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Testimony in Opposition to LD 1611

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Senator Lawrence, Representative Zeigler, and distinguished members of the Select Legislative Committee on Energy, Utilities and Technology, my name is Kat Joyce, and I co-lead the Energy and Environmental Practice at Bernstein Shur in Portland. On behalf of Versant Power, I respectfully submit this testimony in opposition to LD 1611.

The subject matter of LD 1611 has been under discussion and review for years now. There are good reasons that the Legislature has, thus far, declined to pass this into law.

Proponents of LD 1611 in its various iterations over the last few years have represented that a governmental takeover of private utility companies would result in significant cost savings despite abundant evidence to the contrary. These cost savings would purportedly derive from the Pine Tree Power Company's status as a non-profit and consumer-owned entity. However, the sole impartial legislatively-authorized review of this policy by the Public Utility Commission's consultant, London Economics (LEI)¹, comes to a much less optimistic conclusion about the economic risks of this takeover, and reveals the proponents' claims as inaccurate and based on flawed assumptions.

In addition to the analysis performed for the Commission, London Economics wrote a July 29th, 2020 letter to this EUT committee rebutting certain claims public power proponents made purportedly based upon LEI's study. That letter (attached) speaks for itself:

- Public power advocates proposed transfer is like asking to take out a second mortgage on top of the \$13 billion in acquisition costs: "the act of refunding the cash balance is akin to taking on a second mortgage." (p. 2)
- Promised benefits from transmission are "gaming" of FERC-regulated rates which FERC and other states are unlikely to allow to happen (p. 3)

¹ While that analysis pertained to an earlier version of LD 1646, the underlying economics of the proposal remains the same and the significant concerns raised by the report remain relevant.

- Increased efficiencies cannot be relied upon. Indeed, “in the near term, electric ratepayers may see a rate increase due to the incremental costs of starting up . . .” (p. 2-3).

Here are three additional reasons why the public power advocates economic claims and assumptions are incorrect:

First, despite the title of this LD, a Pine Tree Power Company would not be owned by the customers. Ownership comes with legally defined rights, liabilities, and responsibilities. As proposed, this entity would impose many of the responsibilities and liabilities of ownership upon its customers, but none of the rights. It is my understanding that customers would continue, as they do now, to pay for capital investments, capital upgrades, the utility line workers, customer service representatives and other workforce costs such as retirement and health care as well as line repairs, storm response costs, vegetation management, utility trucks, and other costs necessary to deliver electricity and restoration of power around the clock.

Customers would continue to pay for interest on debt while debt (and thus interest payments) would be significantly larger with no equity investor in the company.

Customers would continue to pay a profit on services rendered in the form of a management fee which would include a substantial risk and profit premium, and this bill is written to ensure that those services would be rendered by out of state companies.

In addition to those costs, which customers already feel are challenging to afford, LD 1611 obligates customers to also pay for the establishment of a new entity, the extraordinary transaction costs of a hostile takeover and then costs associated with transferring a utility into new ownership of an elected board, the fair market value of the utility, and the legal proceedings to carry out that taking of private property and to transfer it to a pseudo-governmental entity without meaningful ownership benefits flowing to those customers.

The philosophy, as I understand it, is that the proxy for those absent benefits of ownership is certain anticipated savings – for example, savings from lower interest rates derived from being a quasi-governmental entity. However, and this is my second point, there is no basis on which to presume lower interest rates by virtue of being a quasi-public entity.

In fact, this bill requires that the assets in question be fully leveraged – 100% debt-financed. These types of transactions are typically deemed to be higher risk and ascribed higher interest rates. A good corollary, as a reference point, is the kind of interest rate you would get on a home mortgage if you financed 100% of the value of the home, rather than the interest rate you would get if you financed 80% of the value of the home – if you can get that 100% mortgage at all. These borrower risk concerns, along with the risk associated with lending to an elected, non-expert board of political professionals, are likely to elevate, rather than lower, interest rates.

The other savings promised to balance out and exceed the exceptional expenses associated with this takeover are that the payment of profits would no longer be required. However, while the proposed Pine Tree Power Company is, itself, styled as a non-profit, the proposal also requires a

private operator of the assets. So, imagine yourselves in the shoes of such a potential operator, a utility company deciding whether to take on the risk of operating the distribution grid in Maine. Ask yourself whether your company would enter into such a contract without a meaningful profit margin paid in exchange for your services. The answer is clearly no. A private company taking on utility operations would necessarily require a substantial profit premium.

And if the position of the proponents of LD 1611 is that this new entity would be discerning in their selection of contractor(s), it is worth noting that there are very few companies capable of operating one or two large utilities – and they all happen to be utilities. If the bid conditions are demanding, there is a very realistic possibility that there would be poor bids, or even no bids at all, from which to choose. In short, the proposed structure would transfer substantial profits and authority to an out of state, private operator while Maine customers bear all the costs and risks.

This is worse outcome for customers than the current model, in which profits are regulated, utilities are subject to rate cases, and imprudent management decisions can be challenged and charged to a shareholder. In contrast, the proposal proposes no profit cap for this new private operator, and without a shareholder, all risk and costs are on Maine customers.

In sum, the economic promises contained within LD 1611 and the proponents' claims about it are not supported by evidence. To the contrary - this initiative would cost Maine utility customers billions of dollars for the hostile takeover, would force Maine customers to pay an unspecified cost to an operator, with a profit margin that the Public Utilities Commission would not directly regulate (as it does now), and would shift to customers all costs and liability associated with poor management decisions or imprudent investments, liabilities which are currently borne by utility shareholders.

Given the extraordinary liability and risks embedded in the proposed Legislation, I would encourage you to let the voters decide for themselves. For these and other reasons, I urge the Committee not to pass the proposed LD 1611.

Thank you for your consideration.