Testimony in Opposition to LD 699
An Act to Reduce Future Energy Costs
March 8, 2023

Senator Lawrence, Representative Zeigler, and members of the committee, my name is James Cote and I am here today on behalf of Versant Power in opposition to LD 699.

LD 699 appears to be the first of what may be several bills that you will hear this session that seek to modify, and/or justify some of the many serious flaws contained within the upcoming initiated bill proposing a governmental seizure of the State's two largest transmission and distribution utilities.

Proponents of that seizure are likely to advocate in favor of this and other bills for the simple reason that what is contained in that initiated bill, and which, as you know, cannot be amended by the Legislature without creating a competing measure, remains poorly thought out, would mean billions of dollars of new debt on the backs of Maine electric ratepayers, will not lower rates or improve service, will stall our progress towards achieving Maine's climate and energy goals, requires years of costly litigation, and poses significant cost and risk to Maine people.

Having twice failed to enact this policy through the legislative process during the last two legislative sessions, the proponents of the seizure have gathered enough signatures to present the question to voters this November. We believe that this is the appropriate next step in the process.

In the case of LD 699, we wish to make two very important points:

Competing Measure

We believe that LD 699 qualifies as a competing measure to the initiated bill. Section 18 of the Maine Constitution reads:

> "The measure thus proposed, unless enacted without change by the Legislature at the session at which it is presented, shall be submitted to the electors together with **any amended form, substitute, or recommendation of the Legislature**, and in such manner that the people can choose between the competing measures or reject both."

LD 699 would meet the threshold for a competing measure in part because of how it conflicts with the initiated bill's Section 4003. Powers and duties; acquisition of utility facilities and utility property, 3. Private sector, competitive, performance-based operations. That section reads:

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3. Private sector, competitive, performance-based operations. The company shall contract by means of a competitive public solicitation the services of at least one qualified nongovernmental entity, referred to in this chapter as "the operator" or "the operations team," to provide cost-effective, private sector operations, maintenance, customer accounts management and customer service and information and to assist as necessary in regulatory affairs, capital planning and administrative services. The company may not contract with an operator that has managed a company found to be unfit within the previous 10 years. The company may contract with separate operators for each of the service territories of the acquired utilities, or to meet discrete operations, maintenance or other requirements. In requesting and evaluating bids pursuant to this section, the board shall consider anticipated costs; professional, operational and managerial experience; familiarity with the systems to be administered; and ability to improve customer service and employee morale. The company may establish additional criteria for its solicitation and shall determine the period and the specific terms of each operations contract. **The commission shall review and approve, reject or approve with conditions any contract between the company and an operator before it takes effect. A contract with an operations team must reward proven performance, not the provision of capital, and must provide for the efficient and effective fulfillment of the company's purposes under section 4002.**

LD 699 competes with the initiated bill in a number of ways. First, LD 699 suggests that a large, consumer-owned transmission and distribution utility (read Pine Tree Power) may not enter into an initial contract that exceeds $10,000,000 per year with an entity to provide operations, maintenance, customer account management or customer service (representing some, though not all of the specific tasks contemplated by the language of the initiated bill) for the utility without commission approval.

The initiated bill, on the other hand, states that the commission shall review and approve, reject or approve with conditions any contract between the company and an operator before it takes effect, with no reference to contract price.

Further, LD 699 clearly states that commission approval is conditioned on a theoretical rate-reduction and other benefits, which are clearly defined in section 2.

The initiated bill does not define any of this, and simply states that a "contract with an operations team must reward proven performance, not the provision of capital, and must provide for the efficient and effective fulfillment of the company's purposes under section 4002." A quick review of section 2 of LD 699, and section 4002 of the initiated bill show two very distinct sets of benefits and purposes.

In our opinion, these conflicts would clearly constitute an "amended form, substitute, or recommendation of the Legislature" as contemplated by the Maine Constitution. While the legislature certainly has the discretion to create a competing measure to be presented alongside an initiated bill, we believe the Pine Tree Power proposal is already sufficiently convoluted and a competing measure would only further obfuscate the critical decision Maine voters will have before them in November.

Mutually Exclusive Charges

Subsection 2-A, Approval conditioned on rate reduction and other benefits, of LD 699 requires the commission to make a finding of an immediate rate reduction of at least 10% (note that the concept draft of this bill specified a 15% reduction which has since been reduced to 10% in the language circulated last night) before approving a contract for a third-party operator. We would question how a third-party operator would be in any position to guarantee a 10+% rate reduction given that they would be required, per the initiated bill, to provide for the efficient and effective fulfillment of Pine Tree Power's purposes described under section 4002, assume the safety, legal, property, environmental, and customer liabilities of a brand new utility structure, and offer 8% and 6% employee retention bonuses in the first two years, respectively, among a variety of other responsibilities included in the initiated bill.

Additionally, we would also bring your attention to §4012. Initial 5-year plan of the initiated bill. In this section, it clearly states that the operations team is not required to submit a plan to meet initial affordability, reliability, decarbonization, and connectivity goals until 18 months ***after*** the date in which Pine Tree Power fully takes ownership and control of all utility facilities in the State.

We would question how the commission could confidently approve a contract for a third-party operator of the State's two largest transmission and distribution utilities- and their hundreds of thousands of collective customers- and reasonably conclude that the operator can immediately reduce rates by 10% or more, improve reliability and customer service, all without any taxpayer funding, without having seen a plan to do so in advance of their decision.

Lastly, and perhaps most importantly, we ask what happens if the commission is unable to identify and subsequently approve a contract for a third-party operator of Maine's largest transmission and distribution utilities should the initiated bill come to pass? What happens in the event that no private operator comes forward to bid at all, given the many serious and often conflicting obligations, challenges and risks such a company would immediately face? Who would serve the hundreds of thousands of Maine electric customers? Who would be responsible for keeping the lights on in our schools, businesses, hospitals, and homes? How

would the delay associated with trying to find an operator that could satisfy these requirements impact Maine people?

Taxpayer Funding

Proponents of the Pine Tree Power initiative continue to incorrectly insist that their proposal would not be paid for using tax dollars. A review of the actual initiative language, however, reveals that tax dollars would in fact be utilized to fund the campaign expenses for those seeking election to the Pine Tree Power Co. Board of Directors via Maine's Clean Elections program. In the latest sponsor's amendment to LD 699, circulated at 9:00AM this morning, we find another instance in which the proponents seek to fund their proposal using taxpayer dollars, this for a much larger expenditure, in addition to the billions of dollars that would be financed by debt and paid for on Mainers' future electric bills.

We believe the change made between 7:00PM last night and 9:00AM this morning could allow the Pine Tree Power Company to use tax dollars to pay for the services of an operating company, an expenditure which LD 699 explicitly recognizes could easily stretch into the tens-of-millions of dollars annually. If nothing else, this last-minute edit results in an inconsistency, not only with the remaining text of the initiative (again, raising the question of a competing measure) but with the repeated public statements of the initiative's leadership.

The Pine Tree Power proposal has been accurately described a "a patchwork of political promises." Unfortunately, LD 699 appears to be another political promise made in an attempt to remedy one of the many fundamental flaws contained within the larger Pine Tree Power proposal.

We would urge the committee to reject both measures, thus allowing the voters of Maine to vote on the merits of the initiated bill as a standalone measure in November.

Thank you for your consideration, and I would be pleased to answer any questions or provide more information for the work session at your request.