall file with~~B. The commission shall set reporting requirements for each metric, including data specifications and reporting periods, adequate to track progress in areas of performance.

~~C. The commission shall designate service standards for each metric based on thresholds of performance.~~

~~D. For service standards, the commission shall require quarterly filing of quantifiable data sufficient for the commission to calculate and publish a quantitative score for each standard established by the commission pursuant to paragraph A.~~service standard.

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~~C. E. The commission shall enforce this subsection and rules adopted pursuant to this subsection by initiating an adjudicatory proceeding to consider whether to impose an administrative penalty 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.~~

~~F. The commission shall publish quarterly report cards containing scores for each service standard.~~

**Sec. 2. 35-A MRSA §301, sub-§5** ~~is and sub-section 6 are~~ enacted to read:

**5. Transmission and distribution utility report required; audits.** ~~If the commission has not made a rate determination for a transmission and distribution utility that serves more than 50,000 customers within the preceding 5 years, 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.~~

**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 those annual expenditures of other comparable transmission and distribution utilities located in the United States. When conducting this analysis, the commission shall identify specific categories where spending by an investor-owned transmission and distribution utility significantly deviated from those expenditures of comparable 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 a preexisting one in accordance with this section at any time the commission determines is necessary.~~

**Sec. 3. 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 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 service 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 provider, utility contractor or affiliated interest licensed to do business in this State with one or more employees.

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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 service 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 ~~certain~~ 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

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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.** This section does not diminish or impair the rights of a person under any collective bargaining agreement. A public utility, competitive service provider or affiliated interest may not enter into a collective bargaining agreement for the sole purpose of 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 service provider may not respond ~~by:~~ 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 service provider shall notify the public utility's and the competitive service provider's employees, affiliated interests and utility contractors, respectively, of their rights under this section.

**11. Penalties.** The commission may impose penalties pursuant to 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 section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

E. ~~The~~ In accordance with section 301, subsection 1-A, paragraph E, the commission ~~may~~ 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 for 2 consecutive calendar quarters or otherwise consistently fails to meet a standard established by the commission pursuant to section 301, subsection 1-A, paragraph A. Each calendar quarter that the transmission and distribution utility fails to meet the standard constitutes a separate offense. The commission shall use the proceeds from the penalty assessed under this paragraph to reduce energy costs for low-income customers.

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

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

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The commission shall initiate an adjudicatory proceeding in accordance with this section and section 708, subsection 2, paragraph A, subparagraph (8) to determine whether divestiture of a transmission and distribution utility is warranted if the utility consistently fails to meet the service standards established in section 301, subsection 1-A, paragraph 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, then the following procedures apply:

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

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

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

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-C. Is for a fair and reasonable purchase price; and

C. ~~Demonstrates, if the divestiture includes a sale of the transmission and distribution utility's assets, that the qualified buyer or consumer-owned quasi-municipal corporation will have at completion of divestiture~~D. Demonstrates, that the 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.

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

**Sec. 6. 35-A MRSA §3146 ~~is~~ and §3147 are** enacted to read:

**§3146. Climate change protection plan**

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

**§3147. Integrated grid planning**

The commission shall implement integrated grid planning to assist in the transition to a clean, affordable and reliable electric grid in a cost-effective manner. No later than December 15, 2023, and every three years thereafter, a transmission and distribution utility shall submit to the commission a 10-year integrated grid plan to enable the cost-effective achievement of greenhouse gas reduction obligations and climate policies pursuant to Title 38, section 576-A and section 577, subsection 1. The plan must examine the electric grid in a transmission and distribution utility's service territory, including the relationship to the regional grid, to identify cost-effective solutions to improve reliability and resiliency and to achieve greenhouse gas reductions. The plan shall include more than one scenario and solutions identified may include, but not be limited to, policies, programs, rates, software or technology, and infrastructure, including non-wires alternatives. Plans shall include at a minimum:

- A. Forecasts of projected load, including forecasts of end-use electrification, energy efficiency and distributed energy resources;
- B. Baseline energy supply data and assessment, including but not limited to planned generation retirements, energy generation additions including renewable energy, and energy storage installations.
- C. Hosting capacity analysis including locational benefits of distributed energy resources and areas of existing or potential system congestion; and consideration of available and emerging technologies necessary to enable load management and flexibility;
- D. An assessment of the environmental, equity and environmental justice impacts of integrated distribution plans.
- E. 3-year action plan to optimize near-term grid investments and operations in line with the long-term integrated plan.

The commission shall open an adjudicatory proceeding or proceedings on each transmission and distribution utility's plan submitted in accordance with this section. The commission shall run technical conferences or stakeholder workshops in the early stages of the plan development to define requirements and inform inputs, assumptions, methodologies and tools that will assist the commission in determining what actions if any it shall direct a transmission and distribution utility to take. A transmission and distribution utility shall ensure to the greatest extent practicable that any information related to the plan is provided in a forum accessible to interested parties and all relevant data and distribution planning modeling tools are available to stakeholders subject to commercial non-disclosure, confidential energy infrastructure, codes of conduct and other commercial, Commission and FERC requirements.

The commission shall, if it determines it is necessary, order a transmission and distribution utility to revise the plan to address any deficiencies in the plan or to incorporate any reasonable actions to align its business, programs, operations, and investments with greenhouse gas reduction obligations and climate policies pursuant to Title 38, section 576-A and section 577, subsection 1.

This section shall only apply to transmission and distribution utilities that serve more than 50,000 customers. For the initial integrated grid plan, the commission may provide a phased schedule to allow the utility to file requisite components incrementally. The commission shall develop report-only metrics to establish baselines and track progress in achieving the plan.

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For the purposes of this section, "environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, rules, regulations and policies.

**Sec. 7. 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 8. Assessment of resource needs at Public Utility Commission.** No later than Dec 1, 2022, the Public Utilities Commission shall provide to the joint standing committee of the Maine legislature with jurisdiction over energy, utilities, and technologies a report that includes an assessment of staffing and resources that may be necessary to implement the integrated distribution planning provisions of Section 6. After receiving the report, the joint standing committee may report out legislation on the subject matter of the report.

## SUMMARY

[amendment summary to be added later]

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

1. It establishes service standards and administrative penalties for poor service to consumers and interconnecting generatorsdistributed energy resource providers.

22. It requires the Public Utilities Commission to implement integrated grid planning including an obligation on transmission and distribution utilities to file 10-year distribution system plans.

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

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

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

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

7. It requires the Public Utilities Commission to provide an assessment of staffing and resource needs to implement integrated grid planning.