

LR: 1731  
Committee: EUT  
LA: LL  
Date: 03/15/22

LD 1026  
SPONSOR AMENDMENT  
Offered by Representative Berry

**TITLE: An Act To Update the Regulation of Public Utility Monopolies**

Replace everything after the enacting clause and before the summary with the following:

**Sec. 1. 35-A MRSA Section 102, subsection 2-A** is repealed.

**Sec. 2. 35-A MRSA Section 102, subsection 2-B** is enacted to read:

**2-B. Competitive electricity provider.** "Competitive electricity provider" has the same meaning as in Section 3201, subsection 5.

**NOTE TO THE REVISOR'S OFFICE:** Wherever the term "competitive service provider" appears in the following sections, it is amended to read "competitive electricity provider":

35-A MRSA §103 – 1 instance

35-A MRSA §109 – 4 instances

35-A MRSA §1316 – 7 instances and please update subsection 3's lead-in as follows:

3. Discharge of, threats to or discrimination against employees of public utilities or competitive electricity providers ~~utility service providers~~ for testimony presented to legislative

35-A MRSA §1321 – 3 instances

35-A MRSA §1322 – 4 instances

35-A MRSA §1702 – 3 instances

35-A MRSA §1709 – 2 instances

**Sec. 3. 35-A MRSA §2102, sub-§1** is amended to read:

**1. Approval required.** Except as provided in subsection 2 and in section 4507, a public utility may not furnish any of the services set out in section 2101 in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service without the approval of the commission. The commission may condition approval upon the submission of a bond or other financial security if the commission determines that such a requirement is necessary to ensure that a public utility has the financial ability to meet its obligations under this Title.

A. For a municipal power district created under chapter 39 or a cooperative created under chapter 37, the commission's approval required under this subsection is limited to a determination that the procedures prescribed in chapter 39 for the creation of a municipal

power district, or chapter 37 for the creation of a cooperative, have been complied with. This paragraph applies only if the public utility furnishing or authorized to furnish a similar service in or to the municipality is an investor-owned transmission and distribution utility.

**Sec. 4. 35-A MRSA §3903, sub-§4**, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

**4. Favorable vote.** If a majority of the legal votes cast on this question favor incorporation, a municipal power district may be created for that municipality under this chapter upon declaration of the vote by the municipal officers, provided that the total number of votes cast for and against the incorporation equals or exceeds 40% of the total votes cast in that municipality for all candidates for Governor at the previous gubernatorial election. If not, the proposed district is not created at that time. Upon certification of a favorable vote by the municipal officers, the commission shall approve formation of the district if the commission finds that formation would be in conformance with the requirements of this ~~Title~~ chapter. Upon approval by the commission, the district is created and the commission shall file certification of that approval with the Secretary of State.

**Sec. 5. 35-A MRSA §3903, sub-§5** is enacted to read:

**5. Transfer of property; payment of just compensation.** When a municipal power district is created under this section and approved by the commission under this section and section 2102, the investor-owned transmission and distribution utility furnishing service in that municipality must facilitate the transfer of property in accordance with the commission's approval. The municipal power district shall pay the investor-owned transmission and distribution utility just compensation, as determined by the commission, for the property of the investor-owned transmission and distribution utility.

**Sec. 6. 35-A MRSA §3904, sub-§4**, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

**4. Favorable vote.** If, in each municipality, a majority of the legal votes cast on this question favor incorporation, a municipal power district may be created for those municipalities under this chapter upon declaration of the vote of the municipal officers, provided that the total number of votes cast in each municipality for and against the incorporation equals or exceeds 40% of the total votes cast in the municipality for all candidates for Governor at the previous gubernatorial election. Upon certification of a favorable vote by the municipal officers, the commission shall approve formation of the district if the commission finds that formation would be in conformance with the requirements of this ~~Title~~ chapter. Upon approval by the commission, the district is created and the commission shall file certification of that approval with the Secretary of State.

**Sec. 7. 35-A MRSA §3904, sub-§5** is enacted to read:

**5. Transfer of property; payment of just compensation.** When a municipal power district is created under this section and approved by the commission under this section and section 2102, the investor-owned transmission and distribution utility furnishing service in those municipalities must facilitate the transfer of property in accordance with the commission's approval. The municipal power district shall pay the investor-owned transmission and distribution utility just compensation, as determined by the commission, for the property of the investor-owned transmission and distribution utility.

**Sec. 8. 35-A MRSA §3773** is enacted to read:

**§ 3773 Transfer of property and compensation**

When a cooperative is created under this chapter and approved by the commission under section 3772 and section 2102, the investor-owned transmission and distribution utility furnishing service to the cooperative's members must facilitate the transfer of property in accordance with the commission's approval. The cooperative shall pay the investor-owned transmission and distribution utility just compensation, as determined by the commission, for the property of the investor-owned transmission and distribution utility.

**Sec. 9. 35-A MRSA §3209-B, sub-§5**, as enacted by PL 2019, c. 478 section 4, is amended to read:

**5. Tariff rate; bill credits.** The commission shall establish by rule ~~a~~ tariff rates for customers participating in the program. The initial tariff rate must be established no later than December 1, 2019. A distributed generation resource with a nameplate capacity of greater than one megawatt shall receive the tariff rate described in paragraph A if the entity developing the distributed generation resource certifies by sworn affidavit with accompanying documentation to the Commission that the entity has commenced physical work of a significant nature before September 1, 2022 and thereafter the entity has made and will continue to make continuous efforts to advance toward completion of the facility, including paying additional amounts included in the total cost of the facility; entering into binding written contracts for components or future work on construction of the facility; obtaining necessary permits; and performing physical work of a significant nature. A distributed generation resource with a nameplate capacity of one megawatt or less, or that is collocated with the net energy billing customer or customers subscribed to at least 50% of the facility's output, shall receive the tariff rate described in paragraph A. A distributed generation resource participating in net energy billing under this section that does not receive the tariff rate described in paragraph A shall receive the tariff rate described in paragraph A-1.

A. The tariff rate must equal the standard offer service rate established under section 3212 that is applicable to the customer receiving the credit plus 75% of the effective transmission and distribution rate for the rate class that includes the smallest commercial customers of the investor-owned transmission and distribution utility.

A-1. Beginning on January 1, 2022, the tariff rate must equal the standard offer service rate established under section 3212 that was applicable to the rate class of the customer receiving the credit on December 31, 2020 plus 75% of the effective transmission and distribution rate that was in effect on December 31, 2020 for the rate class that includes the smallest commercial customers of the investor-owned transmission and distribution utility. The tariff rate shall increase by 2.25 percent on January 1 of each subsequent year, beginning January 1, 2023.

B. A customer participating in the program must receive for electricity delivered to the electric grid from a distributed generation resource in which the customer has a financial interest a bill credit based on the tariff rate to apply against the costs of electricity delivered to the customer by the investor-owned transmission and distribution utility.

C. A bill credit under the program as described in paragraph B may be applied to any portion of a customer's electricity bill. Credits that remain unused at the end of any billing period may be carried forward for up to one year from the end of that billing period.

D. A customer participating in the program who remains eligible to participate in the program must be allowed to receive a bill credit based on the tariff rate for a period of no less than 20 years from the date of first receiving the credit.

**Sec. 10. 35-A MRSA §3209-A, sub-§7 paragraph E as enacted by PL 2021 c. 390 section 1 is amended to read:**

E. In order for a distributed generation resource to be used for net energy billing, the following must be met on or before December 31, 2024:

(1) The proposed distributed generation resource must reach ~~commercial operation~~ mechanical completion by the date specified in the net energy billing agreement or by the date specified with an allowable modification to that agreement. For the purposes of this paragraph, “mechanical completion” shall mean all mechanical and physical aspects of a project have been constructed and installed in accordance with design specifications such that the project may commence commercial operation upon receipt of permission to operate from the utility.

**Summary**

This amendment replaces the original bill. Sections 1 and 2 of this amendment update Title 35-A to use consistent terminology. Existing law uses the defined terms “competitive service provider” and “competitive electricity provider;” however, “competitive service provider” is defined as a “competitive electricity provider.” The bill repeals the definition of “competitive service provider” and replaces each usage with “competitive electricity provider.” The bill also corrects one instance in which an undefined term, “utility service providers,” is used.

Sections 3 through 8 of the amendment establish review criteria for commission when it is considering the approval of a municipal power district's or a cooperative's proposal to furnish service in a municipality or municipalities in which another electric utility is already furnishing service. To grant approval, the commission's determination is limited to finding that the municipal power district was created in conformance with the Maine Revised Statutes, Title 35-A, chapter 39 or, in the case of a cooperative, Maine Revised Statutes, Title 35-A, chapter 37. The determination only applies to situations in which the electric utility that is already furnishing service is an investor-owned transmission and distribution utility. The amendment specifies that the investor-owned transmission and distribution utility furnishing service in the municipality or municipalities where a municipal power district or cooperative is approved by the commission must facilitate the transfer of property and be provided just compensation, as determined by the commission, for that property.

Sections 9 and 10: SUMMARY TO BE ADDED LATER