



April 28, 2015

Office of the Public Advocate Testimony on LD 1315 “An Act to Amend Maine's Restructuring Laws”

Chairman Dion, Chairman Woodsome and Members of the Energy, Utilities and Technology Committee,

The Office of the Public Advocate testifies in **opposition** to LD 1315, An Act to Amend Maine’s Restructuring Laws. The bill revises to 35-A M.R.S. § 3204 to give the Commission the authority to determine whether an investor-owned T&D utility can own, control or have a financial interest in generation, and impose such conditions as it sees fit. In effect, the bill would grant an administrative agency the authority to disassemble a core tenet of restructuring on a case by case basis with minimal legislative guidance or oversight.

Any changes to Section 3204 should be incremental, well-defined, and undertaken after careful study. Ownership, control or financial interest by a T&D utility should only be permitted if it would provide an affirmative benefit to ratepayers. As currently drafted, the bill includes no such safeguards.

Key Points

- We generally oppose efforts to allow T&D utilities to own, control or have a financial interest in generation.
- The bill’s grant of discretion to the Commission is overbroad, and would allow the Commission, if it chose, to disassemble this core tenet of restructuring.
- Customers could benefit from a clear, uniform standard for what types of financial interests in generation are permissible, and clear authority for the Commission to impose the conditions it deems necessary.
- Whatever course the Committee pursues, it should tread carefully, and ensure that any changes provide an affirmative benefit to electricity customers.

Background

This provision of Title 35-A has been subject to intense scrutiny over the past three years, at the Public Utilities Commission and then the Law Court, as a result of the proposed joint venture between First Wind and Emera, Inc, the parent company of Emera Maine.

This litigation involved the question of whether ownership of generation by an affiliate of a Maine T&D utility was an unlawful financial interest in generation under Section 3204.¹

In its 2014 decision overturning the PUC's approval, with conditions, of that affiliation, the Law Court concluded that Section 3204 permits a T&D utility to have an affiliation or financial interest in generation or generation-related assets, under certain conditions.² It stated:

a T&D utility has a prohibited 'financial interest' in generation assets or generation-related assets pursuant to section 3204(5) if there exists a sufficient financial interest in the assets of a generator that the interest is likely to produce incentives for favoritism that would undermine the purpose of the Act.³

As a practical matter, this left the Commission with the task of determining whether or not an affiliation produces incentives for favoritism toward affiliated generators.

On remand, the Commission concluded that the affiliation, subject to Commission-imposed conditions, would not produce incentives for favoritism, and once again approved the Emera/First Wind joint venture. The business relationship at issue has since been dissolved, but Houlton Water Company and the Industrial Energy Consumers Group

¹ Emera Maine was not seeking to own or operate generation. Section 3204 bars a utility from owning generation except in certain limited circumstances. We note that the bill would repeal the existing law, §3204(6), that allows limited ownership of generation by utilities when necessary for the utility to manage its grid in an efficient manner. This has not been a controversial element of the Restructuring Act and should not be repealed, as it allows for the location of generation by the utility (with Commission approval) in areas where there would otherwise be the need for expensive transmission lines. However, the bill could accomplish the same outcome through the broad grant of Commission discretion.

² *[Cite]* at ¶ 36.

³ *Id.* at ¶ 35.

appealed the Commission's decision to the Law Court, where the parties recently completed briefing.

In the meantime, the Commission has since taken up the review of an agreement between Central Maine Power Company and its affiliate, Atlantic Wind LLC. Both share a common owner, Iberdrola S.A. The Commission has opened a parallel proceeding to review CMP's relationships with affiliated generators in light of the Law Court's decision.

Current law is unclear as to what types of relationships between T&D utilities and generation are permissible.

At present, there is no clear way to know in advance what sort of relationships between T&D utilities and generators are permissible under Section 3204.⁴ Under current law, some could be, some could not, and it will require a costly and time consuming case-by-case adjudication in each instance that implicates Section 3204. If past experience is any guide, a Commission decision will result in one (or more) appeals to the Law Court. This is not good for anyone, with the possible exception of the parties' outside counsel.

Customers could benefit from the Legislature establishing a clear, uniform standard for what types of financial interests in generation are permissible, and clear authority for the Commission to impose the conditions it deems necessary. One benefit of the bill is that it provides the Commission clear authority to impose conditions on any affiliation, an issue that is currently before the Law Court. Clearly defined standards will give T&D utilities, their parent companies, and both affiliated and non-affiliated generators the certainty needed to undertake investments in generation in Maine. The vast majority of these proposed investments are "price taking" resources that will lower Maine's wholesale electricity prices. And in general, more generators lead to more competition between generators, and better outcomes for customers.

In establishing such a standard, it may be appropriate to revisit the prohibitions in existing law. As we observed in our brief on remand, much has changed since Section 3204 was enacted. FERC and the region have established and refined measures that mitigate many

⁴ The pending Law Court decision may provide some further clarity, for example, on the question of whether the Commission may impose and consider conditions in evaluating incentives for favoritism. However the appellees have advanced a strong argument that the entire appeal is moot.

of the concerns that motivated restructuring.⁵ In short, there are many more barriers to the use of T&D market power than there were in 1999 when Section 3204 was enacted. This suggests that the law could be modified to allow some types of financial relationships that would not have been permissible, or even contemplated at that time of enactment.

Changes to Section 3204, if any, should be made with care and motivated by the interests of consumers, not utilities.

Whatever course the Committee pursues, it should tread carefully. This bill does not. For example, as written, LD 1315 would allow the Commission to permit T&D utilities themselves to own generation, reversing a core tenet of the Restructuring Act. As a general matter, we oppose efforts to allow T&D utilities to own, control or have a financial interest in generation. This is not a problem that needs to be fixed. The central premises of restructuring remain sound. Electric generation is clearly not a natural monopoly. Wholesale electricity markets that allow for competition between generators can and have shifted the risk associated with investment in new generation from the public to private entities.

In considering any changes to the Restructuring Act, the Committee should be clear as to the problem it is trying to solve. The problem cannot and should not be simply that the law prevents utilities from doing things that they would like to do. This is true of almost all utility law. However, if the Committee is interested in pursuing changes in order to provide an affirmative benefit to consumers, then we would welcome the opportunity to participate in that discussion.

Respectfully submitted,



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⁵ These include robust and transparent interconnection procedures, independently administered wholesale markets, detailed reporting of financial relationships between electricity entities, and codes of conduct governing interaction between utilities and their affiliates.