



## **Testimony in Opposition to LD 1708**

### **An Act To Create the Pine Tree Power Company, a Nonprofit Utility, To Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence**

**May 20, 2021**

Senator Lawrence, Representative Berry, and members of the committee, my name is James Cote and I am here today on behalf of Versant Power to testify in opposition to LD 1708.

As you have already heard today from Versant Power's President, John Flynn, the company is eager to continue working with legislators, regulators and stakeholders to help facilitate the major energy transitions underway and to accomplish our state's ambitious climate goals. We understand the imperative that this be done quickly, while ensuring continued reliability and affordability for customers.

Unfortunately, the significant delay, cost and risks associated with LD 1708 would take us further away from those shared goals and would mean the loss of critical years in our fight to mitigate the impacts of climate change and a transformational energy future.

Despite our legal and policy disagreement, Versant Power has listened and tried to understand the impetus behind this bill. While we are eager to engage in a realistic discussion of how we can best respond to the desire for improved customer service and reliability, as well as reduced costs, we remain very concerned that the grid modernization, resiliency and renewables integration that the Legislature has deemed critical to Maine's energy economy and climate change response are at direct odds with an effort to force a takeover of the investor-owned utilities.

#### **Cost, Delay and Uncertainty**

A fundamental and adversarial restructuring of the energy sector in Maine could effectively freeze huge amounts of investment in the state and create massive regulatory uncertainty during a transition period of indeterminate length and with no guaranteed outcome. Maine's ability to achieve our energy and climate goals, and our desire see our economy as a whole recover and thrive, is predicated upon fostering an environment in which significant investment and job creation are sound business decisions. Nor would it only be energy companies impacted by such a takeover – what energy-intensive industrial or manufacturing business, agricultural operation, or institution could justify or finance major



investment in Maine without knowing what their energy costs will be or even with whom they will be working?

The final cost of such a takeover, which will determine whether ratepayers realize any benefit or if they, more likely, will find themselves ultimately responsible for massive amounts of debt, will be determined by lengthy and expensive litigation and appeals. Reasonable adjustments to the optimistic assumptions made by the proponents of LD 1708, which take into account real-world experience with similar scenarios, suggest that the costs to ratepayers may well be considerably higher than initially projected. These massive sums – potentially equivalent to 3 or more times the total annual state budget – make claims of low cost borrowing, along with other claimed cost-savings, unrealistic given the high-risk of lending to an untested and inexperienced entity and a volatile regulatory environment.

Perhaps most importantly, such a takeover will almost certainly delay the State’s progress on a number of critical policy fronts including climate action. The utilities, developers, policymakers and other stakeholders will be unable to make tangible progress, potentially for years, due to massive uncertainty about who will be “across the negotiating table” in the future. Given the need to move quickly and decisively, if we are to mitigate the worst impact of climate change, we simply cannot waste 4, 7, or 10 years without moving forward.

### **Misuse of Eminent Domain**

Versant Power believes that the use of eminent domain in the manner proposed in LD 1708 is unconstitutional. The proposed takeover does not meet the requisite public necessity test to exercise eminent domain, and the Public Utilities Commission has already determined that service from a customer-owned utility is not sufficiently different from service from an investor-owned utility to warrant a public necessity finding. *Kennebunk Light & Power District*, Docket No. 2002-196 (Me. P.U.C., Jan. 24, 2003) p. 12. The Commission noted: A public desire to be served by a particular utility is not a sufficient reason, standing alone, to make the legal determinations that the utility is delivering a different service or that there is public need for the service. *Id.* at 13.

### **Existing Regulatory Regime**

We agree with the sentiment that public utilities that offer critical services ought to be held to high standards by regulators to ensure customers are receiving quality service. In Maine, we already have most of the tools we need to ensure utilities provide the best service possible for their customers, but



those tools are too rarely used. For example, this legislation relies upon a Fitness to Serve evaluation whereby the PUC is directed to conduct an analysis by 2024 – well after the directive for the State to initiate acquisition of the IOUs described in Section 5 goes into effect. The analysis, therefore, is an empty exercise – it has no bearing on the outcome of this effort.

However, that section of the bill highlights real concerns about customer satisfaction, reliability, and cost, and serves to express dissatisfaction with the performance of certain utilities. The Commission already has the tools it needs to prioritize reliability and customer service in rate cases, to penalize utilities for errors or miscalculations, and even to rescind the authority of a utility to do business in the State for cause under Section 1511.<sup>1</sup>

In other words, there is no need to force customers to wait years for an ultimately empty determination, and spend billions on an acquisition for these concerns to be addressed. With clear guidance, thoughtful policy and improved communication among the Commission, the Legislature and the utilities, realistic solutions for these issues can be identified and implemented without this bill and the turmoil it would create.

### **Ratepayer Expense of System Operation**

The purpose of this new company as described in the bill is in complete alignment with the existing purposes of the incumbent utilities, but under a quasi-governmental ownership model rather than a private one. At the same time, however the bill proposes to hire an Operator of this system to provide “private-sector operations.”

The new company will need funds to hire such an Operator, either from debt, to be paid back by customers (Maine people), or from profits earned from customers. That Operator will inevitably be a company, that company will have shareholders, and those shareholders will require a profit in exchange for their services. It seems unnecessary to engage in a years-long legal battle (paid for by customers and Maine citizens), incur the cost of establishing and transferring ownership of complex systems and confidential information to a new entity, only to hire the exact employees who are being criticized as

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<sup>1</sup> 35-A M.R.S. § 1511 provides “The commission may, in an adjudicatory proceeding, suspend or revoke the authority of a public utility to provide service upon a finding that the public utility is unfit to provide safe, adequate and reliable service at rates that are just and reasonable. The commission shall provide notice and a reasonable opportunity for the public utility to comply with its obligations under this Title prior to suspending or revoking the authority of a public utility to provide service pursuant to this section. The authority granted in this section is in addition to the commission's authority under section 1321.”



providing unsatisfactory service, and to pay a different company's shareholders a profit for operating the system.

Given the difficulty of attracting qualified candidates to serve in existing technical roles across the state, the new company may have to pay a premium to engage an Operator, further increasing costs to customers.

### **Taxation and PILOT's**

From 2016-2020, Versant Power (and, formerly, Emera Maine) paid almost \$68 million in property tax to Maine municipalities, over \$3.25 million in state taxes and over \$13.5 million in federal taxes. This is not optional for Versant, and the company takes no issue with the requirement that it pay its share to support the communities in which it operates. As a privately owned company, Versant does not have, nor will it ever have tax-exempt status – the income taxes and property taxes it pays are consistent, reliable income for the state and the municipalities it serves.

There is no such guarantee for a company that is an instrument of the state. The tax obligations of the new company only exist due to legislation that could be repealed if doing so is ever politically expedient.

When the state is faced with political pressure to reduce rates while also making significant investment, will it continue to pay property taxes, or will customers see those costs shift onto their individual municipal budgets? The PILOT payments described in the bill could well be at risk in times of economic uncertainty, potentially leaving communities without critical revenues unless they significantly increase individual property tax rates.

It is also important that the Committee look further into questions raised by the State Treasurer in his testimony. Specifically, he states:

*The sponsor is well aware, and the Committee should keep in mind that the Rostenkowski rule would likely make initial financing of a public power entity taxable. Refinancing could occur later. Determination of tax status of debt like this is fact- specific and the issuer must meet several requirements.*



We would encourage the committee to carefully consider such questions as:

- How does refinancing occur for such a large amount of debt?
- Is the ability to refinance guaranteed?
- What facts determine tax status?
- What requirements are considered in this fact-specific tax status litmus test?

Ultimately, the tax status of this debt could have enormous implications for the State of Maine- and Maine people and businesses generally. We should know the answer to these questions and others before committing ourselves to such an enterprise.

### **Timing & Planning**

LD 1708 contemplates an Initial 5-year Plan to be drafted **after** the conclusion of the takeover proceedings. The forced takeover would itself likely take considerably longer than five years, and during that time customers or taxpayers will have spent a significant amount of time and money to fund the creation a new entity and spent the money to fight about the legality of the transaction. If the bill's optimistic timeline is somehow met, by then customers will also have spent an enormous amount of money to acquire the utilities, and additional money to pay a different entity a fee to operate the utilities – a fee that will ensure the Operator's shareholders realize a profit – and spent money on debt service.

Only then will an Initial 5-year Plan be presented to the Commission. What if, instead of spending precious time and money on a process than lands us in unknown territory, we spend a small fraction of that same time and money on developing and implementing a 5-year plan, starting right now?

Versant Power has consistently supported the idea of a multi-stakeholder holistic planning process in front of the committee, and there seems to be broad support for the concept. Such an exercise could lead to meaningful and broadly supported decisions about how the state and all the players in the energy ecosystem – from generators to utilities to regulators, consumers and advocates – can work together to achieve our shared climate goals. It would bring certainty and accountability to the discussion, rather than unnecessary cost, risk and delay.



## **Conclusion**

Though this bill raises many additional questions, let me conclude by noting that Versant Power understands that there are competing needs in our efforts to modernize the grid, improve resilience, and meet the State's renewable energy goals. This Legislature wants important things for our citizens. Renewable energy. Distributed generation. Grid modernization. Improvement of technological support systems for the grid. Investments in traditional infrastructure, like poles and wires. Investments in our future, like energy storage, and complex interconnections. Investments to protect these precious resources from changing weather patterns and ever evolving security concerns.

Realistically, accomplishing these goals will require hard work and significant expense. Versant Power cannot accomplish them on our own, nor can any one entity. But we are here to be a trusted partner in these efforts, to work alongside the State using the tools it already has to both correct any errors and to cooperate on successes. We believe that we will get where we need to go if we engage with each other as partners, rather than waste a single moment or a single penny on anything that impedes or risks our efforts to move quickly and thoughtfully forward.

We would be happy to provide you with any information as requested for the work session. Thank you for your consideration.