



To: Commission
From: Commission Staff
Date: February 17, 2022
Re: Mainers for Local Power – Waiver Request (Late 24-Hour Reports)

Mainers for Local Power (the “PAC”) is one of the political action committees registered with the Commission to support the 2021 citizen initiative relating to the New England Clean Energy Connect (NECEC) transmission project. The PAC was opposed to NECEC. In December 2021, the PAC disclosed to the Commission it was late filing two 24-Hour reports that were due on October 26 and 28, 2021, but were not filed until December 21, 2021. The PAC requests a partial waiver of the preliminary penalties, which total \$398,500 based on the statutory formula. The PAC acknowledges its mistake and indicates that it was an inadvertent oversight. They further indicate that this error was reported to the Commission by the PAC immediately upon recognizing the error. The PAC requests that the preliminary penalties be reduced to \$2,500 each, for a total of \$5,000. The Commission staff agrees that a total penalty of \$5,000 would be appropriate.

LEGAL REQUIREMENTS

24-Hour Reporting Requirements

PACs are required to file a 24-Hour Report with the Commission if they receive a contribution of \$5,000 or more or make an expenditure of \$1,000 or more made after the 14th day before the election. 21-A M.R.S. § 1059(E).

The Commission assesses a civil penalty when a PAC does not file a timely campaign finance report. The preliminary penalty is calculated according to a formula in statute. When more than \$50,000 is reported late, the maximum penalty is 100% of the amount reported late. 21-A M.R.S. § 1062-A(4).

DISCUSSION AND STAFF RECOMMENDATION

On October 25, 2021, the PAC received a contribution of \$300,000 from one of the energy companies funding the PAC, which should have been disclosed in a 24-Hour Report. On October 27, 2021, the PAC spent \$98,5000 on polling, which also should have been disclosed in a 24-Hour Report.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalties against the PAC for not filing timely reports is \$398,500, calculated as follows:

Report	Date Due	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
24 Hour Report	10/26/2021	\$300,000	100%	58	\$300,000
24 Hour Report	10/28/2021	\$98,500	100%	56	\$98,500

In support of a waiver, the PAC argues that it made every effort to file campaign finance reports on time but the failure to file these two 24-Hour Reports was an oversight. The PAC notes that it filed ten 24-Hour Reports on time, which timely disclosed expenditures totaling \$5,191,523 and contributions totaling \$1,200,000. It notes that the two transactions represent a tiny percentage of the large amount of financial activity of this PAC in the weeks leading up to the election. (In the 11-day pre-election report filed on 10/22/2021, the PAC reported receiving \$9,000,000 in contributions and a total of \$8,751,816 in expenditures.

The staff review of this matter weighs the harm to the public resulting from the late filings compared to the legislative intent of the maximum 100% penalty amount in statute. Mainers for Local Power first registered with the Commission in 2019. In the two NECEC initiatives, the PAC has demonstrated a high degree of dedication to filing the correct reports on time. The staff also appreciates the complexities of the large amounts spent in the last two weeks of 2021 referendum campaign (the most expensive in state history).

Given this strong history of compliant disclosure in the past few years, the Commission staff has no doubt that this was an unintentional oversight and appreciates the diligence of the PAC in filing the reports as soon as the error was discovered. The staff also agrees that the amount of

harm to the public in this case is not proportionate to the very high preliminary penalty amount of \$398,500.

Since 2018, the Commission has generally been assessing penalties of \$750 for routine late filings and \$2,500 penalties for violations of the major contributor reporting requirements. In this case, we agree with the partial waiver amounts proposed by the PAC: \$2,500 for each late 24-Hour Report, for a total of \$5,000. Thank you for your consideration of this agenda item.

January 20, 2022

Via Email and U.S. Mail

Michael J. Dunn, Esq
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Mainers for Local Power/Late-filed 24-Hour Reports

Dear Mr. Dunn,

This is in response to your letter of December 28, 2020, in which Commission staff finds two violations for late-filed 24-hour reports. Mainers for Local Power acknowledges that the two reports were inadvertently filed late and regrets the oversight. But the penalty seems out of proportion to the violation and accordingly it hereby requests a partial waiver of the penalties calculated by staff for the following reasons:

First, the late-filed reports were filed because Mainers for Local Power itself discovered the inadvertent failure to file and promptly notified staff and filed the reports.

Second, the contribution and expenditure that triggered the 24-hour filing requirement occurred during the period from October 21 through October 28, when Mainers for Local Power filed 10 24-hour reports reporting expenditures totaling \$5,191,523.80 and contributions totaling \$1,200,000 on a timely basis. These filings make clear that the failure to report a \$300,000 contribution and a \$98,500 expenditure were simply inadvertent mistakes in the course of numerous other filings. As staff is aware, these are the only late reports filed by Mainers for Local Power, which made every effort to file all reports on time. And the amounts involved are dwarfed by the other reported amounts: not only is the \$98,500 less than 2% of the total expenditures reported during that week, but less than .005 % of the total expenditures when included in the amounts reflected in the 11-day report filed on October 22 (\$98,500/\$17,466,138+\$5,191,524). Similarly, the \$300,000 contribution reported late represents 1.5% of the total reported contributions.

Finally, and most important, these late filings could not and did not cause any harm to the public. In the context of the referendum campaign overall, disclosure of these amounts on a timely basis would have made no difference to any member of the public. It is simply inconceivable that a failure to report a \$98,500 expenditure in the context of already having disclosed over \$22 million in expenditures would have somehow been relevant to any member of the public. Similarly, a failure to disclose a \$300,000 contribution in the context of already having disclosed

January 20, 2022

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over \$20 million in contributions could not possibly have made any difference to any member of the public. Indeed, the opponents of the referendum spent over \$2 million on ads attacking supporters of the referendum as “fossil fuel companies”; the opponents had no doubt about either the source or the magnitude of contributions and expenditures and made those a central focus of their opposition. Some examples of their ads are:

<https://app.frame.io/presentations/fb378a38-3760-4ce4-8263-be4fb586bf2c>

<https://app.frame.io/presentations/451f32e7-9a0d-4e85-99ad-dfac63287cea>

<https://app.frame.io/presentations/ff4ddd3e-aa71-48d7-835d-37ce84686a1a>

For all these reasons, Mainers for Local Power request that the penalty be reduced to \$2500 for each violation, consistent with the minimums previously established by the Commission for PAC violations.

Sincerely,

/s/ James T. Kilbreth

JTK/sab

cc: Vivian A. Mikhail



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0135

December 28, 2021

Ms. Vivian Mikhail, Esq.
Mainers for Local Power
84 Marginal Way
Portland, ME 04101-2480

Re: Mainers for Local Power Late Filing of 24-Hour Reports

Dear Ms. Mikhail:

The Commission staff has made a finding that the Mainers for Local Power (the PAC) was late in filing two 24-Hour campaign finance reports. The reports were due by 11:59 p.m. on 10/26/2021 and 10/28/2021, but were not filed until 12/21/2021. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A). Based on the amount of financial activity in the report, the number of calendar days the report was late, and the PAC's history of violations, the Commission staff has determined that a penalty of \$398,500 is owed. (Please see attached penalty matrix for the calculation.)

The PAC may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the PAC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that the PAC made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Please call me at (207) 287-4709 or send me an email at michael.dunn@maine.gov if you have questions.

Sincerely,

Michael J. Dunn

Michael J. Dunn, Esq.
Political Committee and Lobbyist Registrar

PAYMENT RECEIPT
(Please enclose with payment.)

Mail payment to:

Maine Ethics Commission
135 State House Station
Augusta, ME 04333

Make checks payable to: "Treasurer, State of Maine."

Vivian Mikhail, Treasurer
Mainers for Local Power
84 Marginal Way
Portland, ME 04101-2480

Violation: Late 24-Hour Report (Due 10/26/2021)
Amount Due: \$300,000

Violation: Late 24-Hour Report (Due 10/28/2021)
Amount Due: \$98,500

Total: \$398,500

Committee Name: Mainers for Local Power

Prior Violations:

Report Name	Activity Amount	Due Date	Days Late	Penalty Rate	Penalty
24-Hour Report (10/26/2021)	\$300,000	10/26/2021	56	2%	\$300,000 (MAX)
24-Hour Report (10/28/2021)	\$98,500	10/28/2021	56	4%	\$98,500 (MAX)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 2%

For the second violation, 4%

For the third and each subsequent violation, 6%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1062-A(4)

\$10,000 for Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late.



Commission on Governmental Ethics and Election Practices
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2021 CAMPAIGN YEAR

COMMITTEE		TREASURER	
Mainers for Local Power 84 Marginal Way Portland, ME 04101-2480 PHONE:(207) 253-0536 EMAIL: vmikhail@dwmlaw.com		Vivian Mikhail 84 MARGINAL WAY PORTLAND, ME 04101-2480 PHONE:(207) 253-0526 EMAIL: vmikhail@dwmlaw.com	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Contributions and Expenditures	10/28/2021	10/27/2021-10/27/2021	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$98,500.00
3. TOTAL DEBTS	\$0.00

I, Vivian Mikhail, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Vivian Mikhail
REPORT FILED ON: 12/21/2021 8:57:30 PM
LAST MODIFIED:
COMMITTEE ID: 356331

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/27/2021	Beacon Research 6 Beacon Street, Suite 312 Boston, MA, 02108	Polling services PAYMENT OF \$98,500.00 TO SUPPORT: An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region	POL	\$98,500.00
TOTAL EXPENDITURES TO SUPPORT OR OPPOSE:				\$98,500.00



Commission on Governmental Ethics and Election Practices
Mail: 135 State House Station, Augusta, Maine 04333
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Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2021 CAMPAIGN YEAR

COMMITTEE		TREASURER	
Mainers for Local Power 84 Marginal Way Portland, ME 04101-2480 PHONE:(207) 253-0536 EMAIL: vmikhail@dwmlaw.com		Vivian Mikhail 84 MARGINAL WAY PORTLAND, ME 04101-2480 PHONE:(207) 253-0526 EMAIL: vmikhail@dwmlaw.com	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Contributions and Expenditures	10/26/2021	10/25/2021-10/25/2021	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$300,000.00
2. TOTAL EXPENDITURES	\$0.00
3. TOTAL DEBTS	\$0.00

I, Vivian Mikhail, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Vivian Mikhail
REPORT FILED ON: 12/21/2021 8:57:15 PM
LAST MODIFIED:
COMMITTEE ID: 356331

24-HOUR CONTRIBUTION INFORMATION

1 = Individual

2 = Candidate/ Spouse/ Domestic Partner

3 = Commercial Source

4 = Nonprofit Organization

5 = Political Action Committee

6 = Political Party Committee

7 = Ballot Question Committee

8 = Other Candidate/ Candidate Committee

9 = Candidate / Candidate Committee

10 = General Treasury Transfer

11 = Transfer from Previous Campaign

12 = Contributors giving \$50 or less

13 = Contributors giving \$100 or less

14 = Contributors giving \$200 or less

15 = MCEA Payment

16 = Financial Institution

DATE RECEIVED	CONTRIBUTOR	OCCUPATION AND EMPLOYER	CONTRIBUTOR/ CONTRIBUTION TYPE	AMOUNT
10/25/2021	NextEra Energy Resources, LLC 700 Universe Boulevard Juno Beach, FL, 33408		3 Monetary (Itemized) Cash contribution	\$300,000.00
TOTAL CONTRIBUTIONS / LOANS				\$300,000.00

(2018 - present)				
Committee Name	Type of Report	Preliminary Penalty	Final Penalty	Commission Meeting Date
Waiver Requests				
Maine United Auto Workers PAC	Late January Quarterly	\$400.00	\$400.00	04/25/18
Maine Health Care Assoc. PAC	Late 24-Hour Report	\$2,760.00	\$500.00	08/29/18
Fecteau Leadership PAC	Late 24-Hour Report	\$400.00	\$400.00	08/29/18
New Mainers PAC	Late 24-Hour Report	\$10,000.00	\$1,000.00	03/06/19
Unite Portland PAC (<i>Municipal</i>)	Late IE Report	\$5,000.00	\$1,250.00	12/18/19
	Late IE Report	\$2,052.16	\$750.00	12/18/19
Women's Leadership Fund PAC	Late IE Report	\$100.00	\$50.00	08/11/20
Maine Truck PAC	Late 24-Hour Report	\$2,686.68	\$50.00	10/16/20
Revive Hometown Maine PAC	Late October Quarterly	\$510.00	\$250.00	10/30/20
Mainers for Health and Parental Rights	Late 24-Hour Report	\$980.00	\$750.00	01/27/21
Kittery Democratic Committee	Late 11-Day Pre-General Report	\$500.00	\$100.00	02/24/21
Madison Republican Committee of Maine	Late 11-Day Pre-General Report	\$500.00	\$100.00	02/24/21
York Town Republican Committee	Late 11-Day Pre-General Report	\$500.00	\$100.00	02/24/21
Energy PAC for Maine	Late 24-Hour Report	\$8,840.00	\$750.00	03/31/21
Protect Maine Elections	Late Initial Report	\$1,004.00	\$750.00	10/29/21

(2020 - present)				
Committee Name	Type of Late Report/Other Violation	Preliminary Penalty	Final Penalty	Commission Meeting Date
Waiver Requests				
Mainers for Local Power PAC	Late Major Contributor (2)	\$53,431.15	\$2,500.00	03/10/20
Maine Street Solutions - Protect Schools BQC	Late Major Contributor	\$25,000.00	\$2,000.00	05/27/20
Clean Energy Matters PAC	Late Major Contributor Notice	\$50,000.00	\$2,500.00	03/31/21
We the People PAC	Late Major Contributor Notice	\$11,500.00	\$2,500.00	05/26/21
Mainers for Local Power PAC	Late Major Contributor Notice	\$13,786.32	\$2,500.00	08/23/21
(2018 - present)				
Committee Name	Type of Late Report/Other Violation	Preliminary Penalty	Final Penalty	Commission Meeting Date
Other Violations				
Sara Gideon Leadership PAC	Contributions Made in Name of Another		\$500.00	10/30/19
Working Families PAC	Failure to file 2020 October Quarterly; 11-Day Pre-General, 42-Day Post-General, and 2021 January Quarterly and April Quarterly campaign finance reports		\$3,750.00	05/26/21
Mainers for Fair Laws BQC	Missing Disclaimers in television ads		\$2,500.00	09/29/21
Working Families PAC	Over the limit contribution to Diane Russell senate campaign		\$285.00	09/29/21

Title 21-A Maine Revised Statutes

§ 1059. Report; filing requirements

...

B. During any year in which primary and general elections are held, a committee shall file primary and general election reports in addition to the reports required under paragraph A:

(1) On the 11th day before the date on which the election is held, which must be complete as of the 14th day before that date; and

(2) On the 42nd day after the date on which the election is held, which must be complete as of the 35th day after that date.

A committee shall file primary and general election reports even if the committee did not engage in financial activity to influence the primary or general election.

C. In any election year other than a year described in paragraph B, if a committee has received contributions or made expenditures for the purpose of influencing a ballot question election, a special election or a municipal candidate or referendum election subject to Title 30-A, section 2502, the committee shall file preelection and post-election reports:

(1) On the 11th day before the date on which the election is held, which must be complete as of the 14th day before that date; and

(2) On the 42nd day after the date on which the election is held, which must be complete as of the 35th day after that date.

...

E. If a committee is required to file a report 11 days before an election pursuant to paragraph B or C, the committee shall report any single contribution of \$5,000 or more received or single expenditure of \$1,000 or more made after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election within 24 hours of that contribution or expenditure. The treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, “overhead expenses” includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

...

§ 1062-A. Failure to file on time

...

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, “mitigating circumstances” means:

- A.** A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B.** An error by the commission staff; or
- C.** Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

3. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A.** For the first violation, 2%;
- B.** For the 2nd violation, 4%; and
- C.** For the 3rd and subsequent violations, 6%.

Any penalty of less than \$ 10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered calendar year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

4. Maximum penalties. The maximum penalty under this subchapter is \$10,000 for reports required under section 1053-A, 1056-B or 1059, except that if the dollar amount of the financial activity that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the dollar amount of that financial activity.

...