

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

In Re: Stop the Corridor

DETERMINATION ON REQUEST BY STOP THE CORRIDOR
AND ██████████ TO MODIFY SUBPOENA

At meetings on June 11 and 18, 2021, the Maine Commission on Governmental Ethics and Election Practices considered a petition by Clean Energy for ME, LLC (operating under the name Stop the Corridor) and ██████████ to modify an investigative subpoena to produce records. The Commission is investigating whether Stop the Corridor (“STC”) should have registered and filed campaign finance reports with the Commission in 2019-2020 due to STC’s activities to initiate or influence a citizen initiative to oppose the New England Clean Energy Connect (“NECEC”) transmission project. For reasons expressed below, the Commission modifies Request No. 4 in the subpoena and otherwise declines to modify the subpoena. The Commission requests that STC provide the subpoenaed documents no later than July 9, 2021.

I. Relevant Law

Commission’s Authority to Audit and Investigate

As Maine’s campaign finance agency, the Commission is charged by statute, 1 M.R.S. § 1008(2), with the duty “[t]o administer and investigate any violations of the requirements for campaign finance reports and campaign financing” – all of which are set forth in Chapter 13 of Title 21-A.

Title 21-A, section 1003(1) expressly authorizes the Commission to “undertake audits and investigations to determine whether a person has violated” Chapter 13 (as well as the Commission’s rules and the Maine Clean Election Act). If a source outside the Commission requests an investigation, the Commission is directed by the Election Law to conduct an investigation “if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.” 21-A M.R.S. § 1003(2).

Confidentiality of Investigative Working Papers

Under 21-A M.R.S. § 1003(3-A), the Commission is required to keep confidential certain documents and information (“investigative working papers”) acquired or prepared in the course of an audit, investigation or other enforcement matter, including:

- financial information not normally available to the public,
- information that, if disclosed, would reveal sensitive political or campaign information belonging to [an organization investigated by the Commission], and
- intra-agency communications, including records of interviews.

The Commission is authorized to disclose this information only if the information or record is (a) not “subject to a privilege against discovery or use as evidence” and (b) is materially relevant to a memorandum or interim or final report by the commission staff or a decision by the commission concerning an audit, investigation or other enforcement matter.” 21-A M.R.S. § 1003(3-A).

Subpoena Power

To carry out its responsibility to conduct audits and investigations, the Maine Legislature has authorized the Commission to subpoena witnesses and records. 21-A M.R.S. § 1003(1). Under the Commission’s rules, “[t]he Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is necessary to disposition of the matter.” 94-270 C.M.R. Ch. 1, § 5(3).

Petition to Modify or Vacate a Subpoena

When an administrative agency issues a subpoena, the Maine Administrative Procedure Act permits the witness to petition the agency to vacate or modify the subpoena.

5 M.R.S. § 9060(1)(C). After conducting any appropriate investigation, the agency “may grant the petition in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when the evidence is requested.” *Id.*

Definition of Political Action Committee

Persons raising or spending money to influence a candidate or ballot question election that meet the definition of a political action committee (“PAC”) are required to register and file campaign finance reports with the Commission. As it relates to ballot question elections, the relevant paragraph of the PAC definition is:

A person, including any corporation or association, other than an individual, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose shall register as a PAC within seven (7) days of meeting that threshold.

21-A M.R.S. § 1052(5)(A)(4). To qualify as a PAC under this paragraph, an organization must: (1) have a major purpose of initiating or influencing a campaign (*i.e.*, a Maine candidate or ballot question election), and (2) have received or spent more than \$1,500 for the purpose of influencing that election.

Definition of Ballot Question Committee

Maine campaign finance law provides for an alternative committee classification, a ballot question committee (“BQC”), for an individual or an organization that does not have as its major purpose initiating or influencing a campaign, but that receives contributions or make expenditures of more than \$5,000 to initiate or influence a ballot question:

A person [including an individual or organization] not defined as a PAC that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign is required to register as a ballot question committee ...

21-A M.R.S. § 1056-B. Subsections 1-4 of the BQC statute set out the registration, financial reporting, and record-keeping requirements for BQCs, which are similar to PACs.

Contributions to a BQC

The BQC statute specifies that the definitions of contribution and expenditure in 21-A M.R.S. §§ 1052(3) and (4) apply to BQCs. 21-A M.R.S. § 1056-B(2). In addition, under subsection 2-A, the term “contribution” also includes:

1. Funds that the contributor specified were given in connection with a campaign.
2. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign.
3. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient’s activities regarding a campaign.
4. Funds or transfers from the general treasury of an organization filing a BQC report.

21-A M.R.S. § 1056-B(2-A).

Influence

In connection with a candidate or ballot question election in Maine, state campaign finance law defines the term influence to mean “to promote, support, oppose or defeat.”

21-A M.R.S. § 1052(4-A).

Donor Exception

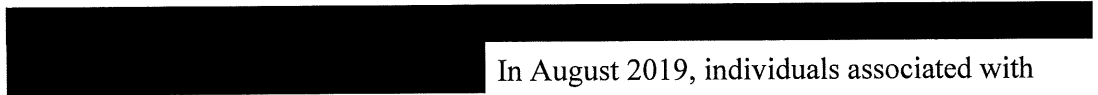
The BQC definition contains an exception for an individual or organization that is influencing a ballot question *only by making contributions to a PAC or BQC* (referred to below in this memo as the “donor exception”):

A person whose only payments of money for the purpose of influencing a campaign in this State are contributions to political action committees or ballot question committees registered with the commission or a municipality and who has not raised and accepted any contributions for the purpose of influencing a campaign in this State is not required to register and file campaign finance reports under this section.

21-A M.R.S. § 1056-B (last sentence of first paragraph).¹ The PAC definition contains a similar exception for donors (an organization that is influencing an election only by making contributions to candidates, party committees, political action committees and ballot question committees). 21-A M.R.S. § 1052(5)(B)(4).

II. Factual Background

From 2018-2020, STC engaged in public outreach and grassroots organizing to influence members of the public to oppose NECEC in state and federal permitting processes and through municipal resolutions and proceedings. Among other forms of communication, STC paid for professional television advertising opposing NECEC.

 In August 2019, individuals associated with another anti-NECEC organization, led by Ms. Sandi Howard, applied to the Secretary of State for permission to circulate petitions for the initiative and subsequently formed a PAC, No CMP Corridor, to promote the initiative. Between October 18, 2019 and February 3, 2020, STC and other associations opposed to NECEC circulated petitions to qualify the initiative for the ballot. On March 4, 2020, the Secretary of State determined

¹ STC relies on this donor exception to argue it is not a BQC.

that the petitions were valid and, after legal challenges were resolved in May, the citizen initiative to reject NECEC was scheduled for the November 3, 2020 ballot. On August 13, 2020, the Maine Supreme Judicial Court ruled that the initiative could not appear on the ballot for constitutional reasons. *Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109.

During the period of October 2019 - February 2020, STC compensated workers to engage in petitioning activities to qualify the initiative for the ballot. In addition to compensating staff, STC also paid for related costs such as travel reimbursements, printing, office supplies, and postage. STC viewed these activities as a donation to No CMP Corridor. In three quarterly campaign finance reports filed with the Commission, the No CMP Corridor PAC reported STC's expenses as in-kind contributions totaling \$85,727.

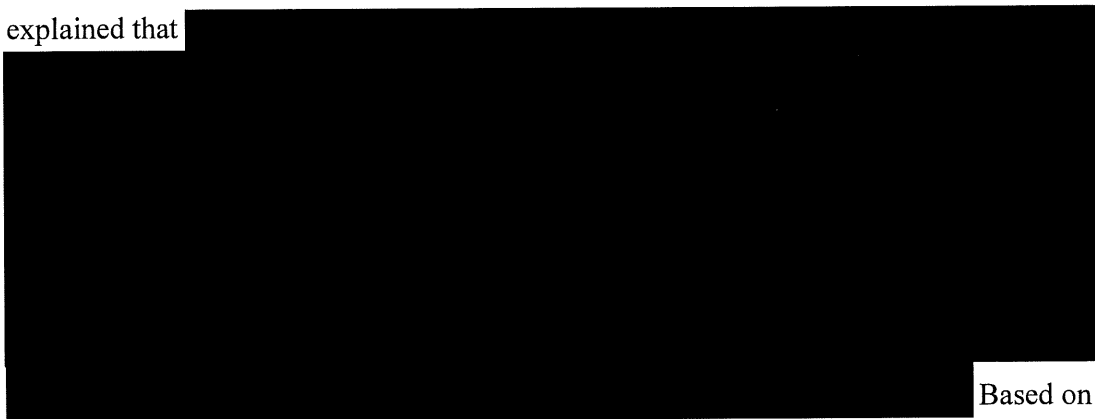
On January 17, 2020, Clean Energy Matters (a PAC funded to support NECEC) requested an investigation into whether STC qualified as a PAC.² The Commission staff raised the additional compliance question of whether STC should have registered as a ballot question committee (BQC).

In a February 12, 2020 response, STC argued that it is not a PAC because its major purpose was to encourage citizens to oppose NECEC through state and federal permitting proceedings, and in municipal resolutions or approval processes. STC acknowledged that it worked with No CMP Corridor on the petition effort but described the project as a small and very ancillary part of STC's mission. According to STC, it was exempt under the donor exception because staffing and other costs incurred in petitioning were reported as in-kind contributions by No CMP Corridor. (In other words, STC argued that because it was merely a donor to a PAC registered with the Commission, it did not, itself, need to register and file reports as a BQC.) Stop the Corridor claimed that it had never solicited contributions for its work on the initiative and had not received funds specifically for its

² To avoid confusion, Clean Energy for ME, LLC is the actual name of a limited liability company *opposing* the NECEC project that was operating under the name of Stop the Corridor and that has not registered with the Commission. Clean Energy Matters is a political action committee registered with the Commission that *supports* the NECEC project.

work on the referendum. In its February 12, 2020 response, STC provided no information about its structure, leadership, personnel or any constituent members, other than noting that STC was an assumed name for a limited liability company in good standing with the Maine Secretary of State.

At a meeting on March 10, 2020, after thorough consideration of the written submissions and presentations by opposing counsel, the Commission voted (2-1) to adopt a motion to conduct an investigation to determine whether or not STC qualified as a PAC. During a telephone conference with Commission staff on March 25, 2020, STC's counsel explained that



Based on preliminary information provided by STC in March and April 2020 and a recommendation by the Commission staff, the Commission decided at a meeting on May 22, 2020, to expand the investigation to also consider whether STC qualified as a BQC.

Commission's Efforts to Obtain Information from STC about its Financial Activities

On May 13 and June 1, 2020, the Commission staff requested from STC's legal counsel an unredacted ledger of transactions that would list by name STC's sources of revenue and payees. The Commission staff viewed this transaction list as necessary to conducting an effective interview of STC's manager, but STC did not provide an unredacted ledger.

On the deadline for the June 1, 2020 request, STC filed a petition for review of final agency action seeking a declaration that the Commission's May 22 action to expand the investigation was illegal. On August 18, 2020, the Commission staff sent STC's counsel a letter requesting seven categories of documents from STC and

relevant to whether STC qualified as a PAC or BQC. On the response deadline, STC asked the Commission, in light of the removal of the initiative from the ballot, to reconsider the request for documents while the Rule 80C proceeding was underway in the Maine courts.

To avoid any further delays in the investigation, on September 18, 2020, the Commission Chair authorized an Investigative Subpoena to Produce Records to STC and [REDACTED].³ The respondents applied to the Maine Superior Court for a stay of the subpoena until the Maine Superior Court resolved the Rule 80C proceeding.

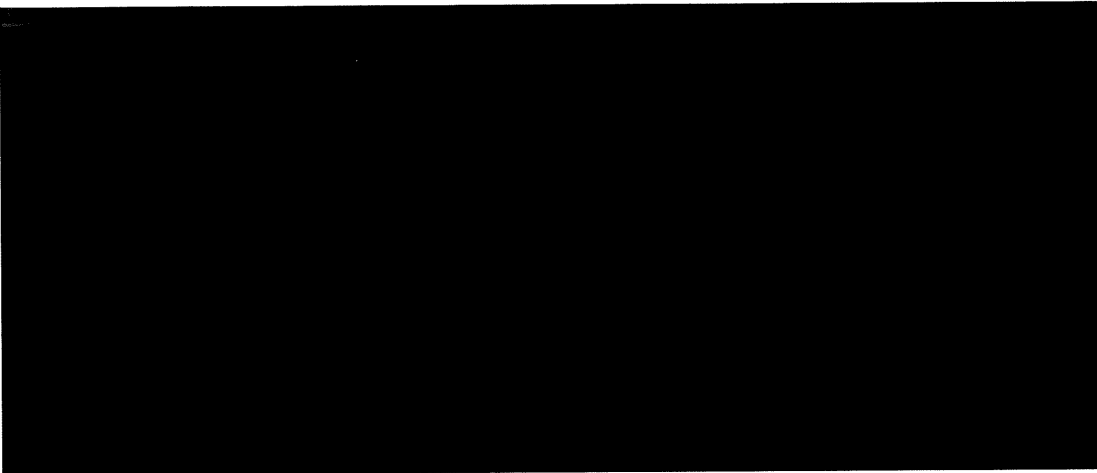
Through an Order dated December 14, 2020, the Superior Court of Maine (Justice Thomas D. Warren) denied STC's motion for a stay of the subpoena because STC did not demonstrate a likelihood of success on the merits and because the court concluded that the information sought in the subpoena appeared relevant to the question of whether STC qualified as a ballot question committee. In a separate Order dated December 22, 2020, the court decided that the Commission's May 22, 2020 expansion of the investigation was not an appealable final agency action. In the alternative, the court held, if the Commission's decision to investigate was properly before the court, the court affirmed the Commission's decision to expand the investigation.

STC's February 1, 2021 Production of Documents

On February 1, 2021, the Commission received 663 pages of documents from STC and [REDACTED], along with two ledgers of financial transactions. The documents were broadly consistent with STC's explanation to the Commission that STC engaged in various activities to engage the public to oppose NECEC.

The financial ledgers indicate that [REDACTED]

³ In this memo, the September 18, 2020 subpoena is referred to as the "first subpoena," to distinguish it from March 16, 2021 subpoena that is the subject of STC's request for modifications.



March 16, 2021 Subpoena and Objections

After reviewing the February 1, 2021 production, the Commission staff recommended to the Commission Chair that the Commission subpoena additional documents from STC and [REDACTED] for the purpose of determining whether STC qualified as a PAC or BQC. On March 16, 2021, the Commission Chair executed a second investigative subpoena to produce records to STC and [REDACTED].

In a letter dated April 16, 2021, counsel for STC and [REDACTED] objected to seven of the requests in the Commission's second investigative subpoena for records. The objections include overbreadth, requesting documents outside the department's jurisdiction, and administrative burden. STC and [REDACTED] requested that the Commission modify the subpoena. The Commission considered the written objections and presentations by STC's counsel at meetings on June 11 and 18, 2021. In between those meetings, on June 16, 2021 the Commission's executive director, Commission Counsel, and Commissioner William Schneider met with STC's counsel to determine if the Commission staff could reach an agreement with STC on modifications to the subpoena, but they could not agree on modifications.

III. Relevance of Documents Requested by the Commission

The Commission finds that the documents requested in the Commission's March 16, 2021 subpoena are relevant to whether STC qualified as a BQC by engaging in financial activities to initiate or influence the citizen initiative to oppose the NECEC transmission project. As discussed below in this section, each category of documents has a direct bearing on whether STC received contributions for the purpose of initiating or influencing the initiative or the extent of expenditures by STC to initiate or influence the initiative. Secondly, the documents requested in the subpoena are also relevant to the question of whether STC operated in 2019-20 as a PAC.

Request No. 1. All documents, including but not limited to electronic mail and text or instant messages, that were transmitted from June 17, 2019 to August 13, 2020 between Stop the Corridor or [REDACTED] and [REDACTED] referring to activities to support the NECEC initiative.

[REDACTED] The correspondence and other documents transmitted between STC/[REDACTED] and [REDACTED] referring to the citizen initiative will provide the Commission with more information concerning STC's activities to promote the initiative, including whether STC engaged in other paid activities that were not reported as in-kind contributions by No CMP Corridor.

Request No. 2. All documents, including but not limited to electronic mail and text or instant messages, that were transmitted from June 17, 2019 to August 13, 2020 between STC or [REDACTED] and Calpine Corporation, Vistra Corp., or Mainers for Local Power referring to activities to support the NECEC initiative.

Two Texas energy companies opposed to NECEC (Vistra Corp. and Calpine Corporation) formed a PAC, Mainers for Local Power, to promote the citizen initiative. During Dec. 2019 – March 2020, the PAC paid a signature-gathering firm roughly

\$660,000 to gather signatures on petitions. These were allies or partners of STC in opposing the NECEC project. The correspondence and other documents transmitted between STC and these allies/partners referring to the citizen initiative will provide the Commission with more information concerning STC's activities to promote the initiative, including whether STC engaged in other paid activities not reported as in-kind contributions by No CMP Corridor.

Request No. 3. All invoices, bills, or requests for money transmitted by STC or [REDACTED] to [REDACTED] or [REDACTED] from June 17, 2019 to August 13, 2020 for any activity to oppose NECEC. This request includes invoices, bills, or requests for money created by entities other than STC or [REDACTED].⁴

The Commission is investigating whether STC received contributions for the purpose of initiating or influencing the citizen initiative, which would render the "donor exception" at 21-A M.R.S. § 1056-B inapplicable. The requested invoices, bills, and requests for money are relevant to whether [REDACTED] or [REDACTED] [REDACTED] received communications that would lead them to believe that STC would use the funding specifically for activities to promote the citizen initiative.

Request No. 4. (as modified by the Commission on June 18, 2021). All documents discussing, describing, or otherwise showing the intended purposes or goals of any television advertising concerning NECEC transmitted during the time period of November 1, 2019 to January 1, 2020 between STC, [REDACTED], and any other person.

Information received to date by the Commission suggests that STC engaged in significant television advertising through May 2019 and then took a hiatus for five or six months. STC resumed its spending on television advertising sometime around December 2019

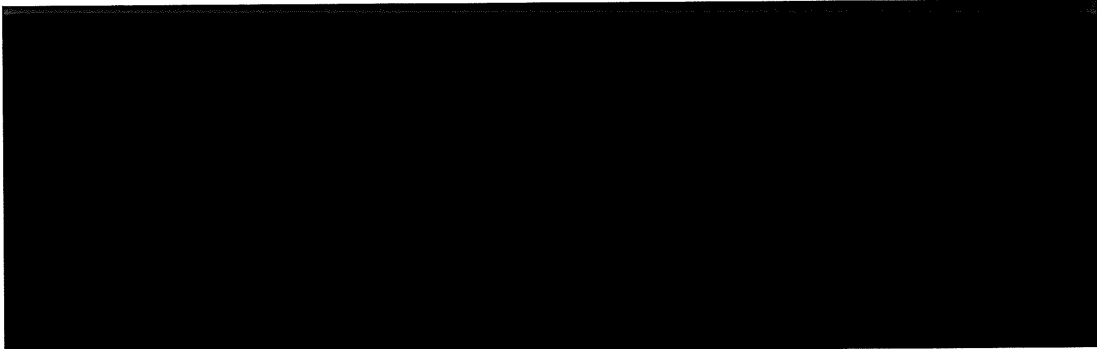
⁴ In the March 16, 2021 subpoena, the Commission instructed STC and [REDACTED] that, to avoid duplication, they could omit invoices and electronic mail communications provided in the February 1, 2021 document production.

and its television advertising spiked. The Commission staff seeks documents for the three-month period of Nov. 2019 - Jan. 2020 to determine whether this increase in television advertising was for the purpose of promoting petitioning that would continue through February 2020 or to influence public opinion during the ballot question campaign that was anticipated for later in 2020.

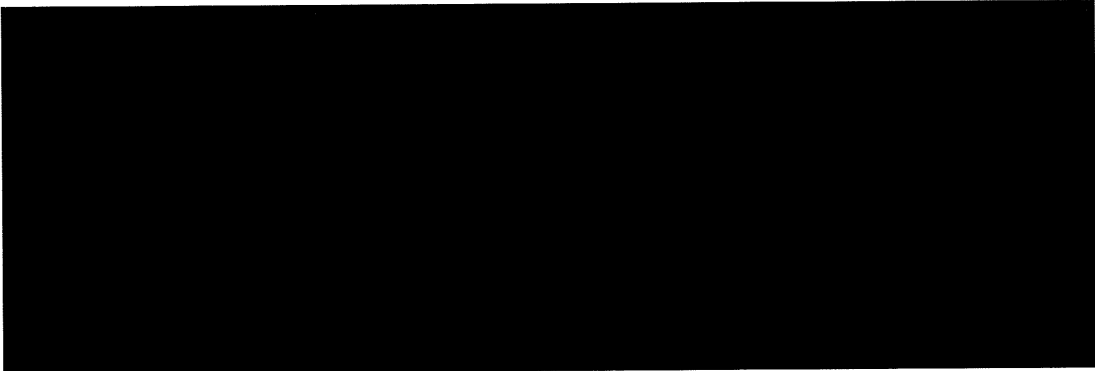
Request No. 5. All Documents relating to [REDACTED] or entities funded by or through [REDACTED], including but not limited to:

- a. Documents transmitted between [REDACTED] and STC or [REDACTED], including but not limited to electronic mail, text or instant messages;*
- b. Documents containing descriptions of services or activities to be conducted by [REDACTED] or entities funded by or through [REDACTED];*
- c. Documents reflecting services provided by [REDACTED] or entities funded by or through [REDACTED], including but not limited to petitioning services, strategic advice, campaign management, advertising, or public opinion research;*
- d. Invoices or other requests for payment;*
- e. Documents reflecting payments to [REDACTED], including but not limited to checks or electronic transfers of funds, and*
- f. Documents reflecting the formation of [REDACTED] or registration as a business entity with a state government, such as a limited liability company operating agreement or a certificate or articles of incorporation.*





Request No. 6. All Documents relating to [REDACTED] or entities funded by or through [REDACTED], including but not limited to:

- a. Documents transmitted between [REDACTED] and STC or [REDACTED], including but not limited to electronic mail, text or instant messages;*
 - b. Documents containing descriptions of services or activities to be conducted by [REDACTED];*
 - c. Documents reflecting services provided by [REDACTED] or entities funded by or through [REDACTED] including but not limited to petitioning services, strategic advice, campaign management, advertising, or public opinion research;*
 - d. Invoices or other requests for payment;*
 - e. Documents reflecting payments to [REDACTED], including but not limited to checks or electronic transfers of funds, and*
 - f. Documents reflecting the formation of [REDACTED] or registration as a business entity with a state government, such as a limited liability company operating agreement or a certificate or articles of incorporation.*
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Request No. 7. Documents sufficient to show all polling questions for the following public opinion surveys:

- a. the August 2019 poll referenced in the documents produced by STC and [REDACTED] [REDACTED] on February 1, 2021 that were bates-stamped STC00006, STC00161, and STC00169;*
- b. the November 2019 poll referenced on STC00005;*
- c. the January 2020 poll referenced on STC00009;*
- d. the April 2020 poll referenced on STC00542; and*
- e. any other public opinion survey conducted during the period of June 17, 2019 to August 13, 2020 that was financed by STC, [REDACTED], [REDACTED], [REDACTED] that asked questions concerning a direct initiative relating to NECEC.*

The February 1, 2021 document production contained email correspondence between STC and [REDACTED] indicating that STC arranged for at least four public opinion surveys between August 2019 and April 2020 that included questions intended to research whether the public would support the citizen initiative to oppose NECEC. (STC may have engaged in more polling related to the initiative later in the campaign prior to its removal from the ballot.) Polling is often used by campaign professionals for purposes of testing themes and messages for future communications to the public or strategic decision-making to promote a candidate or ballot question. Payments for these polls by STC or others may constitute expenditures made for the purpose of initiating or influencing the citizen initiative, which could qualify STC or others as a BQC. The Commission seeks the exact questions of the surveys to determine whether, and to what extent, these polling costs might qualify as reportable expenditures.

IV. Requests for Modifications by STC and [REDACTED]

Modification to Request No. 4

Request No. 4 in the March 16, 2021 subpoena was for documents relating to television advertising concerning NECEC during a three-month period beginning November 1, 2019 transmitted between STC or [REDACTED] and other persons. The request was designed to obtain any available evidence that STC resumed television advertising after a five-month hiatus in order to support the current effort to collect 63,067 signatures on petitioning or to influence public opinion in the anticipated political campaign. In their attorney's April 16, 2021 letter, STC and [REDACTED] objected that the request for documents related to advertising was overly broad and unduly burdensome. In order to focus Request No. 4 on documents most likely to be relevant, the Commission decided at its June 18, 2021 meeting to reduce the scope of the request to all documents *discussing, describing, or otherwise showing the intended purposes or goals* of any television advertising concerning NECEC transmitted during the time period of November 1, 2019 to January 1, 2020 between STC, [REDACTED], and any other person.

Time Period for the Commission's Documentary Requests

Requests No. 1, 2, 3, and 7 in the subpoena are for documents covering the period of June 17, 2019, to August 13, 2020. STC and [REDACTED] object to providing any documents earlier than August 1, 2019. In support of this proposed limitation, STC and [REDACTED] contend that the Commission has recognized that "the [i]nitiative campaign began no earlier than August 1, 2019." This mischaracterizes the Commission's views. Current Maine Election Law does not set out a step in the citizen initiative process when an initiative campaign begins. PACs and BQCs are required to disclose contributions received and expenditures made for the purpose of "initiating" or "influencing" a ballot question. When the Commission first began requesting more extensive records from STC and [REDACTED] last summer, the Commission requested some documents for a time period beginning on August 1, 2019. These requests were based on the Commission's limited knowledge of STC's activities in support of the citizen initiative that was available in August 2020.

Since that time, the Commission has gained additional information concerning STC's assistance [REDACTED]. Specifically, the Commission has learned the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]

These emails indicate that documents and communications during the period of June 17 - August 1, 2019 will promote the Commission's understanding of the full scope of STC's activities with respect to the initiative. The documents may also have bearing on whether

[REDACTED] would be used to promote the initiative. Consequently, the Commission declines to modify the time period for Requests No. 1, 2, 3, and 7.

Constitutional Objection: Overbreadth

STC objects to the subpoena on the grounds that subpoena requests that are not limited in scope to records that "relate to the initiative" constitute an impermissible search of STC's

corporate records under the U.S. and Maine constitutions. The Commission disagrees. The categories of documents sought in the March 16, 2021 subpoena are specific and directly relevant to determining if STC made expenditures or received contributions aggregating more than \$5,000 for purposes of initiating or influencing the citizen initiation. This argument was made by STC as part of its argument to the Maine Superior Court that the first subpoena dated September 18, 2020 should be modified. The Superior Court did not accept this argument.

One of the issues the Commission must examine in this investigation is whether STC received "contributions" greater than \$5,000 for the purpose of initiating or influencing the citizen initiative. Subsection 2-A of 21-A M.R.S. § 1056-B defines "contribution" to include:

...

B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign;

C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient's activities regarding a campaign

....

21-A M.R.S. § 1056-B(2-A). Particularly since STC concedes that it made contributions in support of the initiative, but claims they were covered under the donor exception,

written communications received by [REDACTED]

[REDACTED] are relevant to

the Commission's investigation. The Commission's Request No. 3 in the subpoena, for invoices, bills, or other requests for money which STC or [REDACTED] conveyed to

[REDACTED] or [REDACTED] during June 17, 2019 – August 13, 2020, is therefore

relevant to the investigation and not in violation of STC's constitutional rights. Some of these requests for money may have covered a combination of activities by STC or may be subject to interpretation.

The Commission declines the suggestion by STC that the Commission should limit this request to invoices, bills or requests for money that STC determines were “related to the initiative.” STC may take a different view of which emails “relate to the initiative” than the Commission, leading it to exclude records relevant to the Commission’s investigation. The Commission should receive all invoices, bills or requests for money within this 14-month period, and make its own judgment whether subsequent payments of money by [REDACTED] or [REDACTED] should be viewed as contributions in the context of STC’s activities with respect to the initiative.

The same principles apply to requests numbered 1-2, and 4-7. These requests are intended to obtain information about the extent of STC’s activities to promote the citizen initiative and whether STC engaged in expenditures for the purpose of initiating or influencing the initiative that were not disclosed as in-kind contributions by No CMP Corridor. These are not sweeping requests aimed at overseeing all of STC’s activities in 2019-2020. Rather, the requests are specific in nature and seek information that is directly relevant to whether STC made expenditures aggregating \$5,000 to support or promote the initiative.

For example, in Request No. 7, the Commission seeks the questions for at least four public opinion surveys arranged by STC or [REDACTED] which contained questions about the citizen initiative. These surveys were likely conducted by polling companies engaged by STC or its contractors. The Commission seeks the full set of questions for each poll in order to reach its own assessment of what portion of the polling costs, if any, should be considered expenditures made for the purpose of influencing the citizen initiative. These payments in themselves could result in a finding by the Commission that STC or others were required to register with the Commission as a BQC because they spent more than \$5,000 for the purpose of influencing the citizen initiative.

If the staff of the Commission receives any information that is deemed confidential under the Commission’s investigation’s statute, 21-A M.R.S. § 1003(3-A), that information will

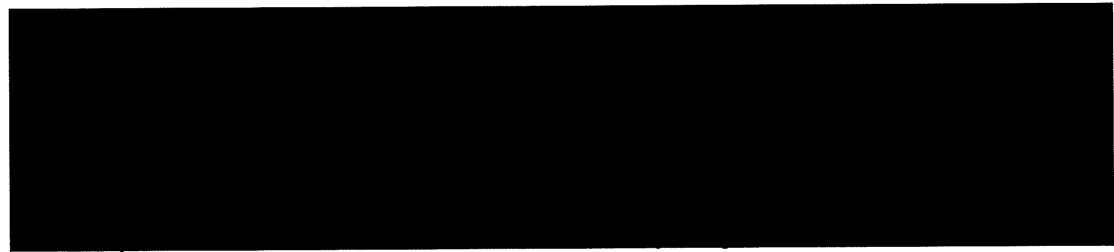
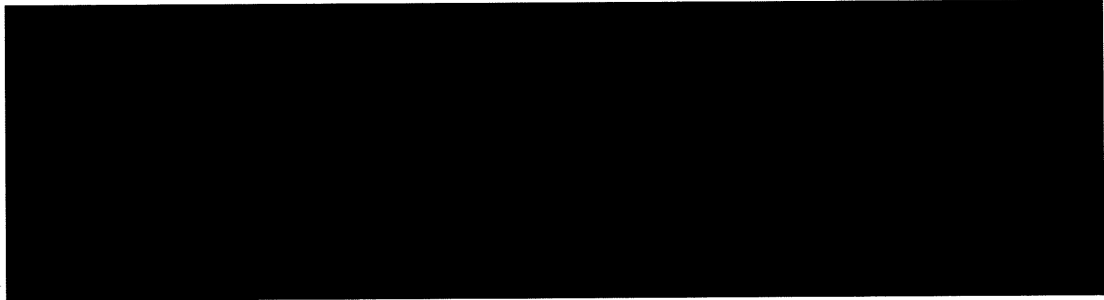
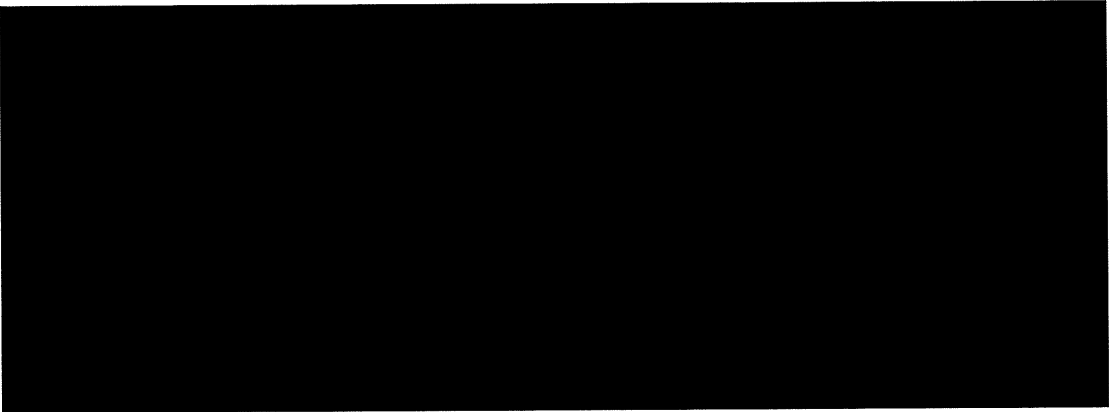
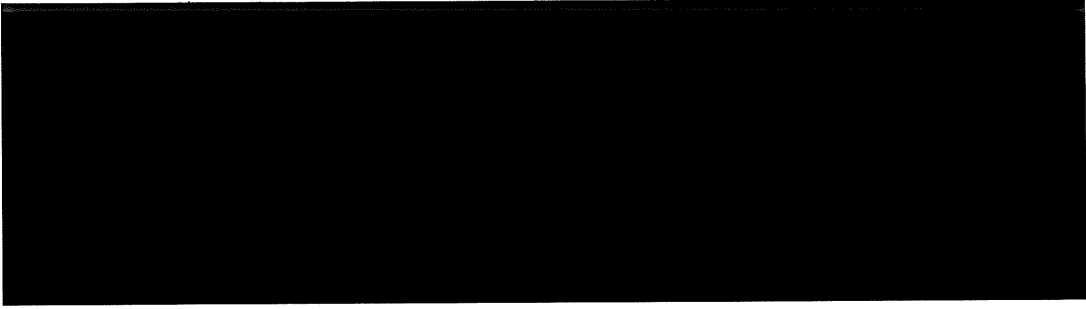
be stored confidentially among the Commission's records. By statute, the Commission may disclose confidential information obtained in the course of an investigation only if it is "materially relevant" to a finding of violation or other decision by the Commission. The Commission has demonstrated a longstanding commitment to protecting the confidentiality of information that organizations produce during an investigation. The Commission has followed this practice during the fifteen months of the investigation and will continue to do so.

STC's Payments to [REDACTED] (Request No. 5) and [REDACTED] (Request No. 6)

[REDACTED]

[REDACTED]

[REDACTED]



V. Conclusion and Order

The Commission has considered the legal objections to the March 16, 2021 subpoena that were set out by counsel for STC and ██████████ in writing on April 16, 2021. The Commission has heard two presentations by their counsel at the June 11 and 18, 2021 meetings, and received a report from the Commission staff on the unsuccessful negotiations with STC’s counsel to agree on modifications of the subpoena. Requests No. 1-7 in the subpoena are directly relevant to whether STC received contributions or made expenditures for the purpose of initiating or influencing the 2019-2020 citizen initiative. The requests are not overbroad and cover a time period that is reasonably designed to obtain relevant information. At the June 18, 2021 meeting, the Commission limited the scope of Request No. 4 as indicated above to reduce the administrative burden on STC. In all other respects, the Commission declined to modify the March 16, 2021 subpoena as requested by STC and ██████████. The Commission orders STC and ██████████ to provide records consistent with this determination on or before July 9, 2021.

Dated: _____

WILLIAM A. LEE III, Esq., Chair
Commission on Governmental Ethics
and Election Practices

NOTICE OF APPEAL RIGHTS: Any person aggrieved by this final determination has a right to seek judicial review by filing a Petition for Review in Superior Court, within 30 days of receipt of the determination, in accordance with 5 M.R.S.A. § 11001 & 11002 and Rule 80C of the Maine Rules of Civil Procedure.

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

In Re: Stop the Corridor)
) **INVESTIGATIVE SUBPOENA TO**
) **PRODUCE RECORDS**

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P.O. Box 9729
Portland, ME 04104-5029

YOU ARE HEREBY ORDERED, in the name of the State of Maine Commission on Governmental Ethics and Election Practices, pursuant to 21-A M.R.S. § 1003, to produce the following designated materials on or before April 23, 2021, at the offices of the Commission on Governmental Ethics and Election Practices for the State of Maine, located on the second floor of the building at 45 Memorial Circle, Augusta, Maine, by delivering in hand or sending the materials by first class U.S. mail to Jonathan Wayne, Executive Director, Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333:

1. All Documents, including but not limited to electronic mail and text or instant messages, that were transmitted from June 17, 2019 to August 13, 2020 between Stop the Corridor (“STC”) or [REDACTED] referring to activities to support the NECEC initiative, as defined below.
2. All Documents, including but not limited to electronic mail and text or instant messages, that were transmitted from June 17, 2019 to August 13, 2020 between STC or [REDACTED] and Calpine Corporation, Vistra Corp., or Mainers for Local Power referring to activities to support the NECEC initiative.
3. All invoices, bills, or requests for money transmitted by STC or [REDACTED] to [REDACTED] or [REDACTED] from June 17, 2019 to August 13, 2020 for any activity to oppose NECEC. This request includes invoices, bills, or requests for money created by entities other than STC or [REDACTED]. To avoid duplication, you may omit the invoices and electronic mail communications provided in the February 1, 2021 document production listed below.

4. All Documents relating to television advertising concerning NECEC during the period of November 1, 2019 to January 31, 2020 transmitted between STC, [REDACTED] and any other person, including but not limited to:
 - a. electronic mail by or to [REDACTED] media buyers, or television outlets;
 - b. written plans, outlines of activities, campaign plans;
 - c. cost estimates or quotes; and
 - d. invoices.

5. All Documents relating to [REDACTED] or entities funded by or through [REDACTED], including but not limited to:
 - a. Documents transmitted between [REDACTED] and STC or [REDACTED] including but not limited to electronic mail, text or instant messages;
 - b. Documents containing descriptions of services or activities to be conducted by [REDACTED] or entities funded by or through [REDACTED];
 - c. Documents reflecting services provided by [REDACTED] or entities funded by or through [REDACTED], including but not limited to petitioning services, strategic advice, campaign management, advertising, or public opinion research;
 - d. Invoices or other requests for payment;
 - e. Documents reflecting payments to [REDACTED], including but not limited to checks or electronic transfers of funds, and
 - f. Documents reflecting the formation of [REDACTED] or registration as a business entity with a state government, such as a limited liability company operating agreement or a certificate or articles of incorporation.

6. All Documents relating to [REDACTED] or entities funded by or through [REDACTED], including but not limited to:
 - a. Documents transmitted between [REDACTED] and STC or [REDACTED], including but not limited to electronic mail, text or instant messages;
 - b. Documents containing descriptions of services or activities to be conducted by [REDACTED];
 - c. Documents reflecting services provided by [REDACTED] or entities funded by or through [REDACTED] including but not limited to petitioning services, strategic advice, campaign management, advertising, or public opinion research;


- d. Invoices or other requests for payment;
 - e. Documents reflecting payments to [REDACTED], including but not limited to checks or electronic transfers of funds, and
 - f. Documents reflecting the formation of [REDACTED] or registration as a business entity with a state government, such as a limited liability company operating agreement or a certificate or articles of incorporation.
7. Documents sufficient to show all polling questions for the following public opinion surveys:
- a. the August 2019 poll referenced in the documents produced by STC and [REDACTED] on February 1, 2021 that were bates-stamped STC00006, STC00161, and STC00169;
 - b. the November 2019 poll referenced on STC00005;
 - c. the January 2020 poll referenced on STC00009;
 - d. the April 2020 poll referenced on STC00542; and
 - e. any other public opinion survey conducted during the period of June 17, 2019 to August 13, 2020 that was financed by STC, [REDACTED] and that asked questions concerning a direct initiative relating to NECEC.
8. The contextual memorandum relating to polling results, referred to in the September 4, 2019 email from [REDACTED] (STC00161).
9. The campaign memo/recommendations document referred to in the March 16, 2020 email from [REDACTED] (STC00487).

This subpoena is issued on behalf of the Commission on Governmental Ethics and Election Practices, in conjunction with a Commission investigation to determine whether Stop the Corridor complied with campaign finance requirements in Title 21-A, Chapter 13, pursuant to 21-A M.R.S.A. § 1003. The Commission's attorney is Jonathan Bolton, Assistant Attorney General, Office of the Attorney General, 6 State House Station, Augusta, Maine 04333-0006. He may be contacted at (207) 626-8551 or Jonathan.Bolton@maine.gov.

NOTICE: A statement of your rights and duties pursuant to this subpoena is set out in 5 M.R.S. § 9060(1)(C) and (D). If you object to the subpoena, you must petition the Commission on Governmental Ethics and Election Practices to vacate or modify the subpoena before April 9, 2021. After such investigation as the Commission considers appropriate, it may grant the petition in whole or in part upon a finding that the testimony or evidence for which production is required does not relate with reasonable directness to any manner in question, or that a subpoena for the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when the evidence is requested.

WARNING: Failure to comply with this subpoena shall be punishable as for contempt of court, pursuant to 21-A M.R.S.A. § 1003(1), 5 M.R.S.A. § 9060(1)(D) and Rule 66(c) of the Maine Rules of Civil Procedure.

Dated: 3/16/2021



WILLIAM A. LEE III, Esq., Chair
Commission on Governmental Ethics
and Election Practices

Definitions

“██████████” means ██████████ and its members, officers, board of directors, employees, and agents.

“Activities to support the NECEC initiative” means all activities supporting or promoting the Citizen Initiative to Reject NECEC, including but not limited to exploring the feasibility of the direct initiative, drafting legislation for the direct initiative, forming business entities, gathering signatures on petitions for the direct initiative, researching public opinion concerning the direct initiative, paying for video advertising or other communications to influence opinion concerning the direct initiative, or engaging in a political campaign in support of the direct initiative.

“██████████” means ██████████ and its members, officers, board of directors, employees, and agents.

“██████████” means ██████████ and its members, officers, board of directors, employees, and agents.

“Calpine Corporation” means Calpine Corporation and its members, officers, board of directors, employees, and agents.

“Citizen Initiative to Reject NECEC” means the direct initiative to enact legislation entitled “Resolve, To Reject the New England Clean Energy Connect Transmission Project” which the Maine Secretary of State approved on March 4, 2020 as having met the petitioning requirements for submission to the Legislature.

“Communication” means, without limitation, any exchange or transfer of information by any means (*e.g.*, whether oral, written, electronic, or by other methods). The term includes but is not limited to electronic mail, text or instant messages, regular U.S. Mail or other delivery service, or postings on social media.

"Documents" means all written, printed, or digitally or electronically stored material (translated, if necessary, into a reasonably usable form). The term includes but is not limited to Communications (as defined above), agreements, contracts, invoices, purchase orders, ledgers, financial statements, accounts, proposals, plans, budgets, projections of financial activity, government filings, computer-stored data or material, and audio/visual recordings.

“██████████” means the person(s) providing funding to ██████████ to finance activities by Stop the Corridor or ██████████ to oppose NECEC.

“██████████” means ██████████ and its members, officers, board of directors, employees, and agents.

“[REDACTED]” means [REDACTED] and its members, officers, board of directors, employees, and agents.

“Mainers for Local Power” means the political action committee of the same name registered with the Commission and its members, officers, board of directors, employees, volunteers, and agents.

“NECEC” means the New England Clean Energy Connect transmission project.

“No CMP Corridor” means the political action committee of the same name registered with the Commission and its members, officers, board of directors, employees, volunteers, and agents.

“Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

“Say No to NECEC” means Say No to NECEC and its members, officers, board of directors, employees, volunteers, and agents.

“STCXXXXX” refers to pages from the February 1, 2021 production of documents by Stop the Corridor and [REDACTED] that were bates-stamped with a five-digit number (e.g., STC00001).

“Stop the Corridor” and “STC” mean Clean Energy for ME, LLC and its members, officers, board of directors, employees, and agents.

“Vistra Corp.” means Vistra Corp. and its members, officers, board of directors, employees, and agents.

Previously provided invoices and other requests for money

For purposes of request #3 above, you may omit the 14 invoices from [REDACTED] provided in the February 1, 2021 document production (STC00001-STC00014) and the eleven emails requesting money (STC00135, STC00169, STC00323, STC00496, STC00497, STC00501, STC00575, STC00580, STC00596, STC00615, and STC00616).