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GOVERNOR

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The 130th Legislature of the State of Maine
State House
Augusta, Maine

Dear Honorable Members of the 130th Legislature:

By the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing L.D. 1708, *An Act to Create the Pine Tree Power Authority, a Nonprofit Utility, to Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence*.

The performance of our investor-owned utilities in recent years has been abysmal: inexcusable billing errors, unacceptable delays in restoration of service, inexplicable confusion over the costs of connecting new solar projects to the grid, substantial rate increases, and now a draft audit report that questions Central Maine Power's management structure. We are well beyond the point of debating whether our utilities can do better. They can, and they must. Our utilities – which are granted a monopoly over the vital service of delivering electricity to Maine consumers large and small – must provide the high quality, reliable, efficient, and competent service that Maine citizens and businesses expect and deserve.

I have read L.D. 1708 multiple times, reviewed testimony submitted during its public hearing, and listened to and considered arguments in favor and in opposition to the legislation. This bill is arguably one of the most consequential ever to be considered by the Legislature – a bill the impact of which would touch the lives of nearly every Maine citizen in serious, substantial, and fundamental ways.

It may well be that the time has come for the people of the State of Maine to retake control over the assets on which they depend for the lifeblood of our communities, that is, our electric transmission and distribution services. And there may be a way to create a utility with a professional governing board that is clearly eligible to issue low-interest, tax-exempt bonds that would save ratepayers money, achieve better connectivity with solar and other renewables, and further the climate goals of this Administration. But L.D. 1708, hastily drafted and hastily amended in recent weeks without robust public participation, is a patchwork of political promises rather than a methodical reformation of Maine's complicated electrical transmission and distribution system.



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L.D. 1708 would direct the public takeover of Maine's two investor owner utilities, Central Maine Power and Versant Power. The current owners of these utilities are not willing sellers. Recognizing this, the bill authorizes the use of eminent domain to condemn their electricity transmission and distribution assets. The bill would create a new public power authority, and to finance the acquisition of the utilities' assets, the bill contemplates the authority's issuance of tax-exempt bonds.

The new authority would be governed by an 11-member board. Seven members with voting rights would be popularly-elected and need not have relevant experience or credentials. Four seats on the board are designated for members with expertise on energy and utility matters, though these members have no voting privileges. The new authority would be required to contract with an operator, through a competitive bid process, to run the just-acquired assets. The bill requires that preference be given to bidders with demonstrated "familiarity with the systems to be administered." That requirement would leave Central Maine Power and Versant – the same entities whose assets were just condemned – in the most obvious position to win the contracts to operate their own former assets.

I am deeply concerned that this bill is being advanced too quickly without having undergone adequate public scrutiny and without having addressed substantive concerns raised by many. The bill was printed on May 17, heard in Committee on May 20, worked in Committee on June 1, and voted on in Committee that same day. A last-minute amendment that makes the new entity liable for property taxes did not permit an evaluation of the effect of that change on the entity's ability to issue tax exempt bonds.¹

Despite such amendments designed to gain the favor of specific legislators, L.D. 1708 has engendered substantial and unabated concerns from respected community members as diverse as the International Brotherhood of Electrical Workers, three former PUC Commissioners, and the mayors of seven Maine cities.

This bill's rush to enactment is particularly disturbing given where this matter was left at the end of the 129th session, when an analysis by London Economics (LEI) had recommended several substantial areas requiring further study. In response, the Energy and Utilities Committee voted to endorse a task force that would study the costs and benefits of a consumer-owned utility. That task force was never created, and significant issues that LEI raised, such as the need for a business plan, still have not been addressed. Instead, L.D. 1708 simply defers them to be dealt with by the

¹ A not insignificant ambiguity lies in the bill's very definition of the new entity, variously referred to as a "body corporate and politic," "consumer owned transmission and distribution utility," a "public municipal corporation," a "quasi-municipal corporation," and in the referendum language as "a nonprofit, privately operated utility...." The characterization of this entity ultimately determines whether it is eligible to issue tax-exempt bonds, a major underpinning of the proposal's purpose of lowering rates, achieving climate goals and improving connectivity and reliability. However, subjecting the entity to property taxes makes it much more difficult to qualify as a "constituted authority of the state." Comm'r v. Shamberg's Estate, 144 F.2d 998 (2d Cir. 1944). If, on the other hand, it is intended to be a private entity eligible for tax-exempt private activity bonds, it would be subject to the "Rostenkowski Rule," which prohibits the purchase of utility assets with tax-exempt bonds.



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authority's elected board. The stakes are too high for that. Basic due diligence demands that we have that information before committing the State to this large a venture.²

In addition, the bill directs the Public Utilities Commission (PUC) to find, notwithstanding other laws to the contrary, that all debt incurred by the new authority prior to its final acquisition of the transmission and distribution assets is a "just and reasonable expense." The new authority, whose voting board members may have no experience in managing a utility, would be at the mercy of attorneys and consultants whose services it would desperately need in trying to fulfill its mission. Declaring all the authority's initial expenses to be just and reasonable as a matter of law would essentially grant these professional contractors a blank check and is a recipe for excessive spending and an inevitable increase in rates to consumers.

L.D. 1708 would become effective only once approved by voters. For a bill of such consequence, that requirement is appropriate. What is inappropriate is the manner in which the bill puts the question to voters. Section 15 of the legislation dictates the language of the ballot question, as follows:

Do you favor the creation of the Pine Tree Power Company, a nonprofit, privately operated utility, governed by a board elected by Maine voters, to replace Central Maine Power and Versant Power, *without using tax dollars or state bonds, and to focus on delivering reliable, affordable electricity, and meeting the State's energy independence and Internet connectivity goals?* (Emphasis added).

This proposed ballot question is not an even-handed treatment of the serious issues that L.D. 1708 presents. It is an attempt to put a finger on the scale of the referendum process by highlighting the most optimistic potential outcomes, with no mention of the potential downside risks. Those risks are substantial, and include protracted litigation over the proper valuation of the condemned assets, the possibility that the hostile takeover of the State's utilities will lead to delays in investments needed to achieve greenhouse gas reduction goals, and problems associated with an inexperienced board trying to run the State's major utilities, potentially under the operation of the very same entities that own them currently. To be fair to voters, the Legislature must give a full airing to these issues before sending the matter to referendum, and then put the question to voters in a form that is objective and impartial, and not designed to elicit a desired result.

The sponsor of the bill had offered to introduce additional amendments in an attempt to address concerns previously raised in the memo my office sent to the Legislature. However, these concerns were not subject to quick and easy language changes. The sponsor's very willingness to consider further last-minute amendments seemed to be a recognition of the bill's substantial flaws and good reason for the sponsor to have carried the bill over to put these far-reaching amendments through

² Another last minute amendment requires that the new entity acquire all rights and responsibilities under any existing TIFs., despite the fact that TIFs generally include non-assignability clauses. Similarly, the provision in the bill that requires all obligations and contracts and net energy billing agreements be transferred to the new entity raises serious constitutional issues concerning the impairment of contract.



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a thorough, deliberative public process in which all stakeholders and consumers could engage and be heard. Unfortunately, this offer was not accepted.

It has been said to me that this is not truly a question of whether Maine needs a consumer-owned utility, but rather, of whether I will let the voters decide. The voters of this state elected me. They elected me to evaluate policy matters in a fair and thoughtful way and to take the steps I believe are in the best interest of Maine people. In fewer words: they elected me to do a job. If I were to simply pass along a measure – one that I believe is deeply flawed – for their consideration, I would not be doing my job. Instead, I would be shirking my responsibilities as their Governor – something I cannot and will not do.

I agree that change is necessary, and I am open to considering alternative proposals and strengthening the authority and penalties available to the PUC. For instance, a process already exists in Maine law to force the divestiture of a public utility's assets. The PUC has the authority to hold an adjudicatory hearing to determine whether a public utility is "unfit to provide safe, adequate and reliable service at rates that are just and reasonable." 35-A M.R.A. § 1511. An evidence-based proceeding such as this might be more appropriate for such a profoundly important change, particularly as compared to the rushed political process that characterized the enactment of L.D. 1708.

The American journalist H.L. Mencken said, "Every complex problem has a solution which is simple, direct, plausible – and wrong." I share the frustrations surrounding the service and performance of Maine's utilities, but I am deeply concerned that this bill presents a rosy solution to a complicated problem that, if implemented, would create more problems than it solves. Those problems are substantial, and include protracted litigation over the proper valuation of the condemned assets, the possibility that the hostile takeover of the State's utilities will lead to delays in investments needed to achieve carbon reduction goals, and problems associated with an inexperienced board trying to run the State's major utilities, potentially under the operation of the very same entities that own them currently.

For these reasons, I return L.D. 1708 unsigned and vetoed, and I urge the Legislature to sustain this veto.

Respectfully,



Janet T. Mills
Governor



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