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S.P. 762

In Senate, May 4, 2023

An Act to Clarify the Review and Procurement Process for Nonwires Alternatives

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator GROHOSKI of Hancock.

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

2 **Sec. 1. 35-A MRSA §3131, sub-§4-B**, as enacted by PL 2013, c. 369, Pt. C, §1, is
3 repealed.

4 **Sec. 2. 35-A MRSA §3131, sub-§4-C**, as enacted by PL 2019, c. 298, §5, is
5 amended to read:

6 **4-C. Nonwires alternative.** "Nonwires alternative" means ~~a nontransmission~~
7 ~~alternative~~ of an infrastructure, technology or application that either individually or
8 collectively defers or reduces the need for capital investment in the transmission ~~and or~~
9 distribution system and addresses system reliability needs proposed to be met by the
10 transmission or distribution system investment. "Nonwires alternative" includes but is not
11 limited to energy efficiency and conservation measures, energy storage, load management,
12 demand response and distributed generation.

13 **Sec. 3. 35-A MRSA §3132, sub-§2-D**, as amended by PL 2019, c. 298, §7, is
14 further amended to read:

15 **2-D. ~~Nontransmission~~ Nonwires alternatives investigation; consideration.** In
16 considering whether to approve or disapprove all or portions of a proposed transmission
17 line and associated infrastructure pursuant to subsection 5, the commission shall, for a
18 transmission line proposed by an investor-owned transmission and distribution utility,
19 consider the results and recommendations of an investigation by the nonwires alternative
20 coordinator conducted in accordance with section 3132-C.

21 **Sec. 4. 35-A MRSA §3132, sub-§5**, as amended by PL 2019, c. 298, §10, is further
22 amended to read:

23 **5. Commission approval of a proposed transmission line; ~~nontransmission~~**
24 **nonwires alternatives.** The commission may approve or disapprove all or portions of a
25 proposed transmission line and shall make such orders regarding its character, size,
26 installation and maintenance and regarding ~~nontransmission~~ nonwires alternatives to the
27 proposed transmission line as are necessary, having regard for any increased costs caused
28 by the orders. In its review and consideration of ~~nontransmission~~ nonwires alternatives, as
29 required by subsection 2-D, the commission shall give preference to the ~~nontransmission~~
30 nonwires alternatives that have been identified as able to address the identified need for the
31 proposed transmission line most cost-effectively. When the cost-effectiveness of the
32 identified ~~nontransmission~~ nonwires alternatives are reasonably equal, the commission
33 shall give preference to the alternatives that produce the lowest amount of local air
34 emissions, including greenhouse gas emissions.

35 **Sec. 5. 35-A MRSA §3132, sub-§6**, as amended by PL 2019, c. 298, §11, is further
36 amended to read:

37 **6. Commission order; certificate of public convenience and necessity.** In its order,
38 the commission shall make specific findings with regard to the public need for the proposed
39 transmission line. The commission shall make specific findings with regard to the
40 likelihood that ~~nontransmission~~ nonwires alternatives can sufficiently address the identified
41 public need over the effective life of the transmission line more cost-effectively. If the
42 commission finds that a public need exists, after considering whether the need can be
43 reliably and more cost-effectively met using ~~nontransmission~~ nonwires alternatives, it shall

1 issue a certificate of public convenience and necessity for the transmission line. In
2 determining public need, the commission shall, at a minimum, take into account
3 economics, reliability, public health and safety, scenic, historic and recreational values,
4 state renewable energy generation goals, the proximity of the proposed transmission line
5 to inhabited dwellings and ~~nontransmission~~ nonwires alternatives to construction of the
6 transmission line, including energy conservation, distributed generation or load
7 management. If the commission orders or allows the erection of the transmission line, the
8 order is subject to all other provisions of law and the right of any other agency to approve
9 the transmission line. The commission shall, as necessary and in accordance with
10 subsections 7 and 8, consider the findings of the Department of Environmental Protection
11 under Title 38, chapter 3, subchapter 1, article 6, with respect to the proposed transmission
12 line and any modifications ordered by the Department of Environmental Protection to
13 lessen the impact of the proposed transmission line on the environment. A person may
14 submit a petition for and obtain approval of a proposed transmission line under this section
15 before applying for approval under municipal ordinances adopted pursuant to Title 30-A,
16 Part 2, Subpart 6-A; and Title 38, section 438-A and, except as provided in subsection 4,
17 before identifying a specific route or route options for the proposed transmission line.
18 Except as provided in subsection 4, the commission may not consider the petition
19 insufficient for failure to provide identification of a route or route options for the proposed
20 transmission line. The issuance of a certificate of public convenience and necessity
21 establishes that, as of the date of issuance of the certificate, the decision by the person to
22 erect or construct was prudent. At the time of its issuance of a certificate of public
23 convenience and necessity, the commission shall send to each municipality through which
24 a proposed corridor or corridors for a transmission line extends a separate notice that the
25 issuance of the certificate does not override, supersede or otherwise affect municipal
26 authority to regulate the siting of the proposed transmission line. The commission may
27 deny a certificate of public convenience and necessity for a transmission line upon a finding
28 that the transmission line is reasonably likely to adversely affect any transmission and
29 distribution utility or its customers.

30 **Sec. 6. 35-A MRSA §3132, sub-§15**, as enacted by PL 2013, c. 369, Pt. C, §7, is
31 amended to read:

32 **15. Advancement of ~~nontransmission~~ nonwires alternatives policies.** The
33 commission shall advocate in all relevant venues for the pursuit of least-cost solutions to
34 bulk power system needs on a total cost basis and for all available resources, including
35 ~~nontransmission~~ nonwires alternatives, to be treated comparably in transmission analysis,
36 planning and access to funding.

37 **Sec. 7. 35-A MRSA §3132-A**, as amended by PL 2019, c. 298, §12, is further
38 amended to read:

39 **§3132-A. Construction of transmission or subtransmission projects prohibited**
40 **without approval of the commission**

41 A person may not construct any transmission project or subtransmission project
42 without approval from the commission. For the purposes of this section, "transmission
43 project" means any proposed new or upgraded transmission line ~~and its~~ substation
44 component or associated infrastructure that is capable of operating at less than 69 kilovolts
45 or more. "Subtransmission project" means any proposed new or upgraded transmission

1 line, substation component or associated infrastructure that is capable of operating at less
2 than 69 kilovolts and projected to cost in excess of \$5,000,000.

3 **1. Submission requirement.** A person that proposes to undertake in the State a
4 transmission project or subtransmission project must provide the commission with a
5 description of the need for the proposed transmission project or subtransmission project.

6 **1-A. Nonwires alternatives investigation; consideration.** In considering whether to
7 approve or disapprove all or portions of a proposed transmission project or subtransmission
8 project pursuant to subsection 2, the commission shall, for a transmission project or
9 subtransmission project proposed by an investor-owned transmission and distribution
10 utility, consider the results and recommendations of an investigation by the nonwires
11 alternative coordinator conducted in accordance with section 3132-C.

12 **2. Commission approval of a proposed transmission project or subtransmission**
13 **project; ~~nontransmission nonwires~~ alternatives.** In order for a transmission project or
14 subtransmission project to be approved, the commission must consider whether the
15 identified need over the effective life of the proposed transmission project or
16 subtransmission project can be reliably and more cost-effectively met using
17 ~~nontransmission nonwires~~ alternatives. In its review and consideration of ~~nontransmission~~
18 ~~nonwires~~ alternatives, as required by subsection 1-A, the commission shall give preference
19 to ~~nontransmission nonwires~~ alternatives that have been identified as able to address the
20 identified need for the proposed transmission project or subtransmission project most cost-
21 effectively. When the cost-effectiveness of the identified ~~nontransmission nonwires~~
22 alternatives are reasonably equal, the commission shall give preference to the alternatives
23 that produce the lowest amount of local air emissions, including greenhouse gas emissions.

24 **3. Exception.** A transmission project or subtransmission project that is constructed,
25 owned and operated by a generator of electricity solely for the purpose of electrically and
26 physically interconnecting the generator to the transmission system of a transmission and
27 distribution utility is not subject to this section.

28 **Sec. 8. 35-A MRSA §3132-B, first ¶,** as enacted by PL 2019, c. 298, §13, is
29 amended to read:

30 For the purposes of this section, "small transmission project" means any proposed new
31 or upgraded transmission line ~~and~~ substation component or associated infrastructure
32 capable of operating at less than 69 kilovolts and projected to cost \$5,000,000 or less. For
33 the purposes of this section, a "distribution project" means any proposed new or upgraded
34 distribution line, substation component or associated infrastructure capable of operating at
35 less than 34 kilovolts.

36 **Sec. 9. 35-A MRSA §3132-B, sub-§4,** as enacted by PL 2019, c. 298, §13, is
37 amended to read:

38 **4. Nonwires alternatives recommendations.** Based on the investigation under
39 subsection 2, the nonwires alternative coordinator shall make recommendations to the
40 investor-owned transmission and distribution utility regarding nonwires alternatives to
41 proposed small transmission projects and distribution projects. The nonwires alternative
42 coordinator and the utility shall attempt to reach a good faith agreement regarding the
43 adoption of nonwires alternatives that are most cost-effective. If agreement is reached, the
44 utility shall pursue the agreed-upon nonwires alternatives. If there is no agreement, the

1 utility ~~shall~~ or the Office of the Public Advocate may petition the commission to resolve
2 the dispute.

3 **Sec. 10. 35-A MRSA §3132-B, sub-§5**, as enacted by PL 2019, c. 298, §13, is
4 amended to read:

5 **5. Dispute resolution.** In responding to a petition by an investor-owned transmission
6 and distribution utility or the Office of the Public Advocate pursuant to subsection 4, the
7 commission shall review the planning study prepared under subsection 1 and the
8 recommendations of the nonwires alternative coordinator under subsection 4. In resolving
9 the dispute, the commission shall give preference to nonwires alternatives that are
10 identified as able to address the identified need for the proposed small transmission project
11 or distribution project and are most cost-effective. Of the identified nonwires alternatives,
12 the commission shall give preference to the lowest-cost nonwires alternatives. When the
13 costs to ratepayers in this State of the identified nonwires alternatives are reasonably equal,
14 the commission shall give preference to the nonwires alternatives that produce the lowest
15 amount of local air emissions, including greenhouse gas emissions.

16 **Sec. 11. 35-A MRSA §3132-C, sub-§1**, as enacted by PL 2019, c. 298, §14, is
17 amended to read:

18 **1. Investigation required.** The nonwires alternative coordinator shall conduct an
19 investigation of and make recommendations regarding nonwires alternatives to a wires
20 project under section 3132, 3132-A or 3132-B in accordance with this section. The
21 investigation must be conducted in coordination with the Efficiency Maine Trust. For the
22 purposes of this section, "wires project" means a transmission line and associated
23 infrastructure subject to the requirements of section 3132, a transmission project or
24 subtransmission project as defined in section 3132-A or a small transmission project or
25 distribution project covered by section 3132-B.

26 **Sec. 12. 35-A MRSA §3132-C, sub-§3**, as enacted by PL 2019, c. 298, §14, is
27 amended to read:

28 **3. Data.** An investor-owned transmission and distribution utility shall provide data
29 requested by the Public Advocate or the Efficiency Maine Trust, subject to enforcement by
30 the commission, to allow the nonwires alternative coordinator, in conjunction with the trust,
31 to carry out investigation and analysis under this section. The trust shall use utility
32 ratepayer usage data to identify cost-effective nonwires alternatives on the customer side
33 of the meter. An investor-owned transmission and distribution utility may request a
34 protective order if necessary to protect the confidentiality of customer data or critical
35 energy infrastructure information provided under this section in accordance with section
36 1311-A.

37 **Sec. 13. 35-A MRSA §3132-D, first ¶**, as enacted by PL 2019, c. 298, §15, is
38 amended to read:

39 When the commission determines a nonwires alternative is appropriate under section
40 3132, 3132-A or 3132-B ~~or an investor-owned transmission and distribution utility agrees~~
41 ~~voluntarily to a nonwires alternative under section 3132-B~~, the utility shall procure the
42 nonwires alternative must be competitively procured in accordance with this section.

43 **Sec. 14. 35-A MRSA §3132-D, sub-§2**, as enacted by PL 2019, c. 298, §15, is
44 amended to read:

