



May 15, 2025

Testimony on behalf of Central Maine Power Company in opposition to LD 1963, An Act to Protect and Compensate Public Utility Whistleblowers.

Senator Lawrence, Representative Sachs, Members of the Joint Standing Committee on Energy, Utilities, and Technology, my name is Andrew Jacobs, Chief Compliance Officer for Avangrid Networks, Inc., submitting testimony in opposition to LD 1963, An Act to Protect and Compensate Public Utility Whistleblowers. I am providing testimony on the Sponsor's amendment, which was distributed to interested parties yesterday.

The proposed amendment would enact a new section 1316-B within Title 35-A, which would provide for compensation awards to whistleblowers and would require the Commission to establish a separate process by which an individual could provide information to regarding conduct of a public utility.

Maine law already contains two separate avenues for employees to report alleged misconduct within their organizations – regardless of whether the individual is an employee of a public utility or any other business.

First, Maine's Whistleblowers' Protection Act, at 26 MRSA § 831 et. seq., creates a pathway for employees to bring whistleblower claims before the Maine Human Rights Commission. The law prohibits an employer from discharging, threatening, or otherwise discriminating against employees if:

- The employee reports to the employer or public body (including the Commission) what the employee reasonably believes is a violation of law or rule;
- The employee reports to the employer or public body what the employee reasonably believes could risk the employee's or another individual's health or safety;
- The employee is requested to participate in an investigation, hearing or inquiry; or
- The employee has refused to carry out a directive to engage in activity that would be a violation of law or rule or that would expose the employee or any individual to a dangerous condition.

Violations can result in civil penalties, including damages and awards of attorneys fees.

Additionally, Maine has already enacted a utility-specific whistleblower law at 35-A MRSA § 1316. This law expands upon the Whistleblowers' Protection Act by prohibiting retaliation against utility employees, utility contractors, and employees of affiliated interests (in each case the individual may be a former or current employee or contractor) who provide testimony to legislative committees, the Commission, or the Public Advocate. The Commission may impose

penalties for violations. Pursuant to 35-A MRSA § 1316-A, the Commission is also authorized to keep confidential any information provided by a person concerning the affairs of a utility that are reasonably related to a violation of state laws. This law was recently updated in 2022 to expand its core protections.

In addition to these specific state laws, the federal Occupational Safety and Health Administration (OSHA) enforces whistleblower provisions of more than twenty whistleblower statutes, such as the Occupational Safety and Health Act, which protects workers who report safety hazards from retaliation. Utilities are also subject to numerous federal environmental laws – such as the Clean Air Act, Safe Drinking Water Act, Clean Water Act, and Solid Waste Disposal Act, among others – which all contain whistleblower provisions that protect individuals who report violations.

Central Maine Power, Avangrid Networks, and Avangrid already work hard to support employees and our contractors in doing the right thing, including speaking up. I would like to briefly remind the Committee of the compliance program, its successes, and its independence from management and any business pressure.

Avangrid's compliance program describes seven elements of an effective compliance program: (1) written policies, procedures, and standards of conduct; (2) a compliance officer and compliance committee; (3) effective training and education; (4) effective lines of communication; (5) internal monitoring and auditing; (6) enforcing standards through well-publicized disciplinary guidelines; and (7) responding promptly to detected offenses.

The company's compliance program not only meets industry standards but serves as a model in the industry. Avangrid has received recognition for seven consecutive years from Ethisphere as a World's Most Ethical Company. Avangrid also has maintained since 2019 Ethisphere's Compliance Leader Verification recognition, which is awarded after a rigorous third-party evaluation of compliance practices.

Key highlights of CMP's compliance program include:

- The company maintains and enforces a Code of Business Conduct and Ethics.
- Mandatory ethics and compliance trainings, which are refreshed and tracked, including custom Code of Conduct training; training for people managers in a dedicated Code of Conduct module; live co-facilitation of separate leadership training with Avangrid's Human Resources function; and a special mandatory training for people managers on non-retaliation and escalating concerns (developed with outside learning partner LRN).
- A regular cadence of communications designed to reach all employees and engage them in ethics and compliance issues and speak up culture, including in-person interactions and a variety of modalities and channels (e.g., e-mails, a weekly company newsletter, digital signage, helpline posters, social media, roadshow events).
- Maintenance of a whistleblower reporting system available at all times to any member of the public, including the option to report anonymously, with oversight of the functioning of the helpline system by the Compliance Unit.

- An ethics liaison program through which the vast majority of employees have a local representative to receive questions or concerns and supports the activities of the compliance program (such as by running compliance engagement events).

The proof of these efforts is found in the program's published metrics, the Compliance System Transparency Report.¹ It describes contacts received by the program and follow-up, due diligence on third-parties, trainings and communications, and the results of other program activities.

CMP's existing policies encouraging reporting are based on best practices and reflect careful consideration with a focus on removing the barriers that otherwise prevent employees from reporting. While a compensation mechanism like the one proposed in this bill may sound like an intuitive way to incentivize desirable behavior, the elements of these provisions – rules, duties, prohibitions, incentives, monitoring, and punishment – change the reason why people act and create an experiment with untold results.

The limited existing whistleblowing compensation systems – such as the False Claims Act, the IRS whistleblower award program, the Dodd-Frank Act – while still subject to much criticism, have been weighed carefully and contain aspects that are missing here: should a claimant give their company a chance to address the issue; can they violate company policies in making a disclosure (such as taking proprietary information or failing to report concern); will the programs actually increase detection or encourage compliance at companies; does the benefit exceed private and public costs? Even seminal issues that are raised in this legislation – is a claimant who contributed to the misconduct eligible? – are not conclusively addressed (the bill only prohibits payments to whistleblowers actually convicted of a related criminal violation).

The Legislature has taken careful steps to enact complementary whistleblower protection schemes. There is no evidence to support the assumption underlying this bill that people are not reporting information that they would report if there was potential for an award. The Maine Whistleblower Protection Act protects employees who acted in good faith and engaged in protected activity to report potential violations of law or a condition that poses a risk to health or safety.

The Maine Human Rights Act makes it unlawful to discriminate against an employee who has taken part in protected activity under the Maine Whistleblower Protection Act. Employers who violate these laws are at risk of financial liability. Any employee or member of the public that has concerns that a utility has potentially violated the law may raise those concerns with the Maine Public Utilities Commission directly (including through a Complaint to the Consumer Assistance and Safety Division); with the Office of Public Advocate; or through the legal system.

We feel these methods are sufficient to ensure that our employees know their rights and the protections afforded them as well as the remedies guaranteed in existing law and that this legislation is unnecessary. Thank you for your consideration.

¹ Available at: <https://www.avangrid.com/documents/453723/3563322/TRANSPARENCY+REPORT.pdf/047f7832-c449-3818-eb7b-8bbfa5af8208?t=1709313363049>