



**February 22, 2022**

**Testimony in Opposition**

**LD 1959, An Act To Ensure Transmission and Distribution Utility Accountability**

Central Maine Power Company submits the consolidated testimony of Joseph Purington, President and CEO; Linda Ball, VP Customer Service; and, Adam Desrosiers, VP Electric Operations in respectful opposition to LD 1959 – An Act to Ensure Transmission and Distribution Utility Accountability

**Introduction**

As a general matter, CMP agrees with the premise of LD 1959 that public utilities should be accountable for their actions, including the quality of the service they provide. In this regard, we believe it is appropriate for utilities to be provided clear rules of the road and authority to make needed investments to address system needs. It is also appropriate for utilities to be held accountable if customers are not provided with good service. Our concern with LD 1959 is that it establishes performance standards for transmission and distribution utilities (“T&D utilities”) that do not accurately measure service quality, and we are further concerned that the remedies established by the bill are too severe and may not result in better service for Maine customers in the long run.

Finally, before we address the specific sections of the bill, it is important to note that CMP does, and will continue to, focus on our customers and the quality of our operations. System performance, accurate and timely bills, service quality, storm response, and grid resiliency to confront a changing climate are all at the heart of what we do.

**Section 1 – Minimum Service-Related Requirements**

Section 1 of the bill amends 35-A M.R.S.A. § 301 which specifies the core function of Maine public utilities to “furnish safe, reasonable and adequate facilities and service” at “just and reasonable” rates. More specifically, the bill adds language to Section 301 that mandates the Maine Public Utilities Commission (“Commission” or “PUC”) adopt rules establishing minimum service-related requirements for T&D utilities. The rules must set “specific, quantitative planning and operational standards” that reflect “standard industry practices” and address at least the following operations and activities:

1. Reliability of service;
2. Timeliness and responsiveness to customers requests for information or service;
3. Frequency of customer complaints;
4. Timeliness and accuracy of bills;
5. Responsiveness to requests for interconnection by generators; and
6. Timeliness of restoring service after storms.

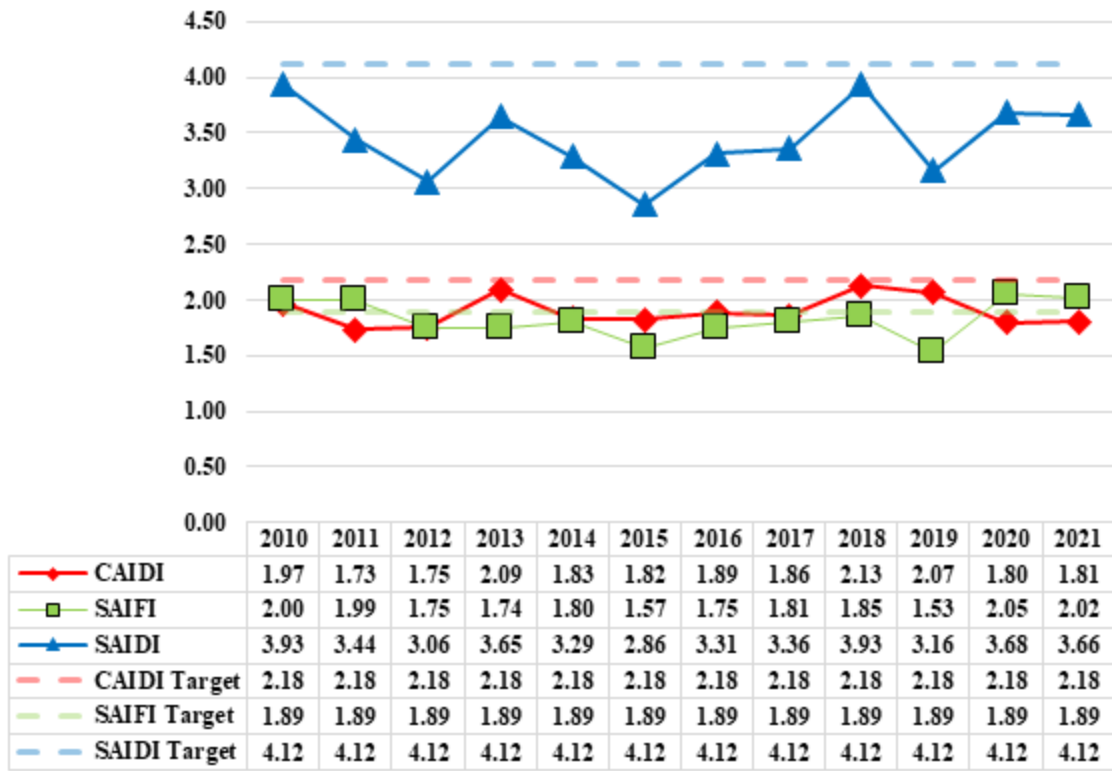
In addition, the section mandates that T&D utilities file with the Commission each calendar quarter “quantifiable data” sufficient for the Commission to calculate and publish a quantitative score for each standard. This Section authorizes the imposition of administrative penalties to enforce this provision.

**CMP track record of customer service improvements.** Before turning to the specific performance indicators in the bill, we wanted to take a moment to address the many steps CMP has taken to meet the needs of our customers and other constituencies. Regarding *interconnection practices*, as is well known, CMP faced an unprecedented increase in requests to interconnect solar PV consequent of legislation passed a few years ago. In both 2019 and 2020, CMP received over 1,200 interconnection applications under the Commission’s Chapter 324 Rule, and over this two-year period CMP received over 600 “Level 4” interconnection projects (2-5 MW each) totaling 2,000 megawatts, which is in excess of CMP’s current peak demand of 1,707 megawatts. Since that time, CMP has worked diligently, both internally and with our customers and stakeholders, to be responsive to developers and efficient in processing the many interconnection requests that have come forward in the past two years. We have improved our processes, added staff, and continue to look for ways to interconnect as many new sites as possible -- all while remaining focused on providing safe and reliable service to our customers. In fact, we have settled outstanding issues with the developers and have a settlement agreement pending approval in front of the PUC.

CMP understands that customer’s reliance on electricity has increased over the past decade and thus, they have higher expectations on reliable service. CMP is investing millions in system improvements to reduce the frequency and duration of outages, to ensure sufficient resources to restore service when outages occur, and to better inform customers about the cause of an outage and the estimated time of restoration of service.

With regard to outage frequency and duration, CMP currently provides an *annual report* to the PUC laying out the service quality, customer complaints and reliability results from the previous year. The Institute of Electrical and Electronics Engineers (“IEEE”) sets the standard for how electric power utilities report their service reliability indices, and the regulatory targets for these indices were set by the PUC in Docket No. 2018-000194. CMP reports the results against these indices in that annual report, the results over the last 12 years are shown in the table below which shows measurements of *customer outage duration* (CAIDI), *system outage duration* (SAIDI), and *system outage frequency* (SAIFI).

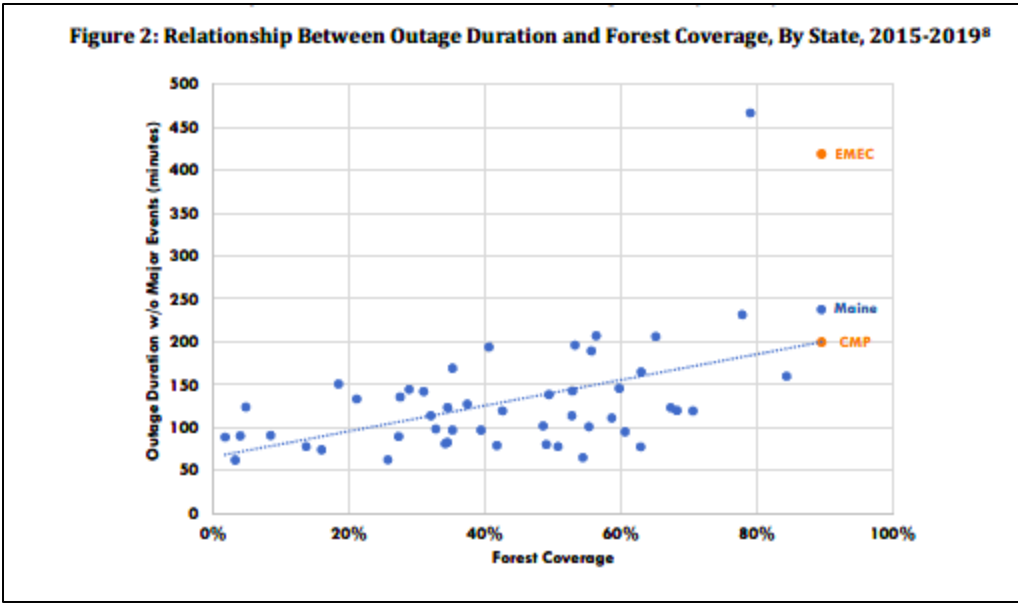
### CMP CAIDI, SAIDI, and SAIFI Trends



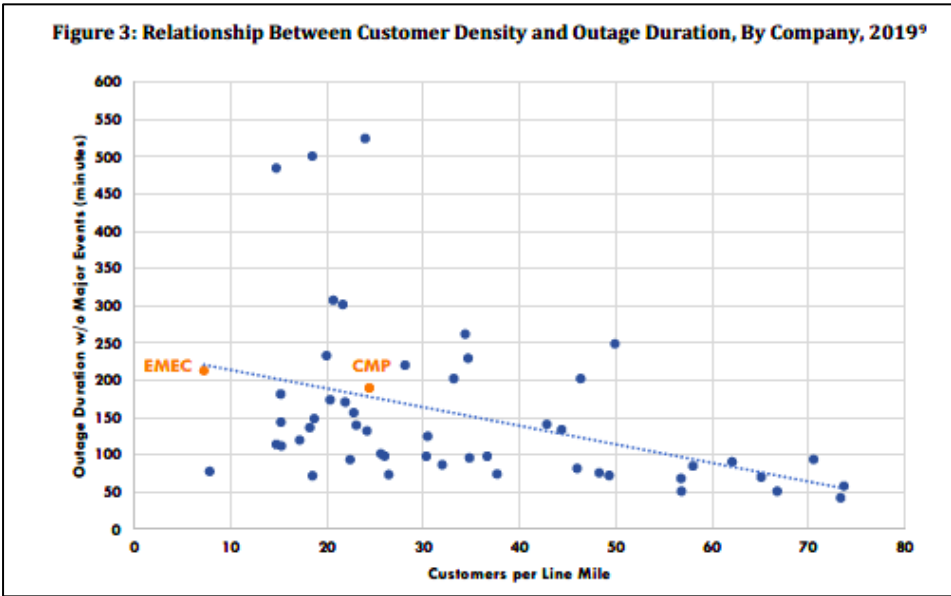
It is notable that CMP has been meeting these industry benchmarks for outage frequency and duration. However, it is important to note that Maine is a very challenging geography to serve, both from the standpoint of physical topography and customer density. In CMP’s territory, nearly 87% of all service outages are caused by trees, and of those outages, 82% of them relate to trees located outside CMP’s right of way. This is not surprising given that Maine is the most forested state in the nation, and trees weighted with ice and snow load are more likely to fall on power lines and cause outage.

Concentric Energy Advisors undertook an analysis of utility reliability performance as a function of state tree cover and found a clear relationship between the two variables.<sup>1</sup>

<sup>1</sup> <https://ceadvisors.com/publication/whitepaper-comparing-the-reliability-of-central-maine-power-to-consumer-owned-utilities/>



Likewise, customer density is an important factor in outage duration, which makes intuitive sense since the more miles of lines a utility maintains relative to its customer base, the greater the likelihood of a problem along a given line – including the likelihood of a tree-related outage. When such an outage does occur, service personnel must travel greater distances to repair the outage, increasing its duration. Concentric Energy Advisors also undertook an analysis of utility customer density as a function of outage duration and found that such a relationship does exist.



In this regard, for relatively sparsely populated utility territories like CMP, outage duration is on average longer than for utility territories that are more densely populated. Continuing this year, and ramping up in coming years, CMP is adding automated devices to modernize its grid. Adding these devices will improve the ability to target the location of outages, isolate outages to the

fewest customers as possible and restore power remotely through centralized, automated switching.

**CMP focus on the customer experience.** Turning back to CMP's efforts around reliability of service, in the last 6 months we have implemented new processes and additional focus on the customer experience related to electric operations. CMP begins each weekday at 8:30 am reviewing every outage from the previous day that affected more than 100 customers. We review the outage response, outage cause, whether the protection equipment operated properly, whether the estimated time of restoration (ETR) was accurately set for the customer, and whether there are additional steps that could be taken to prevent or reduce outages in the future. Also, in an effort to better communicate with and educate customers on the causes of outages, CMP makes a follow up call for all outages impacting 500 or more customers. In the call we explain the cause of the outage and provide the ETR if the power has not yet been restored at the time of the call. Frequently, these outages are caused by items outside of CMP's control like motor vehicle accidents and trees falling from outside CMP's approved trim zone.

It is also important to note that CMP has a very robust and detailed **Emergency Response Plan** that is filed bi-annually with the PUC, or more often as revisions are made. This Plan lays out all activities related to storm response and how we classify different events to determine the anticipated resources needed to adequately respond. As storm frequency and severity continue to change, our approach and response to these storms also must and does continue to evolve. The team at CMP is dedicated and responsive to storms and executes at a high capacity when it comes to restoring customers following a storm event. We have built great relationships with our external stakeholders in storms, including open lines of communications with the Maine Emergency Management Agency (MEMA) and county emergency management agencies (EMAs). These partnerships have proven very successful in making sure our response and priorities align with their needs.

Also, as a requirement of PUC Docket No. 2018-00194, CMP files post-storm event notices for all Tier 2 (incremental restoration costs between \$3.5M and \$15M per event) and Tier 3 (incremental restoration costs greater than \$15M) events; these filings provide a detailed summary of the event and related costs. In addition to the post-storm event notices, CMP files an annual storm report with the Commission.

**Specific concerns with LD 1959 accountability standards.** CMP does not oppose transparency and accountability, and in fact welcomes the intent behind this section of the bill to ensure quality service for all Maine customers. We agree that reliability, responsiveness to customers, bill timeliness and accuracy, interconnections, and storm restoration are essential performance indicators. However, we do not believe that "frequency of customer complaints" is an appropriate measurement for utility performance as discussed below.

Regarding the other five specified areas for performance, robust rulemaking processes administered pursuant to the Maine Administrative Procedures Act should be followed, allowing expert analysis measuring the costs and benefits of any proposed standard. The final standards must be clearly stated, measurable, reasonable, practical, and represent best practices for the industry.

CMP offers the following comments regarding the specific Customer Service metrics in the proposed bill:

***Timeliness and responsiveness*** to customer requests is an important metric, recognized by the industry as a typical performance standard, and is usually defined as Service Level or Average Speed of Answer. In 2021, CMP answered 88% of customer calls within 30 seconds and thus far in 2022, has answered 89% of calls within 30 seconds. CMP has reported its Service Level to the PUC quarterly for the past two years, and CMP supports Service Level as a reasonable measure of customer service performance. While the Company is committed to continuing to meet the metric going forward, it also sees value in exploring the customer experience and expectations in this regard, to determine through the Voice of the Customer what the most appropriate threshold is, and how to best balance the level of service with the cost incurred.

***Timeliness and accuracy of bills*** is important to customers, and CMP has worked hard to consistently achieve this outcome over the past years. In 2020, CMP delivered accurate bills on time to 99.86% of customers, to 99.64% of customers in 2021 and so far in 2022, to 99.87% of customers. CMP supports this metric as a reasonable measure of customer service performance. Despite this metric, we will continue to strive for 100% accuracy.

Additionally, CMP has been achieving and reporting two other Service Quality Indicators (“SQI”) for the past two years, which we believe are also appropriate metrics by which Maine’s T&D utilities should be measured. Call Abandonment Rate measures if customers are able to reach a utility when they call and whether or not customers hang up while waiting for a representative to answer the call. For the past two years, and so far in 2022, more than 99.8% of customers are successfully able to connect with CMP when they call, exceeding the PUC’s benchmark. In addition to managing the ability of customers to reach the Company by phone, CMP also works to facilitate other means of contact, such as the mobile app, online services, an interactive voice response phone system, and electronic billing and payment programs. This allows customers to connect to CMP when they choose to and how they choose to, not confined to simply by phone.

Another appropriate metric is around estimated billing. CMP customers expect to be billed according to their actual usage, based on meter readings which are primarily obtained through CMP’s AMI system, and CMP agrees this is a reasonable expectation. In 2021, CMP customers received bills based on actual meter reads 99.34% of the time. Thus far in 2022, 99.31% of CMP customers have been billed using their actual meter readings. In both years, CMP exceeded the benchmarks established by the PUC.

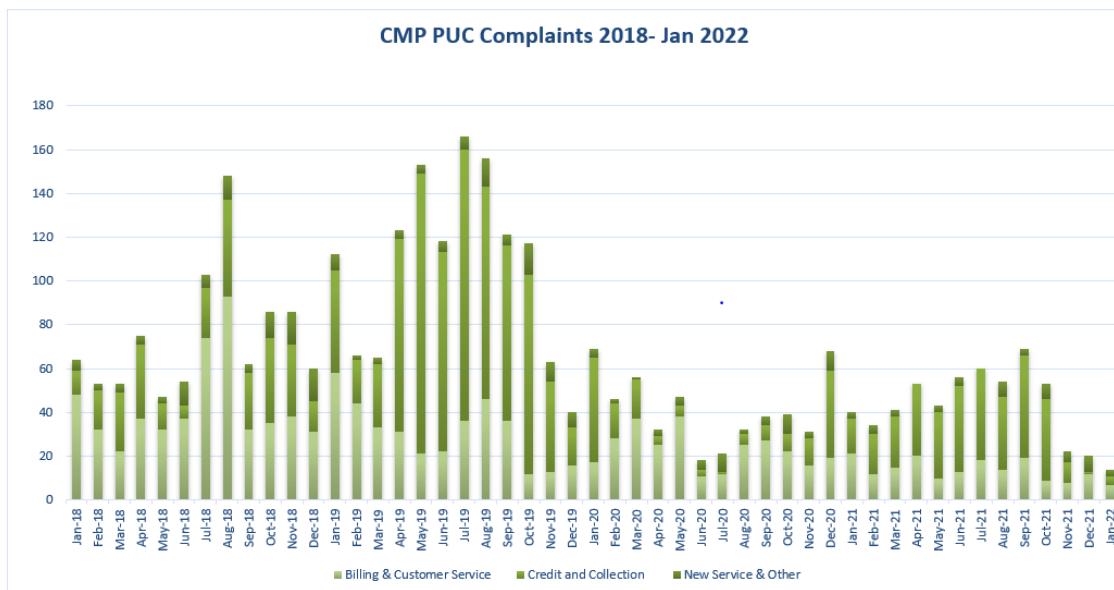
**Frequency of customer complaints not an appropriate metric.** Although CMP supports customer performance metrics, *frequency of customer complaints* is not an industry standard, nor is it an appropriate measurement of utility performance. There is a well-established process for customers to report their complaints to the Commission’s Consumer Assistance and Safety Division (“CASD”). Customers have the right and full opportunity to raise and have complaints heard and addressed by the CASD staff and the Commission itself, and CMP fully supports this process. However, although the complaint process appropriately addresses customer concerns and ensures utility compliance

with regulations and requirements, it does not distinguish between situations where a utility did or did not comply with requirements, whether or not the utility attempted to satisfy the customer’s concern prior to making the complaint, or even whether or not the utility had any control over the cause of the customer’s complaint. In fact, customers are free to make complaints to the Commission even if all appropriate processes were followed and customer protections were provided.

For instance, customers may complain about poles which the Company does not own, high bills as a result of Competitive Electricity Provider (CEP) enrollments or standard offer pricing or weather impacts to their usage, security deposits which were determined in accordance with Commission rules, collections processes when all appropriate customer protections were provided, and many other issues. As a result, utilities should not be judged merely on the basis of how many complaints are made, as the metric is not fully within the utility’s control.

While CMP does not believe that customer complaints are a reasonable metric of utility performance, we do take customer complaints seriously. Each complaint is investigated to determine if any errors were committed by the utility, as well as to identify root causes to drive process improvements. Below is an illustration of CMP customer complaints by month for the past four years, summarized into three main categories, Billing and Customer Service, Credit and Collection, and New Service & Other.

Over the past two years, as CMP has achieved and exceeded the service quality metrics established by the PUC, while customer complaint levels have declined and stabilized, supporting the belief that the metrics are appropriate and correctly target what customers find to be important – namely, timely, accurate billing and the ease with which they can connect with the Company to discuss any needs.



**Recent steps by CMP to improve customer service.** Aside from the specific metrics contemplated in the proposed bill, the following discussion demonstrates CMP's dedication to providing top notch customer service, and the multitude of changes the Company has undertaken in recent years to do so.

In 2021 pursuant to the Company's last rate case, CMP went through an exhaustive and extensive audit of its management structure. The final report published by the Liberty Consulting group noted that CMP has made serious commitments to focus on its customers, had made significant improvements in its customer service functions, and continues to improve in other areas. CMP achieved these improvements through commitments to staffing, including new Maine-based leadership, process improvements, and furthering a customer-first culture, including installing a Customer Champion to ensure customer voices are heard. The success of these changes is evidenced by CMP having exceeded customer service standards for nearly 24 months since they were established by the Commission, which is illustrated in Attachment A to our testimony.

More specifically, CMP has taken the following steps to ensure Maine customers receive the customer service they expect and deserve:

- Created dedicated local Maine positions for customer service functions: Vice President of Customer Service (Linda Ball), Manager of Billing and Revenue Recovery (Mark Morissette), and Compliance Manager (Lisa Biron)
- Appointed an experienced engineer and field manager as the CMP Vice President of Electric Operations (Adam Desrosiers) to manage field operations, reliability investments, and storm preparation and response
- Appointed a "customer champion" – former state Senator Dawn Hill – to be an independent voice advocating for customers
- Added nearly two dozen Augusta contact center representatives and an additional contact center Supervisor position
- Created a Maine-centric Business Support and Solutions group to manage the SmartCare system and interface between business groups and IT
- Created seven New Service Coordinator positions to assist customers with connecting new locations to CMP service
- Created a Maine Community Relations organization dedicated to managing relationships with Maine towns and municipalities and addressing their needs, with local Maine leadership (Amy Marston)
- Created over 20 new field positions
- Introduced a mobile app for customers to streamline billing, payment and outage experiences
- Enhanced online usage services and customer alerts to help customers better understand and manage their energy usage and costs
- Implemented daily customer bill health checks and monthly price validations to ensure billing accuracy



- Revamped customer care contact center quality assurance processes to emphasize high quality customer conversations combined with business accuracy
- Expanded CMP's Low Income Assistance Program, the Electricity Lifeline Program, to significantly expand the program reach to more than 15,000 customers.
- Committed to a more formal customer engagement forum, the Customer Listening Council, that will provide direct and immediate input to the CMP President and management team
- Reached a 3-year contract agreement with our union employees that increases wages, creates new positions, and provides for a new apprentice program
- Invested \$162M in 2020 and \$181 million in 2021 in CMP's distribution network (although rates only considered plant additions worth \$70 million from March 2020 to February 2021). CMP continues with the growth in the investment in its distribution grid with another \$180 million planned for 2022
- Won 3 EEI Awards for storm recovery since 2019
- Completed two-rounds of annual talent management, with emphasis on succession planning, management training, and high-potential development

Importantly, many of these achievements were delivered to CMP customers despite and during the unprecedented COVID-19 pandemic. Throughout the pandemic, CMP worked to protect its employees while simultaneously continuing to deliver excellent customer service. We transitioned large segments of the employee population to work from home, developed new procedures to complete age-old tasks remotely and socially distanced, while continuing to deliver on time and accurate bills, answer customer calls promptly, restore power during storms and other outages, connect new services, all while employees worked at home, schooled their children at home, quarantined, and/or recovered from Covid-19, and still continued to show up for our customers every single day. By contrast, even during the Great Resignation, Customer Care employees continued coming to the office, as distribution dispatch center and energy control center personnel, because they know customers need them and count on them to be here.

Quite simply, CMP is dedicated to providing an excellent experience to our customers, and the positive changes implemented at CMP are here to stay. CMP continues building on the improvements made over the past few years, and fully intends to continue to do so into the future. We are focused on providing excellent customer service in the channels customers desire, improving digital offerings, delivering prompt and accurate customer bills, while enabling the State's policies around initiatives like net energy billing and low income advocacy, and utilizing our AMI network to provide customers with real time usage information by which they can make decisions about their own service.

## **Section 2: Five-Year Financial Audit**

Effective January 15, 2024, section 2 of the bill further amends 35-A M.R.S.A. § 301 to mandate that, in the event the Commission does not make a rate determination for either investor-owned T&D utility for more than 5 years, that utility must provide a report to the Commission comparing the utility's actual costs with the "cost estimates used in the utility's most recent rate case to set rates." Should the Commission then find that there was a difference of more than 10% between

the actual and estimated costs, the Commission may order an audit of the T&D utility and/or disallow cost recovery in the T&D utility's future rate case. This provision is generally consistent with existing law which gives the Commission authority to order an audit of a utility's affairs or to order a utility to commence a rate case in the event there are concerns a utility is over-earning; however, the actual language of the bill is not clearly drafted.

First, the provision's statement that the Commission may disallow cost recovery in the T&D utility's future rate case based on the results of the audit is problematic. The language implies that disallowance would be appropriate simply because of a 10% or more variance between the actual costs and the estimated costs used to set rates, irrespective of whether the actual costs were prudently incurred, or were outside of the utility's control.

Next, the references to actual and estimated costs are ambiguous as it is unclear whether they refer only to O&M costs or include capital investments. Also, several terms are not defined, such as whether the term "estimated costs" refers to those costs offered by the utility or those ultimately used by the Commission in setting rates. Finally, the provision does not specify whether the variance analysis would be performed on a cost-by-cost basis or in the aggregate. This is important, as it is likely that, on a line-by-line basis, certain actual costs will exceed estimated used in setting rates. Reasons for this might include, inflation rates, competitive labor markets, storm frequency and intensity, among other things.

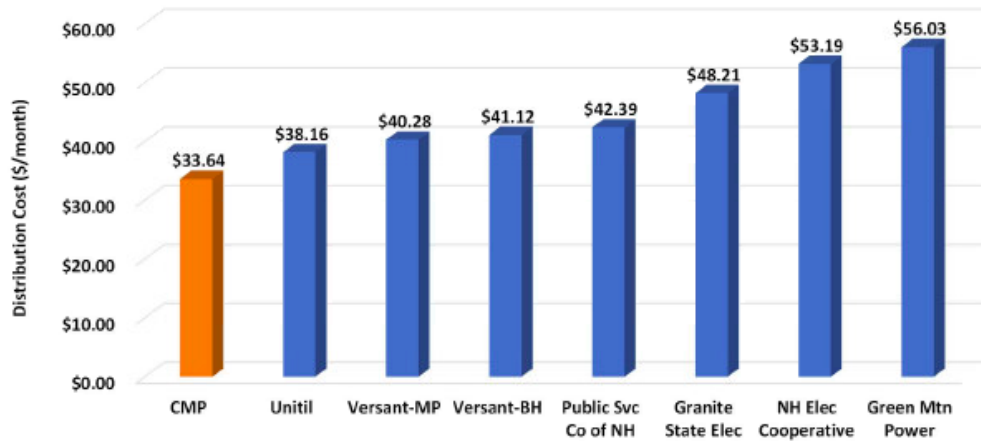
**How CMP delivery rates compare to the region.** CMP works hard to keep its rates just and reasonable as required by state and federal law. To help mitigate rates, CMP benefits from the opportunity to share key services with its parent company Avangrid, including legal, accounting, rates, and other management functions, many of which involve individuals physically located in Maine. Such sharing of services allows economies of scale that keeps costs down. For this and other reasons, CMP actually has lower delivery service costs than comparable utilities in the region,<sup>2</sup> including large rural electric cooperatives in Vermont and New Hampshire which have higher rates.<sup>3</sup>

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<sup>2</sup> <https://ceadvisors.com/publication/whitepaper-comparison-of-electric-rates-in-northern-new-england-by-ownership-model-february-2022/>

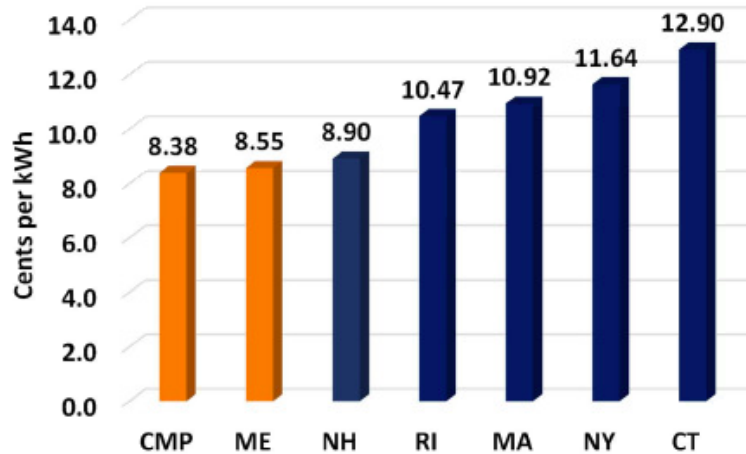
<sup>3</sup> Eastern Maine Electric Cooperative is not included in this list as it is not located in the ISO-NE region, and therefore EMEC is not required to pay the cost of pooled transmission facilities elsewhere in the region. Such regional PTF costs have increases in recent years and were a major reason for CMP's delivery rate increase in 2021

**FIGURE 4: COMPARISON OF RESIDENTIAL ELECTRIC DISTRIBUTION SERVICE COSTS OF UTILITIES IN NORTHERN NEW ENGLAND – ASSUMING RESIDENTIAL CUSTOMER USAGE OF 550 kWh<sup>10</sup>**



Turning from costs to rates, CMP also has lower residential delivery rates when compared to the average rates of the other states in the region, including New York.<sup>4</sup> The figure below is current through February, 2022.

**COMPARISON OF AVERAGE RESIDENTIAL ELECTRIC DELIVERY RATES – PAST 5 YEARS**



As a final note, CMP is keenly aware that electric rates for customers in Maine – and the region – have recently increased substantially due to constraints within the natural gas market. These constraints contributed to significant increases in the supply portion of customer electric bills, which portion is outside the control of CMP. The figure below illustrates the relative change in supply costs for residential customers in CMP’s territory between December 2021 and January 2022:

<sup>4</sup> Note that Vermont is not included in this list as Vermont is the only state in the region that did not restructure its electric industry to separate electric generation from electric distribution, and Vermont rates are bundled rates that make it difficult to determine the portion solely related to delivery.

**Total Monthly Electric Bill  
for 623kwh of Usage in Dec 2021 vs. Jan 2022**



In response to these significant increases, CMP has worked to ensure that customers are aware of tools to help lower their costs, including reducing their electricity usage, understanding their ability to choose their supplier, and programs such as low-income rate assistance. CMP also supported recent efforts by the Mills Administration, the Public Advocate and the PUC to make one-time bill credits available to customers.

### **Section 3: Whistleblower Protections**

This section of the bill amends the existing utility whistleblower law, 35-A M.R.S.A. § 1316, to expand the whistleblower protections to cover former employees of a public utility and current and former employees of the utility’s affiliates, as defined under existing law, and contractors. The section also: (1) protects disclosures to the Public Advocate; (2) narrows the exceptions from protection to proving just false information, rather than information that may harm the utility; (3) limits the award of attorney’s fees to only prevailing employees or contractors, if they go to court to enforce the statute; (4) prohibits a utility from entering into a collective bargaining agreement for the sole purpose of silencing potential whistleblowers; (5) requires utilities to notify its employees, affiliates and contractors of their rights under the statute; and (6) authorizes the PUC to impose administrative penalties in the event a utility violates the statute.

**CMP and Avangrid have a strong commitment to ethical behavior.** CMP and its parent company Avangrid have a strong corporate culture of reporting. The ethics and compliance program at CMP is designed to encourage speaking up and prevent retaliation. The companies have a zero-tolerance policy for retribution against someone who comes forward with an issue. The message to employees is “see something, say something,” and the Compliance team provides multiple internal channels for reporting, including anonymous reporting.

In addition, the [Code of Business and Ethics](#) (the “Code”) followed by CMP and Avangrid establishes a “zero tolerance” policy against retaliation. Likewise, our [Suppliers’ Code of Ethics](#) (the “Suppliers’

Code”) requires that contractors report concerns in good faith and that they not be retaliated against for such reports.<sup>5</sup> Employees who commit retaliation, or who are aware of and fail to report it, are subject to disciplinary action up to and including termination.

The bottom line is that Avangrid and CMP leadership welcome and expect concerns to be raised in good faith by current and former employees and contractors. Such reporting is critical to maintaining and improving the ethical culture of the company.

**Specific concerns with whistleblower changes proposed in LD 1959.** With this background in mind, CMP has several specific concerns about this section. First, with regard to subsection 4, CMP opposes the narrowing of exceptions to employee reporting. Removing these exceptions will create serious risk of inappropriate disclosure of Critical Electric Infrastructure Information (CEII), Personally Identifiable Information (PII), North American Electric Reliability Corporation, Critical Infrastructure Protection (NERC CIP), trade secrets, and other sensitive protected customer information. Also, CMP opposes the provision contained at subsection 6 as it narrows the attorney’s fee provisions to permit the award of such fees only to a prevailing employee; this lack of accountability is not good policy as it eliminates the financial check on employees who might abuse the whistleblower provision.

#### **Section 4: Administrative Penalties**

This section of the bill allows the PUC to impose substantial penalties upon a finding that the utility “otherwise consistently fails to meet a standard.” CMP is concerned that this vaguely-worded provision risks arbitrary oversight and provides little guidance for utilities to achieve compliance.

This section of the bill amends 35-A M.R.S.A. § 1508-A to expand the Commission’s authority to impose administrative penalties of up to \$1 million per violation for a T&D utility’s failure, for 2 consecutive calendar quarters or otherwise consistently, to meet one of the new service-related standards established under the amended version of 35-A M.R.S.A. § 301. The provision also states that each calendar quarter that the T&D utility “fails to meet the standard constitutes a separate offense.”

**LD 1959 misaligns standards with penalties.** CMP objects to the underlying thrust of this provision in that it would provide the Commission with unfettered discretion to impose penalties up to \$1 million for any single failure to meet a service-related standard, with no cap on the total amount of such penalties. The bill provides no guidance on how the Commission should exercise this discretion. Hypothetically, assume that the Commission adopts 15 specific standards, 14 of which were met by a utility. Further, assume that the utility missed the last standard by only a small margin, and for only two consecutive quarters. As drafted, the language of the bill would authorize the Commission to impose up to a \$1 million penalty on the utility. This is a clearly unfair result that illustrates the arbitrary and unreasonable nature of this standard. Such standard also creates incentives for utilities to make unnecessarily costly investments to guarantee compliance, the net effect of which would be higher rates than needed.

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<sup>5</sup> The *Code* and *Suppliers’ Code* are available at [www.avangrid.com](http://www.avangrid.com) > Corporate Governance > Compliance Policies.

Further, the bill provides no opportunity for a utility to explain or for the Commission to consider exceptional circumstances if a metric is missed. For instance, the COVID-19 pandemic has created extraordinary challenges not only for customers but also for utility personnel for more than two years running. While CMP has continued to meet service level metrics thus far, it is certainly conceivable that a significant COVID-19 outbreak amongst staff could negatively impact metrics at the end of one quarter and the beginning of a second, for instance, which could result in the utility missing a metric for two consecutive quarters. Clearly such extenuating circumstances should be considered prior to the imposition of penalties.

Additionally, CMP opposes the triggers for the administrative penalty established in this section. Certainly, we all hope that no utility misses any particular performance metric, for any particular time period. However, it is not proportional to enable the imposition of penalties of up to \$1 million for missing a single metric for two consecutive calendar quarters.

Finally, the term “otherwise consistently fails to meet a standard” is undefined, ambiguous, and does not provide a measurable benchmark against which a utility could plan or invest.

### **Section 5: PUC Ordered Divestiture**

This section bill directs the Commission to initiate an adjudicatory proceeding to determine whether divestiture of a T&D utility is warranted. This remedy is triggered if the utility “consistently fails to meet” the service-related standards established in accordance with the amended Section 301(1-A)(A) discussed above or “is unable to fulfill its statutory duties as a public utility because it is financially impaired.

As we note below, this section as drafted raises serious concerns under the Takings Clauses of the U.S. and Maine Constitutions. The Fifth Amendment of the U.S. Constitution prohibits the taking of private property without just compensation. See U.S. Const. amend V. The Maine Constitution similarly provides that “[p]rivate property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.” Me. Const. art. I, § 21. These Constitutional protections apply with equal force to instances where the State orders the forced sale of private property to a third party. See *Portland Co. v. City of Portland*, 2009 ME 98, ¶¶ 11, 30, 979 A.2d 1279 (engaging in Takings Clause analysis where land parcels were transferred or leased to another private company).

Under LD 1959, neither the trigger for the divestiture of utility property, nor the price to be paid for the taken property, comply with the constitutional requirements of the Takings Clauses.

#### **1. Takings Trigger**

Under the bill, the Commission could order a forced sale of private property upon a mere finding that the utility has “consistently” failed to meet the service-related standards established in accordance with the amended Section 301(1-A)(A). As noted above, however, the bill does not define what this standard means, nor does the bill provide any guidance regarding the level or materiality of any noncompliance or harm to ratepayers that would be necessary to trigger such an extreme remedy. In fact, this standard is so vague that it would permit the Commission to order a forced sale simply because the utility failed to comply with a single service standard in more than

one calendar quarter, regardless of other mitigating facts. Mitigating facts that should be relevant include the financial impact of the noncompliance, whether ratepayers were actually harmed, or whether the cause of the non-compliance related to events within the control of the utility such as extreme weather events.

Additionally, imposing a taking of private property requires a showing that the taking is “necessary.” *Blanchard v. Dep’t of Transp.*, 2002 ME 96, ¶ 27, 798 A.2d 1119. Simple non-compliance does not, of itself, demonstrate the necessity of imposing a penalty of forced sale that takes private property. Under current Maine law, a forced sale is allowed only upon a showing of “public interest” or where a utility has failed to meet its basic obligations of just and reasonable rates and providing safe, adequate, and reliable service.

## **2. Just Compensation**

The forced sale price provisions likewise do not comply with the Takings Clauses of the Maine or US Constitutions. A taking is only permitted if a property owner is provided “just compensation” for the taken property. Any statute authorizing a taking must designate the procedural means to obtain the necessary just compensation. *See Jordan v. Town of Canton*, 265 A.2d 96, 100 (Me. 1970). For the measure of compensation to be “just,” the property owner must be provided the “exact equivalent” of the monetary worth of the value of the property taken. *Orono-Veazie Water Dist. v. Penobscot Water Co.*, 348 A.2d 249, 257 (Me. 1975) (striking down act condemning utility property for failure to provide equivalent money worth); *see also Rangeley Water Co.*, 1997 ME 32, ¶ 18, 691 A.2d 171. The touchstone for just compensation is fair market value. *See Curtis v. Me. State Highway Comm’n*, 203 A.2d 451, 453 (Me. 1966). The owner whose property is subject to a taking is “to be made whole insofar as money can compensate.” *Id.*

As drafted, LD 1959 does not provide for a process that will ensure just compensation and does not require payment of fair market value. The bill instead empowers the PUC to determine in its sole discretion the level of compensation the utility’s owners are to receive for the forced sale of their property, and only calls for a “fair and reasonable purchase price” as determined by the Commission. This measure is not defined in the bill, nor anywhere else in Title 35-A. Nothing in the bill suggests that such a “fair and reasonable purchase price” is intended to represent “fair market value” or “just compensation” as required by the U.S. and Maine Constitutions.

Indeed, read in context, the bill appears to require the Commission to accept a price less than fair market value. The circumstances of any divestiture inherently incentivizes payment at less than fair market value, as the forced sale would not involve a willing seller. *See Curtis*, 203 A.2d at 454 (defining “fair market value” in terms of the price resulting “from fair negotiations, where the seller is willing to sell and the buyer desires to buy”). This dynamic is made worse by the fact that it is the Commission, as opposed to the utility and its owners, that is empowered to conduct the forced sale and select the winning bid.

Even more problematically, the articulated factors governing when the Commission must order divestiture all point to the Commission picking the lowest price bid for the benefit of ratepayers, rather than a bid that ensures that the utility’s owners receive fair market value for the taken property. Specifically, the bill requires the Commission to choose the proposal that results in the

“greatest net benefits to ratepayers,” with no consideration of the interests of the utility’s owners. This conflicts with the fundamental principle of the regulatory compact, namely, that the Commission must consider the interests of both a utility’s ratepayers and its owners when setting rates. See *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (“The rate-making process under the Act, i.e., the fixing of ‘just and reasonable’ rates, involves a balancing of the investor and the consumer interests” (internal citations omitted)); *New England Tel. & Tel. Co. v. Pub. Utils. Comm’n*, 390 A.2d 8 (Me. 1978) (quoting *Hope*). It also sends the clear message to bidders that a bid that confers more benefits on ratepayers will be preferred, even if the bid does not provide the utility’s owner fair market value for the utility. As such, the bill does not guarantee the utility’s owners the exact equivalent of the value of the property taken but instead ensures that they will be paid less than fair market value.

### **Section 6: Climate Change Plan**

CMP supports development of a State plan to assess the vulnerability of state-owned infrastructure to climate change impacts by 2023. By way of background, CMP completed a climate vulnerability assessment for our infrastructure in 2016 through the voluntary Department of Energy Partnership for Energy Sector Climate Resilience. This work included development of a Climate Change Resiliency Plan. CMP has continued to pursue climate resiliency investments since then. More recently, in CMP’s 2018 rate case, the State did not accept CMP’s resiliency proposals for a suite of system-wide incremental climate resiliency investments in system hardening, circuit topology changes, automation, and enhanced vegetation management to make the grid better prepared for the impacts of climate change. Notwithstanding this result, CMP has pursued resiliency investments, including in the Eliot and Jackman areas. CMP looks forward to working with the State and stakeholders through a PUC proceeding to update and improve climate change planning and resiliency investments.

### **Conclusion**

Central Maine Power Company appreciates the Governor’s motivation in putting this bill forward to provide accountability, transparency, tough standards, and consequences for failure. Though we cannot support it as drafted for the reasons we’ve outlined, we remain open to working with the sponsors and the committee to make this legislation better for our customers and our company.