

Senator Lawrence, Representative Berry, and distinguished members of the Select Legislative Committee on Energy, Utilities and Technology,

My name is David Littell, and I am here today in opposition to LD 1708.

I am with Bernstein Shur and here on behalf of Versant Power. I do, however, want to make clear that I am testifying on my own views that I have held since before I joined Bernstein Shur and before I had any sense I would work with Versant. It is my honor to represent Versant but want to be clear this is my testimony. Nothing in it is approved or even reviewed by Versant.

Personal Commitment to Work on Reducing Climate Change and Clean Energy

I am a former Commissioner of the Department of Environmental Protection (DEP) under Governor Baldacci, a former Commissioner on the Maine Public Utilities Commission (PUC) appointed by Governor Baldacci and served a bit more than four years into Governor LePage's term.

I served as the vice chair (twice) and the second Chair of the Regional Greenhouse Gas Initiative ("RGGI") which I with others designed and set up between 2005 and the 2009 RGGI launch. At Maine DEP and Maine PUC, I worked on numerous greenhouse gas initiatives, programs and interstate initiatives on climate change mitigation and adaptation during eleven (11) years of state service.

At the U.N.F.C.C. Conference of the Parties (COP) in Copenhagen, I represented Maine where I had the honor of presenting with officials of the Obama Administration, with fellow state commissioners and directors from New York, California, Michigan, Illinois, Ohio and NGOs and U.S. companies. I note Maine lost almost 10 years of progress to be made since the Copenhagen COP in 2009 – and Maine is now recovering its momentum as a leader on climate change.

Subsequent serving at the Maine DEP, I had the privilege of serving on the Maine PUC from 2010 to 2015 where we adjudicated or decided over 3800 matters.

After the Maine PUC, I worked with a clean energy non-profit advising more than twenty State and five Canadian utility commissions, energy offices and environmental agencies on greenhouse gas reductions initiatives, utility grid modernization, power sector transformation and related clean energy programs. After much travel advising regulators on technical program design, I was pleased to join Bernstein Shur as a shareholder where I serve as the firm's chair of the Climate Change Practice Group and continue non-profit work while working on clean energy projects in Maine, regionally and nationally.

Versant Power and the Legislature's Oversight Role of Utility Regulation

Versant Power, and Emera Maine before it, works hard every day to deliver affordable electricity for their customers. While I did not have any view of the company before joining State government, I was impressed while at DEP and at the PUC as a regulator with a nimble, responsive and straight-shooting small utility.

Emera was always, and Versant is, succinct and to the point in its testimony to the PUC. I appreciate that style and form of communication. It also saves ratepayers money.

It was this company – not state government nor any other utility -- that pioneered using air-source heat pumps in Maine with a large-scale pilot which was so successful. After this small electric utility showed air-source heat pumps work and customer liked them, everyone else got on board. Only after the success

of that demonstration, did the Efficiency Maine Trust pick up and ramp up the program. That occurred during my time on the PUC. Versant and Emera's work there is one of many examples of a Maine success and now continues to be under the EMT. Maine's national leadership on heat-pumps started with a utility-led initiative.

For me, one of the key tests of any institution is how it addresses mistakes, fixes them and moves on with those it serves. Versant does well in that regard compared to many other institutions I am familiar with. Versant can make mistakes as any large institution with a broad span of responsibility will sooner or later but in my view it makes less than its share and it has a very practical we'll fix it attitude that works well with customers and regulators.

That said, we all know the PUC can and should hold utilities accountable – that's the PUC's job and it's a very important role for energy and Maine economy. Divesting the PUC of regulatory oversight in any way as you create an entity susceptible to political control would be foolhardy. We need checks and balances no matter what the form of control and ownership: abuse of authority, power and resources is limited to neither public nor private entities.

There is a clear role for the Maine PUC, including innovation in the light of a rapidly changing energy industry. *The regulatory model that tends to work best from utility regulation as to environmental regulation is capable regulators, with strong standards of performance, regulating private activity.* That view is drawn for my entire professional career and experiences in seven different roles in private, public, non-profit and military institutions. That is why I respectfully suggest this Select Committee and the Legislature might spend its focus most productively improving on the regulatory model. In fact, the Committee, Legislature and Governor have moved solar, grid-scale renewable, non-wires alternatives, and storage initiatives forward which are important pieces of Maine's energy future. *Regulatory innovation is an important piece too.*

Maine's Climate Law

In June of 2019, Governor Mills signed LD 1679 into law. The law sets Maine's climate goals into law. Under this law, Maine must reduce its greenhouse gas emissions to 45% below 1990 greenhouse gas emission levels by 2030, and 80% below 1990 levels by 2050. Those goals are updated and appropriately more ambitious than any state put forward previously.

Due to many pieces of Legislation passed through this select committee in the 129th and this 130th Legislature, Maine is proceeding to meet these goals. However, Maine has much work to do.

- Maine has significant greenhouse gas reduction targets we need to focus on achieving.
- Time to meet the Maine Climate Law goals will run out quickly without focus, planning, implementation and reassessment to meet the Maine Climate Law as well as our national commitments in the Paris and Copenhagen UNFCCC accords.
- Maine's first target under the 2019 Climate Law is less than 9 years away. This bill if passed means Maine will spend most of that time on a very challenging transition, reorganization and fighting in court over a government divestiture. Private investors (Wall Street and bond holders) may not be impressed with Maine.
- During the time, Maine's grid will suffer. Grid modernization investments to integrate and interconnect distributed and grid-scale renewables at levels mandated by the 130th, the 129th and

prior Legislatures will be stymied at best.

- We have far too much to do on our Climate Goals, grid modernization, interconnections challenges, regional efforts working with our fellow New Englanders, Northeastern and MidAtlantic States to spend the better part of a decade in a drawn-out series of legal proceedings in state and federal courts, at the PUC and at the FERC.
- I fear that Maine's economy will suffer too as well as Maine's grid.

The Maine Climate Council with many nonprofits together with private industry, municipalities, and many other stakeholders, are working on this. Maine is very capable of making strides on climate initiatives that also benefit our economy, environment and jobs for Mainers. We undertook similar initiatives in the past and succeeded. We need to continue to move forward rather than get diverted into a huge, bruising years-long series of different legal proceedings that will wreck the foundations we need to make this very progress. Our Climate Goals are achievable with proper focus in a way that builds our economy and jobs in Maine. We should not divert our attention and our resources to an unnecessary, expensive and high-risk gamble that will create years of uncertainty.

If this happens, a Transition Needs to be Done Properly -- We Cannot Lose Focus on Decarbonization, Renewable Energy, and Grid Modernization

Time to Set up and Transition to a Government-Run Utility is Substantial

This is a government forced divestiture of Maine's largest (privately owned) utilities. How this is handled will dictate the message we send to energy investors outside Maine and worldwide. It will also take time to do it properly. In New York, the transition to LIPA (see below) took twelve years and that did not go particularly well.

The time frame in LD 1708 is unrealistic for planning and implementing substantial transition, institutional transformation, reorganizations, and personnel transitions, not to mention numerous legal challenges. I have managed a number of small and large entities and take management and leadership seriously. If this is to be done, it needs to be done properly and carefully, and I say this respectfully, not under a politically mandated timeframe which our regulatory, legal, and institutional constraints will dictate. Breaking what you are trying to improve is hardly a solution.

Lost Opportunities for Reforms and Innovation of Regulatory Structures

This will delay investments and attention to necessary grid modernization initiatives exactly when Maine needs that focus. I have much to say here because I've worked on regulatory improvements and reforms for three decades in many roles (government, nonprofit advisor, private attorney). There are models and examples to consider outside the scope of this bill that other leading states are pursuing.

And Maine's attention will be diverted from efforts to reform ISO-NE which requires a long-term coordinated effort with other New England states and at the FERC. ISO-NE interconnection has been an issue for more than a decade for the renewable build outs in Maine, Massachusetts, Connecticut and Rhode Island. ISO-NE capacity markets disqualify many of our resources in Maine. This is the best time in decades to work with other interested New England states on ISO-NE reform. Other state leaders are focused and three to four of the FERC commissioners are interested in ISO/RTO reforms (half of them Biden appointees and half Trump appointees).

It is clear LD 1708 will divert attention from working on distributed and grid-scale renewable integration – perhaps for years. We can't afford that either delay.

Consider Risks and be Cautious on Claimed Benefits and Low-Ball Costs

Substantial risks are shifted from private investors to ratepayers by LD 1708. Risks over time tend to become costs in the utility world. The risk of bad investments, poor management, political pressure to keep rates low and do everything the Legislature and elected board want will be overwhelming. There are jurisdictions where this institutional arrangement exists now, and it works poorly at least as often as it works out well.

My experience on the PUC suggests that the costs of this bill are far understated. The low-cost bonds promised by some advocates are unlikely to be so low cost. Transition costs in many regards will be high. *In the meantime, the equity and bonding cost of the utilities may well rise if this bill and a referendum effort persists; bond and equity analysts take note.* The PUC can't ignore rising utility financing costs and would be forced to pass increased costs through to ratepayers.

Maine and the utility's ratepayers will bear most of these costs – more so than the utility shareholders. Another example of faulty promised cost savings is the assumption that ISO-NE and FERC will allow the federal transmission rates above cost of service to shift costs through federal rates to subsidize a Maine public entity. That doesn't strike me as consistent with my experience to date at FERC or the ISO-NE tariff process.

Politically Driven Utility Decisions can Lead to Irresponsible Utility Management

As noted above, well-regulated private enterprises tend to produce the best outcomes for the public and customers. The emphasis is on “well-regulated” and “private enterprises.”

The form of ownership, enterprise and regulation are value neutral, either can work well with good people, good management and structures. I've worked as a regulator and represented both regulators and private entities. In my experience, while these forms are value neutral, good regulation of private entities produces the best long-term results for the public, private investors and lower costs.

Here are some examples of what we want to avoid:

The Tennessee Valley Authority (TVA) is the largest public power entity in the U.S. It is also one of the largest polluters in the U.S. After building out hydro, TVA turned to building out coal plants which have polluted air up and down the East Coast from Florida to Southern New England. TVA has polluted groundwater and built terribly managed coal ash. TVA is so badly managed that it went through bankruptcy roughly 25 years ago. It could not even pay its bonds.

Los Angeles Department of Water and Power (LADWP) purchased Southern California's distribution system within the LA city limits in 1922. It has 9,400 employees and \$6.1 billion in revenue. LADWP is the sole electricity provider of the City of Los Angeles. As of 2017, LADWP maintained generation of 7,880 MWs, with a peak demand of 6,502 MWs. While it plans to transition away from coal, the LADWP is one of the dirtiest California utilities, a clear California laggard in cleaning up its power supply. The LADWP despite having cheap coal as a supply resource has high rates and faces charges of poor management driven by the political control over the utility by the Los Angeles Council. See <https://www.dailynews.com/2020/11/05/ladwp-and-the-train-wreck-of-governance-in-los-angeles/>

Long Island Power and Light (LIPA) represents a cascade of poor politically driven decisions and then poor public utility management that have resulted in some of the highest rates in the U.S. with little to show for what Long Island ratepayers pay. LIPA contracts out its utility management to a utility-operators. Despite contracting it out which should result in competent management if done well, the storm responses have been poor, and LIPA's problems of high cost and low performance continue. It's fair to say that if there were problems before public power and the takeover which itself followed a political decision like the one before this committee but the public nature of the utility has not allowed Long Island to improve its electricity service. Here's a recent article from National Public Radio on LIPA:

<https://www.npr.org/2012/11/17/165321973/sandy-reveals-troubled-past-for-long-island-utility#:~:text=Sandy%20Reveals%20Long%20Island%20Utility's%20'Boondoggle'%20Past%20Nearly%20three%20weeks,more%20than%2050%20years%20ago>

There are other examples that look even more squarely like the structure LD 1708. The structure is much akin to structures you might find in former British colonies with a history of English based legal structures. These politically controlled utility structures do not work well. More local control may work for some purposes on a smaller scale. Nebraska of course is largely coal based despite a wind resource grades above Maine's and Nebraska's system is under market pressure as would be any government power entity. In short, going back nearly one hundred years to a form of utility structure made famous by Nebraska and TVA, worse yet with overt political control, does not suggest a fruitful path for Maine.

Thank you for considering my testimony. I am happy to answer any questions that the Chairs or members of the committee might have now or later.

Respectfully submitted,



David Littell