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March 6, 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 Support of LD 2254, An Act to Clarify Permissible Election and Lobbying Expenditures by Consumer-owned Water Utilities*

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 support of LD 2254, which bill proposes to correct some inadvertent errors contained in legislation adopted last year governing political activities by public utilities. Our Association also thanks Senator Lawrence for working so quickly to help get this important after-deadline, emergency legislation introduced and heard before the Legislature.

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.

Background. Last year, the Maine Legislature adopted LD 325 which modified Maine's longstanding policies limiting the ability of public utilities to engage in certain political activities. These longstanding restrictions were further addressed in Chapter 83 of the rules of the Maine PUC. Under these rules, utilities were prohibited from utilizing ratepayer funds for political activities, including campaigns and lobbying activities. However, the rules did not prohibit consumer-owned utilities from utilizing ratepayer funds to engage in lobbying activities or using ratepayer funds to conduct or advertise required local elections for trustees or local referendum questions such bond issues.

Upon the passage of LD 325, the Maine PUC commenced a rulemaking process to implement the requirements of the new law, and during this process, it came to light that the new law was ambiguously drafted and might have the effect of prohibiting consumer-owned utilities from engaging in constitutionally-protected lobbying activities and conducting and advertising required local elections associated with the business of operating a water district. The Maine Water Utilities Association provided comments to the Maine PUC this fall addressing this concern (see attached), and after further discussions earlier this winter with the Commission about this ambiguity, we were advised to seek legislation to address this ambiguity. Hence, the bill that appears before the Committee today.

What does LD 2254 do? LD 2254 makes two changes to current law to address the ambiguities highlight above.

1. **Lobbying activities.** The bill makes clear that consumer-owned water utilities can use ratepayer funds to engage in lobbying activities. As explained in the Association's attached comments to the PUC's rulemaking on this issue, consumer-owned utilities do not have shareholders, and

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therefore cannot draw upon funds other than ratepayer funds in order to engage in lobbying activities. This includes costs associated with having water district employees prepare and deliver testimony before the EUT Committee on bills that impact water utilities, including needed Charter changes. Because such lobbying activities would be conducted by water district employees whose salaries are paid by ratepayer funds, these activities might be prohibited by LD 325. This situation is very different from investor-owned utilities which have shareholders who can separately pay for lobbying activities. Consumer-owned utilities do not have shareholders, and therefore the only way they can engage in speech with the Legislature or Executive Branch regarding legislation is through the utilization of ratepayer funds.

2. **Conducting and advertising local elections.** Consumer-owned utilities in Maine are generally governed by legislatively-created charters, and the governing body of such utilities are often comprised of elected officials. As such, it is common for consumer-owned water utilities to conduct local elections to allow voters to elect trustees or to allow the utility engage in necessary activities such as issuing bonds to finance infrastructure investments. As drafted, it is unclear whether LD 325 would allow consumer-owned utilities to conduct such elections to the extent ratepayer funds would be used to pay for such elections, including the cost of informing the public that an election is taking place. Since consumer-owned utilities do not have access to funds other than funds derived from ratepayers, LD 325 potentially would block such utilities from being able to hold such elections needed to enable the utilities to be governed and to make needed expenditures in their systems.

Conclusion. By approving LD 2254, the Legislature will ensure that consumer-owned water utilities can continue to engage in constitutionally-protected speech before the Legislature, which speech may be defined as “lobbying” when it involves compensation. Passage of the bill also ensures that consumer-owned water utilities can continue to conduct local elections for trustees and required referendum elections such as issuing bonds. For these reasons, we hope the Committee will give LD 2254 unanimous approval.

Thank you for your consideration,



Nicole Pellenz,
Executive Director
Maine Water Utilities Association

cc: Roger Crouse, Chair, MWUA Legislative & Regulatory Affairs Committee
James I. Cohen, Verrill Dana, LLP, Legislative Counsel