



SOLAR ENERGY ASSOCIATION OF MAINE

Testimony in Support of L.D. 1708

**An Act to Create the Pine Tree Power Company, a NonProfit Utility,
to Deliver Lower Rates, Reliable Service and Local Control for Maine Energy Independence**

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To the Joint Standing Committee on Energy, Utilities, and Technology

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Senator Lawrence, Representative Berry, and other members of the Joint Standing Committee on Energy, Utilities, and Technology: my name is Steve Weems, Executive Director of the Solar Energy Association of Maine. The Association thanks Representative Berry for nurturing a proven utility industry organizational structure into the form described in LD 1708, and the co-sponsors for their far-sighted interest in the well-being of Maine electricity customers. We are pleased to provide our enthusiastic support of this bill.

The Solar Energy Association of Maine (SEAM) is a broad coalition of solar energy supporters, advocating for the development of solar electricity of all project sizes and ownership models, for the benefit of all Maine people. It is a not-for-profit corporation governed by a diverse Board of Directors.

We know from experience the for-profit legal structure of investor-owned utilities creates a responsibility to maximize shareholder wealth, a key factor in the decades-long poor performance of Maine's two largest electric utilities, which are failing Maine people. This failure includes terrible reliability, low customer satisfaction, and unnecessarily high electricity rates. Central Maine Power (CMP) and Versant also are serious impediments to achieving Maine's renewable energy goals, as we strive to address the crisis of climate disruption.

Of overriding importance, the cost of financing the upcoming massive investments in our electric grid necessary to convert our use of fossil fuels to electricity generated from renewable resources (aka "beneficial electrification") is certain to be \$5-10 billion higher if investor-owned utilities (IOUs) remain responsible for Maine's electricity delivery system, compared to the financing costs that would be incurred if these IOUs are replaced by a statewide consumer-owned utility (COU), with access to tax-exempt debt. This excess \$5-10 billion of IOU financing costs will be an unnecessary burden on Maine electricity ratepayers.

This cost penalty, which will be incurred due to the for-profit, shareholder-controlled business model employed by the IOUs, can be avoided by establishing the Pine Tree Power Company. This is the most compelling reason to support LD 1708. There are other good reasons too. In this testimony we are going to concentrate on three: (i) the IOUs are actively and passively undermining Maine's progress toward a reliable, renewable energy future; (ii) the IOU's basic structure causes them to be uncooperative saboteurs of clean electricity efforts; and (iii) we can expect a statewide COU to be a well-run, reliable working partner, a willing collaborator in achieving Maine's climate goals.

1. Investor-Owned Utilities Have an Abysmal History of Obstructing Positive Change

The investor-owned utilities, especially Central Maine Power (CMP), consistently have resisted change in the public interest. Negative passive-aggressive behavior started with resistance to competition in the generation sector when this was introduced, followed by stonewalling energy efficiency initiatives, non-wires alternatives, robust data collection and sharing, and imperatives to embrace renewable energy. This unrelenting negativism has endured over many decades, which at key moments has caused the Maine Legislature to take dramatic action to strip certain functions away from the IOUs. This negative behavior has been particularly virulent when it comes to distributed renewable energy resources (DG), which are local and involve IOU contractual agreements with retail energy customers. However, this resistance is not limited to DG. The IOUs have shown an aversion to serving as the standard buyer for clean energy in general. IOUs have made it abundantly clear they cherish their monopoly status, and would like to return to the days when their franchises included generating electricity. If they cannot recover this function, they will want to preserve the status quo, moving electricity over long distances from large, centralized generation projects, which maximizes their return on investment in physical delivery infrastructure.

IOUs are consistent and unrelenting in using their monopoly power for their advantage and resisting positive change. In the 1970s and early '80s, the failure of vertically-integrated utilities to develop cost-effective generation led to a state-imposed requirement for the IOUs to purchase electricity from independent power producers, in a competitive market. The IOUs responded by finding a way to use their monopoly control of the grid to avoid true competition by discriminating against independent producers to the advantage of their own generation facilities. The legislature reacted by "deregulating" the electric utility industry, requiring the IOUs to divest themselves of all their generating assets.

Later, after the Federal Energy Regulatory Commission (FERC) wrestled operational control of the New England transmission system away from the IOUs, due to poor performance, Maine confronted another IOU failure – this time the unwillingness or inability of the Maine

IOUs to implement cost-effective energy efficiency and conservation programs. Again, the Maine Legislature used its oversight role to take this responsibility away from the IOUs, by establishing the Efficiency Maine Trust. This proved highly successful. More recently, the resistance of IOUs to fairly consider non-wires alternatives (NWA) to physical delivery infrastructure resulted in the legislature taking this important function away from the IOUs by assigning the responsibility to consider NWA to the Office of the Public Advocate. These are a few big examples of chronic IOU resistance to acting in the public interest, and as a consequence being stripped of responsibility for handling key functions. This failure and response pattern continues today.

This is a damning, overarching pattern of chronically failing the public trust at a policy level. Down in the trenches, it's the same story every day, especially when it comes to moving into the new era of decarbonization, beneficial electrification, providing better data, getting maximum value out of distributed generation, and just about anything that would result in the flexible, resilient, two-way flow, dynamic electric grid of the future. This is a Board of Directors and management leadership problem, not a worker problem. CMP installed smart meters but bungled the new billing system that came with it, resulting in a customer service nightmare. Then the "smart meters" were used in their dumb mode. The IOUs relentlessly have fought the popular net energy billing program, which encourages the installation of distributed generation, through tactics of disinformation, lobbying, rate case filings at the PUC, and other calculated disruptive activities. CMP even convinced the PUC to adopt the infamous "gross metering" rule, which would have charged solar customers for customer-produced energy never handled by CMP. The legislature squashed this practice.

Every day renewable energy companies are thwarted by an inability to get decent data about the status of the electric grid from the IOUs. The IOUs are not even attempting to plan for the capacity and required dynamic characteristics of the grid of the future. As one CMP executive testified to this Committee, *"Our grid planning process is by design reactive."* The process by which the IOUs consider renewable energy grid interconnection applications is hopelessly bogged down, after many months of jawboning, pleading, and stakeholder meetings. (Note recent news articles about 120,000 internal CMP communications on this one subject.) CMP also has attempted to assess huge grid upgrade costs on developers when the next individual project cannot be accommodated on a clogged grid. The IOUs in essence say things are too complicated and moving too fast (sic) to be able to do long-term, strategic grid planning, without which it will be impossible to achieve Maine's climate goals. And to top it off, Maine's IOUs consistently live at the very bottom of the performance barrel, as measured by independent ratings of reliability and customer satisfaction.

This is a decades-long pattern of unrelenting resistance to change, poor performance, a preference for an expensive and capital-intensive transmission and distribution system (which increases both ratepayer costs and IOU shareholder returns), impervious behavior, opacity, and active aversion to the public interest. There is absolutely no reason to think this will change (see # 2 below). This should disqualify the IOUs as working partners, as Maine strives to decarbonize and switch to renewable sources of energy. It is time for the Maine Legislature to once again realize the debilitating limitations of IOUs and take bold corrective action, by authorizing the formation of Pine Tree Power.

2. The Investor-Owned Utility Business Model is Wrong for Maine

Investor-owned utilities are undesirable working partners due to their corporate structure, resulting legal and financial prerogatives, and monopoly status. This is baked into the status quo. Consumer-owned utilities, like the proposed Pine Tree Power Company, can be chartered to actually serve the public interest and achieve public policy objectives that IOUs subordinate and often actively subvert. This is both a Maine and national problem.

An investor-owned utility (IOU) cannot be expected to operate in the public interest. Essentially it is legally obligated not to do so. It will pursue public interest goals only when the IOU board and management conclude it will enrich the IOU's shareholders by acting in this way, otherwise conforming only to the extent required by law and regulation. Their overriding responsibility is to maximize shareholder value, which causes them to favor big, centralized, capital-intensive infrastructure projects, funded with high-cost capital that includes a generous shareholder return. This is not justified financially, considering the low risk these shareholders bear due to each IOU's monopoly status in its service area, and electricity's essential nature, which virtually guarantees electric utility revenues.

IOU's are shareholder-owned, for-profit entities. Their purpose and legal responsibility is to maximize shareholder value. IOU's are granted a monopoly franchise to deliver electricity to the customers in their service territories. Federal legal precedents (case law) establish a requirement that regulatory entities (like FERC and the Maine PUC) must ensure that IOUs achieve a healthy return on investment so they will remain financially viable and able to delivery electricity to their customers. By legal precedent, in practice an IOU's financial health is independent of their performance – good or bad. The legal structure of IOUs requires their directors to fixate on financial return and subordinate objectives like customer satisfaction, employee well-being, and State climate goals. IOUs also are taxable entities, so by definition they use taxable capital, which makes it more expensive than capital available to a tax-exempt entity, like a COU. The totality of these realities means an IOU in Maine has been and will remain focused on maximizing shareholder value, which in the case of CMP and Versant mean primarily foreign public and private interests.

Expect that IOUs will continue to favor big, capital-intensive infrastructure projects financed with expensive money; and resist (i) positive change, (ii) distributed energy, (iii) strategic grid planning, and (iv) the management challenge of operating the dynamic, two-way grid of the future, which will maximize the value of DG to customers – all while trying to restore their authority to generate electricity. In other words, IOU's want to go back to the way things used to be before deregulation. It's in their DNA. It means they can be expected to obstruct what will be needed from the electric grid to achieve Maine's decarbonization goals. Looking ahead, this makes the IOUs the worst kind of working partners. Beyond this, if they are kept around, based on their high cost of capital, it is certain the necessary huge investments in grid infrastructure alone, over the next 30 years, will cost \$5-10 billion dollars more than necessary. Even if the PUC is populated with miracle-workers, try as they may it will be impossible to regulate the IOUs away from this unsatisfactory, destructive future. Maine IOUs have time and time again proven this to be what happens.

Establishing the Pine Tree Power Company offers a superior alternative – a functional way to succeed. This is due to the structure of this proposed statewide COU. First, Pine Tree Power (PTP) would be a not-for-profit corporation, controlled by an elected board of seven elected Maine directors. This offers three fundamentally important positive distinctions from the IOU model. First, PTP's municipal not-for-profit legal structure would provide PTP with access to tax-exempt revenue bonds. Access to tax-exempt revenue bonds would reduce PTP's cost of capital to one-half or less than the capital used by IOUs. This is why PTP would save electric ratepayers \$5-10 billion dollars over the next 30 years. Dr. Richard Silkman has shown this axiomatic reality graphically. This is an average of \$165 million to \$330 million per year in delivery cost savings that would be realized by electricity ratepayers over 30 years, from this manner of financing alone. Second, do not be misled by the word "municipal." This means this COU would be created by government, but PTP would operate independently, outside the governmental sphere. All of its voting board members would be elected (each from a combination of five Maine Senate districts), and operate independent of any government influence, foreign or domestic! Third, all the directors of PTP would be Maine people, ensuring local control of our electric utility, by people representing all parts of the state.

Being created and controlled by the people of Maine means Pine Tree Power can also be imbued with a mission explicitly in the interest of Maine people, not the financial interest of foreign shareholders. Of note, as stated in LD 1708, the purposes of PTP are to:

- Deliver electricity in a safe, affordable, and reliable manner;
- Ensure excellence, timeliness, and accuracy in billing, metering and customer service;
- Provide an open, supportive, and competitive platform to develop and deploy renewable generation, storage, efficiency, and beneficial electrification technologies;

- Assist the State in rapidly meeting or exceeding legislatively-established climate action goals;
- Improve the State’s internet connectivity through access to utility poles and other infrastructure in unserved or underserved areas of the State;
- Advance the quest for economic, environmental, and social justice;
- Benefit company workers and all communities in the State;
- Provide transparent and accountable governance; and
- Support, secure, and sustain economic growth and benefits for the State.

How refreshing! How empowering! Clearly these purposes would serve Maine people far better than the singular purpose of a Maine investor-owned utility – to enrich its foreign shareholders.

Also, it is important to note (i) Pine Tree Power would not have access to the credit of the State of Maine or its taxpayers to support its operations or secure its debt; (ii) PTP would function under the same regulatory oversight by the PUC that applies to the IOUs; and (iii) PTP would be required by statute to make payments in lieu of taxes (PILOTs) to all property taxing jurisdictions at 100% of the amount these jurisdictions would have been able to levy on CMP or Versant. Now is the time for Maine to adopt the proven consumer-owned utility model.

3. Maine People are Smart and Capable Enough to Establish Pine Tree Power Successfully

The IOUs and their allies would have us believe Maine people are incapable of establishing and running a statewide consumer-owned utility successfully. This is the ultimate affront, if there ever was one. It translates to *“you’re not good enough, leave it to us.”*

To use the vernacular, this argument against establishing Pine Tree Power is pure baloney. There is a lot to unpack about this, but the bottom line is Maine people, and the directors they would elect to provide policy and board oversight to the executive management of PTP, can be expected to perform well. They have proven it in analogous endeavors. In addition, this challenge has been met successfully all across the U.S., where COUs with various governing structures provide service to about one-third of the country’s electricity customers at lower rates and with higher reliability than IOUs. The elected members of the PTP board of directors are not going to run the company. They are going to use their local knowledge and commitment to the legislative purposes of Pine Tree Power to ensure the company is being operated the way it should be, and is a cooperative working partner in the drive to beneficially electrify Maine life and its economy. Professional, private-sector management with successful utility industry experience will be engaged to provide executive and operational leadership.

We’ve done it before in Maine. In the 1980s and early 1990s Maine faced an escalating workers’ compensation crisis. Workplaces were unnecessarily dangerous, claims payouts were

very high, and insurance premiums were skyrocketing, while insurers were abandoning the state. The Maine Legislature, with the support of Governor McKernan, authorized the formation of the Maine Employers' Mutual Insurance Company (MEMIC), a customer-owned entity, to solve these problems and provide reasonably-priced workers' compensation insurance. An initial board of Maine citizens took the reins and organized the company. Professional management was brought in to run the enterprise. Workplace safety improved dramatically, and insurance costs subsided. To the surprise of some, MEMIC has been a great success, one of the shining examples of Maine people solving a seemingly intractable problem with flair and competence, at a reasonable cost. This is not a perfect analogy but it is a fine indicator of the capabilities of Maine people and what could happen with Pine Tree Power. Maine people certainly are capable of replicating this success and will be highly motivated to do so, considering the importance of beneficial electrification in all our lives.

Consider the big picture, and the alternative of being stuck for another 30 years with our antagonistic, underperforming, foreign-controlled IOUs bent on extracting cash equity from Maine ratepayers for their shareholders. Yes, navigating the process to form Pine Tree Power will be a challenge. Yes, the IOUs will fight this initiative all the way. And yes, there is risk. But the basic task is straightforward. Settle on a fair market price and acquire the assets of the IOUs, using a not-for-profit COU model controlled by Maine people. Elect the board members and bring in competent, professional utility management. From the board level, ensure these professional utility executives operate Pine Tree Power in the interest of its customers, as defined in the enabling legislation and interpreted by the company's local elected directors. It boils down to substituting a not-for-profit model with access to low-cost capital for the expensive and unresponsive IOU for-profit structure. It means substituting local elected directors pursuing a mission in the interest of Pine Tree Power's customers for a self-perpetuating board of insiders working for the benefit of foreign shareholders. Superior, customer-oriented direction and care from the Board of Directors should translate into far better results. It would be difficult for Pine Tree Power to do worse than our present investor-owned utilities, based on their record.

We have decades of failure by the IOUs, to justify saying "*enough is enough.*" Now we ask for bold legislative leadership, to start us on the path to a new, brighter era, by imagining a statewide consumer-owned utility and sending this possibility to the voters. Inspire us to bring Pine Tree Power Company into being, by authorizing an initiative by which Maine people finally are empowered to decide for themselves whether to take control of their energy future.

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