MAINE PUBLIC UTILITIES COMMISSION

Report to the Legislature Pursuant to Resolves 2013, Chapter 47, Directing the Public Utilities Commission to Develop a Plan To Reform Regulation of Consumer-owned Water Utilities

January 31, 2014

I. Summary

This report provides a description of the Commission's stakeholder process initiated at the direction of the Legislature in Resolves 2013, ch. 47 (Resolve, Directing the Public Utilities Commission to Develop a Plan to Reform Regulation of Consumer-owned Water Utilities); summarizes the comments of stakeholders who participated in that process; and describes the Commission's recommendation to provide individualized reform of regulatory oversight for consumer-owned water utilities. Participants in the Commission's stakeholder process provided disparate perspectives on regulatory reform. While participants were in general agreement that components of the current regulatory framework were no longer necessary, or were burdensome beyond their value, no consensus was reached regarding a method for regulatory reform. The only areas of universal agreement were that removal of regulatory oversight should not be mandatory and that regulatory reform should not be conducted in a "one size fits all" manner.

The Commission's proposal for regulatory reform acknowledges the general concern that sweeping and precipitous removal of regulatory oversight could have unforeseen detrimental consequences while still creating a means for consumer-owned water utilities to identify, and seek to remove, regulatory requirements that are no longer necessary or productive in the assurance of statutory protections to consumers. Specifically, the Commission recommends the enactment of statutory amendments authorizing the Commission to grant waivers of the regulatory requirements of the majority of Title 35-A. The form of such waivers could be specific to a single requirement or a collection of requirements wherein the consumer-owned water utility has sufficient resources and expertise to ensure the core obligations to customers contained in Title 35-A will be maintained in the absence of Commission oversight. This recommendation was submitted for comment to stakeholders in the form of a Draft Report issued on December 4, 2013. Comments on the Draft Report submitted by stakeholders are discussed below and attached in their entirety in an appendix to this report.

II. Procedural Background

On June 11, 2013, the Legislature enacted a Resolve, Directing the Public Utilities Commission to Develop a Plan to Reform Regulation of Consumer-owned Water Utilities. Resolves 2013, ch. 47 (the Resolve).[1] The Resolve directed the Public Utilities Commission (Commission) to create a plan consistent with the following principles:

[1] Consumer-owned water utilities include both water districts and town owned water departments. These terms may be used interchangeably in this document.

A. Regulatory burdens must be the minimum necessary to protect the public welfare;

B. Regulatory reform may not relieve any provider from complying with environmental obligations under either state or federal law, including but not limited to those relating to the safety of drinking water;

C. Regulatory reform may make distinctions between consumer-owned water utilities based on the utilities' available resources and expertise, as well as on the form of local governance;

D. Regulatory reform must ensure the continued adequacy of consumer protection regulation, including the maintenance of appropriate limitations on disconnection and collection practices, and must ensure that consumers have adequate mechanisms available to them to resolve complaints fairly and promptly;

E. Regulatory reform must provide a mechanism that ensures that the rates charged by each consumer-owned water utility are just and reasonable, pursuant to the standards of the Maine Revised Statutes, Title 35-A, section 301; and

F. Regulatory reform must ensure that the interests of consumer-owned water utilities and their ratepayers are protected with regard to the provision of, and charges for:

1) Municipal fire protection;

2) Water main extensions; and

3) Consumer-owned water utilities' readiness to serve charges.

The Legislature further directed the Commission not to presume that existing laws and rules are appropriately designed for the current environment and the needs of consumer-owned water utilities and their ratepayers and to submit a plan to the Joint Standing Committee on Energy, Utilities and Technology by January 31, 2014, describing necessary changes to law, rules or procedures and any other necessary actions to implement the plan. The Resolve explicitly directed the Commission to provide an opportunity for input in the development of the plan, but did not require an adjudicatory proceeding for that purpose. Accordingly, the Commission initiated an Inquiry by Notice issued on September 24, 2013 soliciting initial comments from stakeholders. This notice was distributed to all water utilities within the State and all persons and organizations that participated in the Commission's Inquiry Into Decreasing Revenues of Water Utilities, Docket No. 2012-00315. In addition, the Commission solicited comments to a Draft Report issued on December 4, 2013.

Submitted by the Maine Public Utilities Commission

In response to these solicitations for comments, the Commission received written submissions from 7 of 137 individual water utilities. The Southern Maine Regional Water Council (SMRWC), the Five Rivers Regional Water Council, Maine Water Utilities Association (MWUA), and the Maine Rural Water Association (MRWA) also submitted comments on behalf of their members generally. The individual utilities submitting comments were the Bar Harbor Water Department, Bath Water District, Belfast Water District, Caribou Utilities District, Portland Water District (PWD), Sanford Water District, and the Winthrop Utilities District. Comments were also submitted by the Maine Department of Health and Human Services Drinking Water Program (Maine Drinking Water Program or MDWP), the Conservation Law Foundation (CLF), the Office of the Public Advocate (OPA), Sandra Bolotsky, Sydney Pew, Bruce Taylor, Bill Harriman, and Anita Hafford (collectively, Stakeholders). These comments, which are summarized and discussed in the body of this report, can be obtained and read in their entirety through the Commission's electronic Case Management System.[2] In addition, the comments that were submitted in response to the December 4, 2013 Draft Report are attached as an appendix to this report.

Comments received from the Stakeholders generally supported minimizing regulatory burdens, but were unified in rejecting the mandatory removal of regulatory requirements. The picture that emerges from the comments is of a wide spectrum of utilities that have vastly different levels of expertise and resources. Based upon these comments, submitted by a relatively small sample of individual utilities and customers but representing a variety of points along that spectrum, it appears that no single regulatory change, and in particular no comprehensive removal of small water utilities from oversight by the Commission, will resolve the challenges faced by these smaller utilities. Indeed, many comments articulated a concern that a sweeping removal of regulatory oversight would impair the ability of certain water utilities to perform their public service obligations.

As noted by the OPA, the statutory requirements governing utility activities "have been developed over many years to ensure that those utilities' customers receive safe and reliable service at rates that are just, reasonable, and not unduly discriminatory." (OPA Comments at 3.) As with any major change in the degree of regulatory oversight, there is a risk of unforeseen (and perhaps unforeseeable) consequences for both water districts and their customers should the overall framework be subject to a wholesale revision and/or repeal. Consequently, the Commission suggests that the Legislature consider an amendment to Title 35-A that would authorize the Commission to grant exemptions to particular statutory requirements imposed on consumer-owned water districts, thereby enabling the Commission to adopt an incremental, case-by-case approach to easing the regulatory burdens faced by consumer-owned water utilities. Our recommended approach recognizes the diverse nature of consumer-owned water

[2] The Commission's CMS can be accessed at: http://www.maine.gov/mpuc/online/index.shtml

utilities and would allow for a considered, and gradual, relaxation of the regulatory framework. As with respect to telecommunications regulation, however, the Commission acknowledges that if elements of regulation by the Commission no longer serve a useful purpose, or are duplicative of effective regulation by other government bodies, removal of those elements is likely to be appropriate.

Specifically, the Commission suggests that the Legislature may wish to consider statutory changes to Title 35-A that would authorize the Commission to consider requests made by individual consumer-owned water utilities for exemptions from particular existing statutorily imposed regulations upon a finding, by the Commission, that the requesting utility has sufficient legal mechanisms and resources to enable it to perform its public service in a manner consistent with the overall requirements of Title 35-A and that granting the requested exemption would not be adverse to the interests of the utility's customers. Such a method of regulatory relaxation would allow for a process that will ensure that customers are not harmed by the transition to a less regulated environment, while, at the same time, permit each consumer-owned water utility to determine the type and pace of lessened regulation that each would like to pursue. Such a mechanism would maintain the statutory foundations of public utility service, specifically, that consumer-owned water utilities are created and organized by grant from the Legislature to serve specifically defined areas, that rates for public utility service be just and reasonable, that utility customers be provided with safe and adequate service, and that such service is provided without discrimination.

The sections below describe the Commission's regulatory framework and the various statutes and rules that govern the Commission's oversight of consumer-owned water utilities. Comments of stakeholders are addressed in each section. There is also a detailed discussion of the waiver process suggested above, along with draft statutory language that would provide the Commission with authority to begin implementing the regulatory reform plan.

III. Overview of Commission Regulation

Consumer-owned water utilities are governed by the general requirements applicable to all utilities in Maine as well as requirements that are specific to consumer-owned water utilities. These requirements are based in statute and implemented through Commission rules. In general, these requirements fall into three categories: 1) requirements that provide protections to consumers concerning applications for service, billing, and dispute resolution; 2) financial and ratemaking requirements; and 3) requirements for operations and activities.

A. Consumer Protections

Regulation of public utilities is justified in part by the belief that customers who must purchase a service necessary for their health and welfare from a single provider should have the protection from a government body to ensure that prices are

reasonable, service is safe and adequate, and disputes concerning billing and other interactions between the utility and the customer are resolved fairly. In the context of water utilities, the Commission has created Chapter 660 of the Commission's rules to delineate the rights and responsibilities of both utilities and consumers of water service and to set requirements for applications for service; the information provided to customers on bills; the means by which customers may pay bills, the creation and enforcement of payment arrangements for past due charges; notice and timing requirements for disconnection of service due to non-payment of charges; provision of service to non-paying customers with medical emergencies; and methods for utility resolution of customer disputes. Additionally, Chapter 660 sets forth the process by which the Commission's Consumer Assistance Division (CAD) investigates and resolves customer disputes.

Title 35-A also provides a means for customers to bring before the Commission disputes that may arise between customers and a utility. Specifically, 35-A M.R.S. § 1302(1) provides that any 10 persons may seek to have the Commission investigate whether the rates, tolls, charges, schedules or joint rate or rates of a public utility are in any respect unreasonable or unjustly discriminatory. Such complaints need not be limited to issues regarding the rates charged by a utility; customers may seek redress for any practices or acts on the part of a public utility relating to utility service or behavior that are claimed to be unreasonable, insufficient or unjustly discriminatory, or that otherwise impede a customer's ability to obtain safe and adequate service. Upon receiving such a complaint the Commission is obligated first to determine whether it should be dismissed as "without merit" and, if not, to investigate and resolve the matters giving rise to the complaint.

Aside from the so-called "10-person complaint," customers of a utility may participate as parties in Commission proceedings affecting the utility. Chapter 110 § 8(B)(1) of the Commission's rules requires the Commission to allow any person who is or may be substantially and directly affected by a Commission proceeding to intervene and participate in that proceeding as a party. In instances where a person does not clearly fit this criteria, Chapter 110 §8(B)(2) nonetheless affords the Commission discretion to allow a person to intervene in the proceeding to the degree that such intervention will ensure that the full breadth of perspectives are represented. Thus, both the "10-person" complaint and the mechanisms for customer intervention afford customers a way to raise concerns and challenge the actions of water utilities in Commission proceedings. These "10-person" complaints have led to Commission investigations into the seasonal charges of the Kennebunk, Kennebunkport, and Wells Water District (Docket No. 2007-00066), the sale of water resource land by the Andover Water District (Docket No. 2010-00115), and the responsibility for maintenance and repair of water infrastructure connected to the York Water District (Docket No. 2012-

00344). Nine other complaints filed against consumer-owned water utilities during the past five years were dismissed as lacking merit.[3]

B. Financial Regulation

Pursuant to 35-A M.R.S. § 101, one of the Commission's primary responsibilities is to ensure that the rates charged for utility services are just and reasonable. Title 35-A requires all public utilities to file with the Commission the schedule of rates to be charged for water service and also the terms and conditions upon which the utility provides water service. Pursuant to 35-A M.R.S. § 309, utilities are prohibited from charging rates for service other than those currently approved by the Commission. Changes to rates for service must be filed with the Commission prior to implementation and water utilities must provide notice to their customers in advance of any change in rates.

Title 35-A provides several statutory methods by which a consumer-owned water utility may increase its rates. First, proposed rate changes may be filed with the Commission in the form of a general rate increase, pursuant to 35-A M.R.S. § 307. Such proposed rate changes are subject to investigation by the Commission and suspension (for no more than 9 months) during the period of investigation.

Second, and in recognition of the uniquely democratic fashion in which consumer-owned water utilities (as opposed to investor owned enterprises, where customers do not have as direct a voice in corporate decisions) are governed, Maine statute affords to consumer-owned water utilities an expedited mechanism for changing rates that avoids the need for the sort of in-depth Commission investigation involved in a general rate case. Specifically, pursuant to 35-A M.R.S. § 6104, a consumer-owned water utility seeking a rate increase in any amount may file a revised tariff with the Commission that may go into effect without investigation (or suspension) provided that the utility notifies its customers of the proposed rate change and conducts a local hearing regarding the change at which the OPA and customers may testify and question the utilities' managing body regarding the need for the rate increase. In such instances,

[3] For example, in Docket 2011-00176, the Commission dismissed a complaint brought by customers of the Lisbon Water Department who claimed that the Department was taking insufficient steps to protect its well from contamination. The District's response to that complaint demonstrated that the Department was monitoring the water quality of its well but that it lacked authority to control the use of privately owned adjacent properties. In Docket No. 2011-00178, a complaint was filed alleging that the Auburn Water District had improperly worked with local municipal governments and regional organizations to limit the permissible use of land in the watershed surrounding the District's water source. The Commission dismissed the complaint because the District demonstrated in its response that the land use limitations were least-cost method of ensuring that its water source complied with federally mandated water quality standards.

the Commission's investigatory authority is not invoked unless a petition is filed with the Commission objecting to the rate increase accompanied by the signatures of the lesser of 1,000 customers or 15% of the utility's total customers. Rate increases filed pursuant to Section 6104 have become the most common mechanism used by consumer-owned water utilities to change rates, with 17 cases filed so far this year. While not a common occurrence, customers have successfully sought Commission review of rate changes filed pursuant to Section 6104 through petitions as recently as 2009. See Docket No. 2009-00337 (Brownville Water Department rate increase pursuant to Section 6104) and Docket No 2009-00135 (Baileyville Utilities District rate increase pursuant to Section 6104).

An even more streamlined process for changing rates is afforded to consumer-owned water utilities under 35-A M.R.S. § 6104-A. This provision permits a consumer-owned water utility to avoid any possibility that the Commission will commence an investigation upon a petition brought by its customers. This mechanism, however, may be invoked only when the utility is seeking to raise its rates by a relatively modest amount.[4] Again, in recognition of the democratic nature by which consumer-owned water utilities are governed, invocation of the expedited mechanism of ratemaking afforded pursuant to Section 6104-A must be accompanied by notice to the utility's customers and a locally convened public hearing.

Although consumer-owned water utilities are subject to the general prohibition (applicable to all public utilities) against collecting revenue for purposes other than those specified by statute, this restriction is relaxed in the case of consumer-owned water utilities. For instance, pursuant to 35-A M.R.S. § 6105(4) a consumer-owned utility is permitted to collection revenues to:

1. pay current expenses for operating and maintaining the water system and to provide for normal renewals and replacements; to provide for the payment of the interest on the indebtedness created or assumed by the utility;

2. provide each year a sum equal to not less than 2% nor more than 10% of the term indebtedness represented by the issuance of bonds created or assumed by the utility, to create a sinking fund devoted to the retirement of the term obligations of the utility;

3. provide for annual principal payments on serial indebtedness created or assumed by the utility; to provide for a contingency allowance;

[4] The maximum rate increase allowed under Section 6104-A is 3% of current rates for large consumer-owned water utility; 5% of current rates for medium consumer-owned water utility; and 7.5% of current rates for a small consumer-owned water utility. The cumulative total of rate increases may not exceed 10%, 15%, and 20%, respectively, over 5 years.

Submitted by the Maine Public Utilities Commission

4. provide for rate adjustments to reflect the cost of anticipated construction of plants or facilities required by the 1986 amendments to the United States Safe Drinking Water Act; and

5. provide for recovery of the amounts necessary to fund the replacement of water system infrastructure.

Notwithstanding the relatively relaxed mechanisms for ratemaking applicable by statute to consumer-owned water utilities, the comments received from individual utilities and the trade associations of which they are members generally supported even less regulation in all facets of ratemaking. The argument advanced by stakeholders in this regard posits that the ability of customers to participate in and determine the governance of consumer-owned water utilities constitutes a sufficient bulwark against unjust or unreasonable rates, and that to the degree that the Commission maintains an oversight role in the ratemaking process, that oversight imposes costs and burdens on consumer-owned water utilities which must be recovered through the utilities' rates.

Although, under existing law, there are a variety of means by which a consumer-owned water utility can raise its rates without triggering a Commission investigation of the sort that typically arises in a general rate case, there are instances in which the financial affairs of such a utility are subject to pre-approval by the Commission. For instance, a consumer-owned water utility must obtain authorization from the Commission prior to issuing bonds or other indebtedness pursuant to 35-A M.R.S. § 902.[5] Pursuant to Section 902, the Commission will authorize such borrowing upon a showing that the proceeds to be obtained are required in good faith for purposes allowed under the statute.

The majority of the comments filed by individual utilities and utility trade associations suggest that Commission authorization of debt issuances under Section 902 is not necessary because after the trustees of a consumer-owned water utility vote to issue debt, the need for the debt issuance (and the ability of the utility to repay the debit) is scrutinized by the utility's lender. As the commenters observed, the Maine Drinking Water Program and United States Department of Agriculture Rural Development (USDARD) are the primary lenders to consumer-owned water utilities and those entities review the infrastructure projects to be funded as part of their approval of the indebtedness. In fact, in most cases, these lenders provide interim financing for the completion of an infrastructure project, and because such interim financing is generally for a period of less than 12 months (for which no Commission approval is required), the Commission's approval of replacement, long-term financing occurs after an

[5] Pursuant to 35-A M.R.S. § 901 a public utility may issue bonds or other indebtedness for the certain specific purposes of acquiring property used to provide service, construct facilities, improve service, or refinance other indebtedness.

infrastructure project has already been completed with short-term financing. Given this modern method of financing infrastructure projects, it is the view of the commenters that the Commission's approval of long term indebtedness is both duplicative of the review performed by lenders of short-term funds and has limited, if any, practical role in preventing unnecessary or potentially harmful borrowing.

In some instances, consumer-owned water utilities have elected to seek financing from private institutions that do not perform a level of financial evaluation similar to those described above. Without the structure of Section 902, consumer-owned water utilities would not be subject to any third party evaluation of borrowing or bonding. Ensuring proper safeguards and review of borrowings should be carefully considered in any potential waiver of this statutory requirement.

Statute and Commission regulations also mandate the form in which a consumer-owned water utility maintains its financial records. These requirements, which are found in 35-A M.R.S. §501 and Chapter 610 of the Commission's rules, are intended to ensure that the managers and governing body of a consumer-owned water utility have the financial and analytical tools that are necessary in order to evaluate whether the existing level of revenues are sufficient to satisfy the utility's revenue requirement and to what extent a rate increase may be necessary. The financial recording requirements imposed upon all utilities differ from those that apply to government entities pursuant to Governmental Accounting Standards Board (GASB) guidelines because the GASB guidelines are not intended to provide the tools necessary for the evaluation of rates. Consequently, it is the financial reports required pursuant to §501 and Chapter 610 that are scrutinized by the Commission when it conducts an investigation into a proposed rate increase. Similarly, 35-A M.R.S. §§ 502 and 504 establish standards that are intended to ensure that accounting data is provided to the Commission and to the public in a format that can be readily analyzed. Section 505 requires that outside audits be conducted according to schedules intended to ensure that a utility's financial statements reasonably reflect the results of its operations and, therefore, may be relied upon in setting rates.

Several commenters suggested that the requirement that a utility maintain its books and records under both the GASB guidelines and the utility-specific requirements delineated in Title 35-A and the Commission's rules creates undue burden and cost. On the other hand, OPA observed that financial records maintained according to traditional ratemaking principles and guidelines are a necessary tool for evaluating whether the rates charged for service are just and reasonable both from the perspective of a utility's need to ensure safe and reliable service and from the interest of customers in ensuring that rates are based on the costs of providing service.

There are, however, opportunities to reduce the costs faced by utilities that are required to maintain associated with maintaining financial records under both the GASB and the Title 35-A standards. For instance, the 12 month accounting period currently required by the Commission does not necessarily coincide with the "financial

year" for which financial statements are prepared under the GASB guidelines. This incongruence may give rise to additional expense for small utilities and thus presents a reasonable opportunity for the Commission to employ the exemption process suggested in this report to make timing adjustments to the regulatory reporting requirements that would reduce costs while still providing a sound basis for assessing the justness and reasonableness of a utility's rates.

Finally with respect to financial matters, 35-A M.R.S. §116 requires the Commission to assess a portion of its operating costs to all public utilities. In this manner, the costs of Commission oversight are funded by the utilities that are subject to the Commission's regulatory authority. Among the concerns voiced by several small consumer-owned water utilities is that the deregulation of a portion of all consumer-owned water utilities might lead to a proportional increase in the share of the Commission's operating budget borne by those consumer-owned water utilities that remain (by choice, or otherwise) subject to Commission regulation and the annual assessment.

C. Performance and Operations

A consumer-owned water utility is required, pursuant to 35-A M.R.S. § 6102, to submit plans and specifications prior to commencing the construction of a new water system or a major addition to, or alteration of, an existing water system. The purpose of these submissions, as stated in Section 6102, is to allow consumer-owned water utilities the opportunity to obtain the advice of the Commission regarding the cost, method of financing and adherence to proper engineering standards. Additionally, if the costs of the construction are likely to result in rates totaling more than 50% of the consumer-owned water utility's annual operating revenue and if the construction results from the requirements of the Federal Safe Drinking Water Act, 42 United States Code, Sections 300f to 300j-11, the utility must publish in a newspaper notice to customers that information regarding the construction, addition, or alteration is available for public review at a location and in a manner that is convenient to the water utility's ratepayers. In addition to such publication, the utility must provide direct written notice of the availability of that information to each of its customers. The implementation of the standards is set forth in Chapter 630 of the Commission's rules. Neither Section 6102 nor Chapter 630 requires Commission approval of plans submitted by consumer-owned water utilities.

In their comments, the SMRWC, MRWA, Belfast Water District, Town of Bar Harbor and MWUA argue that these filing requirements should be discontinued because they unnecessarily increase the time and cost of a construction project and, in any event, duplicate filings required and reviewed by the Maine Drinking Water Program. Generally, the continued role of the Commission as merely a repository of construction plans is an issue that the Legislature may wish to revisit or, alternatively, authorize the Commission to address through the adoption of an exemption pursuant to the authority suggested in this report.

Submitted by the Maine Public Utilities Commission

The Commission, through Chapter 130 of its rules, requires all utilities to report serious accidents occurring upon their premises or directly or indirectly arising from or connected with the maintenance or operation of their physical facilities or equipment if the accident results in the loss of human life, personal injury requiring in-patient hospital admission, more than seven days lost work time of a utility employee or independent contractor employed by a utility, or property damage of $50,000 or more. MRWA and the Belfast Water District advocated for excluding water utilities from this requirement.

The Commission, through Chapter 140 of its rules, requires consumer-owned water utilities to submit maps showing the location and details of system infrastructure to the Commission. Comments urged the removal of this requirement because, in the view of the commenters, locating and mapping facilities is both time consuming and costly with little benefit derived from the exercise.

Finally, Section 6109 imposes notice and process requirements when a consumer-owned water utility wishes to sell or otherwise transfer ownership in "water resource land." As defined by statute and longstanding Commission precedent, the characterization of "water resource land" covers a broad array of real property used for the purpose of providing and protecting the sources of water supply and storage of water, and includes reservoirs, lakes, ponds, rivers and streams, land surrounding or adjoining reservoirs, lakes, ponds, rivers or streams, wetlands and watershed areas. Section 6109 was enacted in response to passage of the federal Safe Drinking Water Act (SDWA) which set new standards governing the permissible levels of contaminates in the sources of drinking water. As a result of the enactment of the SDWA, many water utilities elected to discontinue their use of surface water sources in favor of the establishment of wells as a source of water. This shift away from surface water sources created the possibility that land previously held by water utilities to protect the viability of their water sources would be sold to private entities with a resulting diminution in the recreational and conservation benefits that public ownership of that land incidentally provided. Consequently, Section 6109 was enacted to allow municipalities notice and an opportunity to purchase such lands to conserve or preserve them for recreational or other use consistent with municipal purposes.

Section 6109 requires a consumer-owned water utility to give specific notice to the Commission, municipalities, and customers of pending land sales. It also affords towns where land is located the right of first refusal. Chapter 691, the Commission's rule implementing Section 6109, requires a public hearing regarding any potential sale of water resource land and further notice to customers. Neither Section 6109 nor Chapter 691 requires Commission approval of sale of water resource property.

In *Brian Mills, et al, Request for Commission Investigation into Andover Water District Practices*, Docket No. 2010-00115, the Commission investigated a transfer of water resource land. The Commission found that the consumer-owned

water utility failed to provide notice to customers of the proposed sale or provide specific right of first refusal to the municipality wherein the property was located. Because there was evidence the water utility was advised of the notice and municipal first refusal requirement and moved forward to sell water resource land under a private contract without following these requirements, the Commission imposed a nominal penalty of $100 to discourage noncompliance in the future.

The Conservation Law Foundation filed comments advocating for the retention of these statutory and regulatory requirements imposed upon the disposition by a consumer-owned water utility of "water resource lands." As CLF notes, the Resolve giving rise to the Commission's report expressly requires that any regulatory reform proposed by the Commission not have the effect of diminishing the effectiveness of existing environmental regulations.

D. General Comments Concerning Decreasing Regulatory Requirements

The notion that there should be a general relaxation of the regulatory requirements applicable to consumer-owned water utilities, and of the Commission's oversight role, is not universally shared by the non-utility stakeholders. For instance, Sidney Pew and Brain Mills advocate for a revision of the "water resource land" provisions of 35-A M.R.S. § 6109 to require affirmative Commission approval be granted as a prerequisite to the sale or transfer of "water resource land" and that the monetary penalties for violations of § 6109 be increased. The OPA forcefully opposes any plan that could lead to the wholesale abandonment of the current regulatory framework. The OPA notes the disparity in size and resources between the largest consumer-owned water utilities in the State versus the smaller more rural areas, and observes that the Portland Water District provides service to almost 25% of the public water customers in Maine and that 59% percent of public water customers are served by the 11 largest consumer-owned water utilities. These 11 consumer-owned water utilities, asserts the OPA, have sufficient resources and expertise to comply with current regulatory requirements and there is no indication "of any evidence showing harm from the current method of regulation or that changing the method of regulation would improve service to the public." (OPA Comments at 1.) In the absence of a showing of such harm, the OPA argues, the benefit of ensuring safe and adequate service by maintaining the current level of regulatory oversight outweighs any burden perceived by these large consumer-owned water utilities.

The OPA also cautions that legislation which would authorize the Commission to grant waivers to consumer-owned utilities of the ratemaking and financial reporting requirements of Title 35-A would contravene the language of the Resolve that regulatory reforms not diminish requirements that have historically been employed to ensure that the rates charged to customers are just and reasonable, that the rights of consumers are protected, and that state and federal environmental, and other obligations, on the part of utilities are fulfilled. In the OPA's view, it is the

Commission, and not a body that is locally elected or appointed to govern the operations of a consumer-owned water utility, that is best endowed with the perspective and expertise to ensure that rates are just and reasonable. The OPA cautions that the exercise by the Commission of an authority to grant waivers of statutory requirements in favor of local control, such as is recommended in this report, presents too great a risk that over time, and with waivers in hand, utilities could set rates that are not objectively just and reasonable.

The OPA also observes that smaller consumer-owned water utilities are likely to be injured by decreased regulatory oversight because the regulatory standards and guidelines set forth in statute and the Commission's rules provide a template for utility management that would be otherwise unavailable to the trustees of smaller consumer-owned water utilities. In essence, the OPA suggests that Maine's regulatory scheme as applied to consumer-owned water utilities has been developed and shaped over the course of many years and, by all measures, is effective. To grant the Commission general waiver authority might, according to the OPA, result in the gradual, and perhaps disastrous, dismantling of a beneficial regulatory scheme that would be difficult to reestablish at a later time.

At the other end of the spectrum, the Portland Water District observes, as has the Commission in the past, that the need for oversight by an economic regulator such as the Commission of the activities of a utility is diminished when the local officials charged with managing a consumer-owned utility are selected through the operation of a local political process. In fact, PWD asserts that in formulating a proposal which does not contemplate a total and instantaneous removal of all Commission oversight of utilities that would like to be so relieved of the requirements imposed by Title 35-A, the Commission has failed to adopt an approach that proceeds "from the premise that continued regulation is justifiable and appropriate except where it is shown not to be." The PWD identifies the regulatory assessment (approximately $100,000) that it pays in furtherance of the funding requirement of both the Commission and the OPA, and unquantified costs associated with filing for approval of debt issuances as costs that would be saved by completely removing Commission oversight. In our view, however, the better approach is to permit any utility to request of the Commission waivers of those statutory requirements that it believes are not necessary to ensure that the rates that it charges to its customers for adequate service are just and reasonable. Based upon the Commission's experience, a case-by-case evaluation of whether a particular regulatory requirement is necessary to achieve its purpose with respect to a particular utility will result in decisions that are thoughtful and tailored to the factual circumstances presented by a waiver petition. We do not rely on any presumption concerning the status quo in reaching this conclusion; our recommendation is based on our view concerning how to best carry out our obligations under Title 35-A.

In any case, PWD proposes statutory changes (attached to this report) that would entitle any consumer-owned utility to seek from the Commission what

amounts to a wholesale exemption from all Commission oversight of the affairs of that utility. As envisioned by PWD, a water utility seeking such a comprehensive exemption would file a request with the Commission, which must be granted if the utility is able to demonstrate that it is 1) self-governing; 2) has the technical, financial, and managerial capability to operate without regulation in the areas sought for exemption; and 3) had developed reasonable alternative mechanisms for consumer protection. The proposal submitted by the PWD would also authorize an alternative mechanism whereby a utility could seek less than a wholesale exemption from the requirements of Title 35-A, which would be evaluated under somewhat similar standards, although the "interests of rate payers" would be a criteria for consideration only in connection with requests for discrete, as opposed to wholesale, exemptions. PWD proposes a mechanism whereby the lesser of 1,000 customers or 15% of a utility's customers may petition the Commission for the rescission of any exemption that had previously been granted.

IV. Commission Proposal for Regulatory Reform

Consumer-owned water utilities in Maine are quasi-municipal entities, created by the Legislature and governed, with the exception of water departments, by trustees elected by customers served by the districts or appointed by elected town officials. This characteristic of locally elected government distinguishes water districts from the classic model of government regulated monopolies. From an economic perspective, the regulation of a monopoly enterprise is necessary to ensure that the owners of the enterprise cannot exert their position to extract rates that exceed the rates that would prevail were there a competitive market for the particular service at issue. Thus, the regulation of private monopoly public utilities by government is based on the long standing policy that customers who have no viable alternative source for a necessary public service should be protected through government regulatory action and oversight from unreasonably high prices, inadequate service, and unjust business practices, imposed by a profit seeking entity with whom a customer has little, if any, ability to negotiate. In this model, government regulatory oversight serves as a substitute for the price-constraining effects that competition imposes in markets where monopoly power does not prevail.

Elected officials charged with overseeing the management of a quasi-municipal utility, on the other hand, are presumably not motivated by any profit motive and, because they are ultimately accountable to the public through a democratic political process, will generally not seek to exercise economic monopoly power in the pursuit of revenues. As described above, consumer-owned water utilities are accountable to their customers because it is their customers who either elect trustees or the municipal officials who, in turn, appoint trustees. A customer, or group of customers, when dissatisfied with the nature or terms of water utility management or service, has recourse through the ballot box. Because trustees are generally customers of the water utilities they govern, they are inherently more directly connected to the concerns and affairs of other customers.

The Commission's proposal for regulatory reform attempts to harmonize the unique characteristic of the local political control of consumer-owned water utilities with a view that a long-standing system of regulation that has not been shown to have created aberrational results should not be abandoned precipitously. In this regard, we note that the quasi-municipal water "industry" has not in recent years undergone major structural changes regarding how they are organized and governed. While there have been changes and costs associated with stricter federal drinking water standards and many smaller utilities are finding it increasingly difficult to finance necessary improvements to aging infrastructure with a declining customer base, these operational and financial challenges do not compel the selection of one scheme of economic regulation over another.

The fundamental goal of title 35-A -- that customers pay just and reasonable rates for safe, adequate, and reliable utility service -- is the hallmark of proper utility management and none of the comments suggest that this standard should be abandoned. Indeed, many of the comments received by the Commission reflect a desire to continue the activities that assure consistent utility operation while removing the requirement that consumer-owned water utilities must report these same actions to the Commission.

We acknowledge the view expressed by the OPA that regulatory requirements were generated over many years and that there are legitimate and generally coherent historical underpinnings for each rule and statutory requirement. Similarly, we recognize the validity of the concerns expressed by the OPA and smaller water utilities that the structure of Commission regulatory oversight assists them in the delivery of water service. On the other hand, historical practice might profitably be allowed to give way to greater local governance of those consumer-owned water utilities that possess both the desire and the wherewithal to assume greater responsibility for ensuring that they provide safe and adequate service at just and reasonable rates.

Given this context, we conclude that an overall repeal of the requirements of Title 35-A as those requirements relate to consumer-owned water utilities in the aggregate could lead to significant hardship and uncertainty, particularly for smaller water utilities. The comments submitted in this and prior Commission stakeholder proceedings have indicated a strong preference among consumer-owned water utilities for regulatory reform that would not subject all water utilities to simultaneous and uniform deregulation. Indeed, comments from consumer-owned water utilities have consistently indicated aversion to a "one size fits all approach." Recognizing the diverse positions of consumer-owned water utilities, the Legislature may wish to approach regulatory reform in a manner that allows for a variety of levels of regulatory relaxation, specifically, regulatory reform that is driven by consumer-owned water utilities and focused on issues identified by trustees. Accordingly, the Legislature may wish to consider a legislative amendment, similar to the amendment proposed by PWD, that would grant the Commission the authority to exempt consumer-owned water utilities, individually, or as a class, from certain requirements of Title 35-A. While this

method of reform would allow individual consumer-owned water utilities to seek exemptions from specifically identified provisions, such an amendment would also allow for immediate relaxation of regulatory burdens that are generally considered by consumer-owned water utilities to be unnecessary, such as filing requirements for infrastructure maps, and approval of issuances of indebtedness. Such an amendment might also exclude certain provisions of Title 35-A from exemption or waiver where the purpose of the statute is fundamental to the provision of utility service or not properly included within the scope of regulatory reform.

For example, while a consumer-owned water utility may seek to be exempted from Commission oversight of rates, the Legislature might wish to consider maintaining the requirement in statute that consumer-owned water utilities provide safe, adequate and reliable service and that the rates for such service be just and reasonable. Similarly, the Legislature might also consider excluding Section 6109, governing the sale of water resource land from any waiver authority. Section 6109 is codified in Title 35-A based on its application to water utilities. However, Section 6109 is not clearly an economic regulation consistent with much of the other contents of Title 35-A. As noted by CLF, the purpose of Section 6109 is the conservation and preservation of land previously held by consumer-owned water utilities for public benefit. In order to preserve this purpose, the Legislature might consider removing Section 6109 from the scope of any proposed waiver or exemption authority of the Commission.

We believe that an incremental approach to reform of the regulatory requirements imposed upon consumer-owned water utilities may best serve customer and utility interests.[6] Should the Legislature seek to enact regulatory reform in this manner, it may wish to consider an amendment to Title 35-A, Chapter 61 such as the following:

> The Commission may adopt by rule standards and procedures for granting exemptions from all or specified portions of Title 35-A to individual consumer-owned water utilities, or a class of such water utilities, as defined in 35-A M.R.S. § 6101(1-A). Any exemption granted pursuant to rule must be accompanied by specific findings that the exemption is in the public interest and will not result in unjust or unreasonable rates or have a negative impact on the provision of safe, adequate, and reliable service. In waiving any

[6] The MWUA expressed in its comments to the Draft Report disappointment with the Commission's conclusion that a thoughtful path towards regulatory reform is one that relies on the incremental, case-by-case evaluation of waiver requests sought by individual utilities. MWUA suggests, instead, "that a wholesale assessment – and revision - of the regulatory requirements of, and the value provided by, the Commission, the Maine CDC Drinking Water Program and the Office of Public Advocate just might be the appropriate course of action that would result in broader acceptance of regulatory reform."

Submitted by the Maine Public Utilities Commission

> requirement, the Commission shall make specific findings that the consumer-owned water utility has adequate technical, financial and administrative capacity to perform such waived function(s) or requirement(s). The commission may limit an exemption to specific geographic areas. An entity granted an exemption pursuant to a rule adopted under this section remains subject to 35-A M.R.S. §§ 301(1), 301(2), 301(3), and 6109.
>
> For good cause, as defined by the commission by rule, the commission may revoke any exemption granted pursuant to this subsection. A revocation may be in whole or in part and may be specific to individual entities or services.

The outstanding issue unresolved by this proposal is the effect of different levels of regulation upon the Commission's assessment of consumer-owned water utilities pursuant to 35-A M.R.S. §116. Section 116 states that:

> the portion of the total assessment applicable to each category of public utility or qualified telecommunications provider is based on an accounting by the commission of the portion of the commission's resources devoted to matters related to each category… Assessments on each public utility or qualified telecommunications provider within each category must be based on the utility's or qualified telecommunications provider's gross intrastate operating revenues.
>
> 35-A M.R.S. §116.

It is conceivable, although not certain, that as regulatory oversight decreases, the portion of the Commission's resources dedicated to the regulation of consumer-owned water utilities will decrease. This would result in an overall decrease in the assessment amount attributable to water utilities and, therefore, a decrease to the assessment of any particular water utility. However, the Commission's use of resources for water utilities has, of late, primarily involved the resolution of sometimes contentious litigation involving smaller water utilities. If smaller water utilities generally elect to remain within the Commission's oversight, it is possible that the overall amount of the assessment will remain essentially unchanged. This would result in an increased assessment amount for utilities that elect to remain within the regulatory framework as it currently exists. More immediately, if substantial Commission resources are necessary to process requests for waivers from consumer-owned water utilities, it is possible that the level of the Commission's budget attributable to the water industry will, in fact, increase during the initial period of regulatory reform.

If larger water utilities with more technical, financial and administrative capability are granted waivers from Commission assessments, the financial burden of maintaining Commission capacity will fall increasingly and perhaps significantly on smaller water

districts. If the eleven largest consumer-owned water utilities seek and are granted waivers from the Commission assessment, the Commission's assessment on the remaining water districts could double, assuming the Commission's workload related to water utilities remains constant. This possibility is, not surprisingly, the source of significant concern among many individual utilities and, as the MWUA reports in its comments, raises an issue that has "increasingly split our association."[7] In any event, the cost associated with maintaining the Commission as a regulatory backstop, even in the event of substantial regulatory reform, may not diminish rapidly or in proportion to the number of customers that are served by utilities within Commission oversight.

[7] The SMRWC advises in its comments that its members (Biddeford & Saco Water; Kennebunk, Kennebunkport & Wells Water District; Kittery Water District; York Water District; South Berwick Water District; Portland Water District; and Sanford Water District) are of the uniform view that "utilities who are granted an exemption from oversight should not continue to pay the same level of assessment."

Submitted by the Maine Public Utilities Commission

The following items are regulatory requirements that have been identified by stakeholders as either burdensome, unnecessary, or both. These changes could be made without action by the Legislature.

- Amendments to Chapter 63 to consider adjustments to the threshold above which a water utility must file infrastructure improvement plans pursuant to 35-A § 6102.

- Amendments to Chapter 610 to allow for harmonization between Commission accounting report deadlines and fiscal dates used by water utilities.

- Amendments to Chapter 140 to exclude consumer-owned water utilities from its requirements. Alternatively, the Commission may waive the requirements of the rule as regards consumer-owned water utilities.

FIVE RIVERS REGIONAL WATER COUNCIL

November 7, 2013

Thomas L. Welch, Chairman
Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018

RE: Docket 2013-00444

Dear Chairman Welch:

These comments are submitted by the Five Rivers Regional Water Council which was recently incorporated in accordance with Chapter 68 of Title 35-A. Our members include the Boothbay Regional Water District, Bath Water District, Bowdoinham Water District, Brunswick & Topsham Water District, Great Salt Bay Sanitary District, Richmond Utilities District, and Wiscasset Water District. Together we serve a population of approximately 40,000 people in the Mid-Coast area and our systems range in size from 250 to 7,000 customers. We would also note that two of our members are combined water and wastewater utilities.

We generally support the guiding principles outlined in the Notice of Inquiry. In terms of particular issues cited in the NOI, we believe it is imperative that a mechanism be retained for the proper allocation of public fire protection costs to the municipalities, either by rule or by law. We support retention of rules pertaining to water main extensions as they provide consistency and fairness for developers and economic protection for our customers. In addition, development of a basis for assessing readiness to serve charges would benefit some utilities facing difficult economic circumstances.

The underlying premise of the current regulatory framework is that we have monopoly status and therefore monopoly power, and that power must be monitored and controlled to protect the interests (and wallets) of our customers. Nevertheless, we operate within a quasi-municipal framework like a unit of government. Laws pertaining to open and transparent business proceedings as well as access to information apply to consumer-owned water utilities in the same way as for municipalities. Our governing boards represent our customers and are appointed by the municipal government or elected. Accordingly, we believe that fundamentally there is sufficient accountability and means to resolve disputes and for redress.

We believe that there is a sound basis to shift from State oversight to local control. Some of our members, however, are unsure whether deregulation would be in their best interest. We therefore believe that deregulation should be voluntary. We also agree that there are numerous opportunities to eliminate or streamline certain rules, especially where there are similar or overlapping requirements with other State agencies such as the Drinking Water Program. In fact, we feel that moving regulatory oversight to the Drinking Water Program is an option that should be fully explored.

Our Council members support the reform of regulation of our utilities. We look forward to our continued participation in that process. Thank you for the opportunity to comment.

Sincerely,

Scott Abbotoni
President

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

MAINE PUBLIC UTILITIES COMMISSION RE: Inquiry Into Regulatory Reform Plan For Consumer-Owned Water Utilities Docket No. 2013-00444	PUBLIC ADVOCATE COMMENTS ON DRAFT REPORT December 19, 2013

On December 4, 2013, the Public Utilities Commission issued its Draft Report in response to the Legislature's Resolve Directing the Public Utilities Commission to Develop a Plan to Reform Regulation of Consumer-owned Water Utilities.[1] That Draft Report suggests that the Legislature consider an amendment to Title 35-A that would authorize the Commission, when requested, to grant water districts – individually, or as a class – exemption from any of the statutory requirements that apply to consumer-owned water districts. The Office of the Public Advocate (OPA) understands that the Commission is trying to address a concern expressed by some water districts that they be permitted to request relaxation of certain regulatory requirements that the districts view as unnecessary burdens.[2] However, the OPA believes that the granting of exemptions from the ratemaking requirements and financial reporting requirements in Title 35-A and the Commission's rules

[1] Resolve, Directing the Public Utilities Commission to Develop a Plan To Reform Regulation of Consumer-owned Water Utilities. *Resolves 2013, Ch. 47.*

[2] For the most part, the comments filed in this Inquiry have been the comments of water-district managers, water-district trustees, and water-district consultants. Those comments have focused on the immediate relaxation of various regulatory requirements that the water districts view as unnecessary. Few, if any, comments have been filed by the water-district customers who are the intended beneficiaries of the regulatory protections that some water districts now seek to eliminate. It is not surprising that some water-district managers want to request exemptions from regulations that those managers view as burdensome. That does not mean, however, that the Legislature or this Commission should grant such authority without ensuring that consumers are protected, as we discuss below.

If the Legislature decides to permit water districts to request exemptions from various regulations, water-district customers should have a voice at the initial stage of the exemption-request procedure. Prior to the Commission's consideration of the exemption-request, the water district should be required (a) to inform customers of its intent to seek an exemption and (b) to hold a public hearing in the local area. Otherwise customers will be able to express their opinion on the requested exemption only by traveling to the Commission and participating as interveners, which would be quite burdensome.

will not satisfy key regulatory principles that the Legislature has directed the Commission to observe.

The Legislature's Resolve directed the Commission to create a plan to reform water-utility regulation that is consistent with a number of principles, including the following:

> Regulatory reform must provide a mechanism that ensures that the rates charged by each consumer-owned water utility are just and reasonable, pursuant to the standards of the Maine Revised Statutes, Title 35-A, Section 301;
>
> Regulatory reform may not relieve any provider from complying with environmental obligations under either state or federal law, ... ; and
>
> Regulatory reform must ensure the continued adequacy of consumer protection regulation, including the maintenance of appropriate limitations on disconnection and collection practices, and must ensure that consumers have adequate mechanisms available to them to resolve complaints fairly and promptly.

Resolves 2013, Ch. 47. It is difficult to understand how the Report's recommendation that the Commission be permitted to grant exemptions to any of the requirements in Title 35-A can be consistent with the guiding principles set out in the Resolve.

I. Any reform of the regulation of customer-owned water utilities should include a mechanism that ensures that their rates are just and reasonable.

First, there is no indication in the Draft Report as to what standards or criteria are to be used by the Commission when granting an exemption from a particular regulatory requirement. The Draft Report states clearly that "[t]he fundamental goal of Title 35-A, that customers pay just and reasonable rates for safe, adequate, and reliable utility service, is the hallmark of proper utility management ...."[3] Yet the Report does not include a mechanism or a set of criteria that will ensure that the granting of any requested exemption will protect that fundamental goal.[4] Does the Report contemplate that the granting of an exemption be fully within the discretion of the Commission? Similarly the Draft Report fails to indicate

---

[3] *Maine Public Utilities Commission, Inquiry Into Reform Plan for Consumer-Owned Water Utilities,* Docket No. 2013-00444, Draft Report at 21 (MPUC Dec. 4, 2013). (hereinafter, "Draft Report")

[4] The closest that the Report comes to enunciating a standard for exemption from Title 35-A is a suggestion that (1) that the water district requesting an exemption must have "sufficient structures and resources so that it will be able to perform its public service in a matter consistent with the overall requirements of Title 35-A," and (2) granting the requested exemption "would not be adverse to the interests of the utility's customers." (Draft Report at 4).

whether there should be different standards for the granting of different types of exemptions. Would a water-district's request for an exemption from the Section 6104 requirements (i.e., local ratemaking procedures) be treated differently from a request that the water district be exempt from a reporting requirement that the district annually identify all its water sources? Certainly the standard for granting an exemption cannot be simply that the requesting water district is seeking some form of reduced regulation. By that standard, all water districts might be exempted from any regulations that they want to avoid.

Second, the Report's proposed "exemption" mechanism fails to satisfy the requirement stated in the Resolve that the proposed regulatory reform must provide a mechanism that ensures that the exempted water district's rates "are just and reasonable, pursuant to the standards of the Maine Revised Statutes, Title 35-A, Section 301."[5] There is no such protection enunciated in the Draft Report. For instance, under the proposal offered in the Draft Report, a water district could request that the Commission grant the district an exemption from (a) the requirement of keeping its records according to the uniform system of accounts, or (b) the requirement of maintaining and filing the data necessary to file the district's Annual Report to the PUC.[6] In either case, the granting of such an exemption would "reduce regulatory burden" and eliminate certain annual costs that the district must include in its rates. We understand that some water districts would like to eliminate the expense of reporting on their operations to the Commission. However, if the data involving a water district's revenues and expenses are not presented in an organized and uniform set of accounts,[7] or if those data are not reported and made available to the public, neither the Commission nor the district's customers would be able to determine whether the utility is

---

[5] The OPA suggests that, at a minimum, the standard for the granting an exemption must be a standard that is consistent with the fundamental goal of Title 35-A (as stated by the Draft Report) and with the three principles quoted in the text above.

[6] The data that appears in each water district's Annual Report to the PUC is used also by other state agencies. For instance, Maine's Drinking Water Program, a subset of the Department of Health and Human Services, use those Annual Reports to collect data to determine trends of water usage, including data concerning unaccounted for water and ground water withdrawals.

[7] Financial accounting – usually performed in keeping with a uniform system of accounts – is used to provide information to people both inside and outside a business as a basis for making (or evaluating) management and operating decisions. Without such a uniform system of accounts, it would be difficult to determine how well (or poorly) the business is being managed. It is no accident that business people and non-business people alike use expressions such as "holding people to account," or ensuring that management is "held accountable."

being well managed or whether its rates are excessive. That is, if either exemption were granted, it would be difficult – if not impossible – for the water district's customers or for the Commission to review the data necessary to determine whether the rates charged by the district "are just and reasonable, pursuant to the standards of the Maine Revised Statutes, Title 35-A, Section 301," as required by the Resolve.[8] In short, any reform of water-utility regulation that would permit the Commission to grant either of those exemptions would violate one of the key principles embodied in the Resolve. Indeed, the Report suggests as an example that a consumer-owned water-utility might seek to be exempted from Commission oversight of rates[9] – whereas the Resolve requires that any reform include a safeguard that will ensure that, however managed, water-district rates be set at a "just and reasonable" level.

Therefore, we urge the Commission to amend the recommendations of the Draft Report so that they include an express recommendation that the Commission should not be authorized to grant exemptions from the Resolve-based requirement that for each water district there must be "a mechanism that ensures that the rates charged by each consumer-owned water utility are just and reasonable, pursuant to the standards of the Maine Revised Statutes, Title 35-A, Section 301."

II. The election of water-district trustees is not a substitute for the customer protections and rate regulation now provided by Title 35-A.

The Draft Report argues that reduced regulation is appropriate for customer-owned water utilities on the grounds that water districts differ from the classic model of regulated monopolies in that water districts are governed by locally elected officials. Specifically, the Report argues that "Elected officials charged with overseeing the management of a quasi-municipal utility.... are presumably not motivated by any profit motive and, because they are ultimately accountable to the public through a democratic political process, will generally not

[8] Furthermore, if the Commission were ever to grant an exemption from record-keeping and the uniform system of accounts, there is a serious question as to whether a water district might later be able to reinstitute any assurance that the utility's records are accurate. It would be difficult for utility managers to look back and determine how the utility has been managed and how its monies have been spent or invested.

[9] Draft Report at 23.

seek to exercise economic monopoly power in the pursuit of revenues."[10] However in making that argument, the Report assumes – without firm support – that elected officials will have the management and business skills necessary to ensure that a water utility is operating as efficiently as possible and is utilizing sound management practices. Efficient operations and sound management keep utility costs down. However, there is no assurance that the process of choosing utility officials by elections will result in the sort of utility management that will ensure that customers pay just and reasonable rates, and receive safe, adequate, and reliable utility service, as contemplated under Title 35-A.

Contrary to the assumptions in the Draft Report, the concern is not that the managers of consumer-owned utilities will try to profit from their actions, but that they will attempt to use the water system as a method to generate revenues to fund unrelated municipal services. One of the classic examples is the city of Nashville's use of revenues from its city-owned water utility to pay for the football stadium used to lure the NFL's Houston Oilers to the city, becoming the Tennessee Titans.[11] The Resolve's directive that water rates must remain just and reasonable indicates a strong legislative intention that this Commission must ensure that the water bill does not become a funding vehicle for unrelated municipal projects, or a way for local officials to avoid raising taxes to pay for other local services.

Moreover, water districts very much fit the classic model of monopolies. Most often water-district customers are customers who have no viable alternative source for a necessary public service – i.e., water for their homes and businesses. As such, those customers require and deserve protection through regulatory oversight from the sorts of inadequate service, unjust business practices, unreasonably high prices, or improper financing decisions that might be imposed by an entity with whom customers have little ability to negotiate. Further, there is nothing in the electoral process that will assure that the persons elected to serve as

---

[10] *Id.* at 20.

[11] *See* Bill Lewis, Why is our water so expensive? First, it's really not. Second, remember that deal to get the Titans?
THE NASHVILLE LEDGER (July 29, 2011) <
http://www.nashvilleledger.com/editorial/ArticleEmail.aspx?id=54171>.

water-district trustees will have the management ability and business experience necessary to operate a water utility and to provide safe, reliable, and affordable water service.

One of the rationales that the Draft Report presents in support of its proposal that water districts be permitted to request exemptions from Title 35-A statutory requirements is the suggestion that a similar approach of targeted exemptions was employed when competition first emerged in Maine's telecommunications market.[12] The Report suggests that such an incremental approach to the reform of utility regulations may therefore be appropriate for consumer-owned water utilities. However, the comparison between the telecommunications market and the market for water service is inapt. The introduction of new technologies has brought strong forms of competition to many locations in the Maine telecommunications market. As a result, Maine customers have a choice of telecommunications providers, and in many markets, prices and service quality are determined by the marketplace. When such robust competition exists, the Commission's regulation may no longer be needed to stand in as a surrogate for competition. However, that level of completion is not present in the market for water service. Water utilities simply do not operate in a competitive business. Therefore, it is not appropriate for the Legislature to give consumer-owned water utilities the option to relieve themselves of the regulatory requirements, such as record-keeping and annual reports, that play a key role in ensuring that water-district customers pay rates that are just and reasonable.

Unfortunately, there are examples of unregulated, government-owned utilities that have proven their inability to provide safe and reliable service at just and reasonable rates. A sad but telling example is the bankruptcy of Jefferson County, Alabama, which remains ongoing. The major driver of the county's bankruptcy was a grossly mismanaged project by its sewer utility, resulting in more than $1 billion of debt that could not be repaid, while service remained substandard.[13] We will never know whether the oversight of an economic regulator like this Commission would have prevented Jefferson County's debacle, but it

[12] Draft Report at 5, 23.

[13] See Mary Williams Walsh, A Municipal Bankruptcy May Create a Template, The New York Times (Nov. 19, 2013), < http://dealbook.nytimes.com/2013/11/19/a-municipal-bankruptcy-may-create-a-template/?_r=0> .

certainly debunks the myth that the electoral process always ensures that government-owned utilities provide adequate service at reasonable rates.

The Draft Report suggests that consumer-owned water utilities are accountable to their customers because it is their customers who either elect trustees or the municipal officials who, in turn, appoint trustees. "A customer, or group of customers, when dissatisfied with the nature or terms of water utility management or service, has recourse through the ballot box."[14] We agree that elections do give local voters some control over who serves in office, but voters do not necessarily vote for candidates that have the capability and business experience needed to manage a water utility. A good deal of the time there is only one candidate running for the office of water-district trustee.

Elections can be decided based on many diverse issues. Generally local elections are won based on name-recognition and popularity, and not necessarily based a candidate's efficiency as a manager and or business experience. While some voters may be justifiably dissatisfied with the management of the water utility, others may be focused on voting for issues involving fluoridation, property tax reform, school funding, better police protection, or any of a number of other issues. Water service and water rates are usually not the issues on the top of voters' minds as they enter the voting booth. Frankly, if water service or rates becomes the central issue in a local election, there is a very serious problem that in itself would prove that deregulation has failed.

Furthermore, if the reporting requirements for water districts are relaxed, it would be difficult even to present a case to municipal voters that a particular set of water-district trustees should be turned out of office. In short, we believe that the election of water-district trustees cannot substitute for the sorts of customer protections and rate regulation now provided under Title 35-A. Water districts still fit the classic model of monopolies and local government officials face many pressures. It is not without precedent for a government-owned utility to require its captive customers to subsidize other municipal services, build unrelated projects, and pay higher rates to avoid tax increases. Sadly,

[14] Draft Report at 20-21.

mismanagement and the provision of poor service are not unknown among unregulated, government-owned utilities either. Maine's current regulatory structure has worked well to prevent these kinds of abuses, while recognizing that consumer-owned utilities do not need the same level of regulatory oversight of rates that the customers of an investor-owned utility require.

In conclusion, water-district customers require regulatory protection from the sorts of inadequate service, unjust business practices, and unreasonably high prices that can result where there is an unregulated monopoly service. The OPA respectfully submits that there is no compelling reason to change the existing statutory structure. Maine's consumer-owned water utilities generally provide safe and reliable service at just and reasonable rates. The regulatory process is working to protect consumers while recognizing that rate-setting can occur primarily at the local level, with little Commission oversight.[15] Financial reporting, service quality assurance, and other aspects of the regulatory process for consumer-owned utilities are working. With all due respect to those who would like to see a lessening of the regulatory "burden," it is that very "burden" that is protecting Maine's consumers – and the utilities themselves – from the types of abuses we have seen elsewhere in the country.

Respectfully submitted,

Timothy R. Schneider
Public Advocate

William C. Black
Deputy Public Advocate

[15] In recent years, no Commission oversight has been required of the rate increases proposed by consumer-owned water utilities. Under 35-A Section 6104, the Commission is required to investigate a rate increase proposed by a consumer-owned water district when 15% of the water district's customers sign a petition requesting such an investigation. In the last four years (2010-2013), there have no Section 6104 petitions filed at the Commission. That means that from 2009 to the present, all of the rate increases proposed by consumer-owned water districts have gone into effect without PUC investigation. In short, the existing Section 6104 statute has not resulted in a regulatory burden for Maine's water districts.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

MAINE PUBLIC UTILITIES COMMISSION

RE: Comments of Draft Report on Regulatory Reform Plan for Consumer-Owned Water Utilities

Comments of Sidney J. Pew and Brian T. Mills

December 17, 2013

Docket No. 2013-00444

The Draft Report issued by the Public Utilities Commission suggests that the Legislature adopt an amendment that would authorize the Commission to grant individual exemptions of various statutory requirements to consumer-owned water districts. On Pages 22-23, the Draft Report, suggests that any such amendment to Title 35-A should exclude the granting of exemptions to Section 6109.

While we agree with the Commission's Draft Report that Section 6109 should be exempt we believe that the Public Utilities Commission should recommend, and the Legislature should adopt, stricter regulations for Section 6109. Those recommendations should include (1) a requirement that consumer-owned water utilities must obtain approval in advance for the sale or transfer of water-resource land, and (2) an increase in the amount of the administrative penalty for violation of Section 6109. Presently, that penalty is only nominal. Stronger penalties and requirements for the sale or transfer of water resource land are needed to discourage noncompliance in the future – so that the sort of actions that occurred with the sale of water-resource land by the Andover Water District (as documented in Docket No. 2010-00115) will not occur in the future.

Respectfully submitted,

Sidney J. Pew

Brian T. Mills

Brian T. Mills

Sidney J. Pew
PO Box 592
East Andover, Maine 04226
207-392-1301

FAX TRANSMITTAL

TO: PUC-
COMMENTS ON DRAFT REPORT
DOCKET NO 2013-00444

FAX NUMBER: 207-287-1039

DATE: 12/17/13

ATTACHED PAGES: 1

Portland Water District
FROM SEBAGO LAKE TO CASCO BAY

December 18. 2013

Harry Lanphear
Administrative Director
Public Utilities Commission
State House Station 18
Augusta, Maine 04333-0018

Re: Notice of Inquiry, Docket 2013-00444

Dear Mr. Lanphear:

Enclosed for filing please find comments to the PUC Draft Report filed on behalf of the Portland Water District.

Thank you for your assistance.

Sincerely,

Donna M. Katsiaficas

Donna M. Katsiaficas
Corporate Counsel

225 DOUGLASS STREET P.O. BOX 3553 PORTLAND, MAINE 04104-3553
PHONE: 207.774.5961 FAX: 207.761.8307 WEB: WWW.PWD.ORG

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2013-00444

December 18, 2013

MAINE PUBLIC UTILITIES COMMISSION
Inquiry into Reform Plan for
Consumer-Owned Water Utilities

COMMENTS BY
PORTLAND WATER
DISTRICT ON
DRAFT REPORT

The Portland Water District (hereinafter "PWD") submits these comments on the Draft Report dated December 4, 2013 and filed by Commission Staff in this docket.

PWD is the largest consumer-owned water utility (hereinafter "COWU") in the State of Maine. It serves 11 communities, 10 of which are members and have representation on the Board of Trustees in proportion to their respective populations. The Town of Standish is the one community served that has chosen not to become a member. PWD also sells water to the Yarmouth Water District. PWD is governed by an elected Board of 11 trustees. PWD has more than 50,000 customer accounts and serves a population of approximately 225,000 people. PWD has wastewater interception and treatment responsibilities for six of its communities and provides wastewater collection services in several of those communities as well.

For ease of reference, these comments are organized by section, page, paragraph and sentence or line number from the Draft Report.

Comments on Section I, Procedural Background

In the first sentence of the last sentence on page 2 of the Draft report, it is correctly noted that "the Legislature further directed the Commission not to presume that the existing laws and rules are appropriately designed for the current environment and the needs of consumer-owned water utilities and their ratepayers..." (hereinafter the "Fresh Look directive") This directive is important to bear in mind when reviewing both the stakeholder comments and the Draft Report itself.

In the first paragraph of page 3, it is incorrectly noted that the Commission received written comments from "only 8" water utilities. In fact, as the two regional water councils represent the views of their members, the Commission received comments from 17 water utilities, representing 12% of such utilities in the state. In addition, between the Maine Rural Water Association and the Maine Water Utilities Association, both of which filed comments with the Commission, virtually every water utility in the state commented either directly or through one or more of their trade associations. As a

result, it is inaccurate in the third sentence of the following paragraph to claim that only a "relatively small sample" of water utilities submitted comments.

In the same sentence of the second paragraph on page 3, it appears that the June 11, 2013 Resolve (hereinafter the "Resolve") has been mischaracterized as only focusing on alleviating the regulatory challenges affecting smaller utilities. This characterization is inaccurate, both from the PWD's observation of the Legislature's work, as well as the plain language of the resolve, which specifically allows the Commission to "make distinctions between consumer-owned utilities based on the utilities' available resources and expertise, as well as on the form of local governance."[1]

On pages 3-4, the Draft Report discusses both comments by the Office of Public Advocate (hereinafter "OPA"), the only stakeholder whose comments are summarized at length in this section, as well as its proposed waiver process. It is important to note that the OPA comments discussed here are inconsistent with the Legislature's Fresh Look directive discussed above. It should also be noted that it is not clear how the proposed waiver process complies with both this directive as well as the "Minimum Burden" approach of paragraph A of the Resolve and the "Tailored" approach of paragraph C of the Resolve.

Comments on Section II.A, Consumer Protections

In the second paragraph on page 7, the Draft Report discusses the recent history of "10-person" complaints related to water utilities. However, the three cases cited all involve investor-owned water companies, and not COWUs, which are the subject of the Resolve and Draft Report. The only recent history involving a "10-person" complaint about a COWU is the recent 2013 case involving the Auburn Water District, which was promptly dismissed as lacking merit by the Commission. Therefore, this discussion should be amended to correctly reflect the recent history of COWUs.

Comments on Section II.B, Financial Regulation

In the ninth line of page 12 of the Draft Report, with the sentence beginning "However..." there is reference to "instances" where private institutions do not perform a level of financial evaluation similar to the governmental institutions mentioned previously. PWD requests that the final report include specific examples of where such lack of institutional review has occurred, since this has not been the case in its experience.

In the last paragraph on page 13, the Draft Report cites concerns of "several small water utilities" that deregulation of some COWUs might lead to a proportional increase in their share of the Commission's operating budget. There is no discussion of other stakeholders' comments that such total costs related to water utilities might decrease

[1] Resolve, Paragraph C.

following deregulation or other form of regulatory reform or that the Commission's budget might be redeployed to address other areas of Commission oversight.

The last sentence of the last full paragraph on page 16 states that "neither Section 6109 nor Chapter 691 requires [sic] Commission approval of sale of water resource property." This statement is in direct contrast to prior Commission Staff policy and practice. For PWD alone, the Staff has required the PWD to seek Commission approval in two recent dockets, 2010-00148 and 2010-00149. There is no discussion or explanation of how practice has deviated from the statutory direction, or to what extent the Commission's rules have created this regulatory "drift."

Finally the Conservation Law Foundation's comments, which are summarized on page 17, misconstrue both the statute and the Resolve. PWD supports the statute's discretionary allowance of the sale of water resource land at below market prices in order to preserve its recreational or scenic character or to protect natural resources or air or water quality. However, this allowance is an exception to the purpose of the section, which provides instead for ensuring that a COWU obtain the best possible value for its ratepayers when selling water resource land to private parties or for uses other than the those previously enumerated. As suggested by PWD's reform, a COWU with the proper local governance through an elected board will be able to ensure that no preferential dealing in violation of the statute is allowed. It is only in the absence of such governance controls that the PUC should retain a role in ensuring that the statute's directives are carried out.

Comments on Section II.D, General Comment Summary

In the first paragraph of this section, PWD believes that the comments of Pew and Mills are incorrectly summarized. Their comments were related to the disposition of water resource land, and not to water regulation in general. In addition, it appears that the commenters take issue with the low level of fine levied by the Commission. Effective local governance and institutional policies regarding sale of water resource land would address any concerns regarding COWUs, while the Resolve does not require reform for investor-owned water utilities.

In the carry-over paragraph on pages 17-18, the Draft Report summarizes comments submitted by the OPA. These comments assert that a showing of harm to large COWUs ought to be required before reforming regulatory oversight. These comments ignore the clear direction of the Resolve, specifically the Fresh Look, Minimum Burden, and Tailoring directives of the Resolve discussed previously.

Comments on Section III, Commission Proposal

The Draft Report proposes a general waiver process for consideration by the Legislature. However, this process does not appear to fully comply with the directive of the Resolve. In addition, the Draft Report's proposal appears to create a non-quantifiable standard for approval of exemption requests that may be a disincentive for COWUs to undertake such a process. The Draft Report's proposal would also impose a time-consuming and costly process that appears to proceed from the premise that continued regulation is justifiable and appropriate except where it is shown not to be. This is in direct conflict with the Resolve's Fresh Look, Minimum Burden, and Tailoring directives discussed previously.

PWD disagrees with the statement in the second sentence of the first full paragraph on page 21 that the quasi-municipal water "industry" (we assume that this reference is to the utilities that are the subject of the Resolve) has not undergone major change in recent years. While COWUs are still in the business of providing safe and adequate supplies of water at just and reasonable rates through conveyance in pipes, the amount of time, expense and technology that is deployed to achieve this service has indeed changed dramatically. Whether it is ozonation of water, use of smart meters, or the constant challenge of replacing infrastructure in a way that keeps rates stable and predictable for ratepayers, the business of a COWU has indeed changed. Finally the amount of institutional controls and transparency intended to benefit ratepayers and their communities has also increased significantly.

PWD agrees with the suggestion on page 23 that the requirements for safe, adequate and reliable service and just and reasonable rates be maintained for COWUs. PWD notes that the safe water parameters are overseen primarily by the State's Safe Drinking Water Program, and that no commenter has suggested changing that oversight. PWD notes that its reform proposal would shift primary responsibility for ensuring just and reasonable rates onto the elected trustees of a COWU, with opportunity for analysis and comment by the public and the OPA as exists today. PWD proposes that only in the event of a rate dispute with a non-member community, would the Commission become involved. If ratepayers become dissatisfied with a COWU's rates, they would be able to seek Commission review on whether such authority should be limited in some manner.

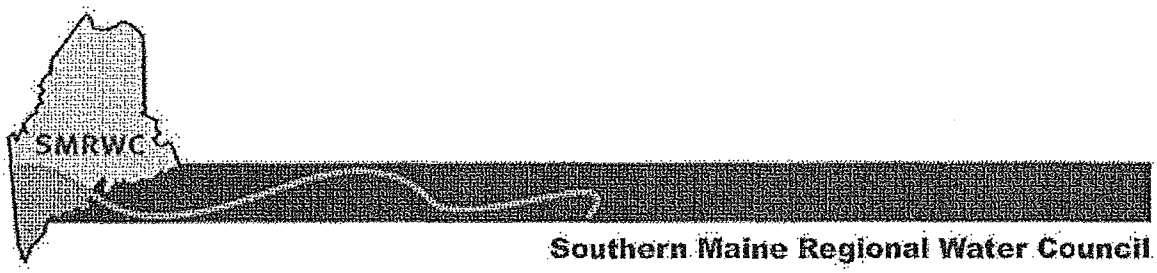
The full paragraph on page 25 of the Draft Report discusses a hypothetical financial burden on smaller water utilities if those with greater capabilities and stronger local governance obtain regulatory reform. While this concern alone is not a good reason to forego such reform, PWD questions its validity. There are several contrary and conflicting assumptions in this paragraph that bear further examination. One is that apparently Commission Staff believes that large COWUs are currently "subsidizing" small COWUs. The second is that the absence of such larger COWUs from the regulatory assessment will not change the Commission budget. The third is that smaller COWUs will not receive any benefit from targeted reform as proposed by PWD in its reform proposal. Finally, the paragraph assumes that the Commission would not deploy its resources as it has historically done to meet changing needs. The growth of natural gas local distribution and the thousands of new customers being added this year and

every year for the foreseeable future alone certainly portend changes in the Commission's work load and priorities. No one is suggesting that the workload of the Commission in total will be less in any possible future than it is today. However, the nature and type of that workload has changed over time and is likely to change in the future.

Finally, PWD also agrees with the Draft Report's statement at the bottom of page 21 that "historical practice without purpose might profitably be allowed to give way to greater local governance" of those COWUs that possess both the capacity and desire to assume greater responsibility. This statement is a good summary of why regulatory reform of consumer-owned water utilities should proceed in the most efficient way possible.

Thank you for the opportunity to provide comments on the Draft Report.

Ronald Miller
General Manager
Portland Water District



December 16, 2013

Thomas L. Welch, Chairman
Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018

RE: Docket 2013-00444 Draft Commission Report

Dear Chairman Welch:

The Southern Maine Regional Water Council (SMRWC) supports "statutory changes to Title 35-A that would authorize the Commission to consider requests made by individual consumer owned water utilities for exemptions from particular existing statutorily imposed regulations" as suggested in the Commission's draft report.

The SMRWC believes than an approach to regulatory reform that allows both the consumer owned water utility and the Commission latitude on where oversight is removed on an individual basis is workable and advantageous to water utilities and consumers.

SMRWC also supports granting exemptions to consumer owned water utilities as a class, as suggested in the draft report. For example, we feel that approval of securities, plans review, and Chapter 140 infrastructure maps are examples of regulations for which all consumer owned water utilities could be exempted.

The Council believes that utilities who are granted an exemption from oversight should not continue to pay the same level of assessment. Utilities who are no longer receiving Commission oversight will not consume Commission resources and shouldn't be expected to pay the same level of assessment. A relevant example exists in the statute, Chapter 35-A §116 1. C. states that "Gas utilities subject to the jurisdiction of the commission solely with respect to safety are not subject to any assessment." Perhaps a lesser assessment based on any remaining oversight could be calculated or agreed upon based on an estimation of Commission resources expended in that area.

The Southern Maine Regional Water Council strongly supports the effort to streamline and reform regulation of consumer owned water utilities. We will continue to be an active participant in this process as well as any legislative action that follows. The Council appreciates the opportunity to comment.

Sincerely,

David Parent
President, SMRWC

MWUA
Maine Water Utilities Association
Organized 1925

150 CAPITOL STREET, SUITE 5
AUGUSTA, ME 04330
OFFICE (207) 623-9511
FAX (207) 623-9522
www.mwua.org

December 27, 2013

MAINE PUBLIC UTILITIES COMMISSION
Inquiry Into Regulatory Reform Plan for Consumer-Owned Water Utilities
Docket No. 2013-00444

Comments on Draft Report Posted December 4, 2013

Maine Water Utilities Association offers these comments on the Draft Report posted by the Commission on December 4, 2013. These comments represent the fifth set of comments on this topic; the previous four are as noted below:

> September 27, 2012: MPUC Docket No. 2012-00315: Inquiry Into Decreasing Revenues of Water Utilities
>
> April 3, 2013: LD 441 Resolve, Directing the Public Utilities Commission To Develop a Plan To Reform Water Regulation
>
> April 9, 2013: Additional Comments: LD 441 441 Resolve, Directing the Public Utilities Commission to Develop a Plan to Reform Water Regulation
>
> October 18, 2013: Inquiry Into Regulatory Reform Plan for Consumer-Owned Water Utilities: Docket No. 2013-00444

We find that the Draft Commission Report falls short of meeting the goals outlined in the Legislative Directive outlined in LD-441, and hampers our attempts to clearly evaluate whether the key principles outlined in the Resolve are being met. This inability to envision the post-regulatory landscape has resulted in more uncertainty for our members and leads us to express serious reservations about the path this reform plan initiative is taking. We have stated previously that this regulatory reform effort should follow a process that has, as its core, a due diligence assessment of the various aspects of the current regulatory framework. We have also expressed the importance of predictability of outcome.

Regrettably, the Draft report appears to raise more questions than it answers, and places the Legislature in the position of assessing the potential of regulatory reform without adequate information to gauge whether they can be successful in what they are striving to accomplish.

It is important to relate that this regulatory reform initiative has been discussed repeatedly in our association's meetings since October 1st. Those have been meetings of the Directors, bimonthly membership meetings, Legislative and Regulatory Affairs Committee meetings and meetings of regional water councils or regional managers groups. Our members have told us much. They have raised many 'what if' questions and scenarios during those meetings that we hoped would be answered with the Draft Report. We now realize that this building uncertainty has increasingly split our association and prevents us from moving forward in a manner that we had hoped for earlier in the process.

The Draft Report includes sections outlining the procedural background of the Resolve, including the guiding principles of what the plan should be consistent with, and an overview of the current commission regulation - that are based in statute and implemented through commission rules. It concludes with their actual proposal for regulatory reform. In the proposal the Commission acknowledged past comments by consumer owned water utilities indicating an aversion to a "one size fits all approach" to regulatory reform. Recognizing the diverse positions, the report includes a comment *"the Legislature may wish to approach regulatory reform in a manner that allows for a variety of levels of regulatory relaxation, specifically, regulatory reform that is driven by*

consumer owned water utilities and focused on issues identified by trustees". It goes on to discuss how the Legislature may accomplish such a change relative to existing statutes and rules. The discussion concludes by highlighting the "unresolved" issue of the effect different levels of regulation would have upon the Commission's financial assessment of consumer owned water utilities that may wish to continue the current structure. The report states that it is "not certain" that as regulatory oversight decreases, the portion of the Commission's resources needed will correspondingly decrease as well. It states that Commission resources of late have "primarily" involved litigation from smaller utility issues. Under that scenario, the overall resources needed to maintain Commission oversight for a diminished number of regulated utilities could remain essentially unchanged. Alarmingly, the report states that if larger utilities are granted waivers from Commission assessments, *"the financial burden of maintaining Commission capacity will fall increasingly and perhaps significantly on smaller water districts"*. The vague and uncertain financial ramifications associated with the proposal builds great uneasiness with many of our members, and leads to questions about how this process will be defined moving forward.

Beyond the structure of financial assessments, there is also growing uncertainty and concern relative to the ongoing ability to continue to ensure that public fire protection service charges are a major portion of revenue requirements. Additionally, there's concern that the potential for the "opt out" scenario will create a situation that leads to two classes of water utilities, to the detriment of the water profession in Maine as a whole.

Perhaps most importantly, there is a sense amongst our members that we are missing an opportunity to avail ourselves of the ample opportunities evident to collectively streamline/reform the regulation of water utilities.

The report (page 4) infers that there is *"a risk of unforeseen (and perhaps unforeseeable) consequences for both water districts and their customers should the overall framework be subject to a wholesale revision and/or repeal."* Further, the report states that the granting of exemptions to particular statutory requirements would enable the Commission to adopt an incremental, case-by-case approach to easing the regulatory burdens faced by consumer owned water utilities.

We suggest that a wholesale assessment – and revision - of the regulatory requirements of, and the value provided by, the Commission, the Maine CDC Drinking Water Program and the Office of Public Advocate just might be the appropriate course of action that would result in broader acceptance of regulatory reform.

In closing, we want to be clear in stating that we feel the opportunities to achieve a regulatory scheme which is of greater benefit to all concerned, while not endless, are abundant and should be pursued. We have discussed many possibilities, in the meetings we have had over the past few months, which warrant further consideration. We need to define and build a better process with which to build clarity and predictability of outcome in order for us to collectively get to a better endpoint.

Jeffrey L. McNelly
Executive Director

December 20, 2013

State of Maine
Public Utilities Commission

Comments Re: Docket No. 2013-444

First I would like to apologize for submitting these comments after the deadline, the short period of time between issuing the Draft Report and the deadline did not allow me enough time to review the document completely, meet with my Board of Trustees, as well as meet with fellow water system professionals to gather input in interpreting the content of the draft.

While I intend to leave the specifics and references to others at this time, I believe that if the draft report goes forward without a substantial rewrite, then we all are missing an opportunity to consider some type of regulatory reform if that is indeed a goal of this effort.

My understanding was that the Legislative Resolve was to be an effort to develop an actual plan that would look at opportunities to reform the regulations and reporting requirements that meet the 'guiding principles' while easing some of the oversight burdens that no longer seem to make sense. Some of these requirements include the mapping and operational reporting that would be better served by reporting this information directly to the DHHS, Drinking Water Program, which already receive much of this data on a monthly basis and actually use it for planning purposes. Other areas that could be considered might be to simply eliminate the financing approval requirements for routine purchases such as trucks and small equipment that are handled in the yearly budget process by the trustees. I'm sure there is more we could discuss if we indeed wish to open up 35-A, M.R.S. and do a thorough review section by section.

I am concerned that the "exemption process" being put forward in the draft does not meet the goal of the Resolve to actually "reform regulation" and could potentially create a greater level of confusion for all parties.

Respectfully submitted,

Trevor Hunt

1 Lambard Street, Bath Maine 04530 • Tel.: (207) 443-2391 • Fax: (207) 443-5321
www.bathwd.org

Portland Water District
FROM SEBAGO LAKE TO CASCO BAY

November 8, 2013

Harry Lanphear, Administrative Director
Maine Public Utilities Commission
18 Station House Station
Augusta, ME 04333-0018

RE: Notice of Inquiry, Docket 2013-00444

Dear Mr. Lanphear,

Enclosed for filing in the above captioned case please find additional comments in the form of proposed draft legislation filed on behalf of the Portland Water District.

If you have any questions relating to these materials, please do not hesitate to me.

Thank you.

Sincerely,

/s/ Donna M. Katsiaficas

Donna M. Katsiaficas
Corporate Counsel

225 Douglass Street P.O. Box 3553 Portland, Maine 04104-3553
Phone: 207.774-5961 Fax: 207.761-8329 Web: www.pwd.org

ARTICLE I

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §6114 is enacted to read:

§6114. Exemption of certain water utilities

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Comprehensive exemption" means exemption from the provisions of

i. The following sections of chapter 1:

a. Section 112 relating to the commission's authority to obtain information;

b. Section 113 relating to the commission's authority to conduct a management audit; and

c. Section 116 relating to utility assessments;

ii. Chapter 3 relating to the rates of public utilities;

iii. Chapter 5 relating to accounting of public utilities;

iv. Chapter 7 relating to regulation and control of public utilities;

v. Chapter 9 relating to approval of stocks, bonds and notes of public utilities;

vi. Chapter 11 relating to sale, lease and mortgages of property;

vii. The following sections of chapter 13:

a. Section 1302 relating to complaints; and

b. Section 1303 relating to investigations;

viii. The following sections of chapter 15:

a. Section 1511 relating to revocation and suspension of authority to provide service; and

ix. The following sections of chapter 61:

a. Section 6102 relating to the filing of plans for construction or improvement with the commission;

b. Section 6104 relating to ratemaking procedures;

c. Section 6104-A relating to streamlined ratemaking procedures;

d. Section 6105 relating to rates for municipal and quasi-municipal water utilities;

e. Section 6107 relating to implementation of system development charges;

f. Section 6107-A relating to funding for infrastructure improvements for water utilities;

g. Section 6109 relating to sale of land by consumer-owned water utilities;

h. Section 6109-B relating to contracts for large scale extraction and transportation of water;

i. Section 6111-C relating to disconnection of water service for nonpayment of sewer services; and

j. Section 6112 relating to contingency allowances for consumer-owned water utilities

B. "Limited exemption" means an exemption from some but not all of the provisions identified in subsection A.

C. "Self governing" means that the governing body of the utility is elected directly by its customers in an election in which not less than 90% of its residential customers are entitled to vote.

2. **Requests for exemption.**

A. Consumer-owned water utilities may request a comprehensive exemption or a limited exemption in accordance with this section. The commission shall rule upon all requests for a comprehensive exemption or a limited exemption within 60 days of the filing of the request. If it determines that the necessary investigation cannot be concluded within 60 days, the commission may extend the period for a further period of no more than 90 days.

B. The commission shall grant a request for a comprehensive exemption if it finds that:

i. The requesting utility is self governing;

ii. The requesting utility has the technical, financial and managerial capability to operate without regulation by the provisions from which it will be exempted; and

iii. The requesting utility has developed a reasonable alternative plan that provides independent review of consumer complaints, including but not limited to disputed billing, disconnection and deposit decisions of the utility, by a party with authority to make determinations binding on the utility, pursuant to contract or otherwise, that will be in place on or before the effective date of the requested exemption.

C. The commission shall grant a request for a limited exemption if it finds that:

i. The requesting utility is self governing;

ii. The requesting utility has the technical, financial and managerial capability to operate without regulation by the provisions from which it will be exempted; and

iii. The requested limited exemption is consistent with the interests of the utility's ratepayers.

3. **Procedure for rescission of a comprehensive or limited exemption**

A. Upon the filing of a petition signed by the lesser of 1,000 customers or 15% of the customers of a utility that has previously been granted a comprehensive exemption or a limited exemption requesting that all or a portion of the exemptions previously granted to such utility be rescinded, the commission shall, with or without notice, investigate the request.

B. The commission, immediately upon the filing of a petition under subsection A, shall notify in writing the public utility complained of that a petition has been made and of the nature of the petition. The utility shall file its response to the complaint within 20 days of the date the notice of petition is issued. After receipt of the response, the commission shall promptly set a date for a public hearing. The commission may allow for all parties to attempt to resolve the matter to their mutual satisfaction. If a mutually satisfactory resolution does not appear to be forthcoming, the hearing shall be held pursuant to section 1304. The commission may not enter an order rescinding all or any portion of a comprehensive

exemption or a limited exemption without an opportunity for public hearing. In the absence of an informal disposition pursuant to Title 5, section 9053, the commission shall render a decision upon the matter no later than 9 months after the filing of the petition.

C. Notwithstanding the provisions of any comprehensive exemption or limited exemption previously granted, upon the initiation of a proceeding under this subsection, the commission shall have the full authority to obtain information from the exempted utility otherwise provided in Section 112, and the exempted utility will be subject to provisions of Section 112 for purposes of the investigation.