

MAINE STATE LEGISLATURE

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L.D. 1026

Date: 4-15-22

(Filing No. H-1027)

REPORT C

ENERGY, UTILITIES AND TECHNOLOGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "C" to H.P. 764, L.D. 1026, "An Act To Update the Regulation of Public Utility Monopolies"

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

Sec. 1. 35-A MRSA §102, sub-§2-A, as enacted by PL 1999, c. 398, Pt. A, §3 and affected by §§104 and 105, is repealed.

Sec. 2. 35-A MRSA §102, sub-§2-B is enacted to read:

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

Sec. 3. 35-A MRSA §103, sub-§2, ¶C, as enacted by PL 1999, c. 398, Pt. A, §10 and affected by §§104 and 105, is amended to read:

C. The commission shall oversee the activities of competitive ~~service~~ electricity providers to the extent provided in this Title.

Sec. 4. 35-A MRSA §109, sub-§1, as amended by PL 1999, c. 398, Pt. A, §11 and affected by §§104 and 105, is further amended to read:

- 1. **Public utilities.** A member or employee of the commission may not:
 - A. Have any official or professional connection or relation with any public utility or competitive ~~service~~ electricity provider operating within this State;
 - B. Hold any stock or securities in any public utility or competitive ~~service~~ electricity provider operating within this State;
 - C. Render a professional service against any such public utility or competitive ~~service~~ electricity provider; or
 - D. Be a member of a firm that renders service against any such public utility or competitive ~~service~~ electricity provider.

COMMITTEE AMENDMENT

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1 **Sec. 5. 35-A MRSA §1316**, as amended by PL 1999, c. 398, Pt. A, §21 and affected
2 by §§104 and 105, is further amended by amending the section headnote to read:

3 **§1316. Testimony presented by employees of public utilities or competitive service**
4 **electricity providers to legislative committees and to the Public Utilities**
5 **Commission**

6 **Sec. 6. 35-A MRSA §1316, sub-§1, ¶B**, as amended by PL 1999, c. 398, Pt. A,
7 §21 and affected by §§104 and 105, is further amended to read:

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

10 **Sec. 7. 35-A MRSA §1316, sub-§2**, as amended by PL 1999, c. 398, Pt. A, §21
11 and affected by §§104 and 105, is further amended to read:

12 **2. Right to provide testimony.** Employees of a public utility or competitive ~~service~~
13 electricity provider have the right to represent themselves and to testify before a legislative
14 committee or the commission on their own time. An employee of a public utility or
15 competitive ~~service~~ electricity provider who complies with this section may not be denied
16 the right to testify before a legislative committee or the commission.

17 **Sec. 8. 35-A MRSA §1316, sub-§3**, as amended by PL 1999, c. 398, Pt. A, §21
18 and affected by §§104 and 105, is further amended to read:

19 **3. Discharge of, threats to or discrimination against employees of ~~utility-service~~**
20 **public utilities or competitive electricity providers for testimony presented to**
21 **legislative committees or the commission.** Unless otherwise provided for, a supervisor
22 may not discharge, threaten or otherwise discriminate against an employee of a public
23 utility or competitive ~~service~~ electricity provider regarding the employee's compensation,
24 terms, conditions, location or privileges of employment because the employee, in
25 compliance with this section, in good faith testifies before or provides information to a
26 legislative committee or to the commission regarding the operation of the business of a
27 public utility or competitive ~~service~~ electricity provider or because the employee brings the
28 subject matter of the testimony or information to the attention of a person having
29 supervisory authority.

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

36 **Sec. 9. 35-A MRSA §1316, sub-§5**, as amended by PL 1999, c. 398, Pt. A, §21
37 and affected by §§104 and 105, is further amended to read:

38 **5. Civil actions for injunctive relief or other remedies.** An employee of a public
39 utility or competitive ~~service~~ electricity provider who alleges a violation of rights under
40 this section and who has made reasonable efforts to exhaust all grievance procedures, as
41 provided for in the contract of employment or which otherwise may be available at the
42 employee's place of employment, may bring a civil action, including an action for
43 injunctive relief, within 90 days after the occurrence of that alleged violation or after the

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1 grievance procedure or similar process terminates. The action may be brought in the
2 Superior Court for the county where the alleged violation occurred, the county where the
3 complainant resides or the county where the person against whom the civil complaint is
4 filed resides. An employee must establish each and every element of the employee's case
5 by a preponderance of the evidence.

6 **Sec. 10. 35-A MRSA §1321**, as amended by PL 1999, c. 398, Pt. A, §22 and
7 affected by §§104 and 105, is further amended to read:

8 **§1321. Orders altered or amended**

9 The commission may at any time rescind, alter or amend any order it has made
10 including an order fixing any rate or rates, tolls, charges or schedules of a public utility or
11 an order relating to matters within the jurisdiction of the commission with respect to a
12 competitive ~~service~~ electricity provider only if it gives the public utility or competitive
13 ~~service~~ electricity provider and all parties to the original proceeding, to the extent practical,
14 written notice and after opportunity for those parties to present evidence or argument, as
15 determined appropriate by the commission. Certified copies of amended orders must be
16 served and take effect as provided for original orders. Nothing in this section is intended
17 to grant to the commission authority to establish or approve the rates charged by
18 competitive ~~service~~ electricity providers.

19 **Sec. 11. 35-A MRSA §1322, sub-§1**, as amended by PL 1999, c. 398, Pt. A, §23
20 and affected by §§104 and 105, is further amended to read:

21 **1. Orders temporarily amended.** When the commission finds it necessary to prevent
22 injury to a public utility's business or to the interest of the people, or if the commission
23 finds there is an emergency, it may temporarily alter, amend or, with the public utility's
24 consent, suspend existing rates, schedules or orders affecting the public utility. When the
25 commission finds it necessary to prevent injury to a competitive ~~service~~ electricity
26 provider's business or to the interest of the people, or if the commission finds there is an
27 emergency, it may temporarily alter, amend or, with the competitive ~~service~~ electricity
28 provider's consent, suspend existing orders affecting the competitive ~~service~~ electricity
29 provider.

30 **Sec. 12. 35-A MRSA §1322, sub-§3**, as enacted by PL 1999, c. 398, Pt. A, §23
31 and affected by §§104 and 105, is amended to read:

32 **3. Limitation of authority.** Nothing in this section is intended to grant the
33 commission authority to establish or approve the rates charged by competitive ~~service~~
34 electricity providers.

35 **Sec. 13. 35-A MRSA §1702, sub-§1, ¶B**, as amended by PL 1999, c. 398, Pt. A,
36 §24 and affected by §§104 and 105, is further amended to read:

37 B. The reasonableness and adequacy of the service furnished or proposed to be
38 furnished by any public utility or competitive ~~service~~ electricity provider;

39 **Sec. 14. 35-A MRSA §1702, sub-§3**, as amended by PL 1999, c. 398, Pt. A, §25
40 and affected by §§104 and 105, is further amended to read:

41 **3. Petition to initiate proceedings.** The Public Advocate may petition the
42 commission to initiate proceedings to review, investigate and take appropriate action with

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1 respect to the rates or service of any public utility or competitive ~~service~~ electricity provider
2 when determined necessary by the Public Advocate.

3 **Sec. 15. 35-A MRSA §1702, sub-§5**, as amended by PL 2019, c. 71, §1, is further
4 amended to read:

5 **5. Intervention on behalf of public.** The Public Advocate may, on behalf of the using
6 and consuming public, or any particular group of consumers, petition to initiate, or
7 intervene and appear in, any proceedings before the commission, appeals from orders of
8 the commission, or proceedings before state and federal agencies and courts in which the
9 subject matter of the action affects the customers of any utility or competitive ~~service~~
10 electricity provider doing business in this State.

11 **Sec. 16. 35-A MRSA §1709**, as amended by PL 1999, c. 398, Pt. A, §28 and
12 affected by §§104 and 105, is further amended to read:

13 **§1709. Conflicts of interest**

14 In addition to the limitations of Title 5, section 18, the Public Advocate or any
15 employee of the Public Advocate may not have any official or professional connection or
16 relation with, or hold any stock or securities in, any public utility or competitive ~~service~~
17 electricity provider operating within this State; render any professional service against any
18 such public utility or competitive ~~service~~ electricity provider; or be a member of a firm that
19 renders any such service.

20 **Sec. 17. 35-A MRSA §3209-A, sub-§7**, as enacted by PL 2021, c. 390, §1 and c.
21 370, §1 and reallocated by RR 2021, c. 1, Pt. A, §37, is repealed and the following enacted
22 in its place:

23 **7. Applicability.** A distributed generation resource with a nameplate capacity of
24 greater than 2 megawatts and not more than 5 megawatts may be used for net energy billing
25 under this section only if the requirements of paragraph A, B or C are met and all the
26 requirements of paragraphs D and E are met.

27 A. In order for a distributed generation resource to be used for net energy billing, one
28 of the following must have been met on or before December 31, 2020:

29 (1) There is a signed interconnection agreement between the entity proposing the
30 development of the distributed generation resource and a transmission and
31 distribution utility governing the connection of the resource to the utility's system
32 and the ongoing operation of the resource after it is connected to the system; or

33 (2) There is a net energy billing agreement between the entity proposing the
34 development of the distributed generation resource and the transmission and
35 distribution utility.

36 An amendment, revision or reissuance of an agreement under this paragraph that occurs
37 after December 31, 2020 may not be interpreted to affect the date on which the initial
38 agreement was signed.

39 B. In order for a distributed generation resource to be used for net energy billing, one
40 of the following must have been met on or before April 30, 2021:

41 (1) A complete application for a customer net energy billing agreement has been
42 submitted for the distributed generation resource and a customer has or customers

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1 have financial interest in 90% or more of the capacity of that distributed generation
2 resource; or

3 (2) There is a fully executed net energy billing agreement between a customer or
4 sponsor of the distributed generation resource and the transmission and distribution
5 utility for the distributed generation resource and a customer has or customers have
6 financial interest in 90% or more of the capacity of that distributed generation
7 resource.

8 C. In order for a distributed generation resource to be used for net energy billing, the
9 following must have been met on or before June 1, 2021:

10 (1) The interconnection study process has commenced for a distributed generation
11 resource located in those portions of the service territory of an investor-owned
12 transmission and distribution utility that are not connected to the ISO-NE region
13 as defined in section 1902, subsection 3.

14 D. In order for a distributed generation resource to be used for net energy billing, all
15 of the following must be met on or before December 31, 2021:

16 (1) There is a fully executed interconnection agreement between the entity
17 proposing the development of the distributed generation resource and the
18 transmission and distribution utility;

19 (2) The entity proposing the development of the distributed generation resource
20 certifies to the commission that the entity has submitted all applicable permit
21 applications to the Department of Environmental Protection and the department
22 has accepted those applications for processing; and

23 (3) The entity proposing the development of the distributed generation resource
24 certifies to the commission that the entity has received all necessary local,
25 nonministerial permits. For purposes of this subparagraph, "nonministerial permit"
26 means a permit for which one or more officials consider various factors and
27 exercise discretion in deciding whether to issue or deny the permit.

28 An amendment, revision or reissuance of an agreement under this paragraph that occurs
29 after December 31, 2021 may not be interpreted to affect the date on which the
30 agreement was initially executed.

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

33 (1) The proposed distributed generation resource must reach commercial operation
34 by the date specified in the net energy billing agreement or by the date specified
35 with an allowable modification to that agreement.

36 An entity proposing the development of a distributed generation resource that does not
37 meet one or more of the requirements of this subsection may petition the commission for a
38 good-cause exemption due to external delays outside of the entity's control, which the
39 commission may grant if it finds that, without the external delays, the entity could
40 reasonably have been expected to meet the requirements.

41 The goal for development of commercially operational distributed generation resources
42 under this subsection and section 3209-B, subsection 7 is 750 total megawatts.

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1 **Sec. 18. 35-A MRSA §3209-A, sub-§8** is enacted to read:

2 **8. Unused kilowatt-hour credits; rules.** To the extent rules adopted under this
3 section provide for the periodic expiration of unused kilowatt-hour credits accumulated by
4 a customer participating in a net energy billing arrangement, the commission shall require
5 by rule that, no earlier than April 1, 2022, each transmission and distribution utility with a
6 net energy billing arrangement that has implemented or elected to implement an arrearage
7 management program pursuant to section 3214, subsection 2-A shall account for and, on
8 or before January 1st of each year, apply all unused kilowatt-hour credits that were
9 accumulated and that expired during the prior calendar year for the benefit of participants
10 in the utility's arrearage management program. The rules adopted by the commission
11 pursuant to this subsection must:

12 A. Establish the manner by which a transmission and distribution utility must account
13 for unused kilowatt-hour credits that were accumulated by all customers of the utility
14 with net energy billing arrangements during the prior calendar year and that expired
15 during the prior calendar year; and

16 B. Establish the manner by which a transmission and distribution utility must apply
17 such unused kilowatt-hour credits for the benefit of participants in the utility's
18 arreage management program, which must be designed to result in each such
19 participant receiving as close to an equal amount of those credits except when the
20 credited amount would exceed the amount of a participant's arrearage.

21 Notwithstanding any provision of this section to the contrary, rules adopted by the
22 commission pursuant to this subsection are routine technical rules as defined in Title 5,
23 chapter 375, subchapter 2-A.

24 **Sec. 19. 35-A MRSA §3209-B, sub-§5**, as enacted by PL 2019, c. 478, Pt. A, §4,
25 is amended to read:

26 **5. Tariff rate; bill credits.** The commission shall establish by rule a tariff rate rates
27 for customers participating in the program. The initial tariff rate must be established no
28 later than December 1, 2019.

29 A. The tariff rate for a customer participating in net energy billing under this section
30 with a distributed generation resource described in this paragraph must equal the
31 standard-offer standard-offer service rate established under section 3212 that is
32 applicable to the customer receiving the credit plus 75% of the effective transmission
33 and distribution rate for the rate class that includes the smallest commercial customers
34 of the investor-owned transmission and distribution utility. The tariff rate under this
35 paragraph applies to net energy billing involving a distributed generation resource;

36 (1) With a nameplate capacity of greater than one megawatt if:

37 (a) The entity developing the distributed generation resource certifies by
38 affidavit with accompanying documentation to the commission that the entity,
39 before September 1, 2022, commenced physical work of a significant nature,
40 as described in Internal Revenue Service Notice 2013-29, Section 4.02, on the
41 distributed generation resource and thereafter the entity has made and will
42 continue to make continuous construction efforts, as described in Internal
43 Revenue Service Notice 2013-29, Section 4.06, to advance toward completion
44 of the distributed generation resource; or

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1 **(b) The distributed generation resource is collocated with a net energy billing**
2 **customer that is or net energy billing customers that are subscribed to at least**
3 **50% of the facility's output; or**

4 **(2) With a nameplate capacity of one megawatt or less.**

5 **A-1. The tariff rate for a customer participating in net energy billing under this section**
6 **with a distributed generation resource not governed by paragraph A must:**

7 **(1) In 2022, equal the standard-offer service rate established under section 3212**
8 **that was applicable to the rate class of the customer receiving the credit on**
9 **December 31, 2020 plus 75% of the effective transmission and distribution rate**
10 **that was in effect on December 31, 2020 for the rate class that includes the smallest**
11 **commercial customers of the investor-owned transmission and distribution utility;**
12 **and**

13 **(2) Be adjusted for inflation based on the Consumer Price Index, as defined in**
14 **Title 5, section 17001, subsection 9.**

15 **A-2. Notwithstanding paragraphs A and A-1, a distributed generation resource may**
16 **make a one-time election in accordance with this paragraph on behalf of a customer**
17 **participating in net energy billing under this section with that distributed generation**
18 **resource. If the customer would be subject to the tariff rate described in paragraph A,**
19 **the distributed generation resource may elect on behalf of that customer to have the**
20 **tariff rate described in paragraph A-1 apply by notifying the investor-owned**
21 **transmission and distribution utility no later than December 31, 2022.**

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

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

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

34 **Sec. 20. Appropriations and allocations.** The following appropriations and
35 **allocations are made.**

36 **PUBLIC UTILITIES COMMISSION**

37 **Public Utilities - Administrative Division 0184**

38 **Initiative: Provides allocation for one Utility Analyst position and associated position costs.**

39 OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
40 POSITIONS - LEGISLATIVE COUNT	0.000	1.000
41 Personal Services	\$0	\$145,312
42 All Other	\$0	\$8,880

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OTHER SPECIAL REVENUE FUNDS TOTAL _____ _____
\$0 \$154,192

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

SUMMARY

This amendment replaces the bill, which is a concept draft. The amendment updates the Maine Revised Statutes, Title 35-A to use consistent terminology. The amendment repeals the definition of "competitive service provider" and replaces each usage with "competitive electricity provider." The amendment also corrects one instance in which an undefined term, "utility service providers," is used.

The amendment also makes changes to the commercial and institutional net energy billing program to establish a new tariff rate applicable to distributed generation programs that are greater than one megawatt and do not meet the requirement to have commenced construction by September 1, 2022. The amendment provides that a distributed generation resource that is eligible for the tariff rate in Title 35-A, section 3209-B, subsection 5, paragraph A may make a one-time election to receive the tariff rate in paragraph A-1. The amendment also establishes that the tariff rate must be adjusted in accordance with the Consumer Price Index.

The amendment changes the way that the minimum nameplate capacity for a distributed generation resource used in connection with residential net energy billing is stated from at least 2 megawatts to greater than 2 megawatts.

The amendment also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)



130th MAINE LEGISLATURE

LD 1026

LR 1731(04)

An Act To Update the Regulation of Public Utility Monopolies

Fiscal Note for Bill as Amended by Committee Amendment *CH-1027*

Committee: Energy, Utilities and Technology

Fiscal Note Required: Yes

Fiscal Note

	FY 2021-22	FY 2022-23	Projections FY 2023-24	Projections FY 2024-25
Appropriations/Allocations				
Other Special Revenue Funds	\$0	\$154,192	\$160,525	\$168,101
Revenue				
Other Special Revenue Funds	\$0	\$154,192	\$160,525	\$168,101

Fiscal Detail and Notes

This bill changes certain qualification requirements for distributed generation resources for net energy billing and establishes new tariff rates. The bill includes ongoing allocations to the Public Utilities Commission (PUC) of \$154,192 beginning in fiscal year 2022-23 for one Utility Analyst position and associated costs to assist with these changes.

The PUC is funded by an assessment set to produce sufficient revenue for the expenditures allocated by the Legislature for operating the PUC. The increased allocations in this bill require a corresponding increase in revenue from the assessment on transmission and distribution utilities.