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PUBLIC UTILITIES COMMISSION

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Testimony of the Maine Public Utilities Commission

Neither for Nor Against

LD 1026, An Act To Update the Regulation of Public Utility Monopolies (Sponsor's Amendment)

March 16, 2022

Senator Lawrence, Representative Berry, honorable members of the Joint Standing Committee on Energy, Utilities, and Technology the Maine Public Utilities Commission (Commission) is testifying neither for nor against the sponsor's amendment to LD 1026, An Act To Update the Regulation of Public Utility Monopolies. The Act contains two distinct overall provisions; 1) a major change in the approval requirement for municipal districts or rural electrification cooperatives to take over the assets of investor-owned transmission and distribution (T&D) utilities (sections 3-8); and 2) a change to the calculation of the Net Energy Billing tariff rate for certain projects (sections 9-10).

Municipal Districts and Cooperatives Authorization to Serve (Sections 3-8)

The Commission has serious concerns with these provisions of the Act. Under current law, the Commission may approve a utility expanding into the service territory of an existing utility only upon a declaration, after a public hearing, that the public convenience and necessity require a second public utility.¹ As a general matter, the "public convenience and necessity" requires a finding of public need. In the context of considering a public utility's request to provide service in a second utility's service territory, the Commission, under current law, must find either that the existing utility's service is inadequate or that the second utility's proposed service is not currently provided. Differences in rates alone are not enough to find that an existing utility's service is inadequate. The proposed amendment would make a major change in current law by specifying that if a municipal power district (district) or rural electrification cooperative (cooperative) is formed according to statute and with Commission approval² it may, after paying just compensation, acquire the property of the investor-owned transmission and distribution (T&D) utility and furnish service in what was the investor-owned T&D utility's territory.

The sponsor's amendment removes the ability for the Commission to truly evaluate if this is in the best interest of the public. For example, under the sponsor's amendment, the Commission is not required to determine if the district or cooperative has the financial and technical expertise to operate a T&D utility. The Commission notes that LD 695, An Act To Allow Municipal Utility Expansion under Certain Circumstances, which was heard in this committee last session, specified that this transfer of ownership

¹ Title 35-A, [section 2105](#)

² The law specifies that cooperatives formed under Title 35-A, chapter 37 require the authorization of the commission to transmit, sell, supply or dispose of electric energy to any member of the cooperative. For districts, the law specifies under Title 35-A, chapter 39 that upon certification of a favorable vote by the municipal officers, the commission shall approve formation of the district if the commission finds that formation would be in conformance with the requirements of chapter 39, which simply specifies the process by which a district is formed.

could only happen with a determination by the Commission that there would be no net harm to other ratepayers associated with the loss of customers by the investor-owned T&D utility for which the district or cooperative is taking ownership of the existing utility's property.

Furthermore, the Commission notes that many of the State's energy policy requirements apply only to investor-owned transmission and distribution (T&D) utilities, such as net energy billing and renewable energy procurement programs. Thus, the costs of these programs (e.g., above-market contract costs) are paid for by the ratepayers of only the investor-owned T&D utilities. Thus, if current customers of an investor-owned utility become customers of a district or cooperative, the remaining customers of the existing investor-owned T&D utility would pay for the lost revenue. It would appear that just compensation in this amended bill only applies to the property of the investor-owned utility; therefore the lost revenues associated with State mandated energy programs could not be recovered from the district or cooperative, which would result in the remaining ratepayers of the investor-owned T&D having to cover those lost revenues. The Commission questions whether it is equitable to allow that cost shift without any Commission oversight regarding whether the takeover of the investor-owned T&D's territory is truly in the public interest.

NEB Tariff Rate (Sections 9 and 10)

These sections of the sponsor's amendment are related to net energy billing. Section 9 specifies that if the entity developing a distributed generation resource greater than one megawatt does not certify by sworn affidavit with accompanying documentation to the Commission that certain activities will be undertaken then that entity will receive a tariff rate that is calculated using the standard offer service rate in effect on December 31, 2020, instead of a tariff rate that changes with the standard offer rate for each year. This change would reduce the potential volatility in pricing and limit ratepayer's exposure to higher supply rates. The Commission would like some clarity regarding the expectations related to the receipt of the sworn affidavit. It is unclear from the language, if the Commission simply receives the affidavit from the entity developing the distributed generation resource or if the Commission is required to confirm the information is accurate and that all requirements are met or will be met. Finally, regardless of whether the Commission is simply receiving the affidavits or confirming the affidavit is accurate, the Commission requests that the Committee consider more clarity for what is meant by "physical work of a significant nature."

Lastly, the Commission appreciates the changes proposed in sections 1 and 2 of the amendment as it provides greater consistency in the statute.

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

Sincerely,



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Maine Public Utilities Commission

cc: Lindsay Laxon, Legislative Analyst