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PUBLIC UTILITIES COMMISSION

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## Testimony of the Maine Public Utilities Commission

### In Support Of

#### **LD 2038, An Act to Require Maine Transmission and Distribution Utility Participation in a Regional Transmission Organization**

January 22, 2026

Senator Lawrence, Representative Sachs, and Distinguished Members of the Joint Standing Committee on Energy, Utilities, and Technology (Committee), my name is Deirdre Schneider, testifying in support of LD 2038, An Act to Require Maine Transmission and Distribution Utility Participation in a Regional Transmission Organization on behalf of the Public Utilities Commission (Commission).

LD 2038 would require Maine's investor-owned transmission and distribution utilities to participate in a regional transmission organization. Currently, both of Maine's utilities voluntarily participate in ISO-NE.

### Background

Section 219 of the Federal Power Act (FPA) required the Federal Energy Regulatory Commission (FERC) to adopt by rule, incentive-based rate treatments for utilities to promote capital investments in transmission infrastructure to ensure reliability and reduce the cost of delivered power by reducing congestion. The Act specifically directed that the rule provides an incentive to a utility that joins a transmission organization and that incentive would be paid by ratepayers through the transmission rate charged by the utility.

The incentive FERC has approved for participation in a regional transmission organization (RTO) has been typically a 0.5% increase in the utility's approved return on equity. This legislation aims to eliminate that adder by requiring RTO participation. This would provide significant savings to Maine ratepayers.

### Other States

Several states, including Connecticut, have enacted legislation, like LD 2038, which requires utilities to participate in an RTO. As a result of these laws, there have been some legal challenges and in those cases the law was upheld.

The Ninth Circuit held that California's mandate for utility participation in an RTO/ISO was not preempted by federal law, as it did not make compliance with both state and federal law impossible, nor did it frustrate the purposes of the FPA. The court also found that the best reading of Section

219(c) is that the incentive adder is intended to induce voluntary RTO membership, and that an incentive cannot induce conduct that is already legally required. Similarly, the Sixth Circuit also found that an Ohio law requiring participation was not federally preempted. The utilities in this case requested the Supreme Court to overturn the Sixth Circuit decision, but the Supreme Court declined to hear the case.

### **FERC Rulemaking**

In 2021, FERC issued a Notice of Proposed Rulemaking, seeking comments on whether they should keep the adder, but limit its duration to the first three years after a utility joins an RTO. This proposal is still pending and has not been finalized. In June 2025, the Regional State Committees, which represent retail regulators in all four of the FERC-jurisdictional multi-state Regional Transmission Organizations, urged FERC to take action and end the Commission's current policy of granting this incentive in perpetuity or eliminate this incentive outright<sup>1</sup>.

I would be happy to answer any questions or provide additional information for the work session.

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<sup>1</sup> The New England States Committee on Electricity (NESCOE) is included in the Regional State Committees