



Report on the Activities of the Commission Pursuant to Public Law 2021, chapter 681 (Tribal-State Collaboration)

Submitted to the Joint Standing Committee on
Energy, Utilities and Technology

January 10, 2025

Maine Public Utilities Commission
18 State House Station,
Augusta, ME 04333

Background

Beginning January 10, 2023, then biennially thereafter, [Public Law 2021, chapter 681](#) (Act) requires the Public Utilities Commission (Commission) to file a report with the Joint Standing Committee on Energy, Utilities and Technology and the Maine Indian Tribal-State Commission (MITSC) on the activities of the Commission pursuant to the Act. Specifically, [5 M.R.S. § 11055\(2\)](#) requires the report to include the following:

- A copy of the current policy adopted and implemented by the Commission pursuant to [5 M.R.S. § 11053](#);
- The name and contact information of the tribal liaison designated by the Commission pursuant to 5 M.R.S. § 11053(3);
- A description of training provided pursuant to [5 M.R.S. § 11054](#);
- A statement of programs, rules or services known at the time of the report, that the Commission intends to adopt, amend or provide in the coming reporting period that substantially and uniquely affect Indian tribes or tribal members;
- A summary of tribal collaboration activities the Commission has engaged in; and
- Any recommendations for improving the effectiveness of the Act, including recommendations regarding other Commission actions for which it may be appropriate to require collaboration under the Act.

Policy

Attached to this report is the policy adopted by the Commission on January 4, 2023, as required by 5 M.R.S. § 11053. The development of this policy was initiated by the Governor's Office and a draft version of this policy was sent to the MITSC as well as to each Tribe for input. Edits were made to the draft policy based on comments received.

Tribal Liaison

The Tribal liaison for the Commission is Jody McColman, Director of Telephone and Water Utility Industries, who can be reached at 207-287-1365, or by email at jordan.d.mccolman@maine.gov.

Training

On November 20, 2024, the Governor's Office provided training on how to implement the statute in a manner that promotes effective communication and positive government-to-government relations with the Tribes.

Commission Activities

There are few, if any rules or Commission activities that substantially and uniquely affect the Indian tribes or tribal members; however, the Commission intends to seek input on certain

matters regardless of whether they are determined to substantially or uniquely affect the Indian tribes or tribal members. The Commission solicited input from tribes in the following matters¹:

- Initiation of a rulemaking for Chapter 815, Consumer Protection Standards for Electric and Gas Transmission and Distribution Utilities (MPUC Docket No. 2023-00025).
- Versant Power request for a rate increase (MPUC Docket No. 2023-00336).
- CMP request for approval of an annual compliance filing (MPUC Docket No. 2024-00014).

Additionally, the Commission intends to solicit input for any rulemaking that impacts consumer-owned water utilities that serve tribal lands.

Recommendations

Currently, the Commission has no recommendations for changes to the statutes.

¹ In Docket No. 2024-00373, the Commission received a request for an advisory ruling from the Indian Township Tribal Government. If any proceeding is initiated as a result of this request, the Commission intends to notify all Tribes.

MAINE PUBLIC UTILITIES COMMISSION

POLICY FOR IMPLEMENTING THE TRIBAL-STATE COLLABORATION ACT

This policy governs the implementation of the *Tribal-State Collaboration Act*, 5 M.R.S. §§ 11051 *et seq* for the Maine Public Utilities Commission (Commission). The purpose of the Act is to promote respectful, government-to-government dialogue, and improve communication between state agencies and the Houlton Band of Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation. Commission staff should interpret and apply the provisions of the law consistent with this purpose. The Act should be administered in a way that is practical, user-friendly, and efficient. The Commission's goal is to ensure the Tribes are afforded a reasonable opportunity to be heard – in addition to the public process – during the development of programs, rules and services that substantially and uniquely affect them or their citizens, while minimizing administrative burdens for both state and tribal staff. This policy incorporates *Tribal-State Collaboration Agency Guidance* of November 29, 2022, which is attached and incorporated herein.

I. Collaboration Required

Commission staff shall engage in tribal collaboration regarding a contemplated program, rule or service that substantially and uniquely affects an Indian Tribe or its members. In determining whether a contemplated action triggers the need for collaboration, staff should consider whether it will have a meaningful and significant impact on an Indian Tribe or its members that is distinct from the general population. This will always be a subjective determination, and should be informed by the Act's purpose of improving communication between the State and the Tribes. When in doubt, the Commission should consider whether some initial, informal communication with potentially affected Tribes would assist in making this determination. If the standard for collaboration is not met, but some communication with one or more Tribes would nonetheless be beneficial, the Commission should ensure that appropriate communication occurs. Decisions about whether and how to engage in collaboration should not be formalistic, but should be driven by common sense and good judgment. The overarching goal is to increase and improve communication with the Tribes, rather than technical compliance with the Act for its own sake.

A. The Process of Collaboration

The Act requires that the Commission provide the Tribes with written notice of the contemplated action, allow the Tribes a reasonable

opportunity to provide information, advice and opinions on the contemplated action, and consider the comments it receives.

1. **Notice (sub-§ 11053(1)(D)(1)).** Once the determination has been made that collaboration is appropriate, the tribal liaison or hearing officer should email the point of contact that each of the four Tribes has provided for the purpose of collaboration. Emails to tribal contacts should explain that the Commission is initiating the collaboration process, provide a description of the proposed action, identify the date within which comments are requested, and offer to answer any questions.
2. **Opportunity to Comment (sub-§ 11053(1)(D)(2)).** The schedule should take into account the nature of the proposed action, its relative complexity, the magnitude of its impact, the relative urgency to act, and other factors. The schedule may be extended or truncated as appropriate, depending on the level of interest the Tribes may express. Comments may be submitted in writing, or provided orally in a meeting or via teleconference. The comment period and the manner in which information is exchanged should be flexible to accommodate the needs of tribal and Commission staff, and to promote efficiency and good communication. The Commission must use reasonable efforts to complete the process before taking final action.
3. **Consideration of Comments (sub-§ 11053(1)(D)(3)).** The Commission must consider in good faith the information, advice, and opinions it receives from the Tribes in the course of collaboration. The Commission is not required to provide a written response to submissions it receives from the Tribes, but it may choose to provide feedback, including informally, in the interests of respectful dialogue. The Commission should include any written materials received or generated in the collaboration process in the record of its decision-making. To the extent the Tribes provide comments orally, the Commission should prepare a memorandum summarizing those comments for its record.
4. **Collaboration in Rulemaking (sub-§§ 11053(1)(D) & (D)(4)).** In the context of rulemaking, the Commission must engage in collaboration consistent with applicable provisions of the Administrative Procedures Act, 5 M.R.S. §§ 8051 *et seq.* (APA), as well as the Tribal-State Collaboration Act, 5 M.R.S. §§ 11051 *et seq.* The Commission should use reasonable efforts to complete collaboration before formal publication of a proposed rule pursuant to 5 M.R.S. § 8053(5).

Completing collaboration before publication of a proposed rule will also avoid procedural confusion that could arise from collaboration occurring at the same time as the public notice and comment process under the APA. If it is necessary to engage in collaboration following publication of the proposed rule, the Commission should work closely with the Attorney General's Office to ensure compliance with both statutes.

In the context of emergency rulemaking pursuant to 5 M.R.S. § 8054, the Commission must provide notice and engage in collaboration to the extent practicable.

Informing Agency Staff (sub-§ 11053(1)(E)). The tribal liaison shall promote awareness of the Tribal-State Collaboration Act and this policy within the Commission by conspicuously posting this policy on the Commission's website and ensuring appropriate references are made to the policy in Commission employment manuals and training materials.

Approval Signature:



Printed Name:

Philip L. Bartlett II, Chair

Date:

6/4/22