

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

H.P. 855 - L.D. 1181

An Act To Reduce Electricity Costs through Nonwires Alternatives

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

Sec. 1. 35-A MRSA §102, sub-§13, as amended by PL 2009, c. 539, §1, is further amended to read:

13. Public utility. "Public utility" includes every gas utility, natural gas pipeline utility, transmission and distribution utility, telephone utility, water utility and ferry, as those terms are defined in this section, and each of those utilities is declared to be a public utility. "Public utility" does not include the operation of a radio paging service, as that term is defined in this section, or mobile telecommunications services unless only one entity or an affiliated interest of that entity, as defined in section 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency spectrum assigned by the Federal Communications Commission to provide mobile service to the service area. ~~"Public utility" includes a smart grid coordinator as defined in section 3143, subsection 1, paragraph B.~~

Nothing in this subsection precludes:

- A. The jurisdiction, control and regulation by the commission pursuant to private and special act of the Legislature;
- B. The commission's jurisdiction and control over and regulation of a public utility that provides, in addition to other services, radio paging service or mobile telecommunications services;
- C. The commission's jurisdiction and control over and regulation of basic exchange telephone service offered by a provider of mobile telecommunications services if, after investigation and hearing, the commission determines that the provider is engaged in the provision of basic exchange telephone service; and
- D. Negotiations for, or negates agreements or arrangements existing on the effective date of this paragraph relating to, rates, terms and conditions for interconnection provided by a telephone utility to a company providing radio paging or mobile telecommunications services.

Sec. 2. 35-A MRSA §116, sub-§9 is enacted to read:

9. Public Advocate special assessment. Each investor-owned transmission and distribution utility subject to assessment under this section is subject to an additional annual assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures of the Office of the Public Advocate for contracted services and administrative costs associated with the nonwires alternative coordinator pursuant to section 1701, subsection 2-A. Revenue produced from the assessments must be deposited in the Public Advocate Regulatory Fund and used only for purposes specified in this subsection.

Sec. 3. 35-A MRSA §1701, sub-§2-A is enacted to read:

2-A. Nonwires alternative policy; coordinator; services. The Public Advocate shall contract with a person or entity, referred to in this subsection as "the nonwires alternative coordinator," to provide services in accordance with this subsection. As used in this subsection, "nonwires alternative" has the same meaning as in section 3131, subsection 4-C. The nonwires alternative coordinator shall:

A. Review small transmission project and distribution project planning studies in accordance with section 3132-B;

B. Investigate and make recommendations regarding nonwires alternatives to proposed capital investments in the transmission and distribution system pursuant to sections 3132, 3132-A and 3132-B and in accordance with section 3132-C;

C. Conduct benefit-cost analyses to evaluate the cost-effectiveness of nonwires alternatives and make recommendations regarding nonwires alternatives and procurement of recommended nonwires alternatives in accordance with sections 3132-C and 3132-D; and

D. Track the implementation of nonwires alternative projects in the State and issue quarterly reports on the projects' progress, including project budgets, timelines, in-service dates, costs incurred, operational savings and other benefits.

The nonwires alternative coordinator shall collaborate with the Efficiency Maine Trust, transmission and distribution utilities and interested parties in performing the services required by this subsection.

The Public Advocate shall include in its annual report required under section 1702, subsection 6 information regarding the services provided by the nonwires alternative coordinator.

Sec. 4. 35-A MRSA §1701, sub-§3, ¶F, as enacted by PL 1999, c. 259, §4, is amended to read:

F. Special Assistant to the Public Advocate, salary range ~~20~~ 25.

Sec. 5. 35-A MRSA §3131, sub-§§4-C and 4-D are enacted to read:

4-C. Nonwires alternative. "Nonwires alternative" means a nontransmission alternative or an infrastructure, technology or application that defers or reduces the need

for capital investment in the transmission and distribution system and addresses system reliability needs proposed to be met by the transmission or distribution system investment.

4-D. Nonwires alternative coordinator. "Nonwires alternative coordinator" means the person or entity providing services under contract to the Office of the Public Advocate as described in section 1701, subsection 2-A.

Sec. 6. 35-A MRSA §3131, sub-§8 is enacted to read:

8. Cost-effective. "Cost-effective" means, with respect to nonwires alternatives, that benefits exceed costs, as determined by benefit-cost analysis conducted pursuant to section 3132-C, subsection 2.

Sec. 7. 35-A MRSA §3132, sub-§2-D, as enacted by PL 2017, c. 201, §4, is amended to read:

2-D. Nontransmission alternatives investigation; consideration. In considering whether to approve or disapprove all or portions of a proposed transmission line and associated infrastructure pursuant to subsection 5, the commission shall, for a transmission line proposed by an investor-owned transmission and distribution utility, consider the results and recommendations of an investigation by an independent 3rd party, which may be the commission or a contractor selected by the commission, of nontransmission alternatives to construction of the proposed transmission line. The investigation must set forth the total projected costs of the transmission line as well as the total projected costs of the alternatives over the effective life of the proposed transmission line the nonwires alternative coordinator conducted in accordance with section 3132-C.

Sec. 8. 35-A MRSA §3132, sub-§3, as amended by PL 2009, c. 123, §3, is further amended to read:

3. Transmission line rebuilding or relocation projects. Each transmission and distribution utility shall file annually with the commission and the Office of the Public Advocate, for review by the nonwires alternative coordinator, a schedule of transmission line rebuilding or relocation projects that it intends to carry out during the next 5 years concerning transmission lines that will become, or will remain at, voltages of 69 kilovolts or more. The schedule must describe each project, showing the length, location and estimated cost.

If the commission determines that an investigation of any transmission line rebuilding or relocation project is warranted, it shall notify the transmission and distribution utility within 60 days of the annual filing and the transmission and distribution utility is then required to comply with the provisions of this section with respect to that project. The absence of commission notification requiring the utility to file a petition does not preclude such notification in subsequent years.

Sec. 9. 35-A MRSA §3132, sub-§3-A, as amended by PL 2009, c. 123, §4, is further amended to read:

3-A. Minor transmission line construction projects. Each domestic transmission and distribution utility shall file annually with the commission and the Office of the Public Advocate, for review by the nonwires alternative coordinator, a schedule of minor transmission line construction projects that it intends to carry out during the next 5 years concerning transmission lines that will be capable of operating at 69 kilovolts or more. A minor transmission line construction project is a transmission line construction project the cost of which does not exceed 25% of the utility's current annual transmission property depreciation charge. The schedule must describe each project, showing the length, location and estimated cost.

If the commission determines that an investigation of any minor transmission line construction project is warranted, it shall notify the transmission and distribution utility within 60 days of the annual filing and the utility must then comply with the provisions of this section with respect to that project. The absence of commission notification requiring the utility to file a petition does not preclude such notification in subsequent years.

Sec. 10. 35-A MRSA §3132, sub-§5, as amended by PL 2013, c. 369, Pt. C, §4, is further amended to read:

5. Commission approval of a proposed transmission line; nontransmission alternatives. The commission may approve or disapprove all or portions of a proposed transmission line and shall make such orders regarding its character, size, installation and maintenance and regarding nontransmission alternatives to the proposed transmission line as are necessary, having regard for any increased costs caused by the orders. ~~The~~ In its review and consideration of nontransmission alternatives, as required by subsection 2-D, the commission shall give preference to the nontransmission alternatives that have been identified as able to address the identified need for the proposed transmission line at lower total cost to ratepayers in this State most cost-effectively. When the ~~costs to ratepayers in this State~~ cost-effectiveness of the identified nontransmission alternatives are reasonably equal, the commission shall give preference to the alternatives that produce the lowest amount of local air emissions, including greenhouse gas emissions.

Sec. 11. 35-A MRSA §3132, sub-§6, as amended by PL 2013, c. 369, Pt. C, §5, is further amended to read:

6. Commission order; certificate of public convenience and necessity. In its order, the commission shall make specific findings with regard to the public need for the proposed transmission line. The commission shall make specific findings with regard to the likelihood that nontransmission alternatives can sufficiently address the identified public need over the effective life of the transmission line at lower total cost more cost-effectively. ~~Except as provided in subsection 6-A for a high impact electric transmission line and in accordance with subsection 6-B regarding nontransmission alternatives, if~~ If the commission finds that a public need exists, after considering whether the need can be ~~economically and~~ reliably and more cost-effectively met using nontransmission alternatives, it shall issue a certificate of public convenience and necessity for the transmission line. In determining public need, the commission shall, at a minimum, take into account economics, reliability, public health and safety, scenic, historic and recreational values, state renewable energy generation goals, the proximity of the

proposed transmission line to inhabited dwellings and nontransmission alternatives to construction of the transmission line, including energy conservation, distributed generation or load management. If the commission orders or allows the erection of the transmission line, the order is subject to all other provisions of law and the right of any other agency to approve the transmission line. The commission shall, as necessary and in accordance with subsections 7 and 8, consider the findings of the Department of Environmental Protection under Title 38, chapter 3, subchapter 1, article 6, with respect to the proposed transmission line and any modifications ordered by the Department of Environmental Protection to lessen the impact of the proposed transmission line on the environment. A person may submit a petition for and obtain approval of a proposed transmission line under this section before applying for approval under municipal ordinances adopted pursuant to Title 30-A, Part 2, Subpart 6-A; and Title 38, section 438-A and, except as provided in subsection 4, before identifying a specific route or route options for the proposed transmission line. Except as provided in subsection 4, the commission may not consider the petition insufficient for failure to provide identification of a route or route options for the proposed transmission line. The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance of the certificate, the decision by the person to erect or construct was prudent. At the time of its issuance of a certificate of public convenience and necessity, the commission shall send to each municipality through which a proposed corridor or corridors for a transmission line extends a separate notice that the issuance of the certificate does not override, supersede or otherwise affect municipal authority to regulate the siting of the proposed transmission line. The commission may deny a certificate of public convenience and necessity for a transmission line upon a finding that the transmission line is reasonably likely to adversely affect any transmission and distribution utility or its customers.

Sec. 12. 35-A MRSA §3132-A, as amended by PL 2017, c. 201, §§5 and 6, is further amended to read:

§3132-A. Construction of transmission projects prohibited without approval of the commission

A person may not construct any transmission project without approval from the commission. For the purposes of this section, "transmission project" means any proposed transmission line and its associated infrastructure capable of operating at less than 69 kilovolts and projected to cost in excess of ~~\$20,000,000~~ \$5,000,000.

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

1-A. Nonwires alternatives investigation; consideration. In considering whether to approve or disapprove all or portions of a proposed transmission project pursuant to subsection 2, the commission shall, for a transmission project proposed by an investor-owned transmission and distribution utility, consider the results and recommendations of an investigation by an independent 3rd party, ~~which may be the commission or a contractor selected by the commission~~, of nontransmission alternatives to construction of

~~the proposed transmission project the nonwires alternative coordinator conducted in accordance with section 3132-C. The investigation must set forth the total projected costs of the transmission project as well as the total projected costs of the alternatives over the effective life of the proposed transmission project.~~

2. Commission approval of a proposed transmission project; nontransmission alternatives. In order for a transmission project to be approved, the commission must consider whether the identified need over the effective life of the proposed transmission project can be ~~economically~~ reliably and more cost-effectively met using nontransmission alternatives ~~at a lower total cost~~. ~~During~~ In its review and consideration of nontransmission alternatives, as required by subsection 1-A, the commission shall give preference to nontransmission alternatives that ~~are~~ have been identified as able to address the identified need for the proposed transmission project ~~at lower total cost to ratepayers most cost-effectively~~. ~~Of the identified nontransmission alternatives, the commission shall give preference to the lowest cost nontransmission alternatives.~~ When the ~~costs to ratepayers~~ cost-effectiveness of the identified nontransmission alternatives are reasonably equal, the commission shall give preference to the alternatives that produce the lowest amount of local air emissions, including greenhouse gas emissions.

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

Sec. 13. 35-A MRSA §3132-B is enacted to read:

§3132-B. Small transmission and distribution projects

For the purposes of this section, "small transmission project" means any proposed transmission line and associated infrastructure capable of operating at less than 69 kilovolts and projected to cost \$5,000,000 or less.

1. Planning study. Each investor-owned transmission and distribution utility in this State shall annually complete and submit to the Office of the Public Advocate, for review by the nonwires alternative coordinator, a planning study for small transmission projects and distribution projects. In completing the planning study, an investor-owned transmission and distribution utility shall develop and use system planning models. The study must:

A. Analyze system needs for the next 5 years and provide a schedule of proposed projects and associated costs;

B. Describe system capacity and load by substation and circuit; and

C. Identify corresponding planned and anticipated growth-related investments.

After review of a planning study submitted under this subsection, the nonwires alternative coordinator may provide comments or recommendations, which may include recommendations to achieve the policy goals established in section 3143. An investor-owned transmission and distribution utility may, at its discretion, incorporate recommendations on a planning study made by the nonwires alternative coordinator.

Failure to incorporate recommendations made by the nonwires alternative coordinator may not result in a presumption of imprudence.

2. Nonwires alternatives investigation. Except as provided in subsection 3, for a proposed project presented in a planning study under subsection 1, the nonwires alternative coordinator:

- A. Shall investigate nonwires alternatives if the project is a small transmission project or is a distribution project estimated to cost \$500,000 or more; and
- B. May investigate nonwires alternatives if the project is a distribution project estimated to cost less than \$500,000 and, in the judgment of the nonwires alternative coordinator, there is a reasonable likelihood that a nonwires alternative would be more cost-effective than the proposed distribution project.

An investigation of nonwires alternatives under this subsection must be conducted in accordance with section 3132-C.

3. Excluded projects; criteria. The commission, by rule, shall develop criteria to exclude from investigation by the nonwires alternative coordinator small transmission projects and distribution projects best suited to transmission and distribution investments, including but not limited to projects that are:

- A. Necessary for redundant supply to a radial load;
- B. Necessary to address maintenance, asset condition or safety needs;
- C. Necessary to address stability or short circuit problems; or
- D. Required to be in service within one year based on the controlling load forecast.

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

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

Sec. 14. 35-A MRSA §3132-C is enacted to read:

§3132-C. Nonwires alternatives investigation and recommendations

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

2. Investigation methods; benefit-cost analysis. An investigation under subsection 1 must set forth the total projected costs and annual carrying costs of the wires project and the nonwires alternatives over the effective life of the wires project. The investigation must include a benefit-cost analysis that evaluates the cost-effectiveness of nonwires alternatives as compared to the wires project, under which:

A. Benefits and costs are measured in net present value;

B. Benefits reflect total, quantifiable avoided costs and are calculated from the perspective of the investor-owned transmission and distribution utility and ratepayers, including any deferral value; and

C. Costs are calculated from the perspective of the investor-owned transmission and distribution utility. For a nonwires alternative, costs include the utility's cost of any contracts required to deliver the nonwires alternative but do not include any ratepayer contributions to the cost of the nonwires alternative.

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

4. Recommendations. On the basis of the investigation under subsection 1, the nonwires alternative coordinator shall develop and provide to the commission or to an investor-owned transmission and distribution utility, as appropriate, recommendations regarding cost-effective nonwires alternatives to the wires project, including a proposed plan for procurement of the recommended nonwires alternatives. The proposed procurement plan must be consistent with the provisions of section 3132-D.

Sec. 15. 35-A MRSA §3132-D is enacted to read:

§3132-D. Nonwires alternatives procurement

When the commission determines a nonwires alternative is appropriate under section 3132, 3132-A or 3132-B or an investor-owned transmission and distribution utility agrees voluntarily to a nonwires alternative under section 3132-B, the utility shall procure the nonwires alternative in accordance with this section.

1. Behind the meter alternatives. For a nonwires alternative on the customer side of the meter, the investor-owned transmission and distribution utility shall contract with the Efficiency Maine Trust to deliver the nonwires alternative through the trust's programs.

2. Grid-side alternatives. For a nonwires alternative on the grid side of the meter, the commission shall determine an entity, which may include but is not limited to the investor-owned transmission and distribution utility or a 3rd party, to deliver the nonwires alternative and shall make orders as necessary; except, when a utility voluntarily agrees to a nonwires alternative on the grid side of the meter under section 3132-B, the utility shall determine the entity to deliver the nonwires alternative.

An investor-owned transmission and distribution utility's prudently incurred costs to deliver nonwires alternatives directly or under contract with the Efficiency Maine Trust or a 3rd party are recoverable in rates. For purposes of this section, prudently incurred costs do not include a financial or performance incentive for the utility.

Sec. 16. 35-A MRSA §3143, sub-§1, as enacted by PL 2009, c. 539, §2, is amended to read:

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Smart grid" means the integration of information and communications innovations and infrastructure, including nonwires alternatives, with the electric system to enhance the efficiency, reliability and functioning of the system through smart grid functions.

~~B. "Smart grid coordinator" means an entity, authorized by the commission in accordance with subsection 5, that manages access to smart grid functions and associated infrastructure, technology and applications within the service territory of a transmission and distribution utility.~~

C. "Smart grid functions" means those functions that advance the policy of the United States as specified in the federal Energy Independence and Security Act of 2007, Public Law 110-140, Section 1301, including functions that enable consumers to access information about and to manage and adjust their electricity consumption or to generate and store electricity and functions specified in Section 1306(d) of that Act.

Sec. 17. 35-A MRSA §3143, sub-§2, ¶¶D and E, as enacted by PL 2009, c. 539, §2, are amended to read:

D. The State currently lacks a comprehensive smart grid policy but faces critical decisions regarding the implementation of smart grid functions and associated infrastructure, technology and applications, and the commission and the Legislature will play central roles in making those decisions; ~~and~~

E. It is vital that a smart grid policy be developed in order to ensure that all ratepayers and the State as a whole are afforded the benefits of smart grid functions and associated infrastructure, technology and applications; and

Sec. 18. 35-A MRSA §3143, sub-§2, ¶F is enacted to read:

F. It is in the public interest to establish a nonwires alternative coordinator for the State.

Sec. 19. 35-A MRSA §3143, sub-§5, as enacted by PL 2009, c. 539, §2, is repealed.

Sec. 20. 35-A MRSA §3143, sub-§10, as enacted by PL 2009, c. 539, §2, is amended to read:

10. Consumer education. A If a transmission and distribution utility that or the Efficiency Maine Trust implements smart grid functions, the utility or the trust shall, to the extent the commission determines appropriate, provide information to customers about the purpose and goals of smart grid functions, the ways in which smart grid functions, including but not limited to time-of-use pricing, may involve customer interaction and how the implementation of smart grid functions can benefit customers.

Sec. 21. 35-A MRSA §10104, sub-§4, ¶G is enacted to read:

G. In developing the triennial plan, or an annual update plan under subsection 6, the trust may include, as part of its budget for electric efficiency and conservation programs under section 10110, the costs of providing nonwires alternatives in accordance with section 3132-D.

Sec. 22. 35-A MRSA §10104, sub-§9, as amended by PL 2017, c. 110, §34, is further amended to read:

9. Coordination with other entities. Consistent with the requirements of this chapter and other applicable laws, the board shall coordinate with the activities and programs of state agencies and authorities that relate to the purposes of this chapter in order to align such activities and programs with the plans and programs of the trust. For purposes of this subsection, activities and programs of state agencies and authorities that relate to the purposes of this chapter include but are not limited to energy efficiency programs relating to state facilities administered by the Department of Administrative and Financial Services, Bureau of General Services, the adoption, amendment and maintenance of the Maine Uniform Building and Energy Code by the Technical Building Codes and Standards Board, established in Title 5, section 12004-G, subsection 5-A within the Department of Public Safety, energy efficiency or green energy workforce development activities of the Department of Labor or the State Workforce Board ~~and~~, energy efficiency and weatherization programs administered by the Maine State Housing

Authority and the activities of the nonwires alternative coordinator established pursuant to section 1701, subsection 2-A.

Sec. 23. Appropriations and allocations. The following appropriations and allocations are made.

EXECUTIVE DEPARTMENT

Public Advocate 0410

Initiative: Provides allocations for the contracted services of a person or entity to serve as a nonwires alternative coordinator.

OTHER SPECIAL REVENUE FUNDS	2019-20	2020-21
All Other	\$800,000	\$800,000
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$800,000</u>	<u>\$800,000</u>

Public Advocate 0410

Initiative: Provides allocations for an increase in the salary range of the Special Assistant to the Public Advocate from range 20 to range 25.

OTHER SPECIAL REVENUE FUNDS	2019-20	2020-21
Personal Services	\$3,039	\$4,052
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$3,039</u>	<u>\$4,052</u>

EXECUTIVE DEPARTMENT

DEPARTMENT TOTALS

	2019-20	2020-21
OTHER SPECIAL REVENUE FUNDS	\$803,039	\$804,052
DEPARTMENT TOTAL - ALL FUNDS	<u>\$803,039</u>	<u>\$804,052</u>