

Testimony of William M. Nugent, Thomas L. Welch, Sharon Reishus and Mark Vannoy
L.D. 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

Testifying: In Opposition

Senator Lawrence, Representative Berry, Members of the Joint Standing Committee on Energy, Utilities and Technology, our names are William M. Nugent, Thomas L. Welch, Sharon Reishus and Mark Vannoy, and we present this testimony regarding 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.

Each of us has served as a commissioner on the Maine Public Utilities Commission (PUC), with over 42 years of combined service. We remain interested in the regulation, operation and development of Maine's electric transmission and distribution system, for the benefit of electricity consumers and the achievement of the State's important policy objectives, including robust and sustainable economic development and decarbonization and electrification of the economy to fight climate change.

It is essential to Maine's success that the State's transmission and distribution (T&D) utilities provide safe and reliable service at just and reasonable rates. We understand that there have been questions raised in recent years as to whether the State's investor-owned T&D utilities have been meeting this standard. Based on our experience, however, we are not convinced that forming a state-wide consumer-owned utility to replace the existing investor-owned utilities will provide an effective remedy for any perceived shortcomings in utility performance, let alone the panacea that some have suggested. Rather, we are concerned that LD 1708 represents too radical a step for Maine's energy policy, a step that is unlikely to produce the customer savings suggested by the bill's proponents, and instead may undermine the effective regulation of Maine's T&D service, and prove counterproductive to the realization of the State's policy objectives.

As drafted, LD 1708 contemplates that the newly formed Pine Tree Power would be governed by a board of seven voting members elected by the voters of Maine, each representing five senate districts and serving six year terms. We are concerned that this governance structure will politicize the management of the new utility and in turn lead to underinvestment in Maine's transmission and distribution systems and undermine the PUC's regulation of the new utility going forward. From our experience, when utilities are managed by elected officials, political pressure to keep rates low, especially in the short term, can dominate utility decisions – regardless of whether those rates provide sufficient revenue to provide safe and reliable service and make the investments required to sustain that service and meet important policy objectives. While this pressure exists whenever there is direct government control of the utility, it is likely to be especially acute, and damaging, where those responsible for utility management (as

contemplated by LD 1708) have no other government function and are thus virtually certain to run on a platform of immediately lower rates. Ensuring that voter expectations are met accordingly threatens underinvestment in utility systems and/or the implementation of rate designs that are economically inefficient: we have seen frequent examples of government-controlled utilities pricing services to favored groups of customers, typically residential but often government entities as well, at levels below any measure of the cost of providing that service, leading to both overpricing for other customers and enormous deficits.

To meet its aggressive decarbonization objectives in the coming years, Maine will need to invest significantly in its transmission and distribution systems to permit increased reliance on both utility-scale and distributed renewable generation and storage and to facilitate the increased electrification of our economy. The politically-elected leaders of a state-wide consumer-owned utility may well be disinclined to authorize the significant additional borrowing that will be needed to support this investment, because such debt will necessarily increase rates. The National Rural Electric Cooperative Association's recent push back on President Biden's plan for a zero-carbon grid by 2035 is indicative of the potential reluctance of a state-wide consumer-owned utility to make the investments needed for Maine to achieve its decarbonization and electrification goals.

Likewise, while Pine Tree Power's elected leadership by design will be local, there is no assurance that the elected board members will have the experience and competence to run a state-wide consumer-owned utility with annual sales exceeding \$800 million. The specter of mismanagement, given the complexity of operations and volume of sales and contracting that the utility will do on an annual basis. We are familiar with many examples of consumer-owned utilities in the United States, including the Long Island Power Authority, Santee Cooper Electric, and the Puerto Rico Electric Power Authority, and abroad, including New Brunswick Power and the state run utilities of eastern Europe, where actual performance has not lived up to the promise and has instead resulted in underinvestment, inefficiencies, poor service, and higher rates over time.

The politically-elected leadership of the new consumer-owned utility likewise threatens the continued effectiveness of the PUC as the independent regulator tasked with oversight of Maine's electric systems. While LD 1708 purports to maintain PUC oversight over the new utility, we are concerned that the Commission will be impotent and ineffective in regulating the new entity in reality. Answering to the voters that put them in place, the politically-elected board will govern the new entity to meet short term political expectations. The Commission may well have no incentive to challenge or alter these decisions, as doing so likely will result in higher levels of utility spending for reliability and infrastructure improvements – and higher rates for customers – and therefore be politically unpopular.

This diminution of the effectiveness of regulation is driven to a great extent by the fundamental difference between investor-owned and consumer-owned utilities. Through the long development of Title 35-A, the Legislature has empowered the PUC with the tools needed to ensure that investor-owned utilities provide the appropriate level of service at just and reasonable rates, and in our experience the Commission has not been reluctant to use these tools when

appropriate. When an investor-owned utility's performance is lacking, the Commission through the ratemaking process and its investigatory authority can find that the actions of the utility's management inefficient or imprudent and impose financial consequences on the investor-owners of the utility (*i.e.*, the shareholders) to improve service or otherwise change behavior. In contrast, with a consumer-owned utility, there are no shareholders to suffer the financial consequences of mismanagement. Any finding by the Commission of management inefficiency or imprudence would only result in more costs to be borne by the customer-owners of the utility.

The long duration and significant costs of, and uncertainty that will prevail during, the transition to a state-wide consumer-owned T&D utility only increase our skepticism as to whether formation of Pine Tree Power will actually produce the promised savings and not undermine the State's achievement of its decarbonization and electrification policy objectives. It is clear that the formation of the new consumer-owned utility, its acquisition of the investor-owned T&D assets, and its commencement of service will take many years. This transition will be complex and require significant commitments of time and resources from the new politically-elected board as well as the existing investor-owned utilities and the PUC. During this transition, many issues will need to be resolved to ensure that service is maintained in a seamless and reliable manner through the transition. All of these activities will be time consuming and costly for the investor-owned utilities and the new consumer-owned utility, and these costs will ultimately be recovered from customers.

While these issues are resolved, there will also be significant uncertainty as to the current and future performance of Maine's transmission and distribution systems. This uncertainty likely will slow needed investment in these systems during the transition, as the existing investor-owned utilities will be disinclined to invest more capital into Maine when their current investments are being seized to form the new entity. Delays in needed investments over the next several years would hamper the State's achievement of its decarbonization and electrification objectives, while the transition plays out.

This uncertainty may also result in higher electric supply prices, as reflected in Standard Offer rates and in the bids the PUC receives for long-term contracts for renewable energy. We anticipate that energy suppliers may well incorporate increased risk premiums in their bids to reflect the changing risk profiles and balance sheets of the existing investor-owned utilities as compared to the new consumer-owned utility. In fact, a fundamental premise of the Standard Offer and renewable energy procurements was to leverage the security provided by the strong balance sheets of the investor-owned utilities to achieve lower prices for customers. It is not clear that Pine Tree Power's balance sheet, which will reflect 100% debt and no equity, will be viewed as favorably by energy suppliers.

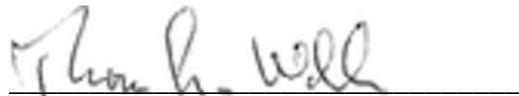
These risks of higher costs for energy supply typify why the Legislature should scrutinize carefully all of the assumptions about customer savings that could be realized with the implementation of a state-wide consumer-owned T&D utility before enacting LD 1708. While on a conceptual basis a consumer-owned utility may have lower capital costs than an investor-owned utility, it is not obvious that the different capital structure of Pine Tree Power, reflecting 100% debt, will actually produce material savings for customers in Maine. Given that the debt

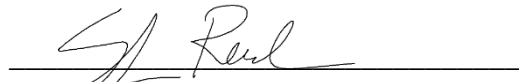
of the new utility will not be backed by the full faith and credit of the State and much or all of the debt used to acquire the assets of the existing investor-owned utilities may not qualify for tax exempt status under the applicable Federal tax rules, the expectation that Pine Tree Power will be able borrow capital at lower rates than the existing utilities appears unrealistic. Moreover, in order to purchase the assets, the new consumer-owned utility will very likely have to pay more than the book value of those assets, thereby increasing the amount of borrowing and rate base of the new utility. Similarly, any assumption that the new consumer-owned utility will be able shift some of its revenue requirement to customers outside of Maine, through for example higher regional transmission rates based on a capital structure that assumes an equity component, is also unrealistic based on our understanding of FERC's ratemaking authority and the expectations of the other New England states.

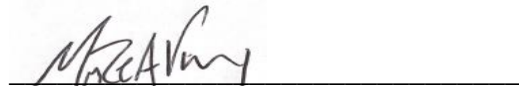
For all these reasons, we respectfully urge the Committee to vote ought not to pass on LD 1708.

Respectfully submitted by


William M. Nugent


Thomas L. Welch


Sharon Reishus


Mark Vannoy