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No. 1400

S.P. 521

In Senate, May 12, 2015

An Act To Focus Energy Laws on Energy Cost

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator WOODSOME of York. (GOVERNOR'S BILL)

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

2 **Sec. 1. 35-A MRSA §3143, sub-§3, ¶B**, as enacted by PL 2009, c. 539, §2, is
3 amended to read:

4 B. Deployment and integration into the electric system of renewable capacity
5 resources, as defined in former section 3210-C, subsection 1, paragraph E, that are
6 interconnected to the electric grid at a voltage level less than 69 kilovolts;

7 **Sec. 2. 35-A MRSA §3207, sub-§1, ¶A**, as amended by PL 2003, c. 141, §1, is
8 further amended to read:

9 A. May sell retail generation service only within their respective service territories,
10 and are authorized to purchase electric power and energy at wholesale, ~~provided that~~
11 as long as the consumer-owned transmission and distribution utility complies with the
12 requirements of section 3203, subsection 3 ~~and section 3210, subsection 3~~, and to
13 purchase such transmission and related services as may be required to effect the
14 delivery of such power and energy to their respective service territories; and

15 **Sec. 3. 35-A MRSA §3207, sub-§1-A, ¶A**, as enacted by PL 2009, c. 108, §1, is
16 amended to read:

17 A. May sell retail generation service only within its service territory and is
18 authorized to purchase electric power and energy at wholesale, as long as the
19 consumer-owned transmission and distribution utility complies with the requirements
20 of section 3203, subsection 3 ~~and section 3210, subsection 3~~, and to purchase such
21 transmission and related services as may be required to effect the delivery of such
22 power and energy to its service territory; and

23 **Sec. 4. 35-A MRSA §3209-A**, as enacted by PL 2011, c. 262, §1, is repealed.

24 **Sec. 5. 35-A MRSA §3210**, as amended by PL 2011, c. 637, §1, is further
25 amended to read:

26 **§3210. Cost-effective renewable resources**

27 **1. Policy.** In order to ensure ~~an adequate~~ a cost-effective and reliable supply of
28 electricity for Maine residents and ~~to encourage the use of renewable, efficient and~~
29 ~~indigenous resources, it is the policy of this State to encourage the generation of~~
30 ~~electricity from renewable and efficient sources and to diversify electricity production on~~
31 ~~which residents of this State rely in a manner consistent with this section~~ businesses, the
32 commission under this section shall seek to lower the cost of electricity and increase the
33 production of clean energy.

34 **2. Definitions.** As used in this section, unless the context otherwise indicates, the
35 following terms have the following meanings.

36 A. "Efficient resource" means a source of electrical generation that:

37 (1) Qualifies as a qualifying cogeneration facility under the Federal Energy
38 Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart

1 B, as in effect on January 1, 1997, was constructed prior to January 1, 1997 and
2 meets the following efficiency standard:

3 (a) During any calendar year, the sum of the useful power output and the
4 useful thermal energy output of the facility is no less than 60% of the total
5 energy input to the facility.

6 For purposes of this paragraph, the term "useful power output" means the electrical or
7 mechanical energy made available for use, exclusive of any energy used in the power
8 production process. For purposes of this paragraph, the term "useful thermal energy"
9 means thermal energy made available to an industrial or commercial process, net of
10 any heat contained in condensate return and makeup water, used in a heating
11 application or used in a space cooling application.

12 This paragraph is repealed January 1, 2016.

13 A-1. "Alternative compliance payment rate" means a certain dollar amount per
14 kilowatt-hour set by the commission that a competitive electricity provider may pay
15 to the commission to satisfy the portfolio requirements of subsection 3-A.

16 This paragraph is repealed January 1, 2016.

17 B. "Eligible resource" means a source of electrical generation that:

18 (1) Generates power that can physically be delivered to the control region in
19 which the New England Power Pool, or its successor as approved by the Federal
20 Energy Regulatory Commission, has authority over transmission, or to the
21 Maritimes Control Area; and

22 (2) Is either a renewable resource or an efficient resource.

23 B-2. "Renewable energy credit" means a tradable instrument that represents an
24 amount of electricity generated from eligible resources or renewable capacity
25 resources.

26 B-3. "Renewable capacity resource" means a source of electrical generation:

27 (1) Whose total power production capacity does not exceed 100 megawatts and
28 relies on one or more of the following:

29 (a) Fuel cells;

30 (b) Tidal power;

31 (c) Solar arrays and installations;

32 (d) Geothermal installations;

33 (e) Hydroelectric generators that meet all state and federal fish passage
34 requirements applicable to the generator; or

35 (f) Biomass generators that are fueled by wood or wood waste, landfill gas
36 or anaerobic digestion of agricultural products, by-products or wastes; or

37 (2) That relies on wind power installations.

38 B-4. "New" as applied to any renewable capacity resource means a renewable
39 capacity resource that:

- 1 (1) Has an in-service date after September 1, 2005;
- 2 (2) Was added to an existing facility after September 1, 2005;
- 3 (3) For at least 2 years was not operated or was not recognized by the New
- 4 England independent system operator as a capacity resource and, after September
- 5 1, 2005, resumed operation or was recognized by the New England independent
- 6 system operator as a capacity resource; or
- 7 (4) Was refurbished after September 1, 2005 and is operating beyond its
- 8 previous useful life or is employing an alternate technology that significantly
- 9 increases the efficiency of the generation process.

10 For the purposes of this paragraph, "capacity resource" has the same meaning as in
11 former section 3210-C, subsection 1, paragraph A. For the purposes of this
12 paragraph, "to refurbish" means to make an investment in equipment or facilities,
13 other than for routine maintenance and repair, to renovate, reequip or restore the
14 renewable capacity resource.

15 This paragraph is repealed January 1, 2016.

16 C. "Renewable resource" means a source of electrical generation:

- 17 (1) That qualifies as a small power production facility under the Federal Energy
- 18 Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart
- 19 B, as in effect on January 1, 1997; or
- 20 (2) Whose total power production capacity does not exceed 100 megawatts and
- 21 that relies on one or more of the following:
 - 22 (a) Fuel cells;
 - 23 (b) Tidal power;
 - 24 (c) Solar arrays and installations;
 - 25 (d) Wind power installations;
 - 26 (e) Geothermal installations;
 - 27 (f) Hydroelectric generators;
 - 28 (g) Biomass generators that are fueled by wood or wood waste, landfill gas
 - 29 or anaerobic digestion of agricultural products, by-products or wastes; or
 - 30 (h) Generators fueled by municipal solid waste in conjunction with
 - 31 recycling.

32 **3. Portfolio requirements.** As a condition of licensing pursuant to section 3203,
33 each competitive electricity provider in this State must demonstrate in a manner
34 satisfactory to the commission that no less than 30% of its portfolio of supply sources for
35 retail electricity sales in this State is accounted for by eligible resources. If a competitive
36 electricity provider represents to a customer that the provider is selling to the customer a
37 portfolio of supply sources that includes more than 30% eligible resources, the resources
38 necessary to supply more than 30% of that customer's load may not be applied to meet the

1 aggregate 30% portfolio requirement. Rules adopted under this subsection are major
2 substantive rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

3 This subsection is repealed January 1, 2016.

4 **3-A. Portfolio requirements; new renewable capacity resources.** Portfolio
5 requirements for new renewable capacity resources are governed by this subsection.

6 A. Except as provided in paragraph B, beginning January 1, 2008, as a condition of
7 licensing pursuant to section 3203, each competitive electricity provider in this State
8 must demonstrate in a manner satisfactory to the commission that the percentage of
9 its portfolio of supply sources for retail electricity sales in this State accounted for by
10 new renewable capacity resources is as follows:

- 11 (1) One percent for the period from January 1, 2008 to December 31, 2008;
- 12 (2) Two percent for the period from January 1, 2009 to December 31, 2009;
- 13 (3) Three percent for the period from January 1, 2010 to December 31, 2010;
- 14 (4) Four percent for the period from January 1, 2011 to December 31, 2011;
- 15 (5) Five percent for the period from January 1, 2012 to December 31, 2012;
- 16 (6) Six percent for the period from January 1, 2013 to December 31, 2013;
- 17 (7) Seven percent for the period from January 1, 2014 to December 31, 2014;
- 18 (8) Eight percent for the period from January 1, 2015 to December 31, 2015;
- 19 (9) Nine percent for the period from January 1, 2016 to December 31, 2016; and
- 20 (10) Ten percent for the period from January 1, 2017 to December 31, 2017.

21 New renewable capacity resources used to satisfy the requirements of this paragraph
22 may not be used to satisfy the requirements of subsection 3.

23 B. Suspensions of scheduled increases in the portfolio requirements as provided in
24 paragraph A are governed by this paragraph.

25 (1) If by March 31st of the years 2010, 2012, 2014 and 2016 the commission
26 determines that investment in new renewable capacity resources in the preceding
27 2 calendar years has not been sufficient for competitive electricity providers to
28 meet the portfolio requirements under paragraph A and that the resulting use of
29 renewable energy credits pursuant to subsection 8 or the alternative compliance
30 payment mechanism pursuant to subsection 9, or both of these methods, has
31 burdened electricity customers in the State without providing the benefits of new
32 renewable capacity resources, the commission may suspend all or some of the
33 future scheduled increases in the portfolio requirements under paragraph A.

34 (2) If the commission finds that alternative compliance payments are made
35 pursuant to subsection 9 in 3 consecutive calendar years, the commission shall
36 temporarily suspend all or some of the future scheduled increases in the portfolio
37 requirements under paragraph A.

38 (3) If the commission suspends any scheduled increases in the portfolio
39 requirements under paragraph A pursuant to subparagraph (1) or (2), the

1 commission may resume increases, limited to no more than one percentage point
2 per year over the previous year, in the portfolio requirements after a minimum of
3 one year.

4 C. No later than March 31, 2008 and annually thereafter, the commission shall
5 submit a report regarding the status of new renewable capacity resources in the State
6 and compliance with the portfolio requirements under paragraph A to the joint
7 standing committee of the Legislature having jurisdiction over utilities and energy
8 matters. The report must include, but is not limited to, a description of new renewable
9 capacity resources available to meet the portfolio requirements under paragraph A,
10 documentation of the loss of any existing renewable generation capacity in the State,
11 the status of implementation of the new renewable capacity resources portfolio
12 requirements, including any suspensions pursuant to paragraph B, and
13 recommendations to stimulate investment in new renewable capacity resources.

14 D. Retail electricity sales pursuant to a supply contract or standard-offer service
15 arrangement executed by a competitive electricity provider that is in effect on the
16 effective date of this subsection is exempt from the requirements of this subsection
17 until the end date of the current term of the supply contract or standard-offer service
18 arrangement.

19 The commission shall adopt rules to implement this subsection. Rules adopted under this
20 subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

21 This subsection is repealed January 1, 2016.

22 **4. Report.** In view of property tax benefits, developments in other states and the
23 development of a market for tradable credits for satisfying eligible resource requirements,
24 the commission shall review the 30% portfolio requirement and make a recommendation
25 for any change to the joint standing committee of the Legislature having jurisdiction over
26 utilities and energy matters no later than 5 years after the beginning of retail competition.

27 This subsection is repealed January 1, 2016.

28 **7. Information.** To the extent that funding is available, the commission shall inform
29 electricity consumers in this State of the benefits of electricity generated in this State
30 using renewable resources and of the opportunities available in this State to purchase
31 electricity that is generated using those resources, including, but not limited to, the green
32 power offer and other green power supply products and renewable energy credit products
33 certified under section 3212-A. The commission may not promote any renewable
34 resources over others. The commission may apply for, receive and expend grant money
35 from the United States Department of Energy and other government agencies for this
36 purpose. The commission may create or cause to be created a brand or logo to identify
37 Maine renewable resources, including the green power offer and other green power
38 supply products and renewable energy credit products certified under section 3212-A, to
39 consumers. The commission shall register any mark or logo created pursuant to this
40 subsection with the United States Patent and Trademark Office or in accordance with
41 Title 10, chapter 301-A, or both. Any brand or logo created pursuant to this subsection
42 may only be used in accordance with the purposes of this subsection as approved by the
43 commission.

1 **8. Credit trading.** The commission shall allow competitive electricity providers to
2 satisfy the portfolio requirements of subsections 3 and 3-A through the use of renewable
3 energy credits if the commission determines that a reliable system of electrical attribute
4 trading exists. When renewable energy credits are used to satisfy the portfolio
5 requirements of subsections 3 and 3-A, the value of a renewable energy credit for
6 electricity generated by a community-based renewable energy project, as defined in
7 section 3602, that is participating in the community-based renewable energy pilot
8 program established in section 3603 and elects the renewable energy credit multiplier
9 under section 3605 is 150% of the amount of the electricity.

10 This subsection is repealed January 1, 2016.

11 **9. Alternative compliance payment; portfolio requirements for new renewable**
12 **capacity resources.** The commission shall allow competitive electricity providers to
13 satisfy the portfolio requirements for new renewable capacity resources under subsection
14 3-A through an alternative compliance payment mechanism in accordance with this
15 subsection.

16 A. The commission shall set the alternative compliance payment rate by rule and
17 shall publish the alternative compliance payment rate by January 31st of each year. In
18 setting the rate, the commission shall take into account prevailing market prices,
19 standard-offer service prices for electricity, reliance on alternative compliance
20 payments to meet the requirements of subsection 3-A and investment in new
21 renewable capacity resources in the State during the previous calendar year.

22 B. The commission shall collect alternative compliance payments made by
23 competitive electricity providers and shall deposit all funds collected under this
24 paragraph in the Energy Efficiency and Renewable Resource Fund established under
25 section 10121, subsection 2 to be used to fund research, development and
26 demonstration projects relating to renewable energy technologies and to fund rebates
27 for cost-effective renewable energy technologies.

28 The commission shall adopt rules to implement this subsection. Rules adopted under this
29 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

30 This subsection is repealed January 1, 2016.

31 **Sec. 6. 35-A MRSA §3210-C**, as amended by PL 2013, c. 454, §1, is repealed.

32 **Sec. 7. 35-A MRSA §3210-F, sub-§1, ¶B**, as enacted by PL 2013, c. 454, §2, is
33 amended to read:

34 B. "Long-term energy contract" means a contract with an investor-owned
35 transmission and distribution utility entered into under section ~~3210-C~~ 3218 or
36 section 3604.

37 **Sec. 8. 35-A MRSA §3210-G** is enacted to read:

38 **§3210-G. Aggregation of distributed generation**

39 The commission shall select a distributed generation aggregator. The distributed
40 generation aggregator shall seek to gather individual owners of distributed generation

1 assets together to maximize the energy supply benefits of distributed generation and
2 compensate owners of distributed generation assets for the energy supply benefits of the
3 distributed generation assets, including, but not limited to, benefits related to energy
4 supply, energy capacity and renewable energy credits.

5 For purposes of this section, "distributed generation" means the generation of
6 electrical power at or near where that power is used.

7 **Sec. 9. 35-A MRSA §3212, sub-§4-C**, as enacted by PL 2005, c. 677, Pt. B, §2,
8 is amended to read:

9 **4-C. Authority to establish various contract lengths and terms.** For the purpose
10 of providing over a reasonable time period the lowest price for standard-offer service to
11 residential and small commercial customers, the commission, with respect to residential
12 and small commercial standard-offer service, may, in addition to incorporating cost-
13 effective demand response and energy efficiency pursuant to subsection 4-B and to the
14 extent authorized in section ~~3210-C~~ 3218, incorporating the energy portion of any
15 contracts entered into pursuant to section ~~3210-C~~ 3218, establish various standard-offer
16 service contract lengths and terms.

17 **Sec. 10. 35-A MRSA §3218** is enacted to read:

18 **§3218. Capacity resource adequacy**

19 **1. Definition.** As used in this section, unless the context otherwise indicates,
20 "contract for differences" means a contractual arrangement between a buyer and a seller
21 in which cash payments are made based on the actual or relative difference between a
22 target price for energy or a capacity resource and the market value of the energy or
23 capacity resource. Under a contract for differences, the seller pays to the buyer the
24 positive difference between the market value and the target price and the buyer pays to
25 the seller the negative difference between the market value and the target price.
26 "Contract for differences" does not include a contract for the physical delivery of energy
27 or capacity resources.

28 **2. Policy.** It is the policy of this State to:

29 A. Reduce electricity rates and costs for the State's residential and business
30 customers; and

31 B. Cost-effectively and to the maximum extent practicable, reduce air pollution,
32 including greenhouse gas emissions consistent with Title 38, section 576.

33 **3. Commission authority.** The commission may direct investor-owned
34 transmission and distribution utilities to enter into long-term contracts for energy,
35 capacity or other products with generation facilities that produce zero greenhouse gas
36 emissions, as long as the total amount of energy purchased from all long-term contracts
37 does not exceed 20% of the State's annual retail electricity load.

38 **4. Priority of long-term contracts.** In selecting energy, capacity or other products
39 for contracting pursuant to subsection 3, the commission shall prioritize long-term

1 contracts that the commission determines will maximize financial benefits to electricity
2 customers.

3 **5. Contract term.** A contract entered into pursuant to subsection 3 may not be for a
4 term of more than 10 years, unless the commission finds a contract for a longer term
5 would provide significantly greater ratepayer benefits.

6 **6. Competitive solicitation process and contract negotiation.** The commission
7 shall establish a schedule for competitive solicitations for long-term contracts pursuant to
8 this section. This schedule must include a timeline for negotiation, commission decision
9 making and contract closing.

10 **7. Disposition of resources.** An investor-owned transmission and distribution utility
11 shall sell energy, capacity or other products purchased pursuant to this section or take
12 other action relative to such energy, capacity or other products as directed by the
13 commission.

14 **8. Cost recovery.** The commission shall ensure that all costs and direct financial
15 benefits associated with contracts entered into under this section are allocated to
16 ratepayers in accordance with section 3210-F. A price differential existing at any time
17 during the term of the contract between the contract price and the prevailing market price
18 at which the energy, capacity or other products are sold or any gains or losses derived
19 from contracts for differences must be reflected in the amounts charged to ratepayers and
20 may not be considered imprudent.

21 **9. Contract payments.** Long-term contracts entered into pursuant to this section
22 must provide that payments will be made only after contracted amounts of energy,
23 capacity or other products have been provided.

24 **10. Customer benefits.** The commission may direct investor-owned transmission
25 and distribution utilities to enter into contracts under this section only as agents for their
26 customers and only when such contracts are in the best interest of customers and in
27 accordance with this subsection. The commission shall adopt rules to ensure that:

28 A. To the extent the benefits to ratepayers of a long-term contract are projected to
29 occur in the later years of the contract term, adequate financial security is in place so
30 that it is reasonably likely ratepayers will obtain the projected benefits of the long-
31 term contract; and

32 B. To the extent practicable, ratepayers obtain the benefit of any reduction in the cost
33 of energy, capacity or other products after the term of primary financing or
34 subsequent replacement financing necessary for the development and construction of
35 a generation project is completed.

36 **11. Rules.** The commission shall adopt rules to implement this section. In adopting
37 rules, the commission shall consider the financial implications of this section for investor-
38 owned transmission and distribution utilities. Rules adopted under this subsection are
39 major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

1 **Sec. 11. 35-A MRSA §10104, sub-§4, ¶D,** as amended by PL 2013, c. 369, Pt.
 2 A, §12, is further amended to read:

3 D. Prior to submission of the triennial plan to the commission, the trust shall offer to
 4 provide a detailed briefing on the draft plan to the joint standing committee of the
 5 Legislature having jurisdiction over energy matters and, at the request of the
 6 committee, shall provide such a briefing and opportunity for input from the
 7 committee. After providing such opportunity for input and making any changes as a
 8 result of any input received, the board shall deliver the plan to the commission for its
 9 review and approval. The commission shall open an adjudicatory proceeding and
 10 issue an order either approving the plan and issuing the appropriate orders to
 11 transmission and distribution utilities and gas utilities or rejecting the plan and stating
 12 the reasons for the rejection. The commission shall reject elements of the plan that
 13 propose to use funds generated pursuant to sections ~~3210-C~~ 3218, 10110, 10111 or
 14 10119 if the plan fails to reasonably explain how these elements of the program
 15 would achieve the objectives and implementation requirements of the programs
 16 established under those sections or the measures of performance under subsection 3.
 17 Funds generated under these statutory authorities may not be used pursuant to the
 18 triennial plan unless those elements of the plan proposing to use the funds have been
 19 approved by the commission. The commission shall approve all elements of the
 20 triennial plan it determines to be cost-effective, reliable and achievable and shall
 21 incorporate into gas utility and transmission and distribution rates sufficient revenue
 22 to provide for the procurement of energy efficiency resources identified within the
 23 plan pursuant to section 10110, subsection 4-A and section 10111, subsection 2. The
 24 commission shall approve or reject the entire plan or elements of the plan within 120
 25 days of its delivery to the commission. The board, within 30 days of final
 26 commission approval of its plan, shall submit the plan to the joint standing committee
 27 of the Legislature having jurisdiction over energy matters together with any
 28 explanatory or other supporting material as the committee may request and, at the
 29 request of the committee, shall provide a detailed briefing on the final plan. After
 30 receipt of the plan, the joint standing committee of the Legislature having jurisdiction
 31 over energy matters may submit legislation relating to the plan.

32 **Sec. 12. Public Utilities Commission to open adjudicatory proceeding.** No
 33 later than December 31, 2015, the Public Utilities Commission shall open an adjudicatory
 34 proceeding to select a distributed generation aggregator pursuant to the Maine Revised
 35 Statutes, Title 35-A, section 3210-G.

36 **Sec. 13. Effective date.** Those sections of this Act that amend the Maine Revised
 37 Statutes, Title 35-A, section 3207, subsections 1 and 1-A take effect January 1, 2016.

SUMMARY

39 This bill directs the Public Utilities Commission to select a distributed generation
 40 aggregator to gather individual owners of distributed generation assets together to
 41 maximize the supply benefits of distributed generation and compensate owners of
 42 distributed generation assets for the energy supply benefits they provide ratepayers,
 43 including benefits related to energy supply, energy capacity and renewable energy

1 credits. Effective January 1, 2016, the bill repeals the renewable portfolio standard,
2 which requires competitive electricity providers to demonstrate to the Public Utilities
3 Commission that a certain percentage of their portfolio of supply sources for retail
4 electricity sales comes from renewable resources, new renewable capacity resources and
5 efficient resources. The bill repeals the provision governing net energy billing, which is a
6 billing and metering practice under which a customer is billed on the basis of net energy
7 over the billing period taking into account accumulated unused kilowatt-hour credits from
8 the previous billing period. The bill changes the long-term contracting authority of the
9 Public Utilities Commission and specifies that it is the policy of the State with respect to
10 long-term contracts to reduce electricity rates and costs for the State's residential and
11 business customers and reduce pollution.