



State of Maine
Office of the Public Advocate
112 State House Station, Augusta, Maine 04333-0112
(207) 287-2445 (voice) 711 (TTY) www.Maine.gov/meopa

Paul R. LePage
GOVERNOR

Timothy R. Schneider
PUBLIC ADVOCATE

March 24, 2015

Office of the Public Advocate Testimony in SUPPORT of LD 357 "Resolve, To Study Options for a State Demand Response Program"

Senator Woodsome, Representative Dion, members of the Energy, Utilities and Technology Committee,

The Office of the Public Advocate testifies in support of LD 357, a “Resolve to Study Options for a State Demand Response Program.” The bill offers a prudent first step in ensuring that the state is prepared in the event that recent court decisions require it to undertake its own demand response program to preserve the benefits of demand response for consumers.

Demand response is, put simply, a reduction in demand for electricity from the power system, such as by using energy-efficient equipment, shutting off equipment, or using electricity generated on site. To the electric system, these reductions in demand are largely interchangeable with increases in generation. The ability to deliver these reductions at specified times, such as during periods of peak demand, offer a host of savings to consumers in the form of lower energy, capacity and even environmental costs.

Regulators and stakeholders have hotly debated how to appropriately pay customers for these demand reductions in a manner consistent with wholesale electricity markets, such as those that serve ISO New England. FERC’s Order 745 found that demand response resources must be paid the same as supply side resources, and directed the operators of the wholesale markets to put in place rules that would allow these resources parity in the energy, capacity and reserve markets. Representatives of generators, among others, appealed FERC’s decision, arguing that because demand response involves payments to retail

customers (who are reducing their load), they were subject to state jurisdiction, and Order 745 was beyond FERC's jurisdiction. In May 2014 the DC Circuit agreed, and vacated FERC Order 745. FERC has appealed the decision to the Supreme Court, which has yet to grant certiorari.

It is important for Maine to consider how it might retain the consumer benefits of demand response if the Supreme Court either declines certiorari, or takes the case and rules that the ISO-administered demand response programs approved by FERC are not within FERC's jurisdiction. If that happens, demand response will be deemed to be within state jurisdiction, and Maine will need to understand its options.

However, the circumstances present something of a moving target. We will not know if the Supreme Court will grant certiorari until late spring or early summer, and if certiorari is granted, the Court will not issue a decision until late spring/early summer of 2016. The outcome of this petition could make any proposed state program moot or urgently necessary.

The other New England states, through the New England States Committee on Electricity (NESCOE) are also working on this problem, and Maine's efforts should coordinate with NESCOE's. It will also be important to monitor ISO New England's parallel efforts to study this issue, which are currently part of its 2015 Work Plan.

Thus while we believe it is valuable for Maine to study how it might implement a state level demand response program, we believe some thought should be given to how best to coordinate the need for a plan with both the appeal timeline and other regional efforts. We look forward to the feedback from other stakeholders and the Committee as to how best to accomplish this.

We offer a few additional observations on the bill:

- The Office of the Public Advocate should be included in the listed entities to be consulted in conducting the proposed study

- The bill contemplates the opportunity for public comment to be overseen by the Efficiency Maine Trust. The Public Utilities Commission has existing infrastructure and processes for receiving and making available feedback from stakeholders, and it should be possible to find a way to use these.
- It may be prudent to provide some additional clarity on the exact objectives the Trust’s proposed demand response program should achieve—the current bill states only that the program should “produce electricity consumer and electrical grid benefits.” For example, the Legislature could require that the programs be compatible with the regional wholesale markets and, to the extent possible, the efforts of other New England states.

The Office of the Public Advocate looks forward to working with the Committee on LD 357, and will be present at the work session to assist the Committee in its consideration of this bill.

Respectfully submitted,



Timothy R. Schneider
Public Advocate