CHARLES COHEN
695 Main Street
Monmouth, ME 04259

Senator Mark Lawrence
Representative Seth Berry
Joint Standing Committee on Utilities, Energy and Technology
100 State House Station
Augusta, ME 04333

Re: L.D. 1708, An Act To Create the Pine Tree Power Company

Dear Sen. Lawrence and Rep. Berry:

My name is Charles Cohen, and I worked as an attorney for the Public Utilities Commission from 1990 through 2019, retiring at that time as the Commission's Deputy General Counsel. During most of my time on the staff of the PUC I worked as a hearing examiner on electric utility cases. I have been following the issues raised by LD 1708 for several years, and I wish at this time to provide testimony which is "neither for nor against" the proposed bill. My testimony is intended to provide the Committee with information on the issue of risk shifting to consumers that will likely occur under the proposed legislation.
.

- **Who bears the risk for "imprudent" decisions by a utility?**

Under the current investor-owned electric utility ownership model, should a utility make an investment or incur expenses that are determined to be imprudent, the utility's shareholders, and not its ratepayers, bear the responsibility for such costs. By contrast, under a public/consumer ownership model, imprudent costs remain with ratepayers since, quite simply, there is no other pocket to transfer such costs to. That is the case today with Maine's consumer-owned utilities; when a bad investment or operational decision is made, ratepayers foot the bill. Turning to the bill itself, it is unclear under the public ownership model being proposed whether the risk of imprudent costs will lie with the "Pine Tree Power Company" ratepayers, with the for-profit third-party management company hired to run the grid, or some combination of the two. This kind of scenario could play out if, hypothetically, Pine Tree Power were to implement a new customer management software system that failed. Under an investor-owned utility model, the PUC might require the utility's shareholders to shoulder a portion of the costs, but under a "consumer-owned" system, the costs of the failed system might remain with the ratepayers.

- **The risk to ratepayers of imprudent decision-making has not been quantified**

While LEI, Concentric, and Dr. Silkman, have all tried to quantify the dollar impact of the proposed public power takeover over a number of years on ratepayers, the actual impact of this risk shifting of imprudent costs cannot be quantified ahead of time since we cannot predict what, if any, imprudent decisions the public utility might make under the new ownership model. Nor have I seen any analysis that attempts to quantify the potential cost impact on ratepayers if the new consumer-owned utility were to make imprudent decisions.

- **Even with a private, third-party grid operator, the risk of imprudence remains**

While the public power entity will not have shareholders, that fact alone does not insulate it from poor decision making. Pine Tree Power Company will still be managed by a private, third-party company comprised of human beings who, like most humans, are subject to occasional lapses in judgement that might be considered "imprudent." To the extent that ratepayers will be responsible for such costs, it must then be recognized that -- in addition to the costs quantified by LEI, Concentric, and Dr. Silkman -- there is a potential pool of costs that could have a significant and negative impact on the benefits that ratepayers actually receive as a result of the transaction. To the extent that the management entity is solely responsible for imprudent costs, it should be expected that the assumption of such risk would significantly increase the amount of the entity's management fee to operate the grid since the management entity's cost exposure could be large. Either way, ratepayers are impacted.

- **Ratepayers will bear the risk of bankruptcy or utility "death spiral"**

Another area of risk shifting that may occur under the new ownership model would be how the new "consumer-owned" utility would be impacted by a dramatic decline in electricity usage, often-referred to as the "death spiral." Under that scenario, the utility is faced with an ever shrinking customer base as a result of economic and/or technological changes, and as usage declines, rates must escalate to cover the remaining fixed costs of the utility. As rates rise, more customers drop off the grid, driving rates ever higher and customer counts lower until the utility can no longer remain in business. The question becomes, under such circumstances, who will be "left holding the bag" for those costs which are now uneconomic? It is my understanding of current utility law that, in death spiral situations, it is the utility shareholder who is "left holding the bag," and not the utility ratepayer.

While no one can say for certain what the electric utility of twenty to thirty years from now will look like, it clearly will be different from today's utility. While power delivery as we know it might still be a product that is viable in the market, it might also not be. To the extent that it is not, the question of who is left holding the bag will become relevant. We know from the legislation that it will not be shareholders, nor will it be the State. If it is ratepayers, this would be major risk shift from the current model and should be recognized in advance of making the decision to purchase the investor-owned utilities' property. To the extent it is the lending institutions who finance the operations and investments of "Pine Tree Power" that are responsible for these uneconomic costs, these lending institutions will understand their ultimate risk since there will be no recourse against the state and they will need to price into borrowing rates the chance of death spiral, and bankruptcy. Given that capital of this consumer-owned utility would be 100% leveraged through debt (there are no shareholders), the impact of higher debt costs takes on greater significance for the financial stability of the entity.

- **Many challenges of operating a utility in Maine are unrelated to ownership model**

Finally, I would note that there are several risks which will not be changed by the proposed ownership transfer, specifically, the risks that climate change pose to reliability of service; the fact that Maine is most heavily vegetated state in the country; and the fact that our state is sparsely populated with a large coastline. These underlying challenges of providing electric service in Maine will remain risks, regardless of any ownership change.

Thank you for providing me with the opportunity to provide this testimony.

Respectfully,

Charles Cohen