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March 11, 2025

Testimony Supporting LD 197 – Resolve, to Direct the Governor's Energy Office to Conduct a Study Regarding the Future of Electric Transmission Infrastructure in the State

Senator Lawrence, Representative Sachs, and Members of the Energy, Utilities, and Technology Committee:

Thank you for the opportunity to present testimony. My name is Tanya Blanchard, and I speak on behalf of Preserve Rural Maine, whose mission is to protect the communities, cultures, and environmental integrity of rural Maine. Balancing the need to meet Maine's energy goals while preserving rural Maine is a delicate and essential task.

The siting of energy infrastructure has lasting impacts on both the people and ecology of Maine. LD 197 proposes a much-needed feasibility study to identify the best technologies and siting locations for future electric transmission infrastructure. With Maine's accelerated goal of 100% renewable energy by 2040, forecasts show we will need to double or triple our current generation and transmission capacity. Such growth demands thoughtful planning that considers the entire state and future energy needs.

Although Maine's renewable energy goals focus on in-state needs, the Public Utilities Commission (PUC) has signaled its intent to make Maine a net exporter of renewable energy, as demonstrated in the failed contract negotiation for the Northern Maine Energy Project. Massachusetts alone is projected to need five times Maine's electric demand. This additional transmission load must be carefully planned to avoid costly rework for ratepayers, unnecessary environmental destruction, and harm to private property owners.

Currently, the PUC is tasked with issuing RFP's for transmission lines but must also weigh a broad set of impacts and benefits: public welfare, private property, industry location and growth, statewide economic development, environmental protection, historic preservation, aesthetics, air and water quality, natural resource use, and public health and safety. Energy infrastructure construction must be treated as a major land-use decision in which environmental, economic, and technical issues are resolved together – not separately.

A study, as proposed in LD 197, would allow the PUC to operate within its established statutory framework, which does not mandate consideration of socio-economic issues. We have already

seen one failed procurement for an aerial transmission line, and issuing another RFP for the same routes and design – without thoroughly considering alternative technologies and locations – would be a waste of taxpayer money.

Furthermore, recent severe winter storms have damaged even high-voltage (345kV) transmission systems, threatening Maine's energy reliability at the most vulnerable times of year. With increasing dependence on electricity through heat pumps and other beneficial electrification initiatives, transmission reliability is more critical than ever. After the 2024 winter storms, Governor Mills allocated $4.4 million to improve grid resilience, including moving lines underground (see attachment A). If Maine is already investing in burying vulnerable existing lines, it makes both economic and practical sense to consider burying new transmission lines – rather than building them overhead only to move them underground later. A proper study should examine both buried and aerial solutions on equal footing.

The challenge of siting transmission lines is not unique to Maine. Federal regulations (23 CFR 645.205, see Attachment B) acknowledge that placing utility facilities within existing highway rights-of-way (ROW) is in the public interest. The US Department of Transportation Federal Highway Administration has clarified that using highway ROW for transmission lines is acceptable if it does not compromise safety, environmental quality, or violate other regulations (see Attachment C).

Using existing highway ROW for buried transmission lines is a common-sense solution:

- It avoids disturbing undeveloped land and forests.
- It leverages existing road infrastructure to access construction sites.
- It uses DOT's historic geotechnical data to avoid surprises like bedrock interference.
- It allows buried corridors to co-exist within already-disturbed areas, minimizing environmental impact.

A buried transmission line along highways corridor would also provide a scalable, high-capacity solution requiring very little land – a far better alternative to sprawling overhead lines cutting through rural communities and sensitive habitats

Maine cannot afford to build transmission infrastructure the wrong way or in the wrong place. Taking time now to study and plan will save money, time and headaches later, while creating a more reliable and resilient grid. For these reasons, we strongly support LD 197.

Thank you for your time and consideration.

Sincerely,
Tanya Blanchard

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Governor Mills Announces $4.4 Million Grant Opportunity to Increase Electrical Grid Resilience to Extreme Storms

February 9, 2024

Federal funds through the Bipartisan Infrastructure Law will spur investments in grid infrastructure and technology to better withstand effects of extreme storms and ensure reliable electricity for Maine people and businesses

Governor Janet Mills today announced the availability of $4.4 million in Federal funds through the Bipartisan Infrastructure Law (BIL) to increase the resilience of Maine's electrical grid to the effects of extreme storms.

The funds will be administered by the Governor's Energy Office (GEO) through the Maine Grid Resilience Program which will support resilience projects such as weatherizing critical technology and equipment, moving electrical infrastructure underground, and improving vegetation and utility pole management, among others.

The funds come after a series of severe winter storms in December and January caused significant devastation to communities, several millions of dollars in infrastructure damage, and left hundreds of thousands of Mainers without power for several days across the state.

"Losing power is not only an inconvenience; it can threaten the health and safety of Maine people," **said Governor Janet Mills**. "We know we can expect more severe storms in the future, which means that we need to take act now to strengthen our electrical grid, and that's exactly what the Grid Resilience Program will do. With these investments through the Bipartisan Infrastructure Law, we can improve our electrical grid, reduce the frequency and duration of power outages in the future, and better protect the health, safety, and welfare of Maine people."

"An investment in our electrical grid not only helps to keep the lights on, but also protects the health and safety of Maine people," **said the Maine Congressional Delegation**. "This grant, funded through the Bipartisan Infrastructure Law, will help support and modernize the Maine Grid Resilience Program's projects to help reduce the number of power outages in the future. By making smart investments today, we can protect our grid for tomorrow."

"With the frequency and severity of storms expected to increase as a result of climate change, it's imperative that we make smart investments in our electrical grid to mitigate and reduce future impacts," **said Dan Burgess, Director of the Governor's Energy Office**. "Through this program, our goal is to empower Maine households, businesses, and communities to be resilient to future disruptive events."

"Extreme winds and storms have left hundreds of thousands of Mainers without power this winter season," **said Maria Robinson, Director, Grid Deployment Office, U.S. Department of Energy**. "The Grid Deployment Office is proud to be partnering with the state of Maine to deploy this historic funding to strengthen and modernize Maine's electric grid and mitigate the impact of server storms because every community across the state deserves reliable, affordable electricity for their homes and businesses."

"The time could not be more urgent to invest in our state's electrical grid," **said Senator Mark Lawrence and Representative Paige Zeigler, co-chairs of the Maine Legislature's Joint Standing Committee on Energy,**

Utilities and Technology. “The investments made through the Grid Resilience Program will help Maine prepare for and respond to future extreme storms and other climate change impacts.”

GEO was awarded these funds from the U.S. Department of Energy through the BIL. The office anticipates receiving another $6.6 million in future BIL funding for additional grid resilience projects in forthcoming years.

Eligible entities include electric utilities, electricity generators, storage operators, and others. In addition to supporting grid resilience, the program aims to support Maine’s climate and clean energy goals and further expand Maine’s clean energy economy, which is the fastest growing in New England.

https://www.ecfr.gov/current/title-23/section-645.205

§ 645.205 Policy.

(a) Pursuant to the provisions of 23 CFR 1.23, it is in the public interest for utility facilities to be accommodated on the right-of-way of a Federal-aid or direct Federal highway project when such use and occupancy of the highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State or local laws or regulations.

(b) Since by tradition and practice highway and utility facilities frequently coexist within common right-of-way or along the same transportation corridors, it is essential in such situations that these public service facilities be compatibly designed and operated. In the design of new highway facilities consideration should be given to utility service needs of the area traversed if such service is to be provided from utility facilities on or near the highway. Similarly the potential impact on the highway and its users should be considered in the design and location of utility facilities on or along highway right-of-way. Efficient, effective and safe joint highway and utility development of transportation corridors is important along high speed and high volume roads, such as major arterials and freeways, particularly those approaching metropolitan areas where space is increasingly limited. Joint highway and utility planning and development efforts are encouraged on Federal-aid highway projects.

(c) The manner is which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such use and occupancy, where authorized, be regulated by transportation departments in a manner which preserves the operational safety and the functional and aesthetic quality of the highway facility. This subpart shall not be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by transportation departments with respect to location and manner of installation.

(d) When utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project on Federal lands, and when the right-of-way grant is for highway purposes only, the utility must also obtain and comply with the terms of a right-of-way or other occupancy permit for the Federal agency having jurisdiction over the underlying land.

[50 FR 20354, May 15, 1985, as amended at 53 FR 2833, Feb. 2, 1988]

https://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/alternative_uses_guidance.cfm

Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: State DOTs Leveraging Alternative Uses of the Highway Right-of-Way Guidance

From:
Stephanie Pollack
Acting Administrator

To:
Directors of Field Services
Division Administrators
Division Directors

Date: April 27, 2021

Reply to: HEPR-40

PURPOSE

The purpose of this guidance document is to provide clarification to FHWA Division Offices who work with State departments of transportation (State DOTs) on certain uses of the highway right-of-way (ROW) that can be leveraged by State DOTs for pressing public needs relating to climate change, equitable communications access, and energy reliability. This guidance document supports the consistent utilization of the ROW for renewable energy generation, electrical transmission and distribution projects, broadband projects, vegetation management, inductive charging in travel lanes, alternative fueling facilities, and other appropriate uses as identified herein. FHWA Division Offices should share this memo with their State DOTs for their consideration for these alternate uses of highway ROW.

These uses of the highway ROW, including the development of renewable energy projects, enable breakthrough transportation technology related to electrification and connected and autonomous vehicles. These uses of the highway ROW also better utilize the full value and productivity of the existing asset while also reducing or eliminating the ongoing maintenance expenses for State DOTs. For example, State DOTs may create new revenue opportunities through participation in public-private-partnerships to develop renewable energy projects and negotiating agreements that include land lease or land license payments and power purchase agreements that reduce the States' energy costs, both actual and over the life cycle of the renewable energy project.

This guidance document first addresses renewable energy generation facilities, such as solar arrays and wind turbines, and alternative fueling facilities (e.g., electric vehicle (EV) charging within the highway ROW). The lands

State DOTs manage can be suitable locations for renewable energy and alternative fueling applications. Such projects can:

- Better leverage the full value and productivity of existing highway ROW assets;
- Reduce greenhouse gas and other pollutant emissions;
- Promote energy security by diversifying energy generation and delivery methods;
- Foster the creation of a local green job market that enhances the viability of the Nation's renewable energy industry;
- Create a potential revenue source for State DOTs to develop projects and negotiate agreements that include land lease or land license payments and power purchase agreements; and
- Reduce or eliminate ongoing maintenance expenses for State DOTs.

Additionally, this guidance document provides relevant information on the use of certain vegetation management practices within the highway ROW to address climate change.

In considering requests pertaining to these ROW uses, FHWA Division Offices are encouraged to develop programmatic approaches, where appropriate, to processing such requests under the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act.

Coordination with State Departments

Division offices of the Federal Highway Administration should collaborate as frequently as practicable with State departments of transportation in reviewing utility accommodation policies under section 645.205 of title 23, Code of Federal Regulations. Division offices should foster an enhanced consideration of right-of-way and utility accommodation interests as part of the transportation planning process.

Additionally, FHWA Division Offices should encourage State DOTs to consider practices that can further broadband deployment initiatives, such as resource sharing. Best practices include minimizing repeated excavation of the roadway, coordinating with broadband utilities during highway construction, and integrating trenchless technologies into construction practices, as appropriate.

RENEWABLE ENERGY, ALTERNATIVE FUELING FACILITIES, ELECTRICAL TRANSMISSION AND DISTRIBUTION, AND BROADBAND PROJECTS

There are two methods for addressing renewable energy, alternative fueling, electrical transmission and distribution, and broadband projects (hereinafter known as "Clean Energy and Connectivity" (CEC) projects) in the ROW of a Federal-aid highway:

1. Accommodation as a utility under 23 CFR Part 645; or
2. Approval as an alternative use of the highway ROW under 23 CFR Part 710.

The FHWA Division Offices should encourage State DOTs to consider addressing these facilities through accommodation as a utility to the extent practicable and consistent with State law.

Accommodation as a Utility

As stated in 23 CFR 645.205, it is in the public interest to accommodate utility facilities on the highway ROW of a Federal-aid or direct Federal highway project when such use and occupancy of the highway ROW does not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and does not conflict with the provisions of Federal, State or local laws or regulations.

The Federal definition of a utility facility in 23 CFR 645.207 is broad and intended to cover the extensive array of uses that are defined by the States. State laws/regulations can be narrower in scope than the Federal definition. As such, States may broaden their applicable State laws/regulations to cover the full scope of the Federal definition should

they wish these facilities to be accommodated in the highway ROW as a utility. In determining whether a proposed installation is a utility or not, the most important consideration is how the State DOT views it under its own State laws and/or regulations (23 CFR 645.209(m)).

Accommodation of these CEC projects as a utility should be reflected in the State DOT Utility Accommodation Policy (UAP). For example, for renewable energy generation, the State DOT UAP should be updated to include language: (1) acknowledging renewable energy generation as a utility facility when consistent with State law, establish the proper form of written agreement or permit, (2) discussing the means by which utility accommodation can be better integrated into the transportation planning process at the State, regional, and corridor levels, and (3) addressing applicable terms and conditions, pursuant to 23 CFR 645 Subpart B. Federal regulations provide each State DOT with flexibility regarding utility accommodation and FHWA must give programmatic approval of the UAP. For broadband projects, similar updates to the State DOT UAP can help accommodate utilities within the Federal-aid ROW.

However, a State DOT UAP that does not specifically mention CEC projects, such as renewable energy generation or broadband, but uses the FHWA definition of a utility, or is in a State where State law allows for renewable energy generation or broadband to be considered as a utility facility, can proceed with a permit for a facility so long as the permit addresses the applicable terms and conditions, including but not limited to the rights and interests being permitted, the terms of the agreement, and the roles and responsibilities of the parties.

State DOTs are not required to charge fair market rent or other fees for use of the ROW if accommodating the facility as a utility, and fees may be set at the discretion of the State. State DOTs are encouraged but not required to allocate collected fees for transportation uses, purposes, and services.

The State DOT's UAP outlines the procedures, criteria and standards to evaluate and approve applications for utility facilities within the highway ROW. Each State DOT must submit a UAP in accordance with 23 CFR 645.211 and 645.215, addressing how the State DOT will consider applications for utility accommodation within the access control lines of a freeway. State DOTs may accommodate utility facilities in the Interstate or non-Interstate highway ROW in accordance with 23 CFR 645.209.

If a State does not view renewable energy, electric vehicle charging stations, other alternative fueling facilities, or broadband as utilities under State laws and/or regulations, these facilities may also be approved in the highway ROW as an alternative use of ROW under Federal regulations, 23 CFR Part 710.

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The contents of this memorandum do not have the force and effect of law and are not meant to bind States or the public in anyway way, however, all cited statutes and regulations must be complied with. This memorandum is intended only to provide clarity to FHWA Division Offices regarding existing requirements under the law or agency policies. Questions may be directed to Nicholas Thornton at (202) 366-1352, Nicholas.thornton@dot.gov, or Lindsey Svendsen at (202) 366-2035, Lindsey.S.Svendsen@dot.gov .