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MWUA
MAINE WATER UTILITIES ASSOCIATION
Organized in 1925

February 13, 2025

Honorable Anne Carney, Senate Chair
Honorable Amy Kuhn, House Chair
Joint Legislative Committee On Judiciary
100 State House Station
Augusta, ME 04333

Re: Testimony in Support of LD 251 An Act to Protect the Confidentiality of Information of Individual Customers of a Public Utility

Dear Senator Carney, Representative Kuhn, and Members of the Committee on Judiciary:

The Maine Water Utilities Association (MWUA) appreciates the opportunity to provide testimony in support of LD 251, which excludes from the definition of "public records" in the Freedom of Access Act (FOAA) information pertaining to an individual customer of a public utility that is designated as confidential in rules adopted by the Maine Public Utilities Commission (MPUC). This bill is important to public water utilities to resolve a current conflict in the law where customer information designated as confidential by PUC rule is not specifically exempted from disclosure under FOAA.

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 consists of approximately 86 utility and 60 associate members. Maine's water utilities provide service to approximately 700,000 Maine residents, thousands of Maine businesses and public institutions, and millions of visitors to Maine every year.

Discussion. Consumer-owned water districts as well as municipal water departments are units of government and subject to FOAA. As a result, these public water systems are required to provide documents in their possession in response to requests from members of the public, unless the documents are specifically exempt from disclosure under FOAA or other Maine statutes. At the same time, the longstanding practice and rule of the Maine PUC (Chapter 660) is that information related to specific water utility customers is confidential and may not be disclosed publicly by a water utility. Unfortunately, this rule of the Maine PUC is not codified as a statutory exemption to FOAA, creating uncertainty as to whether utilities in possession of customer-specific information are allowed to maintain the confidentiality of such records in response to a FOAA request. In essence, this conflict of laws requires consumer-owned utilities in Maine to choose between complying with *MPUC Chapter 660 §4 Customer Privacy* or complying with the *FOAA* when in receipt of a FOAA request for customer information.

Several years ago, MWUA asked for a general counsel's opinion from the Maine PUC asking for guidance on how utilities should resolve this apparent conflict in the laws, but clear guidance was not available.

In practical terms, requests for customer-specific information under FOAA are made for different purposes. Some requests, such as from title companies and real estate agents, are routine and allowed under the PUC rule. Others are larger requests from entities looking to mine customer data possessed by public water utilities. The latter is obviously problematic when it comes to ensuring the privacy of customer information. When the PUC has been asked if a utility should provide requested customer data, the response is to deny the request as per Chapter 660 of their rules. However, when the Freedom of Access Act Ombudsman is asked the same question, utilities are given a different answer, namely, that the information must be provided under FOAA. Further confusing the situation is that Chapter 660 of the PUC's rules has a provision prohibiting water utilities from disclosing customer-specific information except in specifically enumerated instances, including where "otherwise authorized by law." This provision provides useful guidance where there is a law "authorizing" the disclosure of documents, but this provision does not provide useful guidance in the case of customer-specific data which is not directly addressed under FOAA. This bill remedies the ambiguity by clearly exempting from FOAA documents containing customer-specific information where the Commission adopts a rule protecting against the disclosure of such information.

Conclusion. Maine's consumer-owned water utilities need clarity when handling Freedom of Access Act requests for customer data. This bill will allow that clarity to be created through rulemaking. We urge the committee to vote LD 251 ought to pass.

Thank you for your consideration,

David Parent,
MWUA Legislative Committee

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