



STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

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May 14, 2019

Honorable Mark W. Lawrence, Senate Chair  
Honorable Seth A. Berry, House Chair  
Energy, Utilities and Technology Committee  
100 State House Station  
Augusta, Maine 04333

**Re: LD 1646, An Act To Restore Local Ownership and Control of Maine's  
Power Delivery Systems**

Dear Senator Lawrence and Representative Berry:

The Public Utilities Commission (Commission) testifies neither for nor against LD 1646, An Act To Restore Local Ownership and Control of Maine's Power Delivery Systems.

LD 1646

In general, LD 1646 would create the Maine Power Delivery Authority (Authority) as a consumer-owned utility to acquire and operate all transmission and distribution (T&D) systems in the State currently operated by the investor-owned T&D utilities, Central Maine Power (CMP) and Emera Maine. The Authority would be governed by a Board composed of 10 members, appointed by the Governor and confirmed by the Legislature, all of whom must be residents of the State. The Authority would contract by means of a competitive public solicitation the services of a qualified nongovernmental entity to provide operations and administrative services. The Authority has all the powers and duties of a consumer-owned T&D utility under Title 35-A, Chapter 35. Rates and all other charges of the Authority must be sufficient to pay in full the cost of service, including the cost of debt and any payments in lieu of taxation.

Commission Observations

LD 1646 raises a number of significant and complex issues that should be considered by the Committee. These are outlined below:

Valuation Method for the Assets

LD 1646 specifies that the Authority shall pay "net book value" for the utility facilities and any utility property, unless the Authority and the utility agree on a different amount.

-The meaning of the term “net book value” is susceptible to a wide range of interpretations that could have a significant impact on a purchase price. For example, utilities have assets and obligations, such as regulatory assets and liabilities, that are a function of regulatory and accounting decisions and which might not be seen as traditional “utility property” with a net book value. Such obligations and liabilities can include excess accumulated deferred income taxes (such as those resulting from Federal Tax Cuts and Jobs Act) and deferred recovery of certain costs (e.g., stranded costs, storm recovery costs). Because a purchase price is a complicated issue and would likely depend on the particular utility’s circumstance, the Committee may want to give the Commission authority to determine a fair purchase price, rather than attempt to define it in statute.

-In the event that the existing utility does not agree on a price, issues regarding a “taking” and the proper valuation might arise that could lead to complex and time-consuming litigation that could take years to resolve. Certain other valuation methods may arguably be as valid as net book value, such as fair market value or reconstruction cost less depreciation and would likely be an issue in any litigation.

-Any such litigation would likely require years to resolve and could create significant uncertainty regarding the operations and future of an existing utility. This uncertainty would affect the day-to-day operations of the utility and might make it difficult and expensive for the existing utility to obtain necessary debt or equity financing for its capital needs, potentially leading to cutbacks or delays in providing services or making investments needed to provide safe and reliable service. More generally, during this period of uncertainty, the utility may defer making important investments in infrastructure.

#### Financing Mechanisms and Costs

-The Authority’s cost of financing for the acquisition as well as for future projects (such as necessary system investments such as transmission upgrades) is unknown at this point. The financing would be “non-recourse,” meaning that the State does not backstop the Authority’s debt. Accordingly, the cost of the debt would be based on the bond holders’ view of the value of the Authority’s assets, current and future cash flows, and consideration of risks regarding payback. This would apply not only to the initial acquisition of the utility, but on an ongoing basis as the Authority would need to finance necessary investments.

-Under LD 1646, the operations of CMP and Emera Maine would be consolidated. Although this may result in some cost savings, it may also strand or increase costs and create duplicative systems (e.g., billing systems, customer service functions). In addition, the utilities currently have affiliate agreements, such as money pooling arrangements, joint credit facilities, mutual aid agreements and shared services agreements, under which the utilities receive services and access to needed resources. Such arrangements would cease with the creation of the Authority and the services and facilities provided pursuant to these arrangements would have to be replaced.

-LD 1646 specifies that the Authority contract with a non-governmental entity to provide operations and perform administrative functions. Presumably, this includes the development of new facilities. The costs associated with a nongovernmental entity performing functions that are currently performed by the utility is unknown and could exceed the utility’s current operational cost.

-A significant regulatory tool in the hands of the Commission, a prudence review, would appear not applicable to the operations, decisions, and investments of the Authority. Currently, in the event that an investor-owned utility acts unreasonably or makes imprudent investments, the Commission can disallow costs from recovery from ratepayers, such that the utility shareholders would absorb such costs. In the case of a consumer-owned power authority, there would be no shareholders to absorb any unreasonable or imprudent expenditures. Thus, the ratepayers will necessarily pay the resulting costs.

-There are also rate-making tools that can be used for investor-owned utilities that would appear inapplicable to an Authority. For example, there is a mechanism in place for CMP by which shareholders and ratepayer share certain costs related to storm-related outages and restoration.

### State and Local Taxes

An investor-owned public utility pays both state sales and local property taxes. As a public entity, the Authority would not be subject to taxes. LD 1646 does require the Authority to make "payments in lieu of taxes" to municipalities and the State. However, with respect to property taxes, the Authority would pay taxes only to the extent that funds are available. The Commission is unclear on the provision regarding payments in lieu of taxes to the State. The bill appears to require the Authority to make payments to the State only during fiscal years 2019-2020 or 2020-2021 if the Authority owns and manages a service territory in any month during those years and appears to be silent on any payments in lieu after fiscal year 2020-2021. Any tax revenues not provided by the utility would presumably result in tax increases to other Maine businesses or residents, or reductions in services.

### Long-Term Contracting

LD 1646 has conflicting provisions regarding the Authority's ability to enter into long-term contracts. Section 4003(2) states that the Authority may not purchase capacity or energy from a generating facility. Section 4003(8)(B) states that the Authority is subject to section 3210-C, which authorizes utilities to enter into long-term contracts.

The Commission looks forward to working with the Committee on LD 1646 and would be happy to respond to any questions the Committee has at this time. The Commission will also be present at the work session should the Committee have any additional questions in its consideration of this bill.

Sincerely,



Paulina McCarter Collins, Esq.  
Legislative Liaison

cc: Energy, Utilities and Technology Committee Members  
Lucia Nixon, Legislative Analyst