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Testimony Neither For Nor Against

LD 1708 – An Act To Create the Pine Tree Power Company, a Nonprofit Utility, To Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence

May 20, 2021

Senator Lawrence, Representative Berry, honorable members of the Committee on Energy, Utilities, and Technology, the Public Utilities Commission (Commission) testifies neither for nor against LD 1708, *An Act To Create the Pine Tree Power Company, a Nonprofit Utility, To Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence*.

The Act creates the "Pine Tree Power Company" (Company) a privately operated, nonprofit, consumer-owned utility controlled by an elected board. The elected board would retain a non-governmental entity, referred to as the "operator," to manage the operations of the Company. The operator would be required to hire the employees of the acquired utility.

The Act contemplates that the Company would purchase the facilities of Maine's investor-owned transmission and distribution utilities (IOUs) – Central Maine Power Company (CMP) and Versant Power (Versant). The Act also contemplates that the Commission would regulate the Company as it currently regulates the IOUs, rather than the limited regulatory authority over consumer-owned transmission and distribution utilities (COUs) under current law.[1]

After providing an overview of its perspective, the Commission offers six main points for your consideration on the specific provisions of this proposal: (1) PUC oversight over Company and operator; (2) Operator employees; (3) Individual utility acquisition discretion; (4) State energy programs; (5) Elected Board ; and (6) Fitness to serve.

[1] For example, under current law, the Commission does not conduct rate cases for COUs unless 10% of the utility's ratepayers petition for a Commission review of a proposed rate change. Title 35-A, section 3503.

Overview

A primary purpose of the Act is to substantially lower ratepayer costs through the ability of the Company to finance what is expected to be substantial investments in the grid to accomplish the State's climate goals through beneficial electrification at much lower costs than an IOU. The creation and operation of a non-profit quasi-governmental entity to own the assets of T&D companies may well accomplish this important goal over time. Whether it does so will depend, in part, on decisions made by the operator and the priorities set by the Board, which could align with or compete with these policy goals.

Proceeding with this legislation is not without risks. The expected time frames for the creation and operation of the Company and potential time-consuming and resource-intensive litigation, both before the Commission and the courts, may create delays and uncertainties over a significant period of years that could frustrate the State's goals of grid moderation and beneficial electrification. For example, this uncertainty may affect the day-to-day operations of the utilities and might make it difficult and expensive for the existing utilities to obtain necessary debt or equity financing for its capital needs, potentially leading to cutbacks or delays in providing services or making needed investments.

Thus, the decision to move ahead with this legislation is an extremely important State energy policy decision that will have long-lasting consequences.

The Commission offers the following comments on specific provisions of the Act.

1. Commission Oversight Over the Company and the Operator

As mentioned above, the Act contemplates that the Commission will regulate the Company as it currently regulates IOUs. This raises several issues. For example, would the Commission be required to approve the management contract between the Company and the operator? What would be the criteria for such a review?

Moreover, should the contract provide for cost disallowances if the operator acts in an imprudent manner as determined by the Commission? What should be the role of the Commission in reviewing the Company's and the operator's plan for system expansions to modernize the grid? Clarification would also be helpful in understanding how disputes between the elected Board and the operator would be adjudicated, particularly when imprudence by either party may be involved.

2. Operator Employees

The Act requires the operator to hire the employees of the acquired utility who are subject to a collective bargaining agreement at the time of the acquisition and are required to offer a bonus to such employees.

The Commission understands the purposes for requiring the operator to hire the existing utility's employees. However, the operator will be a private company that would seek to provide its service at the lowest reasonable cost and may have key personnel with expertise it would want to bring in for particular roles. Requiring a private entity to hire specified employees at specified salaries may be considered overly restrictive for any entity considering bidding to provide the operator services. Generally, private entities are able to use their judgement in deciding which type of expertise is required, the number of needed employees, and to fill necessary positions accordingly. This would especially be the case if the operator were to manage the facilities of both CMP and Versant in which there may be duplication of services from the former employees of the two utilities.

The Commission seeks clarification as to whether it would be expected to enforce the employee retention provision of the Act; including, for example the authority to penalize the operator for violations of the Act.

3. Individual Utility Acquisition Discretion

The Commission suggests that the Committee consider providing to the Company the discretion to choose to initially acquire the facilities of only one IOU with a subsequent acquisition of the other IOU. As the Committee is aware, CMP and Versant have completely different systems in their operation of the grid and their back-office systems (such as billing systems and customer service functions). Requiring the selected operator to take over and manage the systems of two utilities at the same time may create significant complexities, costs, and delays for the operator.

The Committee might also consider specifically allowing the Company's Board to hire separate operators for the two utility service territories. This could ease the transition and, ultimately, lead to a more successful integration into a single utility in the future.

4. State Energy Programs

The Act specifies that the Company would have all the power and duties of the IOUs under Title 35-A. Thus, the Company would have the obligations to fulfill State energy policy programs such as NEB and long-term contracting with renewable generation resources. As the Committee is aware, CMP and Versant have existing NEB agreements and long-term contract obligations. The Committee may want to specify that all such existing obligations of the IOUs be transferred to the Company and that the counterparties to the agreement must accept the assignment of the IOUs to the Company.

5. Elected Board

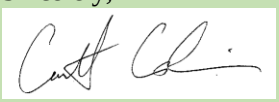
The Board composition is predominately elected members rather than one made up largely of individuals with expertise. Elected boards have the advantage of direct accountability to voters, while boards with more expertise have the advantage of enabling detailed oversight and accountability on specific aspects of the utility's work. Popularly elected boards may also result in politics playing a central role. Campaign finance considerations may be worthy of consideration, as special interests who stand to benefit from utility policies or practices could finance candidates.

6. Fitness to Serve

The Act adds a new provision to Title 35-A, section 1511-A, entitled "fitness to serve." This provision appears unrelated to the creation of the Pine Tree Power Company. The provision would require the Commission to find a T&D utility "unfit to serve" and to require the sale of the utility if the utility fails to meet two of three criteria over a previous five-year period. A firm requirement that a utility be sold based on the criteria contained in the Act could be complex, costly, and time-consuming given that a fair price would have to be determined and a transfer could take many years to complete. Accordingly, the Commission suggests that, if this provision is included in law, the requirement for a sale be optional. The Commission notes that it has broad existing authority to remedy inadequate service without requiring the sale of the utility.

The Commission is available to answer any questions and will attend any work sessions.

Sincerely,



Garrett Corbin
Legislative Liaison

cc: Energy, Utilities, and Technology Committee Members
Deirdre Schneider and Daniel Tartakoff, Legislative Analysts