Central Maine Power

An Avangrid company

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Consolidated testimony in opposition to LD 1949 An Act Regarding Energy Fairness

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Central Maine Power presents this testimony in opposition to LD 1949, An Act Regarding Energy Fairness.

Parts A-1 and A-2 of the bill would direct the Maine Public Utilities Commission (Commission) to adopt rules prohibiting utilities from terminating or disconnecting service for nonpayment if the customer or a member of the customer's family is 65 years of age or older, is a dependent or incapacitated adult, has been certified by a medical professional or government authority within the last 12 months of having any medical condition or disability, or is less than one year old, provided that the customer has applied for or is enrolled in an assistance program.

CMP appreciates the intent of these provisions, and we actively participate in existing processes meant to help our neediest customers meet their obligations. For example, the Electric Ratepayer Advisory Council (ERAC) meets regularly to discuss methods for improving the availability and administration of assistance programs such as the Home Energy Assistance Program (HEAP), the Electricity Lifeline Program (ELP), the Arrearage Management Program (AMP), and the Low-Income Heating Assistance Program (LIHEAP). In fact, an ERAC recommendation around providing monthly credits rather than annual lump sum credits is in development and represents the type of thoughtful modifications that are possible to improve assistance programs. We also offer options to certify use of electric medical equipment, a program for customers using oxygen pumps or ventilators to receive additional bill credits, and the option to designate a friend to receive important notices to help with their account. These existing programs, which are designed to help customers manage their bills, make timely payments, and clear arrearages, reflect the broader interest in ensuring that costs are shared equitably.

Unfortunately, this bill would put more pressure on these already-strained programs by creating incentives for individuals to avoid paying their electric bill, resulting in large arrearages and potential shifting of those expenses to other customers, who then face a greater energy burden.

Assistance programs are a part of addressing this challenge, but Chapter 815 of the Commission's rules also requires utilities to send a notice explaining the past due amount, suggesting people apply for assistance, and asking them to contact the utility to talk and see what can be done. In the summer period, this is a disconnection notice. In the winter period, this is a past due reminder notice. While the rules also require utilities to work with customers to attempt to maintain their utility service, these notices are a method of encouraging payment. Disconnection notices, unsurprisingly, are more effective than past due reminder notices. Customers who received a disconnection notice are far more likely to seek and receive help than those who receive only a past-due notice and are also far more likely to make payments than customers who receive a past-due notice.

While this bill presents the concept of issuing past-due notices to customers not making timely payments as method of assistance, we can observe that the existing past-due notice process actually increases the debt burden customers face once the applicable protection expires. This bill would exacerbate that problem by allowing customers to avoid paying their electric bill altogether for potentially significant periods of time. Debt could accrue for years, with no real motivation to pay amounts owed, and no real

possibility for economically disadvantaged customers to catch up.

The eligibility provisions in Part A demonstrate the potential significant impact of this bill. To receive protection from disconnection while not paying for electric service, a person must only self-attest that they meet the conditions of paragraph B. Utilities have no way to validate the ages or capacity of people in a home. Protections apply even if a person wasn't eligible for assistance, meaning every single household with a protected class member could qualify, even if they can afford to pay the bill, with absolutely no verification of need. Although the bill allows for a process to propose disconnection in exceptional circumstances, this again creates additional process and expense, and is burdensome not only to the utilities but also to the CASD. The Sponsor's amendment presented on May 15 does not change CMP's position on these sections of the bill.

Parts A-2 and A-3 of the bill would prohibit a competitive electricity provider (CEP) from enrolling low income customers who received low-income assistance during the 12-month period prior to the contract unless the customer would receive a lower rate compared to the standard offer. CMP does not comment on this provision, but generally respects customer choice regarding enrollment with a CEP or the standard offer.

Part B of the bill would establish certain limitations on rates and associated penalties. As a threshold point, CMP is not entitled to recover any costs or expenses that are not prudently incurred. In order for a cost to be recoverable, CMP must propose it for recovery at the MPUC; and CMP bears the burden of proof to establish it is a recoverable item. Part B of this law, in some of its provisions, strips the utility of the legal right to seek recovery for a cost and it strips the MPUC of the ability to consider the behavior of the utility and assess whether the costs sought for recovery are reasonable and prudent.

Under Maine law, public utilities are entitled to recover their reasonable and prudently incurred rate case expenses. *Millinocket Water v. Maine Pub. Utils. Comm'n*, 515 A.2d 749 (1986). This right comes from the fundamental premise under the Constitution and Supreme Court precedent that utility rates must be sufficient to permit the utility to recover its expenses and to yield a reasonable return on the utility's property used to provide service. Otherwise, the rates are unjust, unreasonable, and confiscatory, and their enforcement would deprive the utility of its property in violation of the Fifth and Fourteenth Amendments of the Constitution.[1]

Paragraph A-1. Fines and penalties. Utilities would not seek the recovery of penalties assessed by the Commission. In no circumstance does CMP expect such costs would have been prudently incurred.

Paragraph C. Lobbying Expenses. Employees already track and account for all lobbying time, and these amounts are not recovered from CMP customers. In addition, Commission rule establishes reporting obligations that require CMP to disclose lobbying work to the MPUC.

Paragraph E. Boards of Directors. CMP opposes the ability to seek recovery of reasonable travel, lodging and food for board directors. These are expenses that are submitted to the MPUC for consideration and must be prudently incurred before recovery is authorized. To legislatively prohibit the utilities right to seek recovery for such costs is confiscatory and contrary to law..

Paragraph F. Investor Relations. Neither Avangrid nor CMP has this function and does not comment.

Paragraph G. Limitation on Rate Proceeding costs. LD 1949's proposed limitation on rate case expenses

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[1] *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923); see also *Camden & Rockland Water Co. v. Maine Pub. Utils, Comm'n*, 432 A.21284 (1981) ("[T]he Commission must set rates that will provide the utility with the opportunity to earn a return sufficient to meet its operating expenses and, by allowing a fair return to its investors, to attract necessary capital at reasonable rates.")

that public utilities may recover in rates is likewise flawed and unnecessary. CMP understands the intent of the limitation to "level the playing field" by permitting a public utility to recover in rates only the amount the Office of Public Advocate ("OPA") incurs in that rate case. However, limiting the rate case expenses a utility may recover to the costs the OPA incurs in a case ignores that the public utility (not the OPA) bears the burden of proof in a rate case and would deny the utility the right to recover prudently incurred expenses necessary to establish just and reasonable rates, contrary to Maine law and the Constitution.

In addition to the points made at the outset regarding CMP's right to seek recovery of prudently incurred costs, under 35-A M.R.S. §§ 310(1) and 1314(2), the public utility bears the burden of proof in all rate cases. This means that the utility must present sufficient evidence to show that the requested rate increase is just and reasonable. In contrast, the OPA's role differs in that it and any other intervening parties do not bear the burden on any issue and instead they question, dispute, support or otherwise comment on the utility's case. In practice, this means that the utility must present more extensive evidence, often from expert witnesses, to which the OPA does not offer opposing expert testimony. For example, in many rate cases, to meet its burden to establish just and reasonable rates, the utility offers a detailed revenue requirement cost of service model with supporting evidence, and expert testimony on the appropriate cost of capital/rate of return, depreciation costs, and working capital expenses. In rate cases that address rate design, the utility also must offer marginal cost of service and embedded cost of service studies prepared by expert witnesses. This evidence is then subject to extensive discovery by the Commission Staff, the OPA, and other parties. In contrast, the OPA typically offers a much less extensive case, which often does include expert testimony on all or any of these points. Instead, the OPA typically questions the utility's proof during discovery and hearings. Limiting the utility's recovery to the costs the OPA incurs in opposing the utility's case accordingly would deny the utility recovery of costs it necessarily incurred to present its case.

Likewise, limiting the recovery of the costs associated with utility employees' attendance, participation, and preparation of a rate case to the costs the OPA incurs would also deny the utility recovery of clearly necessary and reasonable payroll expenses. Because utility rates must be established through rate cases before the Commission, most Maine utilities have personnel responsible as part of their jobs for preparing and presenting rate cases. Often in the regulatory, accounting and legal groups, these employees spend much of their time working on preparing and presenting rate cases or other regulatory proceedings. Their services are necessary for the utility to provide service to customers and to meet its regulatory obligations under Title 35-A and the Commission's rules. Their compensation (salary and benefits) including for time spent working on rate cases is accordingly included in the payroll and benefits amounts in the utility's revenue requirement the Commission uses to set rates. In addition, the utility must rely on various internal subject matter experts (such as managers, engineers, customer service representatives, financial analysts, etc.), to assist in preparing and presenting all aspects of the utility's case. To limit the recovery of the compensation for all of these employees to the costs the OPA incurs in participating in a rate case is unwarranted and confiscatory.

Again, CMP bears the burden of proving the justness and reasonableness of all aspects of its rate request and does so through the analysis, testimony, and support of its employees throughout the case. The OPA has a very different role in a rate case; by statute it is to "review, investigate and make appropriate recommendations" to the Commission on the reasonableness of the utility's requested rate increase.[2] In fulfilling its role, the OPA relies upon one or more of its staff attorneys, consultants, analysts, and assistants to review and comment on the utility's case, during discovery and at the evidentiary hearing before the Commission.

The proposed limitation on the utility's recovery of rate case expenses would also impose an unnecessary, additional burden on the Commission in determining recoverable rate case expenses. Under Chapter 850 of the Commission's rules, the Commission only permits recovery of a utility's requested rate case expenses to the extent it finds such expenses to be reasonable and prudently incurred. In deciding whether a rate case expense is reasonable, the Commission considers the following criteria, among others:

1) the customary fee for similar services, including the fees rendered in the relevant market

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[2] 35-A M.R.S. §§ 1702(1)(A)

to companies of similar size in matters of similar importance to the client; 2) the amount of money at issue; 3) the extent to which the attorney's or expert's services contributed to the presentation of the case; 4) whether the utility used a negotiations or bidding process, or otherwise considered information concerning the availability, experience, quality and cost of outside attorney and expert services when hiring outside attorneys and experts; and 5) the experience and ability of the attorney or expert.[3]

In contrast, LD 1949 would now require the Commission to obtain a detailed monthly breakdown of the costs the OPA incurs participating in the rate case, including the time spent by, and resulting portion of the salaries of, the OPA's staff participating in the case, as well as any expert witnesses the OPA uses for the case, and to compare that breakdown to the monthly costs for the utility's participation in the case including the portion of the utility's employee salaries associated with participating in the case, as well as any attorney's fees and expert witness fees the utility incurs. This inquiry would be burdensome and intrusive and ultimately would result in an outcome that denies the utility recovery of reasonable and prudently incurred expenses contrary to Maine law and the Constitution.

Part C-1 of the bill would establish new reporting requirements around disconnections, the number of customers enrolled in payment plans, and the number of customers in arrears by environmental justice census block groups. These reports would be created at ratepayer expense without a plan to utilize the specific data.

Part C-2 of the bill would require utilities to disclose to customers any "administrative charges" on a customer's bill, as defined by the statute. For the reasons provided below, utilities cannot comply with this section.

First, the definition in this proposed bill would require that utilities disclose to customers information considered proprietary and confidential. For example, the cost of procurement of materials to build an interconnection is accomplished through multi-company bids that leverage the buying power of CMP's parent company, Avangrid to secure qualified goods and services at the lowest cost, which CMP views as a direct benefit to interconnecting customers. The Company's contracts for materials and services are confidential and thus CMP cannot share this information on a customer's bill, as doing so be a breach of contract.

Second, the costs to identify and attribute indirect costs in a direct manner to each project would be arduous, impractical, and costly. These costs are already allocated in accordance with CMP Terms & Conditions section 1.1, where the Commission has approved CMP's use of a set administrative adder. In addition, the Commission evaluates and investigates administrative charges as part of any request for rate change or during CMP's annual reconciliation filings.

CMP opposes subsection 4, which would require utilities to reimburse customers for costs that could not be line-item billed, even though those expenses were incurred by CMP and benefited that customer's interconnection.

CMP offers testimony only on **Part D-5**, which would enact environmental justice requirements for the Public Utilities Commission to implement in executing all of its duties, powers, and regulatory functions.

CMP strongly supports the principle of environmental justice—ensuring that no community bears a disproportionate burden from energy infrastructure and that all communities share in the benefits of the clean energy transition. We are committed to promoting equity and inclusivity in our infrastructure planning and investments, and our integrated grid plan currently in development will include an assessment of its potential environmental, equity, and environmental justice impacts pursuant to law enacted by the Legislature in 2022 and the Commission's July 12, 2024 order on grid plan filings.

Establishing definitions around environmental justice may be useful for both utilities and generation

[3] (65-407 Chapter 850, § 3(B))

developers in evaluating project impacts. As drafted, however, we are concerned that the proposed language would introduce new uncertainty in Commission proceedings that could lead to ambiguity, inconsistent application, and unintended delays for a range of projects and administrative cases.

Section D-5 first establishes a definition of "environmental justice" that includes race, national origin, ability, gender identity, sexual orientation, ancestry, and religion. This definition is not used elsewhere in the section, and these characteristics are also broader than those listed in the definition of "environmental justice population." As a result, it is unclear how the definition of environmental justice should be considered by participants in Commission proceedings, and how or whether the Commission should apply that definition in its work.

Section D-5 also establishes a definition of "environmental justice principles," which references environmental pollution and individuals' ability to live in a clean and healthy environment, which includes meaningful involvement in the development, implementation, and enforcement of environmental laws, rules, regulations and policies, as well as the equitable distribution of energy, health, economic, and environmental benefits and burdens. These are worthy considerations, however, the scope of these principles expands beyond the Commission's authority and expertise, which could lead to uneven application and uncertainty for participants in Commission proceedings. Many of these considerations more aptly describe DEP-jurisdictional matters. Limiting this language to the Commission also has what is perhaps a significant unintended consequence of excluding project siting from review, potentially allowing generation facilities with larger geographic footprints (such as solar facilities) and facilities producing carbon or other harmful emissions (fossil fuel-fired power plants) to locate in census blocks that meet the definition of environmental justice population with no consideration of the requirements of this section.

Finally, Section D-5 implicitly requires the Commission and participants in Commission proceedings to determine whether environmental justice impacts "outweigh" benefits to environmental justice communities and broader public benefits. Many projects, including those improving service reliability or enabling electrification in underserved areas, could be inadvertently delayed or discouraged by uncertainty around how to meet these new requirements. Without clear procedural guidance, these provisions could slow needed investments in clean energy and grid modernization – investments that are critical to achieving both climate goals and long-term equity.

In conclusion, while we oppose Section D-5 as currently drafted, we welcome continued dialogue on how best to incorporate environmental justice into development of our shared energy infrastructure.

Thank you for your consideration.