

Maine State Legislature

Committee on Energy, Utilities and Technology

February 6, 2024

Testimony of Conservation Law Foundation in Support of LD 2172, *An Act to Enhance Electric Utility Performance-based Ratemaking*

Chair Lawrence and Chair Zeigler, and members of the Energy, Utilities & Technology Committee, I am Sean Mahoney, Vice President and Senior Counsel of the Conservation Law Foundation, a member-supported nonprofit advocacy organization working to conserve natural resources, protect public health, and build healthy communities in Maine and throughout New England. CLF submits this testimony in support of LD 2172, An Act to Enhance Electric Utility Performance-based Ratemaking, as amended and with suggestions for strengthening the bill that we believe are consistent with the intent of the bill.

While Maine voters were split roughly 60-40 on last year's Pine Tree Power referendum, there was little split among Maine people that the performance of our transmission and distribution utilities needs to improve. In developing CLF's [position](#) on the Pine Tree Power proposal, we outlined a number of measures to do just that, beginning first and foremost, by recommending that Title 35-A be amended to increase accountability by adding metrics to measure the utilities' performance regarding affordability, grid modernization, transparency, and compliance with Maine's climate and clean energy laws. We of course weren't the only ones to make these suggestions – Representative Runte did the same in a September 20, 2023 [commentary](#) in the Portland Press Herald, calling attention to the legislation he introduced last year that is, as amended, before you today.

The goals for utility performance set out in the amended bill are important additions to the existing categories of utility performance that the Public Utilities Commission must be addressing. New and improved metrics and incentives are needed to motivate the utilities to operate a cleaner, more reliable power system, and to align utility performance with state public policy. We support the bill but believe that there are a number of steps that should be taken to strengthen it. Specifically, we would recommend that the Committee consider the following modifications during its work session, which are also reflected in the redlined document included below as Attachment A:

- **Changing the requirement in Section 1 that the Commission “initiate a proceeding to evaluate” to “initiate a proceeding to investigate, develop and adopt a framework for” in order to ensure that this bill results in meaningful action by the PUC;**
- **Changing the requirement that the Commission “consider” the goals in Section 2(A) to a requirement that the Commission in fact “develop” these goals;**
- **Adding explicit reference to Maine’s Renewable Portfolio Standard (RPS) (35-A M.R.S. s. 3210) in Section 2(A)(5) of the amended bill;**
- **Adding penalties and incentives to the standards and metrics proposed in Section 2(B) of the amended bill; and**
- **Using the term “performance-based regulation” instead of “performance-based rate designs” to better reflect an approach that considers policies and programs that include,**

but extend beyond rate design, such as performance metrics and incentive mechanisms, multi-year rate plans, as well as innovative rate designs.

Despite the clear need for reform of performance-based regulation in Maine, recent attempts by the PUC to effect meaningful reform have failed, highlighting the need to provide the Commission with explicit direction from the Legislature for any meaningful expansion of performance-based regulation. In past proceedings, the Commission has followed the path of least resistance and largely maintained the status quo with respect to incentivizing utility performance and has squandered opportunities to motivate improved utility performance that also advances state public policy.

For example, in December 2020, the Commission opened a docket (Docket No. 2020-00344), to explore whether the performance metrics and incentives under which Maine’s transmission and distribution (T&D) utilities have operated should be revised or expanded to better measure and motivate improved performance in the areas of service quality and customer service, as well as for other aspects of the T&D utilities’ performance.¹ Though the Commission initially indicated it would explore metrics for performance in the areas of affordability and cost control, grid modernization and technologies, distributed energy resources (DER) interconnection and deployment and furtherance of energy and environmental policies, it ultimately declined to develop any such metrics. The Commission likewise declined to adopt such metrics during its rulemaking to update Chapter 320 of its rules concerning “Electric Transmission and Distribution Utility Service Standards,”² even though the Legislature directed it to conduct rulemaking on DER interconnection in P.L. 2022, Ch. 701, § 1.³

In addition to providing explicit direction, LD 2172 will also help put the Commission on a path toward compliance with its statutory mandate under 35-A M.R.S. § 103-A. Enacted by the Legislature in 2021, Section 103-A requires the Commission, in executing its duties, powers and regulatory functions, to “facilitate the achievement by the State of the greenhouse gas emissions reduction levels set forth in Title 38, section 576-A.” The Commission’s existing performance-based regulation framework does not meet this explicit statutory obligation. The current framework has no performance standards that would help incentivize utilities to improve deployment of DER, to increase grid modernization and technologies or to further state clean energy and environmental policies. By not developing any such metrics, the Commission is arguably not in compliance with its obligation under Section 103-A. Passage of LD 2172, especially with the changes suggested above, will put the Commission back on a path toward compliance with its statutory obligation.

We urge this Committee to support this effort to increase utility accountability and to vote ought to pass on LD 2172.

¹ <https://mpuc-cms.maine.gov/CQM.Public.WebUI/Common/CaseMaster.aspx?CaseNumber=2020-00344>.

² <https://mpuc-cms.maine.gov/CQM.Public.WebUI/Common/CaseMaster.aspx?CaseNumber=2022-00052>.

³ <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0697&item=19&snum=130>.

Attachment A – CLF Redline

Committee: EUT
LA: LJJ
LR (item): 2755(02)
New Title?: N
Add Emergency?: N
Date: 2/3/2024
Filename: G:\COMMITTEES\EUT\Amendments\131st R2\Sponsor Amendments\LD 2172 Sponsor Amendment Draft Rep. Runte.docx

LD 2172 PROPOSED SPONSOR AMENDMENT Offered by Rep. Runte

Strike section 2 of the bill and replace with the following.

Sec. 2. 35-A MRSA § 3196 is enacted to read:

§3196. ~~Review of p~~Performance-based ~~regulation~~rate designs.

1. Commission proceeding. Beginning October 1, 2024, then every 3 years thereafter, the commission shall initiate a proceeding to ~~evaluate~~investigate, develop, adopt and review a framework for performance-based ~~regulation~~rate designs, including rate adjustment mechanisms and innovative rate designs, that the commission may implement for an investor- owned transmission and distribution utility.

A. In conducting a proceeding, the commission shall first, in accordance with subsection 2, paragraph A, establish goals for the utility’s performance and then develop standards and metrics, in accordance with subsection 2, paragraph B, that may be used to assess the utility’s performance towards achieving those goals, and establish penalties and incentives relating to those standards and metrics.

B. In its evaluation, the commission must consider performance-based ~~regulation~~rate designs to:

(1) Enhance the minimum service standards established pursuant to section 301, subsection 1-A; and

(2) Align utility performance with standards and metrics developed in accordance with subsection 2, paragraph B.

C. The commission shall also consider performance-based ~~rate designs~~regulation utilized in other states.

2. Goals, standards and metrics; considerations. The commission shall establish goals for a utility’s performance and standards and metrics to assess the utility’s performance towards achieving the goals in accordance with this subsection.

A. The commission shall establish goals that are consistent with the objectives of the State’s climate action plan under Title 38, section 577 and address the elements of a utility’s integrated grid planning filing pursuant to section 3147, subsection 4. The commission shall also ~~consider~~develop, at a minimum, goals that would benefit ratepayers and would achieve the following:

(1) The promotion of efficiency and cost-effective utility operations;

- (2) Increased planning and preparation for extreme weather events and climate hazards;
- (3) The cost-effective and comprehensive response to outages;
- (4) Increased affordability, customer empowerment and satisfaction; and
- (5) The advancement of the State’s greenhouse gas emissions reduction goals established pursuant to Title 38, section 576-A and the State’s renewable portfolio standard under Title 35-A, section 3210.

B. After establishing goals in accordance with paragraph A, the commission shall establish specific standards and metrics for assessing transmission and distribution utility performance relative to the goals, and establish penalties and incentives relating to those standards and metrics. In developing standards and metrics and penalties and incentives, the commission shall consider standards and metrics and penalties and incentives used in other states.

3. Innovative rate design. As a part of the proceeding pursuant to subsection 1, the commission shall consider implementing innovative rate designs to align transmission and distribution utility performance with the standards and metrics developed pursuant to subsection 2, paragraph B, including, but not limited to, designs that:

- A. Assess the effectiveness and adjust the decoupling of the transmission and distribution utility profits from utility sales where appropriate;
- B. Use the total of operations and capital expenses as the basis for ratemaking, rather than capital expenses alone; and
- C. Use of cost of equity as the minimum to be recovered by utilities in rates, with any recovery above that amount determined by utility performance.

4. Stakeholder input. The commission shall hold stakeholder workshops to receive stakeholder input and to assist in evaluating performance-based rate designs.

Nothing in this section prohibits the commission from investigating performance-based rate designs for consumer-owned transmission and distribution utilities.

5. Report. Beginning January 1, 2026, and then every 3 years thereafter, the Commission shall provide a report summarizing the proceeding, along with any information regarding the utilization of performance-based rate designs, and any recommended legislation, to the joint standing committee of the Legislature having jurisdiction over utility matters.

Insert new section 3 in the bill as follows.

Section 3. Technical policy group. The Public Utilities Commission shall create a technical policy group to develop goals, standards and metrics, including those required by the Maine Revised Statutes, section 3196, subsection 2; monitor utility performance and recommend rate designs based on performance; draft legislative reports requiring policy-based analysis; and perform other activities that have broader implications related to the commission’s regulatory oversight. The commission may hire 3 full-time employees for this purpose.

SUMMARY

This amendment strikes section 2 of the bill and replaces it with language that requires the Public Utilities Commission to, beginning October 1, 2024, then every 3 years thereafter, initiate a proceeding to evaluate performance-based rate designs, including rate adjustment mechanisms and innovative rate

designs, that may be implemented for investor-owned transmission and distribution utilities. In conducting the proceeding, the commission must first establish goals for utility performance and then develop standards and metrics may be used to assess a utility's performance towards achieving those goals. The commission must consider implementing innovative rate designs to align transmission and distribution utility performance with the standards and metrics developed by the commission and must hold stakeholder workshops to receive stakeholder input and to assist in evaluating performance-based

rate designs. The commission must provide a report summarizing the proceeding, along with any information regarding the utilization of performance-based rate designs, and any recommended legislation, to the joint standing committee of the Legislature having jurisdiction over utility matters.

The amendment also directs the commission to create a technical policy group to develop goals, standards and metrics; monitor utility performance and recommend rate designs based on performance; draft legislative reports requiring policy-based analysis; and perform other activities that have broader implications related to the commission's regulatory oversight. The commission is authorized to hire 3 full-time employees for the policy group.