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January 25, 2024

Honorable Mark Lawrence, Senate Chair
Honorable Stanley Zeigler House Chair
Joint Legislative Committee on Energy, Utilities and Technology
100 State House Station
Augusta, ME 04333

Re: Testimony in Opposition to LD 2132, An Act to Clarify the Right of Appeal Certain Maine Public Utilities Commission Decisions

Dear Senator Lawrence, Representative Zeigler, and Members of the Committee on Energy, Utilities and Technology:

The Maine Water Utilities Association (MWUA) appreciates the opportunity to provide testimony in opposition to LD 2132, which bill proposes to modify the current process for informal adjudication by the Consumer Assistance and Safety Division (CASD) of the Maine Public Utilities Commission (PUC) in two ways: (1) requiring the PUC to conduct a de novo investigation of any CASD decision when requested by a customer or the utility; and (2) allowing for a direct appeal of any such PUC investigation to the Maine Law Court. We believe this proposal will add substantial cost and administrative burden to the utility regulatory process costing ratepayer substantial amounts of money while yielding little if any value.

About MWUA. MWUA is a nonprofit association based in Augusta that provides support for water works professionals throughout the State of Maine in advocating for safe drinking water through educational and technical programming as well as advocacy on the local, state, and national level. The Association was formed in 1925 and counts approximately 109 water utilities in Maine as members.

Discussion. As noted in the summary of LD 2132, this bill is in response to a recent decision of the Maine Law Court in *General Marine Construction v. Maine Public Utilities Commission*, 22ME 20. In that case, a commercial customer of the Portland Water District filed a complaint with the Consumer Assistance and Safety Division (CASD) of the Maine PUC challenging the issuance of a make-up bill. CASD staff conducted an informal investigation of the complaint and determined that the water district had properly issued the make-up bill. The customer appealed the findings of the CASD to the full Commission, which upheld the finding and declined to undertake a formal investigation. The customer then appealed the Commission's decision to the Maine Law Court, claiming that the PUC's refusal to investigate was subject to review by the Court. Ultimately, the Law Court disagreed and dismissed the case, finding that the Commission's refusal to investigate was not "final agency action" subject to appellate review.

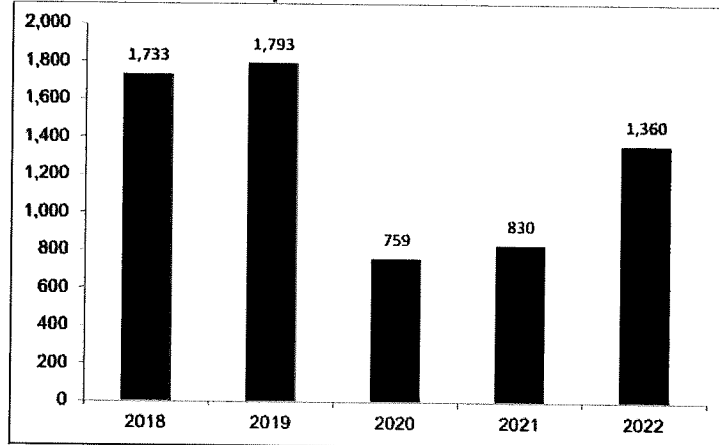
In dismissing the customer's appeal, the Law Court noted an argument made by the Maine PUC that requiring formal adjudication of customer complaints, as argued by the customer, would undermine the purpose of the Commission's current, rapid review process for resolving customer disputes. Stated the Commission:

If the CASD process was a formal adjudication it would not serve the purpose it was created to serve: provide a rapid, inexpensive, low-barrier way for financially distressed customers to keep their lights on, heat their homes, keep water coming out of their taps, and reasonably pay their bills. 22 ME 20 at 8.

LD 2132 proposes to change the current, low-barrier, efficient dispute resolution process by mandating a formal investigation of customer complaints if requested by a customer or utility. If adopted, we would expect the Maine PUC to become tremendously bogged down with time-consuming, costly adjudications that would ultimately be paid for by utility ratepayers.

As noted in the *General Marine* case, the 2020 Annual Report of the Maine PUC indicated that, in 2019, the PUC processed 1,793 CASD complaints. In the COVID-impacted year of 2020, that number declined to 759 complaints. The 2022 Annual Report of the Maine PUC indicated that there were 1,360 complaints filed in 2022. The 2022 Annual Report included a 5-year history of complaints filed.

Chart 6 - Consumer Complaints 2018 – 2022



Importantly, the current complaint resolution process is informal, and efficient. If these complaints required formal adjudication, parties might need legal counsel, would need to engage in formal legal discovery, might need to draft and submit legal briefs, and then engage in oral arguments before the Commission. This would require more members of PUC staff, which is an expense charged to ratepayers. It would also require utilities to pay for staff and other resources to handle these disputes, the cost of which is recoverable in utility rates charged to ratepayers. If the OPA became involved in these disputes, it might require more staff, another expense charged to ratepayers. Finally, if thousands of cases needed to be resolved by the Commission itself, it is hard to imagine the Commission having time to do much else other than hear customer disputes. This would be an unfortunate result for Maine utility consumers, its economy, and its environment.

As a final note, without LD 2132, customers still have another means for formal, legal redress: by filing a complaint in Maine's court system. As the Law Court noted in the *General Marine* case, customers have full access to Maine courts when arguing about their bills or terms of service.

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Conclusion. Our Association and its members care very much about providing affordable water service in a manner that meets the needs of its customers. Our members are local, and high-quality service is extremely important. In the relatively rare instances where customer disputes arise, water utilities work hard to resolve them fairly and efficiently. And in the rarer instance where disputes are not resolved, water utilities participate openly and earnestly in the PUC's informal dispute resolution process. We think this process works well and balances the need for a neutral arbiter of a complaint while at the same time keeping down the cost of the resolution process – which allows utilities, and the Commission itself, to meet the many other needs of customers and stakeholders. LD 2132 is well-intentioned, but if passed, it would overwhelm utility and PUC staff as well as unnecessarily raise the rates of every utility customer in Maine. That would be a poor outcome, and is a key reason we ask the EUT Committee to unanimously vote LD 2132 “ONTP.”

Thank you for your consideration,



Roger Crouse,
Chair, MWUA Legislative & Regulatory Affairs Committee

cc: James I. Cohen, Verrill Dana, LLP, Legislative Counsel