



January 25, 2023

Testimony of John Brautigam, Esq., Legal Services for the Elderly in support of LD 2132 – An Act to Clarify the Right to Appeal Certain Public Utilities Commission Decisions.

Good afternoon, Senator Lawrence and Representative Zeigler, and honorable members of the Joint Standing Committee on Energy, Utilities and Technology.

Legal Services for the Elderly (LSE) is a nonprofit legal services organization with the mission of providing free legal assistance to Maine's older adults when their basic human needs are threatened. LSE has been providing these services in Maine for nearly 50 years.

The Office of the State Economist estimates that in 2025 Maine will have 339,780 Mainers over the age of 65. An alarming percentage of those ratepayers are financially insecure, with incomes below 150% of the poverty level. Unfortunately, this number is increasing.

A utility bill that might represent only a modest monthly expense for other Mainers might hit these older ratepayers much harder given their fixed income. Many must budget carefully for their electric bill or other utility payments. An unusually large bill would cause hardship especially at a time of rising prices in the general economy.

We appreciate the programs in place to assist older low-income ratepayers, including the arrearage management program, the low-income assistance program, and building insulation and air-sealing incentives and subsidies. Thank you for supporting those measures.

This committee needs no reminder that billing practices are not perfect, and mistakes do happen – sometimes consequential mistakes. Currently, in the CASD process, when a utility provides CASD with information refuting a ratepayer's case, there is no guarantee that the affected consumer can respond or even know whether the utility provided such information. The ability to respond to such information can be very helpful. In these cases, a basic element of the truth-finding process may be missing.

We are mindful of the Law Court's ruling in *General Marine Construction Corporation et al. v. Public Utilities Commission*, 2022 ME 20, 271 A.3d 1166. That ruling provides that the informal, non-adjudicatory decision of the consumer assistance and safety division may be the final word within the Commission on a customer complaint.

In most cases, the CASD process works well and there is little reason to consider a more formal process. But in a few cases, a more formal adjudicatory process is necessary to get at the underlying

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facts. The existence of this alternative – even if rarely used – would have a salutary effect on the entire system and would contribute to consumer confidence.

A right to a formal process is a matter of basic fairness. The Commission exists to protect consumers. It is not realistic to expect individual consumers to bear the burden of litigating a case in Superior Court. Most of our clients would not have the wherewithal to pursue that option, even if their case had merit. But these ratepayers might be willing and able to initiate and participate in an adjudicatory proceeding at the Commission.

Finally, we are aware that the right to an adjudicatory proceeding is recognized in Massachusetts and perhaps other states. There is no sign that this has resulted in a flood of frivolous proceedings. This makes sense. A consumer with a frivolous concern would have little incentive to initiate a formal proceeding and devote the resources which would be required.

The Law Court did not foreclose the option for a formal proceeding. To the contrary, footnote six of the Court's decision invites the Legislature to put a more formal process into the statute.¹ LD 2132 merely takes up the Court's invitation.

Finally, none of this should be construed to denigrate the CASD or the Commission itself. Without their work, vulnerable ratepayers would be far worse off, and we commend their efforts. We only suggest that the right to a formal appeal within the Commission is a useful addition to the current system and is consistent with fundamental principles of due process.

Thank you for considering this testimony and for all you do to protect the interests of older ratepayers on fixed incomes.

We support LD 2132 and thank Representative Warren and the Public Advocate for bringing this bill forward.

¹ "If, so shortly after Memphis Light was decided, the Legislature intended what the dissent asserts, it would have said so, and could still do so at any time if it disagrees with the CASD process that the Commission has created."