

**Testimony of the Industrial Energy Consumer Group**  
**In Opposition of**  
**L.D. 542, *An Act To Comprehensively and Equitably Reform Electricity Rates***  
**Before the Joint Standing Committee on Energy, Utilities and Technology**  
March 16, 2023

Good morning, Senator Lawrence, Representative Ziegler and Members of the Joint Standing Committee on Energy, Utilities and Technology. I am Steven Hudson, an attorney with the firm of Preti Flaherty, here today on behalf of the Industrial Energy Consumer Group (IECG). IECG has been representing medium and large sized consumers of energy in Maine for more than twenty-five years at the state, regional and federal level. We advocate for policies that reduce the cost of energy for our members, helping to maintain their operations in our state and the thousands of jobs provided directly and indirectly by those operations. We also advocate for climate change mitigation through cost-effective beneficial electrification.

Industrial Energy Consumer Group testifies today in opposition to L.D. 542, *An Act To Comprehensively and Equitably Reform Electricity Rates*, not because we are opposed to reform of electricity rates, but that we oppose setting up automatic upward ratchets in rates as a reward to investor-owned transmission & distribution utilities for doing the kinds of things IECG thinks they should either be doing to protect the interests of the ratepayers or that we already expect them to do and for which they are already well compensated by existing ratemaking.

IECG believes that this well-intentioned bill is an apparently unintentional, but potentially lucrative gift to Maine's largest T&D utilities. Section 1 of the bill encourages what is billed as performance-based multi-year ratemaking (MRP) for these utilities. These concepts have been tried in Maine previously under slightly different names and arrangements. Unfortunately, as a report for the National Association of Regulatory Utility Commissioners (NARUC) has noted: "The issues surrounding MRPs are more complex than what first meets the eye. Whether MRPs are in the public interest is the ultimate question for regulators to answer, but one that has no clear answer."<sup>1</sup>

The NARUC report goes on to say:

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<sup>1</sup> National Regulatory Research Institute, *Multiyear Rate Plans and the Public Interest*, Report No. 16-08, Executive Summary page iv, October 2016, accessed at <https://pubs.naruc.org/pub/FA86999D-D03F-2858-7228-A6353560E5B9>

The major supporter of MRPs in the U.S., electric utilities, have advanced different arguments. Their main one is that MRPs would improve the regulatory process and their financial condition (e.g., from less regulatory lag). From a regulatory perspective, their arguments seem to fall short of making a compelling case for how their customers would benefit. For example, utilities have emphasized the need for MRPs to facilitate recovery of capital costs between general rate cases. While this may benefit customers, MRPs have other effects on utility customers, either positive or negative. The mixed results from MRPs preclude a prima facie case for their approval by regulators.<sup>2</sup>

IECG further notes that this section of the bill appears to be unnecessary, given the existing provisions of law in the Electric Rate Reform Act, codified at 35-A MRSA Ch. 31, subch. 3, §§3151-3155 which among other things provides that the commission to: relate transmission and distribution rates more closely to the costs of providing transmission and distribution service; consider the ability of low-income residential customers to pay in full for electric services as transmission and distribution rates are redesigned consistent with these policies; and to set rates to the extent practicable to achieve economic efficiency. These provisions also direct the commission to: encourage energy conservation, minimize the need for new transmission and distribution capacity, minimize costs of transmission and distribution service to consumers, minimize transmission and distribution rates over the long term or short term and take into account the needs of low-income customers. Finally the PUC already has authority to consider incentive ratemaking through the provisions found in of 35-A MRSA §3195.<sup>3</sup>

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<sup>2</sup> Id.

<sup>3</sup> §3195. Commission authority to promote transmission and distribution utility efficiency

**1. Rate-adjustment mechanisms.** This Title may not be construed to prohibit the commission from or to restrict the commission in establishing or authorizing any reasonable rate-adjustment mechanisms to promote efficiency in transmission and distribution utility operations and least-cost planning. Rate-adjustment mechanisms may include, but are not limited to:

- A. Decoupling of utility profits from utility sales through revenue reconciliation;
- B. Reconciliation of actual revenues or costs with projected revenues or costs, either on a total or per customer basis;
- C. Adjustment of revenues based on reconciled, indexed or forecasted costs; and
- D. Positive or negative financial incentives for efficient operations.

**2. Just and reasonable rates.** In determining the reasonableness of any rate-adjustment mechanism established under this subchapter, the commission shall apply the standards of section 301 to ensure that the rates resulting from the implementation of the mechanism are just and reasonable. Prior to the adoption of a new or replacement alternative rate plan or renewal of any existing alternative rate plan, the commission shall, in order to ensure that rates at the starting point of the plan are just and reasonable, conduct a revenue requirement and earnings review pursuant to the standards of section 301. In conducting such a review under this subsection, the commission, at its discretion, may conduct the review in a manner designed to minimize the cost of the review to ratepayers.

**3. Value of utility property.** Notwithstanding section 303, rate-adjustment mechanisms established under this section may be used to establish the value of the transmission and distribution utility's property.

IECG is skeptical of attempts to adopt any mechanisms that include revenue decoupling for utilities. IECG believes decoupling disrupts and distorts the utility core business functions and is not a particularly effective way of promoting energy efficiency or anything of benefit to the utility's customers. Time and time again decoupling has been tried in several states, only to be suspended because it unduly interferes with the overall regulatory process. A 2019 study found: "...U.S. utility data in 2000-2012 reveals that RD [Revenue Decoupling] is associated with more than 10% higher electricity prices and revenues in two years after RD is implemented relative to similar non-decoupled utilities. Between these comparable utilities, there are no significant differences in the electricity sales, indicating that RD tends to allow larger increases in utility revenues."<sup>4</sup>

IECG respectfully suggests LD 542 be voted Ought Not to Pass or at a minimum the bill be amended to delete sections 1 and 2. IECG encourages the Committee to just allow the PUC to do its job for Maine and Maine ratepayers.

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**4. Ratepayer protection.** In determining the reasonableness of any rate-adjustment mechanisms, the commission shall consider the transfer of risks associated with the effect of the economy and the weather on the utility's sales. To the extent these risks are transferred from the utility to its customers, the commission shall consider in a rate proceeding the effect of the transfer of risk in determining a utility's allowed rate of return.

**5. Report.** The commission shall include in its annual report pursuant to section 120, subsection 6 any significant developments with respect to any actions taken or proposed to be taken by the commission under this section.

**6. Rate flexibility.** Notwithstanding sections 307 and 703, the commission, in an adjudicatory proceeding, may authorize a transmission and distribution utility to implement a program under which:

A. The utility may change its schedule of rates with limited notice to the commission; and

B. The utility may enter into contracts for the sale of transmission and distribution services and related management services with limited or no prior express approval by the commission.

The commission shall render its decision in any adjudicatory proceeding held for the purposes of authorizing a utility to implement a program consistent with this subsection within 9 months of the initiation of the proceeding. In the adjudicatory proceeding, the commission shall establish the terms and conditions under which a program is authorized under this subsection. The authority granted to the commission under this subsection is in addition to the authority of the commission granted under other provisions of this Title and nothing in this subsection may be construed to limit the authority of the commission under any other provision of this Title.

<sup>4</sup> Brucal A and Tarui N) *Revenue decoupling for electric utilities: impacts on prices and welfare*. Centre for Climate Change Economics and Policy Working Paper 343/Grantham Research Institute on Climate Change and the Environment Working Paper 309. London: London School of Economics and Political Science, 2019