CENTRAL MAINE POWER

March 16, 2022

Carlisle Tuggey, General Counsel

Testifying: In Opposition

LD 1026, An Act To Update the Regulation of Public Utility Monopolies

Senator Lawrence, Representative Berry, Members of the Joint Standing Committee on Energy, Utilities, and Technology my name is Carlisle Tuggey. I am a resident of the Town of Cumberland and General Counsel for Central Maine Power Company, presenting testimony in opposition to LD 1026, An Act To Update the Regulation of Public Utility Monopolies, as amended by the Sponsor Amendment submitted on March 15, 2022.

CMP's opposition is based on the fact that this bill would allow for the unconstitutional takings of CMP's franchise rights and CMP's physical property. Unlike prior "public power" bills which would result in a one-time taking of all of CMP's property, LD 1026 would authorize such takings on a municipality-by-municipality basis. While the process for the takings is different, the legal analysis is not. This legal analysis is set forth in the attached testimony provided with respect to LD 1708 – An Act to Create the Pine Tree Power Company. As with LD 1708, LD 1026 violates the Takings Clauses of the U.S. and Maine Constitutions. Likewise, LD 1026 suffers from a number of other constitutional flaws. It implicates numerous provisions of the U.S. and Maine Constitutions, including the Due Process Clause, the Equal Protection Clause, the Contracts Clause, and the Commerce Clause, all as explained in the attached testimony regarding LD 1708.

Of note, the bills references that "just compensation" shall be paid for any utility property which is required to be transferred to a new municipal electric district. Just compensation in terms of constitutional interpretation would require that the price paid would need to include the market value of the assets, including the value of the franchise, going concern value, and severance damages; that is, the damages to the remaining system from the excision of the seized assets.

The compensation would also have to ensure that the seizure did not increase the rates of the remaining ratepayers serviced by the utility whose assets have been seized. So, for example, if a portion of CMP's transmission and distribution lines were required to be transferred to a small municipality, and if as a result, the rates for CMP's many remaining ratepayers would go up, the

cost of that rate increase to all those remaining customers would have to be borne by the potentially few residents of that small community.[1]

Perhaps most importantly, the bill does not require there to be any public necessity for the required transfer of property - the taking would be authorized whenever the government, acting through the electorate, chooses, on whatever basis it wants, or none at all. Hence, the bill fails on this basis - its text on its face allows seizures without any public necessity. To allow seizure of public property whenever the public desires violates this fundamental premise of the Maine Constitution.

Aside from constitutional issues, LD 1026 eliminates the requirement under Sections 2102 and 2105 of a finding of public convenience and necessity before a utility can be authorized to provide service within a municipality. Currently Sections 2102 and 2105 require all utilities to obtain MPUC approval before being authorized to provide service in a municipality where another utility is serving—this allows the MPUC to monitor the public interest of ratepayers statewide.

Passage of this legislation would change forever the systematic development of efficient electric infrastructure because utilities would no longer be secure in their reliance on franchise service areas. Knowing which areas they will serve allows utilities to plan for growth by making long term plans, including financing plans, to build electric infrastructure, including transmission connections, substations, and primary circuits based on the certainty that they will continue serving in an area in the future. Infrastructure is not built based on town boundaries, but on service territory boundaries. This bill provides no assurance for the utilities and their customers to continue investing in Maine's electric infrastructure.

In addition, this bill inexplicably ties the concept of utility municipalization to changes in the payment structure and eligibility requirements for tariff rate net energy billing. The only nexus between these two issues is the question of what will happen to customers participating in net energy billing in a municipality which chooses to take over the assets of the incumbent investor-owned transmission and distribution utility. This is one issue that would certainly need to be clarified.

Also, Chapter 313 of the MPUC rules provide that an eligible facility located in a service territory of a consumer-owned transmission and distribution utility must have an installed capacity of 100 kW or less unless the consumer-owned transmission and distribution utility elects to allow facilities with an installed capacity of up to less than 5 MW. Customers in municipally owned electric districts will undoubtedly have less opportunity to participate in net energy billing arrangements.

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[1] See Letter from Marjorie R. McLaughlin, Legislative Liaison, Maine Public Utilities Commission, to Sen. Norman K. Ferguson and Rep. William R. Savage, Joint Standing Committee on Utilities and Energy (March 22, 2001) (explaining that the payments would have to include, among other things, contribution to stranded generation costs, other fixed costs, and "any increased costs to the remaining CMP ratepayers that may result from the loss of customers in a dense area who are less expensive to service and therefore lower the averaged rates to all customers." Such a bill, the liaison noted, would need to guarantee holding "harmless" the remaining ratepayers of the utility whose property was seized.

Another example from Chapter 313 is that consumer-owned transmission and distribution utilities are not required to provide shared financial interest net energy billing arrangements. If they do permit such arrangements, they are allowed to limit such arrangements to a total of 10 meters, while investor-owned transmission and distribution utilities are required to accommodate an unlimited number of participants in a shared financial interest arrangement.

With respect to the proposed changes to the tariff rate program, CMP is neither for nor against the proposed changes. However, CMP would recommend that certain issues be clarified, such as:

- Sworn affidavits and accompanying documentation regarding the satisfaction of requirements should be sent to both the MPUC and the applicable transmission and distribution utility. Having the project sponsors provide the utilities with copies of such documentation will ensure that we are in a position to administer this legislation, if passed.
- The meaning of "collocated" should be clarified. Under ISO-NE rules, a net energy billing facility cannot be a load reducer and have their full generation reported to ISO-NE. For facilities participating in the Tariff Rate program, any behind the meter generation would be participating in kWh netting and the excess generation delivered to the retail delivery point could potentially be reported to ISO for settlement in the wholesale energy market. If collated means that the generating facility is in the same proximity as 50% percent of the load, then as long as the generation is separately metered from the load and not treated as behind the meter generation, the total output of the facility would qualify for the tariff rate credits and the gross generation and gross load of the collated customer would be reported to ISO for settlement purposes.

We will have counsel available for your work session to answer any questions you may have.

Thank you for your consideration of our comments.