



# Natural Resources Council of Maine

3 Wade Street • Augusta, Maine 04330 • (207) 622-3101 • Fax: (207) 622-4343 • [www.nrcm.org](http://www.nrcm.org)

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## **Testimony in Support of LD 325, An Act To Require Transparency in Transmission and Distribution Utility Advertising Expenditures**

By Rebecca Schultz, Senior Advocate for Climate and Clean Energy  
February 16, 2023

Senator Lawrence, Representative Zeigler, and members of the Joint Committee on Energy, Utilities and Technology, my name is Rebecca Schultz. I am a Senior Advocate for Climate and Clean Energy at the Natural Resources Council of Maine (NRCM). NRCM has been working for more than 60 years to protect, restore, and conserve Maine's environment, on behalf of our 25,000 members and supporters. I am here today to testify in support of LD 325, An Act To Require Transparency in Transmission and Distribution Utility Advertising Expenditures, with suggested modifications to strengthen the proposed bill.

Maine's 2021 ballot measure (Question 1) on Central Maine Power's (CMP) transmission corridor broke all records for political spending. According to the Maine Ethics Commission, CMP and its affiliated companies spent more than \$54 million in an effort to defeat the referendum.<sup>1</sup>

Maine people have various views about the CMP corridor, even if 60 percent of voters did cast their ballots in support of the measure. Debate is a sign of a healthy democracy. But I hope we can agree on the principle that companies given a monopoly franchise with guaranteed returns in exchange for providing an essential service to Maine people should not be spending that kind of money to influence the outcome of our elections.

I'm even more confident we can agree that political influence campaigns should not be charged to Maine ratepayers through electric bills they have no choice but to pay.

Maine's current rules governing the political and advertising activities of our public utilities were last updated substantively in 1987. That was a long time ago. That was well before the 2010 Citizen United decision by the U.S. Supreme Court that super-charged corporate spending in politics, and well before the proliferation of Political Action Committees (PACs). It was also years before the various acquisitions and reorganizations that brought Maine's largest electric utilities under complex structures of multinational corporate ownership.<sup>2</sup> These rules are long overdue for an update. For evidence of this,

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<sup>1</sup> CMP spent through two Ballot Measure Committees (Clean Energy Matters and Mainers for Fair Laws). Hydro-Quebec spent more than \$22 million. Prior to 2021, the most money spent in Maine on a ballot measure campaign was \$9.4 million in 2017 in a failed effort to get voters to approve a casino in York County, see Ballotpedia available at

[https://ballotpedia.org/Maine\\_Question\\_1\\_Casino\\_or\\_Slot\\_Machines\\_in\\_York\\_County\\_Initiative\\_\(2017\)](https://ballotpedia.org/Maine_Question_1_Casino_or_Slot_Machines_in_York_County_Initiative_(2017)).

<sup>2</sup> CMP was acquired by Spanish utility Iberdrola in 2007 and reorganized under new U.S. parent Avangrid in 2016. Emera was acquired by ENMAX, changed to Versant Power, in 2020.

<https://www.mainepublic.org/business-and-economy/2016-01-26/cmp-under-new-ownership-in-iberdrola-merger>

look to CMP's annual reports to the Public Utility Commission (PUC), where it acknowledged a mere \$327,000 in political expenses for 2021.<sup>3</sup>

LD 325 takes an important step forward in amending the disclosure requirements related to advertising. However, the requirements should apply to all public utilities in Maine, not just to transmission and distribution (T&D) companies. Furthermore, the Committee should take this opportunity to consider additional ways to strengthen the law. The following are three no-nonsense revisions we urge the Committee to adopt:

1. The rules barring Maine's public utilities from charging political activities to ratepayers should be expanded to include **charitable and unapproved education spending**.<sup>4</sup>
2. The prohibition should be broadened to apply to **parent companies and all affiliated interests** who may be acting on behalf of a public utility in Maine.<sup>5</sup>
3. The disclosure requirements should be expanded to **include charitable and educational spending** and **spending by all affiliated interests**, and detailed annual reports should be **readily accessible** to the public.<sup>6</sup>

These revisions are in line with recommendations made by the Energy and Policy Institute, a non-partisan research organization tracking the political activities of public utilities across the United States.<sup>7</sup>

In closing, there is a lot of money being spent by our utilities to influence their political environment, and much of it is very hard to track. Our current rules are woefully out of date and fail to protect consumers. Ahead of what is poised to be another year of record spending to affect the outcome of dueling referendum campaigns on the 2023 ballot, Maine people will surely welcome these prudent measures to help shine a light on the influence of political spending by our public utilities. I urge the Committee to vote ought to pass with these suggested changes.

Thank you for your consideration of this testimony.

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<https://www.newscentermaine.com/article/money/business/emera-maine-becomes-versant-power/97-4193c28a-e614-4066-96b3-92ab8744b44e>

<sup>3</sup> To find public utility annual reports, go to <https://www.maine.gov/mpuc/online-services>; then click "View Annual Report"; then fill out search terms.

<sup>4</sup> Title 35-A §302, Limitations on rates, available at <https://legislature.maine.gov/statutes/35-A/title35-Asec302.html>.

<sup>5</sup> Title 35-A §707, Affiliated interests, available at <https://legislature.maine.gov/statutes/35-A/title35-Asec707.html>.

<sup>6</sup> Title 35-A §302-A, Rules governing political activities, promotional advertising and institutional advertising, available at <https://legislature.maine.gov/statutes/35-A/title35-Asec302-A.html>.

<sup>7</sup> Energy and Policy Institute, January 2023, Getting Politics Out of Utility Bills, report available at <https://www.energyandpolicy.org/guide-to-protect-ratepayers-from-utility-scandals/>.

LD 325: New Title: An Act to Protect Utility Customers and Improve Disclosure of Political and Advertising Spending by Public Utilities and Their Affiliates

**§102. Definitions**

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

1. Commission. "Commission" means the Public Utilities Commission.

1-A. Abutting property. "Abutting property" means, with respect to a parcel of land, another parcel of land that shares a common property boundary, except that "abutting property" does not include a parcel of land separated from another parcel by a public road or highway.

1-B. Affiliated interest. "Affiliated interest" has the same meaning as provided in section 707, subsection 1, paragraph A.

**§302. Limitations on rates**

The following expenses, whether paid directly or indirectly, through reimbursement or otherwise, incurred by a public utility or by an affiliated interest, shall be listed and described by date, payee, purpose and amount in a public utility's annual and quarterly report to the commission, and shall not be included or incorporated in operating expenses:

1. Contributions to political groups or candidates. Contributions or gifts to political candidates, political parties, political or legislative committees or any committee or organization working to influence referendum petitions or elections.
2. Tax-deductible contributions. Contributions to a public charity, including but not limited to a charity managed or influenced by the utility or by an affiliated interest.
3. Unapproved public education. Spending of more than \$1,000 per month on public education or customer education campaigns, including but not limited to bill inserts, advertising by digital, radio, television, print or other media, sponsorships, endorsements, public relations and external communications, except as approved in advance by the commission for the purpose of serving a public necessity.

**§302-A. Rules governing political activities, promotional advertising and institutional advertising**

Rules adopted by the commission concerning promotional advertising; promotional allowances, including, but not limited to, the granting of promotional rebates or credits; advertising to promote corporate image or goodwill; or political activities; charitable contributions; and public education by public utilities or their affiliate interests are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules on these matters in effect on the effective date of this section remain in effect and do not require legislative approval but any changes to such rules are subject to review and approval in accordance with Title 5, chapter 375, subchapter 2-A.

Rulemaking. The commission shall amend its rules to conform with this act.

Summary: This bill prevents political, charitable or public education expenditures by a public utility or its affiliate from being included in customer rates, except for public education expenditures with prior approval. It also requires detailed reporting of these expenditures and requires the commission to update its rules to administer the prohibition.

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## OPINION

# Getting politics out of utility bills

Public utility commissions should explicitly bar utilities from spending customers' money on politics, using clear and common-sense definitions of political activity.

Published Feb. 1, 2023

By David Pomerantz

*David Pomerantz is the executive director of the Energy and Policy Institute.*

Larry Householder, the former Ohio Speaker of the House, entered a courtroom last week where he's being tried for his alleged role in a brazen \$60 million bribery scheme involving the investor-owned utility FirstEnergy. It's the largest political corruption case in Ohio's history.

Prosecutors allege that FirstEnergy funneled money through dark money groups to Householder's political organization in exchange for a bailout of several of the company's unprofitable nuclear and coal plants that cost ratepayers over \$1 billion.

Based on audits by regulators, it's clear that at least part of the money Householder received came from fees that FirstEnergy collected from ratepayers, likely across many states, through their monthly bills.

Unfortunately, utilities charging customers for many of the costs of their sprawling political influence machines is standard operating

procedure across the industry.

While some cases have led to high-profile criminal charges and indictments, utilities regularly exploit a host of more mundane legal loopholes to use customers' money to try to influence politicians and regulators, all in an effort to grow their profits and thwart competition.

For example, gas utilities use their trade associations to convince people that methane isn't a threat to our climate, and electric utilities use customers' money to fund slick PR campaigns against rooftop solar, or to convince people that rate increases are good for them.

Customers pay first for the political influence tactics, and then again via the higher rates and environmental harm that flow from them.

Ratepayers deserve better.

State and federal policymakers can ensure that no ratepayers ever have to pay for a situation like the FirstEnergy-Householder corruption scheme again.

To do so, they should adopt a mix of rules, disclosure and enforcement.

For starters, public utility commissions, or PUCs, which regulate investor-owned utilities in all 50 states and the District of Columbia, should explicitly bar utilities from spending customers' money on politics, using clear and common-sense definitions of political activity.

Rules are hard to enforce without transparency, so it's also critical that PUCs require detailed disclosure of all utility political expenses.

Finally, when utilities violate these rules, PUCs must levy fines and penalties that extend beyond refunds. If the only consequence of being caught breaking the rules is that a utility has to refund customers without penalty, it would be as if every time the police stopped a bank robbery, they simply asked the robber to return the money to the vault, and then walk away otherwise unpunished.

Public utility commissioners aren't the only state leaders who can and should take action to prevent the next FirstEnergy scandal from coming to their state.

State law governs the regulatory authority and responsibilities of each public utility commission, providing legislators with the ability to write or amend statutes requiring PUCs to take many of the above actions in rulemaking, disclosure and enforcement.

Legislation can remove uncertainty, place an affirmative onus on PUCs to act, and guarantee continuity in the face of new PUC appointments or elections. Legislators can also appropriately budget PUCs to enable better oversight and enforcement, and can craft tighter campaign finance rules for utilities.

The Federal Energy Regulatory Commission also has tools at its disposal to protect ratepayers.

FERC sets the rates for all interstate transmission of electricity and gas, which means that FERC has jurisdiction over what costs utilities are allowed to recover from their wholesale transmission customers.

FERC also manages the Uniform System of Accounts, or USoA, which gives guidance to utilities for how to classify different expenditures. Most state PUCs require utilities to use the USoA as their accounting system, which means that the accounting system has a trickle-down effect beyond FERC's jurisdiction over wholesale transmission rates.

FERC has long recognized that ratepayers should not be forced to pay for their utility's political activities, which typically benefit a utility's shareholders. Yet despite that principle, the nation's ratepayers are currently paying for their utilities' efforts to influence policy in the transmission portion of their gas and electric bills.

FERC issued a Notice of Inquiry in 2021 to consider many questions related to utilities' recovery of political costs from customers. In response, consumer advocates and state officials alike called on FERC to clarify rules, definitions and standards to make explicit that utilities should not be able to charge ratepayers for a broad suite of political influence activities.

The agency can act with a proposed set of new rules at any time.

Enacting these reforms will result in lower bills for the nation's energy customers. It will make addressing climate change easier, as utilities' ratepayer-subsidized political operations often oppose climate action. It will strengthen our democratic institutions, by reducing the ability of some of the most aggressive spenders on politics to do so under cover of darkness.

State and federal leaders should act now for all these reasons, and to prevent the next trial of a ratepayer-funded corruption scheme from landing in their state next.