

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-ONE

H.P. 782 - L.D. 1053

**An Act To Allow Microgrids That Are in the Public Interest**

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

**Sec. 1. 35-A MRSA §120, sub-§6**, as enacted by PL 2009, c. 122, §10, is amended to read:

**6. Significant developments.** Any significant developments in the utility sectors or other areas of commission oversight; ~~and~~

**Sec. 2. 35-A MRSA §120, sub-§6-A** is enacted to read:

**6-A. Microgrids.** Beginning February 1, 2025, any activities undertaken by the commission related to new microgrids as defined in section 3351, subsection 1, paragraph B, including whether any new microgrids have been approved; and

**Sec. 3. 35-A MRSA §2305-B, sub-§1**, as enacted by PL 2001, c. 110, §2, is amended to read:

**1. Transmission and distribution utilities; microgrids.** A transmission and distribution utility or a person that constructs, maintains or operates a new microgrid approved in accordance with section 3351, subsection 3 may construct and maintain its lines in, upon, along, over, across or under the roads and streets in any municipality in which it is authorized to supply electricity, subject to the conditions and restrictions provided in this chapter and chapter 25.

**Sec. 4. 35-A MRSA §2305-B, sub-§2**, as enacted by PL 2001, c. 110, §2, is amended to read:

**2. Persons other than transmission and distribution utilities or person that constructs, maintains or operates new microgrid.** A person other than a transmission and distribution utility or person that constructs, maintains or operates a new microgrid approved in accordance with section 3351, subsection 3 may not construct or maintain electric lines, including poles or other related structures, in, upon, along, over, across or under a road, street or other public way unless:

A. The person satisfies the requirements of section 2503;

B. The person or the person's contractor hired to construct the line provides to the applicable licensing authority a performance bond:

(1) In the amount of the value of the line, including poles or other related structures, to be located in the public way; and

(2) That is enforceable for one year from the date the line is energized;

C. Prior to constructing the line, the person notifies the transmission and distribution utility in whose service territory the line is proposed to be built of the proposed location of the line; and

D. If a public utility objects to the line on the basis that it may constitute a duplication of existing transmission or distribution facilities or may interfere with the adequate and safe delivery of electricity to others, the commission issues a finding that the line is not a duplication of existing transmission or distribution facilities and does not interfere with the adequate and safe delivery of electricity to others. A finding is not required under this paragraph unless a public utility has objected in writing to the applicable licensing authority.

**Sec. 5. 35-A MRSA c. 33-A** is enacted to read:

## **CHAPTER 33-A**

### **MICROGRIDS**

#### **§3351. Microgrids**

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

A. "Distributed energy resources" means small-scale electrical generation sources located close to where the generated electricity is used, energy storage resources, energy efficiency resources or demand response resources.

B. "New microgrid" means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the electric grid and can connect and disconnect from the electric grid to enable the new microgrid to operate in both electric grid-connected mode and nongrid-connected mode, referred to in this chapter as "island mode," and that is constructed after October 1, 2020.

**2. Microgrids, public utility exception.** Notwithstanding section 2102 or any other provision of this Title to the contrary, a person that constructs, maintains or operates a new microgrid approved under subsection 3 does not, solely as a result of furnishing service through that new microgrid to participating consumers, become a public utility and is not subject to regulation as a public utility under this Title.

**3. Commission approval; requirements.** A person may not construct or operate a new microgrid without commission approval in accordance with this subsection.

A. The commission shall approve a petition to construct and operate a new microgrid if the commission finds that operation of the new microgrid is in the public interest and the new microgrid meets at least the following requirements:

- (1) The proposed new microgrid will serve a total load of no more than 10 megawatts, except that the commission may approve no more than 2 new microgrids that each serve a load greater than 10 megawatts but no more than 25 megawatts;
- (2) The proposed new microgrid is located in the service territory of a transmission and distribution utility with more than 50,000 customers;
- (3) The distributed energy resources for the new microgrid meet the applicable portfolio requirements in section 3210, subsections 3, 3-A, 3-B and 3-C;
- (4) Any distributed energy resources constructed after the effective date of this subsection for the new microgrid are a renewable capacity resource as defined in section 3210, subsection 2, paragraph B-3 or a renewable resource as defined in section 3210, subsection 2, paragraph C;
- (5) The person proposing the new microgrid demonstrates that the person has secured the financial capacity to operate the proposed new microgrid;
- (6) The person proposing the new microgrid demonstrates that the person has secured the technical capability to operate the proposed new microgrid;
- (7) There is a contractual relationship between the proposed new microgrid operator and consumers within the area to be served by the proposed new microgrid; and
- (8) The proposed new microgrid will not negatively affect the reliability and security of the electric grid.

For the purposes of this paragraph, when determining whether a proposed new microgrid is in the public interest, the commission shall consider possible ratepayer effects, whether positive or negative; benefits due to the increased resilience or reliability of the electric grid; economic development benefits; and any other factors the commission considers necessary to promote the public interest.

B. As a condition of approval of a new microgrid, the commission shall:

- (1) Require that any increase in costs to the electric transmission and distribution system in the State as a result of the new microgrid must be fully recovered from the person approved under this subsection to construct, maintain or operate the new microgrid and customers of the microgrid and may not be passed on to other electric ratepayers; and
- (2) Impose any other terms, conditions or requirements on the construction, maintenance or operation of the new microgrid as, in its judgment, it considers necessary, which may include but are not limited to parameters regarding the ability of the new microgrid to enter island mode, as defined by the commission by rule, and the operation of the new microgrid in grid-connected mode and island mode.

**4. Commission oversight; grid protections; consumer protections.** A new microgrid approved in accordance with subsection 3 is subject to commission oversight to ensure reliability and security of the electric grid and consumer protections for customers of the new microgrid.

5. Services. Services provided by a new microgrid may include, but are not limited to:

A. Standby electric service, as defined by the commission by rule, when the new microgrid is operating in island mode; and

B. Selling electricity as a competitive electricity provider when the new microgrid is operating in grid-connected mode.

6. Rulemaking. The commission may adopt rules to implement this section. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**Sec. 6. Report.** The Public Utilities Commission shall submit a report by January 7, 2023 to the joint standing committee of the Legislature having jurisdiction over energy and utility matters detailing its activities related to new microgrids as defined in the Maine Revised Statutes, Title 35-A, section 3351, subsection 1, paragraph B, including whether any new microgrids have been approved under Title 35-A, section 3351. The report must also include any recommendations for legislation that may be necessary to clarify or enhance the law regarding new microgrids. The committee may report out a bill to the First Regular Session of the 131st Legislature based on the report.

**Sec. 7. Precedent established by Public Utilities Commission.** The provisions of this Act may not be interpreted to modify or nullify the analytical framework and precedent for analyzing whether an entity is a transmission and distribution utility or a competitive electricity provider established by the Public Utilities Commission in opinions and orders issued prior to the effective date of this Act, including, but not limited to, opinions and orders issued under Docket Number 2000-653, Request for Commission Investigation Regarding the Plans of Boralex Stratton Energy, Inc. to Provide Electric Service Directly from Stratton Lumber Company and Docket Number 2011-200, ReEnergy Rumford, LLC, Request for Advisory Ruling.