

**Testimony of Seth Berry in Support of L.D. 301, An Act to Allow the Public Utilities Commission to Establish Performance-based Metrics and Rate-adjustment Mechanisms for a Public Utility in Any Proceeding**

**March 6, 2025**

Senator Lawrence, Representative Sachs, and members of the Joint Standing Committee on Energy, Utilities and Technology: my name is Seth Berry and I live in Bowdoinham. I am a former member of this committee and Executive Director of Our Power. Today I submit this testimony today on my own behalf, and in support of LD 301.

LD 301 would clarify that the Commission may use performance-based metrics and rate-adjustment mechanisms in any proceeding. Both PBMs and RAMs are part of a larger movement called performance-based regulation, or PBR.

PBR has gained attention as a tool to improve utility performance and align incentives with public policy goals, such as environmental sustainability, affordability, and reliability. The experience of 17 states is not conclusive, but suggests both advantages and disadvantages of PBR.

**Advantages:**

**Alignment of Utility Goals with Public Policy Objectives:** PBR offers an opportunity to better align utility behavior with societal goals, such as reducing greenhouse gas emissions, enhancing energy efficiency, and promoting renewable energy. By setting performance-based metrics, utilities can be incentivized to meet specific environmental and social targets rather than focusing solely on cost recovery and infrastructure investment.

**Incentive for Innovation and Efficiency:** Performance-based regulation can incentivize utilities to adopt innovative solutions and new technologies. When utilities are rewarded for meeting performance targets such as reduced emissions, improved grid reliability, or increased energy efficiency, they may be more likely to invest in modernizing infrastructure, adopting clean energy solutions, or implementing demand-side management programs.

**Ratepayer Benefit:** By tying utility earnings to performance metrics, PBR can ensure that consumers benefit from improved utility performance, whether through lower rates, better service quality, or enhanced environmental outcomes. This approach can help curb the tendency of traditional cost-of-service regulation to encourage utility over-investment in capital-intensive projects without direct benefits to ratepayers.

**Flexibility in Rate Adjustments:** Performance-based rate adjustments can provide a more dynamic and responsive way to update utility rates in line with changing conditions. This flexibility can lead to more predictable and efficient pricing, ensuring that rate structures reflect the actual costs and benefits delivered to consumers and the environment.

Disadvantages:

**Complexity and Implementation Challenges:** Designing and implementing performance-based metrics and rate-adjustment mechanisms can be complex. It requires careful consideration of what metrics are appropriate, how they are measured, and what the penalties or rewards should be. Poorly designed metrics or poorly calibrated mechanisms could result in unintended consequences, such as utilities gaming the system or neglecting important areas of performance not captured by the metrics.

**Risk of Mismatched Incentives:** While PBR can drive utilities to meet specific performance targets, it may also lead to a narrow focus on certain goals at the expense of others. For instance, utilities might prioritize easily measurable goals like energy efficiency improvements, while neglecting long-term infrastructure needs or grid resilience, which are harder to quantify.

**Potential for Increased Costs to Ratepayers:** If not carefully structured, performance-based rate adjustments could lead to higher costs for ratepayers. For example, utilities might pursue short-term projects to meet performance targets without addressing longer-term needs, resulting in inefficient spending or higher overall rates for consumers. Additionally, if the incentive structures are too generous, utilities might prioritize financial rewards over customer welfare.

**Equity Concerns:** There is a risk that performance-based regulation could disproportionately impact low-income or vulnerable customers if incentives are tied too heavily to metrics that don't fully reflect the needs of these populations. For example, a utility might focus on cost-saving measures that harm low-income communities or fail to invest in necessary infrastructure in underserved areas.

Overall, performance-based regulation has the potential to align utility operations with public interests, incentivize efficiency, and drive innovation. Never in history have these goals been more crucial than they are now! However, PBR also presents challenges in terms of complexity, balancing incentives, and ensuring equitable outcomes. The success of performance-based metrics and rate-adjustment mechanisms will depend on careful design, stakeholder engagement, and monitoring to ensure that the benefits outweigh the risks and that all ratepayers receive fair treatment.

Some say LD 301 should apply only for adjudicatory proceedings, or (more limiting) only to rate cases. However, such proceedings are generally dominated by those with the ability to hire lawyers and expert witnesses billing at \$600-1200 per hour.

To electrify rapidly, we need to improve utility service and affordability rapidly. Our best hope is robust, responsible regulation. For this reason I urge you to enact LD 301, and then to monitor its use. One way to do this is to require the Commission to report back to you annually on the results it obtains with this clarified power, and to enable yourselves to take action based on the information provided.