

January 23, 2024

Good afternoon, Senator Lawrence, Representative Zeigler, and Members of the Committee on Energy, Utilities, Technology.

My name is Brook DeLorme, and I am testifying in support of LD 2087, “An Act to Protect Property Owners by Preventing the Use of Eminent Domain to Build Transmission Lines Under the Northern Maine Renewable Energy Development Program.”

I live off-grid in Palermo, Maine. This is one of the towns that was targeted for extensive land taking – around 280 people received letters from LS Power. I live about 4000 feet from one of the lines proposed by LS Power. I do not live on one of the parcels targeted for taking.

In summer of 2023 it became clear that the threat of eminent domain was the primary source of fear and shock to hundreds of residents up and down the proposed corridor. I talked to many people who were afraid, tearful, or angry.

There were 400-450 parcels which were targeted by LS Power for an easement. There were 3000+ abutters. **To date, I have not met anyone who agreed to sell easements on their land for the transmission line.**

Maine has some of the worst laws protecting landowners from eminent domain, according to Institute for Justice, a non-profit legal aid group organized specifically to help low-income people fight for just compensation.¹ **Maine ranks “D”**, because it has not adjusted its laws in the era following the Supreme Court ruling of *Kelo v. New London*. This ruling allowed states to take land from private landowners, and give it to private corporations for private benefit.

Please note how distinctly different this is from taking land to build a road. I live near Route 3, which was built using eminent domain in the 1960s. But, unlike LS Power or other utilities, the state route is legitimately owned by the state and the taxpayers and provides direct and clear usefulness or benefit to its neighbors. In the case of an eminent domain taking for private use, such as was envisioned by LS Power, **the state is facilitating a transfer of wealth between private landowners – and in this case, it would be *taking* from lower-income and rural people, and *giving* to a multi-billion-dollar out-of-state company.**

This is why a route like this is **proposed through lower-income, socially vulnerable rural communities**. Can you imagine this being proposed through Camden or Cape Elizabeth? It requires time, money, and resources to organize and fight to receive just compensation, in spite of the fact that the law accords this right.

But: **just compensation is not offered to the neighboring parcels who have now had their property value diminished by as much as 50% for the lifespan of the transmission line.** There are numerous independent studies that demonstrate this. LS Power has offered a single study disputing this, by James Chalmers, a researcher who primarily works on behalf of utilities

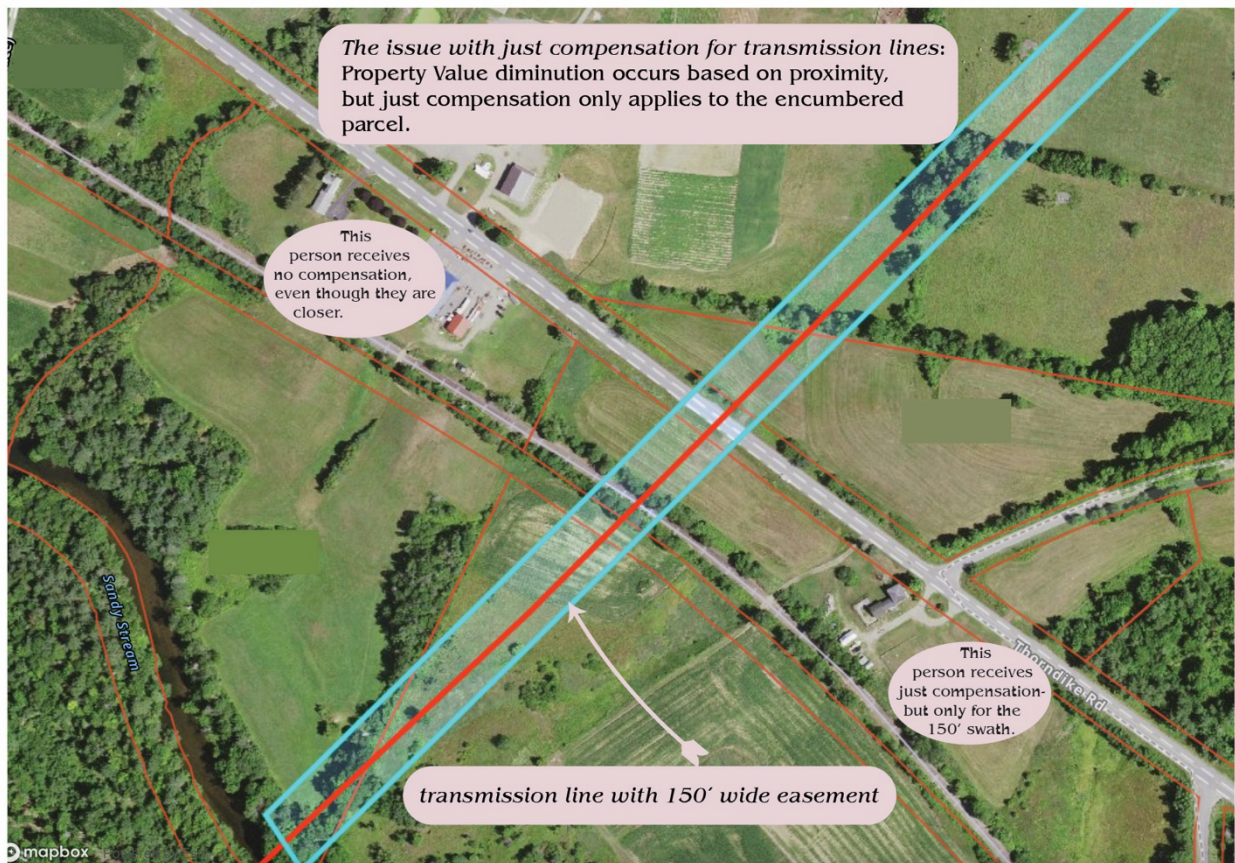
¹ <https://ij.org/issues/private-property/eminent-domain/>

intending to demonstrate there is minimal property value diminution in proximity to a transmission line. New Hampshire Public radio interviewed Chalmers and found:

“In an interview with New Hampshire Public Radio (NHPR), the Applicants’ property valuation consultant, James Chalmers, concurred in the possibility of such a loss, stating that:

If it is basically a view-lot and your view is down the valley and you string transmission lines across that valley right in the middle of the viewshed and that becomes kind of the dominant feature of the view, I can easily imagine your \$200,000 second home might only be a \$75,000 second home or a \$100,000 second home – something like that.”²

Thus, **the consultant for the utilities acknowledges a 63% property value diminution** as a possibility when he is interviewed by NH Public Radio.



² <https://www.nhpr.org/north-country/2012-11-01/appraisal-triggers-latest-dispute-over-northern-pass#stream/0>

Appraisers Must Be Able to Act Without Fear of Persecution

This same article from NHPR³ describes how the **utility in question threatened the license of an appraiser** who provided a similar estimate as Chalmers. In order to seek just compensation, landowners must be assured that appraisers do not have their licenses threatened.

Limited Attorneys in Maine with Subject Matter Expertise in Eminent Domain

Many of the big law firms in Maine are already conflicted out of cases involving the PUC or the utility companies. (I know this from personal experience: from calling and asking, and from reading which firms already represent the utilities in the PUC dockets. I was also unable to engage the law firm with whom I have worked for 25 years because they are conflicted on this matter.) There are few attorneys in any state specializing in eminent domain and just compensation. It would be easy for any utility facing this prospect to contract with, and thus conflict out *all* the big firms in Maine who have experience with this issue – leaving landowners with extremely limited experienced representation.

Moreover – as is evidenced by the House Hearing from the 112th Congress (linked below) – there is uncertainty how mortgage holders, whether private or public, will handle eminent domain property value diminutions. Without the assistance of a competent attorney, a landowner may not be able to correctly navigate the competing interests in their land while protecting and seeking compensation for their investment to date. It is possible for an eminent domain taking to trigger a mortgage default, depending on the lending structure.⁴

Does the average landowner, if approached by a utility asking to purchase their easement (outside of an eminent domain taking) understand the risks they face with their lender, or the possible triggering of PMI, or other tax implications for their property (current use, farmland, tree growth)? Since the average landowner may not understand these risks, and they are being coerced through the threat of eminent domain into an easement sale, is it not more fair for the billion-dollar utility to pay for the independent legal expenses the landowner requires to accurately assess the issues?

Independent Property Valuation Impact Studies

Listed below are some independent studies that demonstrate up to a 44% diminution in property values for land in proximity to a high impact transmission line:

³ <https://www.nhpr.org/north-country/2012-11-01/appraisal-triggers-latest-dispute-over-northern-pass#stream/0>

⁴ Personal conversation with someone in private lending

Valuation Guidelines for Properties with Electric Transmission Lines. by Kurt C. Kielisch, ASA, IFAS, SR/WA, R/W-AC⁵

Summary: a study written by an appraiser, listing specific examples, including:

- 2006 studies of rural agricultural and recreation land with 60 ft wood H-poles found 23% diminution in sale price. When the line bisected a large property, the loss was as large as 34%. (page 3)
- 2007 Tucson AZ study: when looking at land-only impacts found a 40% loss in property values. (page 4)
- In 2009 it was reported in the Montana Standard that property owners in Montana would be exempted from paying property taxes on land within 600 feet of either side of an HVTL right-of-way. (page 20).

The Pricing of Power Lines: A Geospatial Approach to Measuring Residential Property Values -David Wyman & Chris Mothorpe. 2020 ⁶

Summary: lots adjacent to power lines sold for 44.9% less, and lots within 1000 feet sold for 17.9% less. Lots within viewshed of a tower had pricing diminution of 22.1%.

Economic Impact Analysis and Review of the Proposed Northern Pass Transmission Project, Prepared for the State of New Hampshire Office of the Attorney General Counsel for the Public. SEC Docket No. 2015-06, by Nicolas O. Rockler and Thomas E. Kavet. 2017 ⁷

Summary: Northern Pass in NH proposed only 32 miles of new corridor. The study notes that even a tiny fraction of a property value reduction equates to millions of dollars in lost value and lost tourism dollars.

The Impact of Overhead High Voltage Transmission Towers and Lines on Eligibility for Federal Housing Administration (FHA) Insured Mortgage Programs. House Hearing 112th Congress.⁸

Summary: The town of Chino Hills, CA saw a 17% drop in property values *across the entire city* within 10 months of the project start date.

Usefulness of the Northern Maine Renewable Energy Project for Lower-Income, Socially Vulnerable, or Rural Mainers?

The Governor's Energy Office wrote in *State of Maine Renewable Energy Goals Market Assessment* March 2021, that “**Maine is currently already a net exporter of energy**” (page 18), and they cite the US Energy Information Administration.

⁵ <https://www.icc.illinois.gov/docket/P2013-0657/documents/211996/files/373834.pdf>

⁶ <https://www.tandfonline.com/doi/abs/10.1080/10835547.2018.12091490>

⁷ https://www.nhsec.nh.gov/projects/2015-06/testimony/2015-06_2017-04-17_supp_test_kavet_rockler_exb.pdf

⁸ <https://www.congress.gov/112/chrg/CHRG-112hrg75087/CHRG-112hrg75087.pdf>

In reviewing current numbers from the same EIA, I could not independently verify the GEO's statement, however, did find that it appears the state is limiting natural gas electricity generation. It appears that Maine uses 14.2 million MWh yearly, and is generating 12.4 million MWh yearly, but running natural gas plants at 31.8% capacity. Running those same plants at 48% capacity would make up the variance. We can assume that wind and solar are not being arbitrarily suppressed, (running at 30% and 19% capacity, respectively) – and we do not know the source of the international imports of 2.2 million MWh. (Source: *EIA 2022 Maine Electricity Profile Spreadsheet Full Data Tables, Tab 14, Capacity Factors Monthly*)

Since Maine residents have already paid for the generation capacity that could supply the state needs in a method seemingly considered by the Governor's Energy Office to be an appropriate bridge fuel⁹, is it really in the interest of the ratepayer to build massive transmission infrastructure on the property of rural farmers, foresters, and homesteaders and take the land via eminent domain?

Finally, the **generation and transmission contract terms must be matched in order to truly quantify the cost to ratepayers**. The current estimate for wind turbine equipment is a lifespan of 20 years¹⁰, matching the proposed contract term. Transmission lines are known to have a lifespan of 40+ years.¹¹ These contract terms need to be harmonized.

Stray Voltage

Stray voltage has been determined by courts across the country to be a serious issue for dairy farmers. A 2018 publication called *Stray Voltage and Dairy Farms Can Lead to Large Damage Awards* by Mary Francque, lists the court awards: the highest of which has been \$14 million at that point in time.¹²

⁹ GEO's testimony opposing LD 2077. January 23, 2024 – I believe this to be an accurate characterization of the sentiment expressed.

¹⁰ <https://www.twi-global.com/technical-knowledge/faqs/how-long-do-wind-turbines-last>

¹¹ <https://engineering.mit.edu/engage/ask-an-engineer/how-do-electricity-transmission-lines-withstand-a-lifetime-of-exposure-to-the-elements/>

¹² https://legalectric.org/f/2021/01/Ex.-GCI-Cray-8_Stray-Voltage-and-Dairy-Farms.pdf

Year	Case Name	State	Claims brought	Relief granted to Farmer
1984	Zorn v. Electrical Research & Manufacturing Coop.	Wisconsin	negligence	\$79,786
1985	Schriner v. Pennsylvania Power & Light Co.	Pennsylvania	Strict Liability	\$81,374
1986	Public Service Indiana, Inc. v. Nichols	Indiana	Strict Liability	\$343,000
1986	Hensley v. Howell-Oregon Electric Coop.	Missouri	Negligence	\$172,091
1988	Otte v. Dayton Power & Light	Ohio	Negligence	\$36,500
1989	Lipke v. Waushara Electric Coop.	Wisconsin	Negligence	\$70,000
1989	Taplin Farms, Inc. v. Ryder Sales & Service	Wisconsin	Negligence (Co-defendant Northern State Power found negligent)	\$178,684
1990	Fink v. Lafayette Electric Coop.	Wisconsin	Negligence and strict liability	\$500,000
1991	Kolpin v. Pioneer Power & Light Co.	Wisconsin	Negligence, strict liability, and nuisance	\$133,326
1992	ZumBerge v. Northern States Power Co.	Minnesota	Strict liability and negligence	\$1,000,000
1993	Cook v. Goodhue County Coop.	Minnesota	Negligence	\$450,000
1994	Matchey v. Trempealeau Electric Coop.	Wisconsin	Negligence	\$400,000
1996	Vogel v. Grant-Lafayette County Electric Coop.	Wisconsin	Negligence and Nuisance	\$240,000
1998	Vandenberg v. Consumers Power Co.	Michigan	Negligence and Nuisance	\$750,000
1999	James v. Beauregard	Louisiana	Negligence	\$1,500,000
1999	Tipmont Rural Electric Membership Corp. v. Fisher	Indiana	Negligence	\$1,700,000
2000	Scullion v. Wisconsin Power and Light Co.	Wisconsin	Negligence	\$277,500
2001	Iowa Lakes Electric Coop. v. Schmitt	Iowa	Negligence	\$303,022
2006	Muth v. Wisconsin Electric Power Co.	Wisconsin	Nuisance and negligence	\$1,107,289
2007	Gumz v. Northern States Power	Wisconsin	Nuisance	\$532,000
2008	Chapman v. New Mac Electric Coop.	Missouri	Nuisance	\$2,094,184
2012	Bollant v. Scenic Rivers Energy Coop.	Wisconsin	Nuisance and negligence	\$5,000,000
2015	Poppler v. Wright-Hennepin Cooperative Electrical Association	Minnesota	Negligence, nuisance, and trespass	\$2,500,000
2016	Norman v. Crow Wing Power	Minnesota	Nuisance and negligence	\$6,300,000
2017	Haldersons v. Northern States Power	Wisconsin	Nuisance and Negligence	\$14,000,000
2017	Burdick v. Interstate Power and Light	Iowa	Nuisance and negligence	\$500,000

Figure 1 Source: *Stray Voltage and Dairy Farms Can Lead to Large Damage Awards*, Mary Franque

The court cases above provide evidence that many farmers have faced issues with transmission lines in proximity to dairy cows, and forcing this to happen through eminent domain takings is contradictory to several initiatives¹³ in the state intended to support farmers.

¹³ Maine Won't Wait, Dec 2020, page 69 "Recent legislation directed the Department of Agriculture, Conservation, and Forestry to increase state purchasing of Maine- grown food, and to support institutions' purchases in reaching the goal of purchasing 20% of the food they procure from Maine producers by 2025."; LD 1881 aims to help protect farmland from impacts of renewable energy siting, including transmission siting.

Suggestions for amendments to LD 2087

- The PUC RFP shall require bidders to show a separate line item demonstrating they have budgeted appropriately for just and fair compensation and severance damages to landowners and abutters.
- The PUC RFP shall require bidders to propose on existing corridors, and the PUC shall be required to approve the joint use of equipment.¹⁴
- Utilities shall cover legal expenses for landowners and abutters' counsel of choice in negotiations for fair and just compensation in eminent domain and severance damage cases.
- Utilities shall demonstrate at least one of the big, full-service law firms in Maine is not conflicted by relationships with utilities or with the PUC.
- If the proposed taking causes a property value diminution of more than 15%, the “buy the farm” language shall apply.¹⁵
- A utility shall acquire 90% of the easements needed, by linear measure, within two years before they shall have access to the right of eminent domain taking.

Thank you for taking the time-

¹⁴ <https://www.mainelegislature.org/legis/statutes/35-A/title35-Asec711.html>

¹⁵ <https://www.revisor.mn.gov/statutes/2023/cite/216E.12>