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Chairman Lawrence, Chairman Berry and Members of the Energy, Utilities and Technology Committee,

The Office of the Public Advocate (“OPA”) testifies neither for nor against LD 1646 “An Act To Restore Local Ownership and Control of Maine’s Power Delivery Systems” which creates the Maine Power Delivery Authority as a consumer-owned utility to acquire and operate all transmission and distribution systems in the State currently operated by the investor-owned transmission and distribution utilities known as Central Maine Power Company (“CMP”) and Emera Maine (“EMERA”).

LD 1646 would enact Chapter 40 of Title 35-A to create the Maine Power Delivery Authority (“MPDA”). MPDA would be a statewide authority that would begin the process of converting Maine’s investor-owned utilities to one large customer-owned utility.

With public ownership, the new district would not be sending its profits in the form of shareholder dividends out of the state and out of the country. Governance by a Maine-based board would be better than ownership out of state or country, such as Iberdrola’s ownership and Avangrid’s management of CMP, and Emera’s current ownership by a Canadian company and the fact that it is seeking approval of a new ownership structure from another Canadian company, ENMAX Energy of Calgary.

This bill would get the conversation started about how to address the issues Maine is currently experiencing with its two investor-owned electric utilities, CMP and Emera, namely high rates and poor customer service. There is a great deal of

public resentment and frustration with both CMP and Emera due to the high cost of electricity and their poor reliability and customer service.

There is already a statute in place that allows a municipality to create a power district. Chapter 39 of Title 35-A is the “Municipal Electric District Enabling Act,” allows the following:

The formation of a municipal power district if the majority of the residents in a town vote to approve such a district.¹ The statute also allow two or more municipalities to form a multimember district.²

Provides that the Commission must approve the formation of the district so long as the town followed the statutory guidelines for the vote.³ On at least one occasion, the Commission has approved such certification – for the Town of Jay in 1995.⁴ It does not appear that Jay took any further action following Commission approval of the vote to establish the district.

The statute sets forth the power of a municipal district, including the right to construct, purchase, lease and maintain transmission and distribution lines. It can raise the funds necessary for operation through issuance of bonds and notes. It also gives the municipal power district the right to eminent domain. Chapter 39 makes clear, however, that a municipal power district “may not serve as a public utility, as defined in section 102, without consent from the commission in accordance with section 2102.”⁵ Approval under section 2102 requires a utility that wants to serve in a municipality that is already being served by another utility. In the Jay case, for example, the Commission stated

¹ 35-A M.R.S. § 3903.

² *Id.* § 3904.

³ *Id.* §§ 3903, 3904.

⁴ *Jay Power District, Application for Commission Approval from the Town of Jay for the Formation of Jay Power District*, Docket No. 94-428, Order Approving Formation of Power District (Me. P.U.C. Feb. 14, 1995).

⁵ *Id.* § 3915.

that the formation of the district was only one part of a two-stage process. The second phase would involve the Commission reviewing the district's request to serve in an existing service territory and would address issues such as the pre-existing utility's stranded investments.

LD 1646 allows for a statewide district, which goes beyond the scope of Chapter 39. But it does not amend Chapter 39 or repeal and replace it. If LD 1646 becomes law, creating Chapter 40, would Chapter 39 still be effective? Chapter 39 has far more protections for utility in the form of Commission approval of the taking over of service territory. There should be some explanation of what happens with Chapter 39.

LD 1646 establishes a Governance board that is composed of Governor-appointed members who are representative of the customers served by the incumbent utilities in a proportional manner. It is important that the customer representatives selected have experience and/or training in the complex matters involved in the provisions of electric service. For example, financial and accounting experience, engineering, energy (including non-wires alternatives) are just some of the areas that will be covered by the Board in making governance decisions relating to a utility that would serve 800,000 customers. The Board must be given the resources in order to provide training to its members as well as access to expert consultation services.

The OPA was not listed as a member of the board and we feel it would be beneficial if the OPA were to serve on the board in some capacity to ensure that customers, particularly residential customers, are fully represented.

LD 1646 allows for the creation of the statewide public electric district without the need to obtain approval from the Public Utilities Commission ("PUC"). In fact, this bill provides for very limited regulation by the PUC of any of its activities. The bill specifically provides in proposed section 4003(1) that the "authority is a consumer-owned transmission and distribution utility and has all the powers and

duties of a transmission and distribution utility under this Title as affected by the provisions of chapter 35, within the service territories of the investor-owned transmission and distribution utilities whose utility facilities it acquires under this chapter.” Chapter 35 governs consumer-owned T&D utilities, which are subject to very light regulation by the Commission. For example, a consumer-owned utility is only required to seek approval for rate increases that are more than 15 percent.⁶

LD 1646 provides that the authority “shall contract by means of a competitive public solicitation the services of a qualified nongovernmental entity ... to provide operations and administrative services.” It makes sense to assume that a utility that serves 800,000 customers would require an experienced and sophisticated operator but the use of a contractor removes many of the benefits of consumer-owned utilities, which rely on local boards and managers to operate their facilities.

One of our primary concerns with LD 1646 is the size of the utility being created one of more than 800,000 customers. According to the American Public Power Association (APPA), this would make it one of the largest public utilities in the country. There are only 30 public utilities that serve more than 100,000 customers and only four that serve more than a million customers.

The strength of Maine’s publicly owned utilities flows from their small size and local nature. A utility of this size will not provide those benefits. It will have the same constraints that CMP currently faces in dealing with outages – not having linemen in the location where they can address outages immediately. This new statewide utility would also have to open local offices to provide the kind of walk-in service that public utility customers currently enjoy in Maine.

The cost associated with paying for CMP’s and Emera’s assets would be approximately \$5.7 billion if you use the “net book value” as set forth in this bill (\$4.2

⁶ 35-A M.R.S. § 3502.

for CMP and \$1.2 for Emera). This would be done through bonding but it is important to know how this would affect ratepayers and taxpayers in Maine. It's unclear whether a public takeover of this size has ever been done on a statewide basis in any other state. There would need to be a feasibility study to study the cost.

Overall, the OPA believes this is an intriguing idea and opens up the much-needed conversation about how to improve the delivery of electricity in Maine. The Legislature should study the proposal set forth in LD 1646 as well as other possible approaches. The OPA would welcome the opportunity to assist the Legislature with such study efforts.

Thank you for your time, attention and consideration of this testimony. The Office of the Public Advocate looks forward to working with the Committee on LD 1646, and will be present at the work session to assist the Committee in its consideration of this bill.

Respectfully submitted,



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