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PUBLIC UTILITIES COMMISSION

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**Testimony of the Maine Public Utilities Commission
In Opposition to
LD 2132, An Act to Clarify the Right to Appeal Certain Public Utilities Commission
Decisions**

January 25, 2024

Senator Lawrence, Representative Zeigler, and Distinguished Members of the Joint Standing Committee on Energy, Utilities, and Technology (Committee), my name is Derek Davidson, Director of the Consumer Assistance and Safety Division (CASD), testifying in opposition to LD 2132, An Act to Clarify the Right to Appeal Certain Public Utilities Commission Decisions on behalf of the Public Utilities Commission (Commission).

LD 2132 proposes a significant change to the informal, efficient consumer complaint resolution process implemented by the Commission. The new process being proposed by this legislation would allow a customer or a public utility to petition the Commission for a *de novo* adjudicatory proceeding to investigate the dispute. The proposed change would transform the user-friendly and effective approach the Commission offers to assist customers who are having issues with utilities into a formalized and, in the Commission's view, burdensome process that would be unmanageable and costly for customers. It is the Commission's view that the process CASD currently uses to deal with customer disputes works very well and that quite frankly, this legislation represents a solution in search of a problem.

The informal CASD complaint process is designed to minimize the burden on customers by allowing CASD staff to collect evidence on the customer's behalf from both the customer and the utility. A majority of the customers that seek the CASD's assistance are in a crisis situation and need immediate help to either prevent the disconnection of the customer's utility service or to establish reasonable terms for the reconnection of their utility service. This process is very consumer friendly, by design, and minimizes the need for a customer to interact with a utility. In these situations, the CASD staff interview the customer, take the customer's income and expense information, and review other information the customer wishes the CASD to consider. After interviewing the customer, the CASD staff collect the necessary information from the utility to resolve the dispute. The CASD then issues a resolution letter that typically establishes the terms of an affordable payment arrangement for the customer and establishes terms for the reconnection of the customer's service if the customer is disconnected.

Though the majority of complaints that the CASD handles relate to payment issues, there are other types of complaints that do not relate to payment issues that can be challenging for the CASD to

resolve. If the resolution of the complaint can be accomplished through the interpretation of a state law, Commission rule, or a utility's terms and conditions, the CASD process works very well. A small number of complaints, however, involve factual disputes and disputes involving potential damages that do not necessarily fit well within this informal process. In these situations, the CASD staff advise the complainant of this and explain that the customer has the option to take their matter to civil court. If the customer does not wish to go to civil court, the CASD will attempt to resolve the matter to the best of its ability, sometimes facilitating a resolution.

As with the complaint process, the review process is also designed to minimize the burden placed on customers. If a customer is not satisfied with the CASD's resolution, the customer can file a Request for Review of the decision. The Commission reviews the record to determine if the CASD decision complies with applicable statutory and regulatory requirements, is based on sound facts, and does not represent an abuse of discretion by the CASD. If the Commission has concerns with the CASD's decision, it may open a formal investigation or it may refer the matter back to CASD to further investigate the customer's concerns. This review process is designed to be as efficient and timely as possible, often being completed in a matter of weeks.

The Commission is concerned that the process proposed by LD 2132 would place an unmanageable and potentially costly burden on customers seeking a review of a CASD decision by requiring a *de novo* adjudicatory proceeding. Unlike the current review process, the burden would be placed entirely on the customer to provide evidence to document the customer's position. Further, utility attorneys would have the opportunity to rebut any evidence provided by the customer and would be afforded the opportunity to cross-examine customers. The Commission believes this process places too much of a burden on the customer and that most customers are not prepared to represent themselves effectively. Most of these customers are already in financial distress and do not have the means to hire an attorney to represent them in a formal adjudicatory proceeding. Also, by requiring this process to be adjudicatory, it deprives the customer of the right to go to small claims or civil court to resolve their dispute if they so choose because any decision rendered by the Commission in an adjudicatory proceeding is only appealable to the Law Court.

In addition to the unmanageable burden placed on customers, the Commission is concerned that the *de novo* adjudicatory process proposed by LD 2132 may place customers at a disadvantage compared to utilities. Utilities often have most of the of evidence in these situations, (*e.g.*, billing and payment information, meter readings, etc.), and utilities have in-house, and external attorneys experienced in utility matters who can litigate these cases. In short, in most cases the utilities will be better prepared to manage these cases than customers. And because LD 2132 allows the utility to petition the Commission for a *de novo* adjudicatory hearing following a CASD decision, a customer may be required to be a party to proceeding that the customer did not initiate.

In addition, LD 2132 will increase the workload on the Commission and the Law Court. In 2023, the CASD investigated and resolved 3,128 consumer cases where the consumer or the utility could request a review. In 43 of these cases, the customer or utility sought a review of the CASD's resolution. While this is a low rate of review (1.4%), if these Requests for Review were transformed into adjudicatory proceedings, it would represent 43 docketed adjudicatory cases being added to the Commission's workload.

The Commission also notes that because credit and collection activities are suspended pending the resolution of a customer complaint and associated Request for Review, it is important that these cases be resolved quickly so that customers do not fall too far behind on their bills. In 2023, the CASD

resolved these cases on average in 40 days, ensuring that customers did not miss more than one monthly utility payment. As previously discussed, the current review process is very efficient and can be completed in a matter of weeks. The adjudicatory process proposed by LD 2132, on the other hand, would dramatically lengthen the amount of time it would take to resolve disputes. The Commission estimates that these cases would take from three months to nine months to resolve. This is a significant amount of time that a customer could go without making a payment on their utility bill. This could result in many customers building an insurmountable past due balance, even if they are successful in the proceeding, that may lead to an increased number of disconnections.¹

In closing, the current informal review process for CASD complaints is efficient, convenient for customers, and works well. The Commission is concerned that LD 2132 would replace this customer-friendly process with an unmanageable process and thus urges the Committee to vote-ought-not-to-pass on LD 2132.

I would be happy to answer any questions or provide additional information for the work session.

¹ Even in situations where a customer prevails in a case, the customer is still responsible to pay for the utility service that was provided at the appropriate tariffed rate.