



Testimony In Opposition to LD 301

An Act to Allow the Public Utilities Commission to Establish Performance-based Metrics and Rate-adjustment Mechanisms for a Public Utility in Any Proceeding

March 7, 2024

Senator Lawrence, Representative Sachs, and distinguished members of the committee, my name is James Cote, and I am here on behalf of Versant Power to testify in respectful opposition to LD 301.

Importantly, Versant Power would like to clarify that we are not opposed to the concept of Performance Based Ratemaking (PBR) generally. Versant is willing to engage in a discussion about the potential benefits and costs of a PBR regime in Maine.

However, we believe that if Maine is to pursue implementation of PBR, that, it should do so via a transparent process that includes ample opportunity for stakeholder engagement; that policymakers initiate such a process by clearly identifying the most important outcomes they want to accomplish via PBR; and that PBR be clearly defined from the outset – in line the national understanding of the concept – as including a symmetrical approach (i.e., both incentives and disincentives) to enforcing performance.

LD 301 would authorize the imposition of PBR-like measures prior to the state undergoing a fulsome process to evaluate and design a PRB regime appropriate for Maine. It would also “notwithstanding” all of Title 35-A and the carefully constructed and balanced approach to energy policy contained therein. Title 35-A, which has been developed and refined over many years, includes longstanding customer and regulatory protections that are designed to carefully balance the needs and goals of various parties in the energy ecosystem.

As you are aware, in Maine our usual form of ratemaking is based on the traditional “cost of service” model that allows utilities to recover their prudently incurred costs associated with their statutory obligation to provide safe, reliable and adequate service, as adjudicated by the Maine Public Utilities Commission in extensively litigated rate cases.

At times, the MPUC has also approved the settlement of proposed rate plans that augment traditional cost of service ratemaking with additional components, including so-called “alternative rate plans” (ARPs) that may encompass, for example, multiple rate years, various cost-sharing mechanisms, revenue decoupling mechanisms (RDMs), or service quality indices (SQIs).

Such settlements are carefully constructed and are invariably the result of significant negotiation among the relevant parties, which, at a minimum, include the utility/utilities, MPUC staff, and the Office of the Public Advocate (and frequently include a much broader spectrum of stakeholders). Recognizing that no good compromise fully satisfies any single party, this process nonetheless ensures that each party’s interests are adequately represented. The negotiated settlement process also includes sufficient protections to ensure the outcomes are reasoned and informed and guards against results that are arbitrary or harmful to customers.

Cost-of-service ratemaking is transparent, well understood nationally (allowing for meaningful cross-jurisdictional comparisons) and has proven that it can facilitate the recovery of prudently incurred utility costs and simultaneous accomplishment of other policy goals, allowing utilities to access capital at reasonable rates (which, in turn, directly impacts customer affordability).

That is not to say that Versant Power opposes consideration about true Performance Based Ratemaking (PBR); however, PBR is a fundamentally different approach than cost of service ratemaking with its own set of potential costs and benefits. Its hallmarks are a focus on carefully developed and measured outcomes (a *value* of service rather than a *cost-of-service* model) and a dynamic and symmetrical set of utility incentives and disincentives to achieve these objectives. PBR has been implemented in several jurisdictions after multi-year regulatory proceedings with extensive records, rigorous analyses, and stakeholder participation.

While policymakers and regulators have occasionally considered and discussed PBR over the past decades, Maine has not yet undertaken the type of detailed proceeding necessary to successfully implement a proper PBR regime that would appropriately meet the needs of the utilities, customers, regulators, and other stakeholders. Despite this, LD 301 would grant the MPUC broad authority to impose PBR-like requirements in any proceeding and outside the negotiated settlement process.

We believe that the imposition of metrics (and associated incentives) should come at the conclusion of a process that first carefully evaluates the appropriateness of a PBR regime in Maine; identifies and prioritizes the goals PBR seeks to accomplish; and then implements metrics that are both directly related to those goals and within a utility’s ability to influence.

If well executed, PBR can provide important clarity to utilities about the goals they are expected to accomplish and can align incentives with the efficient accomplishment of such goals. If poorly designed, however, PBR can lead to serious negative consequences, e.g., delay in meeting state policy objectives, inefficient over- or -under-investment in the grid, an unreasonable prioritization or de-prioritization of certain objectives based on misaligned incentives, upward pressure on utility costs or customer rates, etc.

As you know, in Maine, we are not starting with a blank slate. In addition to various metrics, service quality indices, alternative-rate-mechanisms, etc. into which some utilities have voluntarily entered into with the Commission in recent years, Governor Mills' LD 1959 from a recent legislature set in motion the setting and enforcement of certain regulatory requirements that aim to achieve similar goals often pursued by PBR. As the committee considers the path forward with this bill, we ask that significant attention be paid to how it would interface with existing metrics and requirements.

Versant Power is committed to being a constructive participant in these important policy debates and would be pleased to provide any information that may be helpful upon your request.

Thank you for your consideration.