

MAINE STATE LEGISLATURE

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L.D. 1959

Date: 4/13/22

(Filing No. S-552)

REPORT C

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 "C" 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

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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:

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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.

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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.

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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 F, 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 lower, that fails for any rolling 18-consecutive-month period or otherwise consistently fails to meet a standard established by the commission pursuant to section 301, subsection 1-A, paragraph A. In determining the amount of an administrative penalty under this paragraph, in addition to the factors in subsection 2, the commission shall take into account the severity of the noncompliance, the harm, if any, to ratepayers, whether the noncompliance was the result of events or actions within the utility's control and such other factors as the commission determines appropriate. The commission shall use the proceeds from the administrative penalty assessed under this paragraph to reduce energy costs for low-income customers.

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

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

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 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

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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.

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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**

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COMMITTEE AMENDMENT "C" to S.P. 697, L.D. 1959 (S-552)

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

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
POSITIONS - LEGISLATIVE COUNT	0.000	2.000
Personal Services	\$0	\$307,938
All Other	\$0	\$25,592
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$333,530

Public Utilities - Administrative Division 0184

Initiative: Provides allocations for contracted services.

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**

OTHER SPECIAL REVENUE FUNDS	\$0	\$733,530
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$733,530

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

SUMMARY

This amendment replaces the bill. This amendment:

1. Requires the Public Utilities Commission to adopt rules governing the evaluation of transmission and distribution utility performance and establishing metrics for utility operations and activities related to service quality, customer service, field services and distributed energy resources interconnection. The commission must publish quarterly report cards on utility performance and must impose administrative penalties for a utility's poor performance unless the utility demonstrates good cause for its failure to meet the service standards;
2. Authorizes the commission to perform audits and disallow cost recovery for certain transmission and distribution utilities when the commission has not made a rate determination in the preceding 5 years;
3. Requires the commission to conduct a detailed expenditure analysis for certain transmission and distribution utilities;
4. Clarifies and adds protections for employees of utilities, competitive electricity providers, affiliated interests and utility contractors that provide testimony to legislative committees, the commission or the Public Advocate;

COMMITTEE AMENDMENT

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5. Establishes a new administrative penalty provision specific to violations of the service standard requirements;

6. Provides for a process to determine whether an underperforming investor-owned utility should be required to divest its utility assets to a qualified buyer;

7. Requires transmission and distribution utilities to develop and submit to the commission a 10-year plan including specific actions for addressing the expected effects of climate change;

8. Repeals the 100-megawatt cap for electrical generation sources in the definitions of "renewable capacity resource" and "renewable resource"; and

9. Requires the commission to adopt rules to implement the service standard requirements no later than June 30, 2023.

The amendment adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)



130th MAINE LEGISLATURE

LD 1959

LR 2562(04)

An Act To Ensure Transmission and Distribution Utility Accountability

Fiscal Note for Bill as Amended by Committee Amendment "C" (S-552)

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	\$733,530	\$347,427	\$363,594
Revenue				
Other Special Revenue Funds	\$0	\$733,530	\$347,427	\$363,594

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system. The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time. The collection of additional filing fees may increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

This bill establishes new performance standards for transmission and distribution utilities operating in the State and creates new oversight responsibilities for the Public Utilities Commission (PUC). The bill includes ongoing allocations of \$333,530 starting in fiscal year 2022-23 for one Utility Analyst position and one Staff Attorney position and associated All Other costs. It also includes a one-time allocation of \$400,000 in fiscal year 2022-23 for contracted services related to the additional reporting requirements outlined in the bill. 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.