

SENATE

JOHN J. CLEVELAND, District 15, Chair
TROY D. JACKSON, District 35
EDWARD M. YOUNGBLOOD, District 31

JEAN GUZZETTI, Legislative Analyst
CASSIE NIXON, Committee Clerk



HOUSE

BARRY J. HOBBS, Saco, Chair
ROBERTA B. BEAVERS, South Berwick
DIANE RUSSELL, Portland
SARA GIDEON, Freeport
DEANE RYKERSON, Kittery
RYAN D. TIPPING-SPITZ, Orono
LARRY C. DUNPHY, Embden
AARON F. LIBBY, Waterboro
LANCE E. HARVELL, Farmington
MELVIN NEWENDYKE, Litchfield

State of Maine
ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE
COMMITTEE ON ENERGY, UTILITIES AND TECHNOLOGY

February 20, 2014

Senator Emily Ann Cain, Senate Chair
Representative Chuck Kruger, House Chair
Government Oversight Committee

Re: Input on Matters Pertaining to the PUC

Dear Senator Cain and Representative Kruger:

Thank you for the letter sent regarding the Office of Program Evaluation and Government Accountability (OPEGA) investigation into the Public Utilities Commission (PUC). We appreciate the time that Director Ashcroft took to present pertinent and valuable background information to the members of the Energy, Utilities and Technology Committee.

In the letter, you requested input on the six recommendations directed to the PUC in the OPEGA report, potential options for addressing the risk of perceived bias regarding the commissioners at the PUC and a number of other concerns that were outside of the scope of the OPEGA report but were raised through public comment before your committee. You requested that we answer three specific questions related to all of the matters presented. They were:

1. Whether the EUT Committee anticipates addressing any of these matters in bills pending before EUT in the Second Session of the 126th Legislature;
2. whether any of these matters are also concerning to EUT, and if so, what actions EUT feels would be appropriate to address them; and
3. whether it would be helpful for the Government Oversight Committee (GOC) to provide a vehicle, in the form of a bill, to allow EUT to propose action, as warranted, on any or all of those matters.

In response to the first question, the only bill pending before the committee that addresses any of the matters raised is LD 1619 *An Act to Amend the Law Governing Conflicts of Interest with Respect to the Public Utilities Commission*. This bill seeks to provide a mechanism for assigning a temporary commissioner in the case that two commissioners have recused themselves due to conflict of interest. We considered the 4 recommendations to address perceived bias and would not

recommend taking action on them. While we understand the risk of perceived bias, we believe it is important to maintain the independent role of the commissioners to weigh evidence and make an unbiased decision. We are concerned that any requirement that certain interests be represented on the commission, that commissioners have certain qualifications or that creates independent advocates within the commission could compromise the commission's independent quasi-judicial role. Further, we have not identified a sufficient benefit to justify the cost of increasing the number of commissioners at the PUC.

In response to the second question, a number of the matters raised in your letter were concerning to members of the EUT Committee. We are very aware of the debate related to the PUC's consideration of health and safety issues and of the pending case at the commission regarding the health and safety of smart meters. Reflecting upon a recent Law Court decision that is based on existing statute, we believe the PUC has been adequately directed to consider health issues related to the safety of services provided by utilities and so do not recommend clarifications to law at this time.

Regarding the other matters outlined in the letter, we are impressed with the depth of the work by OPEGA in developing the recommendations in the report and in providing additional information presented through public comment. Likewise, we are impressed with the PUC's response, which was attached to the letter sent to our committee. Our understanding is that OPEGA will continue to monitor the PUC's progress in addressing its action items. At this time, the committee is satisfied these matters will be sufficiently addressed, and we hope that you will notify us if OPEGA determines otherwise.

In response to the third question regarding a vehicle for legislation, the committee discussed and found value to the proposal for an ombudsman position, or ratepayer advisor, at the Office of Public Advocate, which would require legislation to create. Upon further discussions with the Public Advocate, we were informed that his office may be able to temporarily fund the position until the end of the next fiscal year. We are interested in pursuing this option, at least as a pilot project, and so request that the GOC provide a vehicle for legislation. We hope that Director Ashcroft will contact our committee analyst, Jean Guzzetti to discuss the details.

Thank you for sharing the results of the OPEGA study with our committee and for asking for our input on these important issues.

Sincerely,


John J. Cleveland
Senate Chair


Barry J. Hobbins
House Chair

c: Members of Energy, Utilities and Technology Committee
Paulina Collins, Legislative Liaison, Maine Public Utilities Commission
Beth Ashcroft, Director, OPEGA