

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

S.P. 762 - L.D. 1887

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

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

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 C, §1, is repealed.

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

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

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

2-D. ~~Nontransmission~~ Nonwires 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 the nonwires alternative coordinator conducted in accordance with section 3132-C.

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

5. Commission approval of a proposed transmission line; ~~nontransmission nonwires~~ nonwires 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 nonwires~~ nonwires alternatives to the proposed transmission line as are necessary, having regard for any increased costs caused

by the orders. In its review and consideration of ~~nontransmission~~ nonwires alternatives, as required by subsection 2-D, the commission shall give preference to the ~~nontransmission~~ nonwires alternatives that have been identified as able to address the identified need for the proposed transmission line most cost-effectively. When the cost-effectiveness of the identified ~~nontransmission~~ nonwires 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. 5. 35-A MRSA §3132, sub-§6, as amended by PL 2019, c. 298, §11, 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~~ nonwires alternatives can sufficiently address the identified public need over the effective life of the transmission line more cost-effectively. If the commission finds that a public need exists, after considering whether the need can be reliably and more cost-effectively met using ~~nontransmission~~ nonwires 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~~ nonwires 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. 6. 35-A MRSA §3132, sub-§15, as enacted by PL 2013, c. 369, Pt. C, §7, is amended to read:

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

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

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

A person may not construct any transmission project or subtransmission project without approval from the commission. For the purposes of this section, "transmission project" means any proposed new or upgraded transmission line and its associated substation infrastructure that is capable of operating at less than 69 kilovolts or more. "Subtransmission project" means any proposed new or upgraded transmission line, substation component or associated infrastructure that is capable of operating at less than 69 kilovolts and projected to cost in excess of \$5,000,000.

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

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

2. Commission approval of a proposed transmission project or subtransmission project; ~~nontransmission~~ nonwires alternatives. In order for a transmission project or subtransmission project to be approved, the commission must consider whether the identified need over the effective life of the proposed transmission project or subtransmission project can be reliably and more cost-effectively met using ~~nontransmission~~ nonwires alternatives. In its review and consideration of ~~nontransmission~~ nonwires alternatives, as required by subsection 1-A, the commission shall give preference to ~~nontransmission~~ nonwires alternatives that have been identified as able to address the identified need for the proposed transmission project or subtransmission project most cost-effectively. When the cost-effectiveness of the identified ~~nontransmission~~ nonwires 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 or subtransmission 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. 8. 35-A MRSA §3132-B, first ¶, as enacted by PL 2019, c. 298, §13, is amended to read:

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

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

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~~ or the Office of the Public Advocate may petition the commission to resolve the dispute.

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

5. Dispute resolution. In responding to a petition by an investor-owned transmission and distribution utility or the Office of the Public Advocate 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. 11. 35-A MRSA §3132-C, sub-§1, as enacted by PL 2019, c. 298, §14, is amended to read:

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 or subtransmission project as defined in section 3132-A or a small transmission project or distribution project covered by section 3132-B.

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

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 customer data or critical energy infrastructure information provided under this section in accordance with section 1311-A.

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

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 must be prudently procured in accordance with this section.

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

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.~~