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February 23, 2021

Honorable Mark Lawrence, Senate Chair
Honorable Seth Berry, House Chair
Joint Legislative Committee on Energy, Utilities and Technology
100 State House Station
Augusta, ME 04333

RE: ***LD 251 An Act Regarding Public Utility Assessments, Fees and Penalties***

Dear Senator Lawrence and Representative Berry:

The Maine Water Utilities Association (MWUA) appreciates the opportunity to provide testimony ***neither for/nor against*** LD 251.

About MWUA. The Maine Water Utilities Association 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 counts approximately 109 water utilities in Maine as members.

Stability in PUC and OPA assessments is critical. As regulated water utilities with rates set in advance by the Maine PUC, our members value stability in their cost structure, including the assessments that our members pay each year to support the activities of the Maine PUC and the Maine Office of Public Advocate. When these fees suddenly go up without advance warning, there is a risk that the revenues our members collect in rates may be insufficient to meet the costs of operating their water systems. This is obviously not good. Additionally, many of our members are small water systems where even minor annual swings in costs can create significant challenges in meeting budget.

2019 and 2020 saw major volatility in PUC and OPA assessments. In 2019 water utilities were surprised to see a sharp increase in the annual assessment which adversely impacted budgets that were established months earlier. In 2020 we saw a relatively high increase in MPUC fees, but OPA fees went up dramatically for some, and down for others. Assessments have been unpredictable and quite honestly appear to be effectively out of control at this point.

LD 251 is more likely to increase assessment volatility. Although we fully support any effort to control and stabilize assessments, we do not believe the mechanism put forth in LD 251 is the right way to go about stabilizing and limiting increases in the future. In particular, by subdividing utilities as between publicly-owned and investor-owned systems, the base over which to spread costs necessarily becomes narrower. In some years, this might reduce costs for publicly-owned systems if there is a particularly large case involving investor-owned water systems, but costs for publicly-owned systems could escalate dramatically in future years when those investor-owned cases go away. So, if a publicly-owned water system sets its rates based on a given year – or years – when fees happen to be low, what happens to the

system when fees go up in future years, after rates have been locked in? The short answer is that water systems may face a shortfall, which challenges operations.

Assessments need to be stabilized. Although this bill as currently written will likely increase rather than decrease the volatility of regulatory assessments for water utilities, we do believe there are solutions, as noted below. We would be happy to expound on any of these concepts and provide data to back them up at the work session.

1. **Three-year rolling average.** Implementing a system whereby the basis of allocating PUC and OPA assessments is based on three-year rolling average would result in less volatile assessments. This is probably the most straight-forward approach to moderating the volatility of assessments.
2. **Regulatory reserve.** Alternatively, a reserve could be created by the PUC and OPA for their operations and used to moderate assessment increases in years the agencies need a significant budget increase.
3. **Advance notice or timing of assessments.** Additionally, the PUC and OPA could adopt a process whereby the invoices for annual assessments could be sent in advance of the water utilities' budget season making it possible to budget for any increase. A related solution might be to send the invoices as usual, but give utilities the option of moving any increase to their next budget year.

Fees and penalties should reflect costs. Currently, fees and penalties are set based on costs or for the purpose of deterrence. Over time, the PUC and the Maine Legislature have the ability to propose and adopt changes in fees and penalties based on these same principles of cost and deterrence. Under LD 251, however, the PUC would be required to submit a bill to the Legislature proposing increases based on the CPI, which may have little to do with costs or principles of deterrence. We strongly disagree with this approach. All increases in fees and penalties should be based on need and well justified.

Reorganization fee. Under Section 5 of the bill, the application fee for a "reorganization" filing would change from an initial filing fee of \$50,000 to a variable initial filing fee of 0.05% of the estimated total value of the "resulting" entity – which we assume is intended to mean the value of the Maine utility. Under this formula, there may or may not be a relationship between the initial fee and the net cost to the Maine PUC associated with processing the case. Although we understand that any excess fees paid by an applicant would be refunded, we think a better approach would be to set the initial filing fee in a manner that approximates the net cost of processing the case.

Conclusion. Again, we appreciate the opportunity to provide information to the Committee on this bill, and if you have questions or need additional information, please do not hesitate to let us know.

Sincerely,

David Parent

David Parent

MWUA Legislative & Regulatory Committee

cc: Bruce Berger, Executive Director
Roger Crouse, Kennebec Water District, Chair, MWUA Legislative Committee
James I. Cohen, Verrill Dana, LLP, Legislative Counsel