State of Maine
Office of the Public Advocate
112 State House Station, Augusta, Maine 04333-0112
(207) 624-3687 (voice) 711 (TTY)
www.maine.gov/meopa

Janet T. Mills
GOVERNOR

William S. Harwood
PUBLIC ADVOCATE

Testimony Neither For nor Against
LD 2172, "An Act to Enhance Electric Utility Performance-based Ratemaking"
February 6, 2024

Senator Lawrence, Representative Zeigler and distinguished members of the Joint Standing Committee on Energy, Utilities, and Technology,

My name is William Harwood, here today as Public Advocate, to testify neither for nor against LD 2172, "An Act to Enhance Electric Utility Performance-based Ratemaking."

Before I address the specific provisions of the bill, I want to offer a few high-level comments about Performance Base Ratemaking (PBR). The concept has been around for decades but has not been widely adopted. Like many ideas, there are pros and cons to PBR. See, The Simple Analytics of Performance-Based Ratemaking: A Guide for the PBR Regulator, Yale Journal on Regulation (Vol. 13:105, 1996) (PBR is "unlikely to be a panacea for the ills" of traditional ratemaking").

First, like many things "the devil is in the details." For PBR to benefit ratepayers, it is critically important that the specific system of rewards and penalties be carefully worked out. Unfortunately, in too many cases the utilities have better access to critically important financial data as well as the capacity to retain high-priced lawyers and consultants to advocate for it. This creates a risk that a PBR may turn out to be more favorable to utility shareholders than ratepayers.

Second, it is easy to fall into the trap of better service is always better for ratepayers. Utilities can almost always improve service – the question is at what cost. Some experts say that the utilities should never be rewarded for providing service that exceeds the statutory requirement of "safe, reasonable and adequate service." Specifically, utilities should be penalized for falling below this standard but should not be rewarded for exceeding it.

PBR should certainly be part of the PUC's regulatory toolbox. There may well be times where its use may be appropriate. However, I hope this bill is not interpreted to be a mandate to the PUC to start widely using PBR.

Section 1 of the bill adds a provision to the Commission's general ratemaking statute (Title 35-A, section 307) that authorizes the establishment of performance-based metrics and rate adjustment mechanisms. Although the PUC's statutes generally provide such authority to T&D utilities, through Title 35-A, section 3195,[1] the OPA finds this additional language to be a useful, clarification. It should be pointed out that when amending Section 301, the changes apply to all utilities, including gas and water utilities.

Section 2 of the bill[2] requires the Commission, every three years, to initiate a proceeding to evaluate performance-based rate design, including rate adjustment mechanisms and innovative rate designs. Through these proceedings, the Commission is required to establish goals for T&D utility's performance and develop standards and metrics to assess the utility's performance. Regarding rate design, the bill requires the Commission to consider the effectiveness of revenue decoupling, the use of operations and capital expenses as the basis for ratemaking and amounts above the cost of equity based on utility performance.

First, as explained above, the OPA cautions against requiring or even encouraging mechanisms by which utilities are rewarded through higher rates for meeting specified performance metrics. Utilities should not receive a "bonus" for providing a quality of service which they are required to do by law.

Second, it is the Commission's traditional practice to periodically evaluate rate adjustment mechanisms and rate designs (typically in rate case or other investigations).

---

[1] Section 3195 provides the Commission with the authority to adopt multi-year rate plans for T&D utilities that contain rate-adjustment mechanisms based on utility performance.

[2] Codified at 35-A MRSA § 3196.

Moreover, the OPA emphasizes that section 2 of the bill mirrors, to a large degree, the requirements, as well as other minimum service standards provisions, that were enacted into law during the 2022 legislative session through An Act Regarding Utility Accountability and Grid Planning for Maine's Clean Energy Future (Accountability Act).[3] Among its several major provisions, the Accountability Act required the Commission to adopt rules that establish quantitative minimum service standards for: service quality and reliability, customer service, field services, and distributed energy resources interconnection.

As required, the Commission adopted minimum service metrics through Chapter 320 and Chapter 324 of its rules. These service metrics include:

-service reliability which includes limits on the duration of outages and the number of customers that have sustained outages;

-requirements for the amount of time for calls to be answered and limits on call abandonments and blocked calls; and

-limits on the number of erroneous bills and estimated bills.

In the event a utility violates these standards, they are subject to financial penalties. In the most recent CMP and Versant rate proceedings, the Commission enhanced the metrics for service quality and reliability which include financial penalties for not meeting these requirements.[4]

Moreover, the Accountability Act (section 8) also required the Commission to initiate a proceeding once every five years to identify the priorities to be addressed in a grid plan that will assist in the cost-effective transition to a clean, affordable, and reliable electric grid. At the conclusion of the process in which all stakeholders are encouraged to participate, the Commission will issue an order that directs the utility to submit a filing that addresses the priorities identified in the proceeding. On November 1, 2022, the Commission initiated the

[3] PL 2021, ch. 702 (LD 1959).

[4] *Central Maine Power Company, Request for Approval of Distribution Rate Increase and Rate Design Changes*, Docket No. 2022-00152 (June 6, 2023) and *Versant Power, Request for Approval of Rate Change*, Docket No. 2022-00255 (June 5, 2023).

required proceeding to get input from stakeholders to address the establishment of a grid plan.[5] The proceeding is ongoing.

Finally, the Accountability Act (section 7) requires the Commission to periodically review specific action by T&D utilities to address the effects of climate change on its assets needed to transmit electricity to its customers.

Given the specific requirements contained in the Accountability Act and the several proceedings to address those requirements, the OPA questions the need to enact LD 2172 at this time, as emergency legislation. There are limited resources at the Commission, the OPA, and the many persons and organizations that actively participate in proceedings involving utility performance and ratemaking incentives to achieve the State's policies.

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 2172 and will be available for the work session to assist the Committee in its consideration of this bill.

Respectfully submitted,

William S. Harwood

William S. Harwood
Public Advocate

[5] *Proceeding To Identify Priorities for Grid Plan Filings*, Docket No. 2022-00322 (Nov. 1, 2022).