

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

S.P. 248 - L.D. 634

**An Act To Reduce Volatility in the Net Energy Billing Program and To
Define "Competitive Electricity Provider"**

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

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 A, §3 and affected by §§104 and 105, is repealed.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.

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

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

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

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

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

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

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

3. Discharge of, threats to or discrimination against employees of utility-service public utilities or competitive electricity providers for testimony presented to legislative committees or the commission. Unless otherwise provided for, a supervisor may not discharge, threaten or otherwise discriminate against an employee of a public utility or competitive service electricity 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 regarding the operation of the business of a public utility or competitive service electricity 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 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.

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

5. Civil actions for injunctive relief or other remedies. An employee of a public utility or competitive service electricity 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 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.

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

§1321. Orders altered or amended

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

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

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

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

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

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

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

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

3. Petition to initiate proceedings. The Public Advocate may petition the commission to initiate proceedings to review, investigate and take appropriate action with respect to the rates or service of any public utility or competitive ~~service~~ electricity provider when determined necessary by the Public Advocate.

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

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

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

§1709. Conflicts of interest

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

Sec. 17. 35-A MRSA §3209-A, sub-§7, as enacted by PL 2021, c. 390, §1, is amended to read:

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

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

- (1) There is a signed interconnection agreement between the entity proposing the development of the distributed generation resource and a transmission and distribution utility governing the connection of the resource to the utility's system and the ongoing operation of the resource after it is connected to the system; or
- (2) There is a net energy billing agreement between the entity proposing the development of the distributed generation resource and the transmission and distribution utility.

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

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

- (1) A complete application for a customer net energy billing agreement has been submitted for the distributed generation resource and a customer has or customers have financial interest in 90% or more of the capacity of that distributed generation resource; or

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

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

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

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

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

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

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

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

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 by the date specified in the net energy billing agreement or by the date specified with an allowable modification to that agreement.

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

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

Sec. 18. 35-A MRSA §3209-A, sub-§7, as enacted by PL 2021, c. 370, §1 and reallocated by RR 2021, c. 1, Pt. A, §37, is reallocated to 35-A MRSA §3209-A, sub-§8.

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

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

A. The tariff rate for a customer participating in net energy billing with a distributed generation resource described in this paragraph must equal the ~~standard-offer~~ 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. The tariff rate under this paragraph applies to net energy billing with a distributed generation resource:

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

(a) The entity developing the distributed generation resource certifies by affidavit with accompanying documentation to the commission that the entity, before September 1, 2022, commenced on-site physical work of a significant nature on the distributed generation resource and the entity has made and will continue to make continuous on-site construction efforts to advance toward completion of the distributed generation resource. For the purpose of this paragraph, continuous on-site construction efforts include, but are not limited to, in the context of a solar facility, the continuous installation of racks or other structures to affix photovoltaic panels, collectors or solar cells to a site. The commission may share information contained in the affidavit submitted in accordance with this paragraph with a transmission and distribution utility, as necessary, to verify a distributed generation resource's compliance with this section. In administering this subsection, the commission may adopt rules including, but not limited to, requiring the entity that submits a sworn affidavit under this subparagraph to provide updated documentation to the commission after submission of the affidavit; or

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

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

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

(1) In 2022, equal the standard-offer service rate established pursuant to 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; and

(2) Increase by 2.25% on January 1st 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.