

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 22, 2019

To: Joint Standing Committee on Energy, Utilities and Technology

From: Lucia Nixon, Legislative Analyst

Re: LD 1646, An Act To Restore Local Ownership and Control of Maine's Power Delivery Systems (Berry)

BILL SUMMARY

This bill creates the Maine Power Delivery Authority as a consumer-owned utility to acquire and operate all transmission and distribution systems in the State currently operated by the investor-owned transmission and distribution utilities: Central Maine Power Company and Emera Maine. The specific provisions of the bill are as follows:

Sec. 1: Establishes the Maine Power Delivery Authority Board in Title 5

Sec. 2-3: Amends the definition of “consumer-owned transmission and distribution utility” in Title 35-A section 3501 to include the Maine Power Delivery Authority.

Sec. 4: Enacts Title 35-A Chapter 40 – Maine Power Delivery Authority

Section 4001 – Definitions

Section 4002 – Authority Established

- Maine Power Delivery Authority is established “to provide for its consumer-owners in this State reliable electric transmission and distribution services at the lowest possible cost”
- Created as a Public Instrumentality of the State
- **Governance:** It is governed by the MPDA Board, composed of 10 members appointed by the Governor and confirmed by the Legislature
 - The 10 members are to be appointed as follows:
 - 5 from the service territory of the largest IOU as of 1/1/2000
 - 2 from the service territory of the 2nd largest IOU as of 1/1/2000
 - 1 from the service territory of the 3rd largest IOU as of 1/1/2000
 - 1 proposed by an organization representing COUs
 - 1 proposed by an organization representing labor
 - 1 member must be a Residential Consumer; 1 member must represent a Commercial Consumer; 1 member must represent an Industrial Consumer
 - No more than 5 members may be from the same political party
 - **Term of Office:** Board members serve 6 year terms; terms are staggered; members may be reappointed
 - **Voting** – all decisions of the board must be made by a majority vote of the board

Section 4003 – Powers and Duties

1. General Powers: Authority is a COU and has all the powers and duties of an T&D under Title 35-A within the service territories of the IOUs whose utility facilities it acquires

2. Limits/Generation: Authority may not own or operating a generating source or purchase capacity or energy from a generator, except as PUC may approve to maintain/improve reliability

3. Operations: Operations and administrative services of the Authority are provided by a “qualified nongovernmental entity” selected by the Authority through a competitive solicitation; operated by private contractor

4. Employees:

- the employees of the contractor are considered private employees
- the contractor is required to hire any person who was an employee of the IOU at the time the authority acquired the IOU who is a “qualified, nonexempt employee subject to collective bargaining agreements of the acquired IOU, to the extent of the contractor’s need for personnel to provide sound operation”
- contractor shall retain these employees for 5 years after beginning operations; if otherwise qualified may not be terminated as a result of 5 year period expiring
- contractor required to honor terms of collective bargaining agreements in effect at time of acquisition, except when 2+ contracts exist they must be made reasonably equal to the higher values or exceed what was paid by IOU
- when contracting for services of operation, the authority is required to give preference to providers who agree to maintain or improve terms of collective bargaining agreement in effect

5. Acquisition of Utility Property

- Within 1 year of appointment of first board, the authority is required to purchase all utility facilities in the State owned or operated or held for future use by an IOU (except board can extend this period by 12 months)
- Board is required to finance the purchase by issuing debt
- Amount paid: the authority shall pay the reported “net book value” of the utility facilities and utility property, unless the authority and the franchisee mutually agree on a different amount
- Appeal: a final decision of the authority to offer a price for utility facilities and utility property may be appealed to the Law Court (see comments from Judicial Branch)
- Eminent domain: If final purchase not accomplished within 1 year of appointment of first board, or 12 months after extension by the board, the authority may take utility facilities and property by eminent domain

6. Regional transmission

- Service territories of the authority remain in the transmission system to which they belonged on effective date, until changed by majority vote of the board

7. Name: can adopt alternative or abbreviated name

8. Treatment of COUS/Application of law:

- This law may not be construed to affect powers, authorities, responsibilities of any COU existing on effective date or created after that date
- Authority may not oppose the extension of the service territory of a COU to include the entirety of a municipality in which the COU provides service as long as the authority is reasonably compensated for assets/appurtenances
- Notwithstanding any other provisions of this law, the authority is subject to:
 - Section 3104 – Schedule of regular meter readings required
 - Section 3210-C – Long-Term Contracts / subsections 3, 7, 11 - Commission may direct the Authority to enter into long-term contracts for capacity resources, associated energy, RECs, etc; utility shall sell resources, energy or recs purchased as directed by PUC; enter contracts as agents for customers and only when in best interest of customers
 - Section 3212 – Standard Offer
 - Section 3212-A – Green Power Options
 - Section 3214, sub 2-A – Needs based low-income assistance, Arrearage Management Program

Section 4004 – Rates

- Rates must be sufficient to pay the “cost of service” (see definition page 1), including the cost of debt and any payments in lieu of taxation
- No debt or liability of the authority is a debt or liability of the State or any agency or instrumentality of the State other than the authority
- Neither the State nor any agency or instrumentality of the State other than the authority, guarantees the authority’s debt/liabilities

Section 4005 – Tax-exempt; payments in lieu of taxes

1. Tax exemptions

- Property exempt -- Authority is a “public municipal corporation” under Title 36, section 651, and property of the authority is exempt from taxation

§651. Public property

The following public property is exempt from taxation:

- D. The property of any public municipal corporation of this State appropriated to public uses, if located within the corporate limits and confines of such public municipal corporation;
- Income exempt – income of the Authority, as a public instrumentality, is exempt from all taxation or assessment by the State or any political subdivision of the State
- Indebtedness / legal obligation – all bonds and notes issued by the Authority are legal obligations of the Authority;
- Debt liability – the authority is a “quasi-municipal corporation” for the purpose of Title 30-A section 5701:

§5701. Debt liability

The personal property of the residents and the real estate within the boundaries of a municipality, village corporation or other quasi-municipal corporation may be taken to pay any debt due from the body corporate. The owner of property taken under this section may recover from the municipality or quasi-municipal corporation under Title 14, section 4953.

- Tax exemption – provides that bonds and notes issued by the Authority are exempt from State income tax

2. Payment in lieu of taxes

- The rates charged by the Authority must be sufficient to provide for payments in lieu of taxes
- *To the extent the Authority's revenues exceed current expenditures and necessary reserves*, the Authority shall make payments in lieu taxes on property or facilities to any municipality, county or other political subdivision in which the IOU paid taxes, in the same amount that would have been paid by the IOU
- Specific requirements for payment in lieu of taxes to the State for FY2019-20 and FY2020-21 (monthly payment for each month of ownership)

Section 4006 – Governmental Function

- As a public instrumentality, the authority performs a governmental function; however no debt or liability of the authority is a debt or liability of the state

Section 4007 – Termination of Authority

- May not be dissolved or cease operations except by authorization of law and only if all debt and liabilities have been paid (or sufficient amount put into trust)

Section 4008 – Accountability, transparency and reporting

- Subject to same standards of governmental review and freedom of access as the PUC
- Annual report to EUT committee by April 15 of each year

Sec. 5: Requires the PUC to examine all laws that may be affected by this Act, including laws governing the Authority and laws relating to IOUs. PUC to determine necessary/appropriate modifications to laws and submit proposed legislation to the EUT committee by January 15, 2020. EUT committee has authority to report out a bill to 2nd Regular Session related to this Act.

INFORMATION REQUESTED FOR WORK SESSION

1. From Deb Hart / Dirigo Electric: (a) How COUs neither for nor against would feel about being absorbed into a single Maine Power Authority? (Rep. Foster) (b) Any information from Nebraska that would be relevant? (Rep. Berry)

2. From Dick Rogers / IBEW: Would your employees support being brought into the Maine State Employees Association? (Rep. Foster)

NOTES & ISSUES

1. Significant volume of testimony on all sides
 - Proponents – will provide accountability, reliability and affordability in electricity service
 - Opponents – significant legal challenges
 - Neither for Nor Against – recommend further study

2. Issues raised by committee members at hearing:
 - Valuation of CMP and Emera Maine; what would the Authority pay for CMP and Emera; issues relating to “just compensation”
 - Why not include current COUs as part of the Authority
 - Reliability of COU vs. IOU
 - How have public power authorities been created in other jurisdictions?
 - Prospects of litigation and associated expenses
 - Whether existing service territories of CMP and Emera Maine should continue under the Authority
 - Impact on bond rating

3. Issues Raised by State Agencies testifying Neither For Nor Against
 - A. Administrative Office of the Courts / Judicial Branch:
 - Page 4, lines 17-19 under 35-A section 4003, subsection 5, paragraph B
 - Provides that a final decision of the Authority may be appealed directly to the Law Court
 - Judicial Branch requests that this be addressed; decisions should be appealed to the Superior Court not the Law Court – significant issues presented if challenges were to bypass the Superior Court

 - B. Office of the State Treasurer
 - Ensure the bill is clear that indebtedness of the Authority is not a “general or moral obligation of the State”
 - Caution the committee that tax status of bonds issued by the Authority would be determined by use of the bond proceeds (the bill declares that bonds issued by the Authority are tax exempt); there is a specific prohibition on tax-exempt financing for acquisition of existing transmission assets

 - C. Public Utilities Commission
 - *Valuation of the CMP/Emera assets*; issues with use of “net book value”; likelihood of litigation and issues regarding a “taking” if IOU and Authority do not agree on price; issues regarding potential length of litigation and uncertainty
 - *Financing mechanisms and costs* – cost of financing is unknown; “non-recourse” as the State does not backstop the debt; consolidating CMP and Emera may result in costs savings and may strand or increase costs; costs of the nongovernmental contractor are unknown and could exceed IOU current costs; prudence review as a regulatory tool does not appear applicable; also ratemaking tools that currently apply to the IOUs

- *State and Local Taxes:* An IOU pays various state and local taxes, including state sales and income tax and local property tax; implications for state and local tax revenue; some provision for payment in lieu of taxes but the bill requires those only to extent funds are available
- *Long-term contracting:* the bill has conflicting provisions regarding the Authority's ability to enter into long-term contracts; see section 4003, subsection 2 (may not purchase capacity or energy from a generator) and section 4003, subsection 8 (authority subject to long-term contracting provision of 3210-C)

D. Public Advocate

- Notes that the bill allows for a statewide power district but does not amend or repeal title 35-A chapter 39 "Municipal Electric District Enabling Act"; should address what happens to chapter 39
- Bill allows for creating of statewide district without need to obtain approval from the PUC; limited regulation of the Authority by the PUC
- Governing board of authority must have experience/training in the complex matters involved in providing electricity (financial, accounting, engineering, energy)
- Strength of COUs flows from small size and local nature; the Authority will not have those benefits
- Need for feasibility study

E. Governor's Energy Office

- Nothing should be undertaken without a full and robust review of what could arise with the policies proposed in the bill
- Need to develop full understanding of the potential risks, costs and opportunities before proceeding

3. Recommendations for further study before proceeding

- One theme in the testimony, particularly in the Neither for Nor Against category, was a recommendation for comprehensive investigation and analysis of the concepts presented in LD 1646 as the appropriate next step.
- Recommended by: Governor's Energy Office, Office of the Public Advocate, ReEnergy, Maine Renewable Energy Association, Two Lights Energy Advisors, Industrial Energy Consumers Group (IECG) and IECG members,

FISCAL IMPACT

- Not yet available
- Potential implications for State Tax Revenue

PUBLIC HEARING TESTIMONY:

<p><u>In Support:</u> <i>Rep. Berry, Sen. Moore</i> <i>John Clark, former manager of HWC</i> <i>Tobey Williamson, Rockland</i> <i>Gordon Weil, Harpswell</i> <i>Fortunat Mueller, Revision Energy</i> <i>Kristy Pottle, CMP Ratepayers Unite</i> <i>Susan Lubnar, Bath</i> <i>Dawson Julia, South China</i> <i>Sue Inches, N. Yarmouth</i> <i>Staci Coomer, Maine Climate Action</i> <i>Robert Wasserstrom, Camden</i> <i>Rev. Darien Sawyer, Jackman</i> <i>Paul Kando, Midcoast Green Collaborative</i> <i>Brandy Staples, Phippsburg</i> <i>Elery Keene, Winslow</i> <i>Sue Ely, NRCM</i> <i>Alice Elliott, Sierra Club</i></p>	<p><u>In Opposition:</u> <i>Jim Cohen, Emera Maine</i> <i>Ed Bearor/Rudman Winchell, Emera Maine</i> <i>Eric Stinneford, Vice President, CMP</i> <i>Carlisle Tuggey, CMP</i> <i>Jared des Rosiers, CMP</i> <i>Catherine Connors, CMP</i> <i>David Flanagan, former CEO of CMP</i> <i>Ben Gilman, Maine State Chamber of Commerce</i> <i>Ashley Pringle, Maine & Co.</i> <i>Bruce Metrick, Cianbro</i> <i>Jeffrey Ellison, Swan's Island</i> <i>Arielle Silver Karsh, Bangor (Emera employee)</i> <i>Philip Smith, Winterport (Emera employee)</i> <i>Janet Scully, Plymouth (Emera employee)</i> <i>Tim Pease, Hampden</i></p>
<p><u>Neither for Nor Against</u> <i>Barry Hobbins, Public Advocate; Henry Beck, State Treasurer; Angela Monroe, Governor's Energy Office</i> <i>Dick Rogers, IBEW; Tony Buxton, IECG; David Barber, Barber Foods; Paul Serbent, Huhtamaki; Michael Peters, Messer</i></p>	

(note: significant volume of additional testimony also submitted on-line)