An open letter to the members of the Maine Legislature

During my time on the Energy, Utilities, and Technology Committee, I worked on early iterations of the proposal that will go before voters this fall as a Citizen's Initiative, "An Act to Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility." While I am certainly a fan of consumer-owned utilities, I am deeply worried about this proposal. It is likely that this initiative will increase rates for quite some time and it could easily set back our climate change response efforts.

We could be opening the door to many years of strife, of which Maine's electric customers have already had quite enough. The costs involved in the unanswered questions amount to millions of dollars a year in Maine's electric bills, yet we are being asked at sign on the dotted line without having those answers.

Because the subject matter is dense and not well understood by those outside of the field, the campaigns' messaging is particularly shallow. The proponents' optimistic projections about savings and improvements are often repeated in the media without any counterbalance. The utilities don't have much of a grassroots movement and their pushback is ignored by many who find them unlikable. But some of that pushback is on solid ground and we must take it seriously, regardless of our feelings about the utilities.

This document is intended as a reference. While I am not a subject-matter expert, I have made every effort to ensure the information is correct. If you believe there are material errors, please bring them to my attention; I will be updating the document as needed.

I am not being compensated for this effort. I have not received compensation from the utilities (or their PACs) for any reason and I have no intention of doing so in the foreseeable future. My membership on the Electric Ratepayers' Advisory Council, also an unpaid position, is not related to this effort in any way.

Respectfully,

Tina Riley
Jay, Maine
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Abstract

In November, voters will decide Question 3, a citizen' initiative which would create a nonprofit corporation to take over Maine's investor-owned utilities. The accounting, operation, and regulation of an electric utility is astonishingly complicated and most people have very little background in the subject. Information provided by the campaigns is mostly too slanted to clarify the issues.

A 2020 analysis commissioned by the PUC evaluated a proposal similar to the referendum. That analysis, as well as several partisan responses, inform the basis for this document. The parts of these analyses that refer to obsolete items from previous initiatives are ignored. The focus is on areas of discrepancy between the analyses, as those differences account for more than the entire savings being touted by the proponents. Unanswered questions equate to a great deal of risk for ratepayers, but that risk is largely invisible to the public.

Several specific concerns are explored here, mostly relating to the costs of purchasing, financing, and operating the grid. Because the initiative's language does not speak to many of the factors that impact rates and reliability, unsupported or disputed assumptions have filled the space. Our failure to resolve those discrepancies, and to understand and mitigate the risks, is worrisome.

Recent regulatory improvements, geared toward holding the utilities accountable, are making a difference. After CMP's billing debacle a few years ago landed them in hot water, they were hit with the largest fine in the Public Utilities Commission's history. Maine's investor-owned utilities (IOUs) are now required to report metrics that consumers have demanded, with penalties enforced for failure to meet benchmarks.

Consumer-owned utilities (COUs) have, overall, provided good service at somewhat lower prices than investor-owned utilities, but it is clear that factors other than ownership model play into that. Many of those COUs were built decades ago, often with federal Rural Electrification Act funding. That history, and their often small scale and simple design, are factors that probably play into their success but which do not apply to this initiative. Larger-scale attempts at taking over IOUs have been less successful. The city of Boulder, CO, spent nearly $30M before abandoning the effort in order to focus on climate change response. Since setting up their COU decades ago, Long Island has been battling poor reliability and higher rates than we pay in Maine. While COUs can be an excellent model, they are far from a guarantee of improved rates or reliability, and this transition would entail a great deal of risk.

Definitions

The following terms are used throughout the document:

COU - consumer-owned utility (Maine calls all non-profit utilities COUs, even if they are not actually owned by their consumers. Pine Tree Power would be one such COU).

FERC - the Federal Energy Regulatory Commission, which regulates interstate aspects of utilities.

IOU - investor-owned utility, like CMP and Versant.

LEI - London Economics International, the firm hired by the PUC to produce an analysis of the "Maine Power Delivery Authority" proposal from LD 1646 in the 129th Legislature. It is the most

relevant and non-partisan analysis available in spite of some clear mismatches with the current proposal.
NBV - the "net book value" of the infrastructure of the grid, currently owned by CMP and Versant.
PTP - Pine Tree Power Company
PUC or **MPUC -** the Maine Public Utilities Commission
T&D utility - an electric utility that provides transmission and distribution services.

What does Question 3 do?
The petition language tells the PUC to find the IOUs unfit to serve if any four conditions on a given list are found to be true. That list essentially spells out the proponents' complaints about the utilities, ensuring that the utilities will allow the new Pine Tree Power corporation to initiate their purchase, through eminent domain if necessary.
Voters across the state will elect the first seven board members, each of whom will have over 150,000 constituents. Candidates will be able to access Maine's Clean Election funding for their campaigns.
The seven elected members will "designate" six additional members who "collectively possess experience and expertise" across six areas including:

- Utility law, management, planning, operations, regulation or finance;
- The concerns of utility employees and other workers;
- The concerns of commercial or industrial electricity consumers;
- Electricity generation, storage, efficiency, delivery, cybersecurity, connectivity or related technologies;
- Planning, climate mitigation, adaptation or the environment; and
- Economic, environmental, and social justice, including the needs of low-income and moderate-income persons.

All board members have equal standing and all serve six-year terms, which will be staggered. There is no provision for recall, so only a majority of the board can remove a member and then only under certain circumstances. There are no term limits.
Neither voters nor board members are required to be customers of Pine Tree Power (PTP). All board members are required to be residents of Maine, and elected members are required to be at least 21 years of age. Board members receive $110 per day. PTP's customers will not have any ownership stake in the utility.

The board will set up the new corporation and hire personnel - advisors, a management team, and support staff, as it sees fit - and commence to create a business plan, arrange financing, and negotiate the purchase of the utilities. An "open solicitation" process will be developed to hire an operations contractor who will do most of what CMP and Versant currently do. The referendum language specifies that any spending related to setting up the new Pine Tree Power corporation and purchasing the utilities will be included in electric rates.

As a nonprofit, PTP would be exempt from paying income taxes. This will result in the loss of millions of dollars in annual revenues for the State of Maine, but a savings for ratepayers. The language does require PTP to pay property taxes, though as a carve-out, that could easily be reversed by the Legislature.

What we don't know:
Acquisition and startup cost
The initiative calls for the PUC to find our existing utilities "unfit to serve" if four of eight metrics are met. Those metrics include:

1. Scoring poorly on a national customer-satisfaction opinion survey.
2. Having a high rate of outages compared to similarly-sized utilities across the nation.
3. Having higher rates than similarly-sized utilities across the nation.
4. Recently hiring contractors to do more than $100,000 worth of work.

5. Foreign governments being >5% investors in the utilities.
6. Pay corporate income taxes and the established transmission rate.
7. Shareholders rather than federal taxpayers paying for the part of the storm damage not paid by ratepayers.
8. Having a fiduciary responsibility to shareholders.

Whether those metrics would be found to be reasonable by a court is unknown.
One certain challenge to this initiative would face in court will concern eminent domain. Article I, Section 21 of the Maine Constitution reads, "*Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.*" In order to force a sale by eminent domain, the court will have to agree that the public exigencies require it. Since the service provided by the utilities is likely to be seen as acceptable by the court, in spite of public opinion, the process may end with a high court determination that there is no need to take over the utilities via eminent domain.

Should the sale be approved, the court would determine the price. The "net book value" (NBV) of the utilities is on file, but an "acquisition premium" will most likely be added. That premium is projected to be between 1.1x and 2x the NBV, though the court may set a higher or lower price. So the cost to buy the utilities could be as low as five billion dollars or as high as ten billion - and considerably more, if the inevitable litigation drags out for very long.
We should have a better idea of how much this will cost before we invest.
Finance costs: revenue bonds, factors that determine the rates we will pay
PTP would be financed with revenue bonds, and the rate we will pay on those bonds is unclear but almost certainly lower than the rate we pay as a "return on equity" to the utilities as set by regulators.

Factors that will impact those rates include:

- Interest rates, which have gone up considerably this year and are likely to remain higher.
- The yet-to-be crafted operational plan and other details will be evaluated for a credit report that will impact the rate we pay on those bonds.
- Financing more than the actual value of the assets would increase the rates we pay, much like a no-money-down mortgage has a higher interest rate than if there is a 20% downpayment.
- Tax-exempt bonds, which offer a lower rate than taxable bonds, cannot be used for the initial purchase. Portions of the debt could be refinanced in the future to take advantage of the lower rates on tax-exempt bonds.

The plan for financing is left in the hands of a management team that would be hired by the Board. We simply do not have enough information yet to reasonably forecast the rates we would pay for financing, especially during the startup phase.
We should know how much it will cost to finance this purchase before we agree to it.
Transmission revenue streams
The transmission infrastructure that we share with the New England region is paid for by ratepayers throughout the region. FERC sets the transmission rate, just as the PUC does with distribution.

The rate that a COU is allowed to collect for the cost of shared transmission is somewhat lower than the rate an IOU is allowed, because a COU has a lower cost of capital. The nonpartisan analysis cited that rate at 8% while a PTP-friendly analysis put it at over 10% and the analysis paid for by CMP put it at under 7%.

Proponents have argued that FERC will allow PTP the same transmission rate as the IOUs and much of the savings they are touting are based on that assumption. But one of the core tenets of rate design is that rates must be based on the actual cost of providing service, so the rate for a COU will reflect its lower cost of capital (as well as its tax-exempt status) as compared to IOUs.

Additionally, it's unlikely that other New England ratepayers will be subject to the part of those transmission rates that are based on the "acquisition premium" mentioned above, since only Mainers benefit from the buyout. It is possible that FERC will be convinced otherwise, but most likely, Maine ratepayers will have to make up that difference - and they will pay for that litigation as well.

The difference between the analyses is impactful. The cost to PTP ratepayers would be wildly different from one scenario to another, with much of the savings touted by the initiative's proponents evaporating if the non-partisan or CMP-funded analyses turn out to be more accurate than the one they are banking on.

Who will run the grid

As required by the referendum language, PTP would hire a for-profit contractor to do all but the highest-level management of the grid (the board will hire a management team directly). There are few operations contractors with the skills to operate a T&D utility, so the pool of potential contractors could be quite small.

The Long Island Power Authority's (LIPA, which is a COU) arrangement is perhaps the most similar to this proposal. It contracts with Public Service Energy Group's subsidiary, PSEG-LI, to operate the grid. PSEG is an investor-owned energy corporation with global ownership; BlackRock is a major shareholder, so the company's profits flow to investors around the world.

The only companies in Maine with the capital and technical know-how to take on this job are CMP and Versant. Any company able and willing to take on the operations contract would need enormous capital and technical capabilities, so the operations contractor would likely be similar to LIPA's - a subsidiary of a global corporation. This presents a similar concern to one expressed by the proponents, that our grid is under the control of international companies. Additionally, the people most likely to be hired to head the operations team would likely be utility executives who are currently running CMP and Versant.

Management fees

While we would no longer pay a "return on equity" to the investor-owned utilities, we would pay management fees to the for-profit grid operator. The COU-friendly analysis projects a $15M cost while the nonpartisan analysis set it at $80M. The management fees under LIPA's contract with PSEG-LI has topped $100M but was cut back due to poor performance and customer dissatisfaction. But even after the penalties, the cost is over $80M a year, more than five times the amount that proponents are citing.

The board's makeup and its decisions

The board is responsible for creating a business plan for the COU. It will decide how to balance affordability with the need for infrastructure upgrades to meet reliability and climate change goals. Rates hinge on it, but there is no way to know how that will take shape. There are pressures and guidelines the board will need to consider, other than public opinion.

Rates

Given that we don't know the purchase price, how the change of the corporate structure will impact revenues, what our financing rates will be, or how much extra spending the board will direct, we cannot know what our rates will be.

The referendum language does require that rates be set high enough to cover "the cost of service, including the cost of debt and property taxation," and insists that no general fund money will be used.

What we do know:

There are costs and risks associated with passing this initiative

We would be taking over two large businesses that have made it clear that they do not want to sell. Their owners are spending enormous amounts to try to derail this referendum and if it passes, that spending would continue in the form of litigation. Millions of dollars will be spent by ratepayers whether the takeover actually happens or not.

The City of Boulder, CO, attempted a similar takeover; after ten years and nearly $30M, they decided to keep their IOU instead because they were falling behind in their climate change response.

Years down the road, if this all works out well, we would very likely see better rates than we have now. But there is no guarantee that it would all work smoothly and there is reason to fear that it would not.

Consumer-owned utilities can be excellent but it's not guaranteed

Ownership model is only one of many factors that decide customer satisfaction, and there are no guarantees that rates will go down or that satisfaction will increase under PTP. Transitioning to a COU model could deliver great results, but the payoff would be well down the road and even then, it's not guaranteed.

It is a grave error to assume that, because some COUs have low rates and good service, that those qualities are inherent in COUs. Many of those utilities are small, long-standing organizations or even town departments. They've built and paid for their infrastructure over many decades, and in many cases, construction was funded through the Rural Electrification Act. The comparison between those organizations and a large-scale buyout (requiring extensive financing and the use of an operations contractor) is not realistic.

The Long Island Power Authority (LIPA) and PREPA in Puerto Rico are COUs with long histories of difficulties. LIPA customers pay more than Maine ratepayers, and PREPA went bankrupt and is still fighting for a resolution. Large-scale COUs do not have the kind of track record that small, longstanding COUs enjoy.

Additional spending is built in

The corporation is required to create a five-year plan that will:

- establish a separate rate class for low-income customers,
- install EV rapid chargers across the state,
- "make rapid investments" to support climate change response, and
- reduce the pole attachment fees charged for broadband cables.

The first and last of these mandates are reductions in revenue which, along with the other two spending items, would be rolled into rates. We do not know how much the board will invest in these projects.

Some of the other new spending includes:

- Retention bonuses of 8% the first year and 6% the second year for union workers.
- Aligning the CMP and Versant workers' contracts so that, wherever the contracts differ, both utilities' workers get the higher benefit (estimated at about $4M/year cost to ratepayers).
- Paying a contractor to operate and maintain the grid. The existing utilities make a profit by investing in the grid while they operate and maintain it at cost, but an operations contractor would expect a substantial profit.

COUs can generally access capital at a lower cost than IOUs can, but these costs offset some or all of that savings.

To pay the cost of storm damage, COUs are able to access FEMA funds for which IOUs are not eligible. While this is touted as a benefit of the initiative, the contribution from the IOU's shareholders, who are required to cover part of the cost of storm damage, is not always acknowledged. Ratepayers are responsible for repair costs above the threshold (i.e., $2M per year or $3M per major event for CMP). It is not clear what hte impact to ratepayers would be under the COU scenario.

Strong regulation works
After the great billing fiasco of 2017, CMP was hit with a reduction in their allowed earnings and was required to make changes that benefited ratepayers. The utilities are required to continue to report detailed customer satisfaction metrics to the PUC, with penalties for failing to meet those benchmarks. The number of consumer complaints fielded by the PUC has dropped dramatically in recent years, indicating that many of the reasons for public outrage at the utilities have subsided. The continued strife around CMP's NECEC "corridor" project has kept the public's ire alive nonetheless.

Why the campaigns concern me
Climate change response is spurring a great deal of investment in the grid, so the value of the assets that PTP would be buying is expected to grow rapidly. The cost of financing that investment will be less expensive for a COU than it is for an IOU. The question is, would it be worth the cost and additional risks to adopt that model?

There is a lot at stake.
This proposal will impact not only Maine's energy delivery system but its entire economy as well as our climate change response. Unfortunately, the campaigns are making poorly-supported claims, obfuscating the issues we should be weighing. The devilishly complicated subject matter creates opportunities for misdirection. Political campaigns, geared to stoke emotions, are leaving voters with little more than slogans and the claims they're making sometimes rely on shaky assumptions. Let's take a look at some of those claims.
Claim: $13.5 billion of debt

This figure is often put forth in the utility PAC's ads. It was taken from an analysis, paid for by CMP, for an earlier version of this proposal which is still pertinent to the current referendum. The assumptions that drove that estimate of the purchase price that high are a combination of the value of the grid at the time of the sale and the "acquisition premium." Since it is a guess that doesn't reflect the range of possibilities or even the uncertainty of the actual cost, it's not useful information.

Claim: A government takeover
The proposal would create "a body corporate and politic," meaning that it has governmental authority, and the resulting entity would force the utilities to sell their businesses. Love it or hate it, and call it what you will, this is direct democracy, a citizen's initiative to create a new utility that would force an unwanted sale by the existing utilities.

Claim: Shutoffs
The organization pushing to pass this initiative sends out emails claiming, "Shut-offs are an unjustifiable practice that our for-profit monopolies use to squeeze working-class Mainers." While the email (and similar statements from proponents) only implies, without actually claiming that PTP would discontinue the practice of shutting off power for nonpayment, many supporters understandably inferred it.

To be clear, no utility can operate without the ability to shut off customers who don't pay. The cost of financing, already uncertain, would skyrocket if it were obtainable at all under such a model. The system would quickly collapse.
Currently, COUs and IOUs are all required to follow certain procedures to shut off power when customers don't pay. This practice is not about "corporate greed" or "corruption," but is a required, if unsavory, practice that safeguards the system as a whole.

Claim: IOUs are charging too much
We're all tired of being pinched by rising prices and energy prices have been among the worst offenders for some time. The supply portion of our electric bills - which the utility is required to bill for but does not keep - has gone up dramatically. More recently, it has dropped slightly and

will very likely drop more next year. The IOUs are not responsible for the increase in supply cost, nor do they benefit from it.

The PUC's mandate is to set rates that are "just and reasonable." That doesn't mean that the rates are required to strike customers as reasonable, but that the rates have to be reasonable compared to the cost of providing that service. IOUs must be allowed a reasonable return on their investments, and if the PUC tries to whittle them down too far, the courts would surely not approve. COUs must also set rates that cover current costs as well as ongoing investments.

New England's electric rates are high, but Maine's are slightly less than the regional average. CMP's rates are just about equal to the average Maine COU rate. The COUs' rates vary wildly; their unique circumstances account for much of the differences in their rates, whether it's a longstanding COU built with federal funds or an island that needed an expensive solution.

Ownership model is not the most significant factor behind our rising rates.As discussed earlier, it seems highly unlikely that PTP customers would see any decrease in their rates for years, maybe decades. Implementing this initiative may cause rates to rise for some time, and we have done far too little to understand and mitigate that risk.

Claim: Profits are going to Spain (or Qatar, or Calgary)

Yes, Versant is owned by a company that is owned by the City of Calgary, and the byzantine corporation that owns CMP has foreign shareholders around the globe. Such is the case with most large corporations and it's unlikely that this initiative will change that.

The grid operator hired by PTP is almost certainly going to be a subsidiary of a complex global corporation, and it will send profits out of Maine and out of the country. Blackrock owns a large interest in both Iberdrola (a CMP parent company) and PSEG, the parent company of the Long Island grid operator.

There are no companies in our area that are capable of operating our grid other than the companies that are already doing the job. It's reasonable to think we could end up with a new subsidiary of PSEG operating the grid in Maine, under the PTP model.

Too many of the PTP supporters I have spoken to feel sure that we will not hire an operator, but that the board will fire the upper management of the existing utilities and then run the utility directly. Not only is this not feasible, but it isn't how the initiative is set up.

Claim: The PUC rubber-stamps rate hikes

We give the utility a monopoly because additional sets of poles and wires would create a chaotic mess. The utilities are regulated because the absence of competition allows prices to soar and service to suffer. The regulators must follow state and federal law when setting rates or making other determinations; they do not have license to avenge angry ratepayers.

The process for rate cases is complex and it is structured by decades of legal history. The "takings clause" of the Constitution requires the government to consider the costs of providing service and a reasonable profit. So the PUC evaluates whether the utilities spending has been prudent when determining whether to allow recapture of the costs.

For the first time in years, Mainers are seeing an increase in rates due to "stranded costs." In the past, these costs were related to restructuring (when utilities were made to sell their power generation facilities). This time, it's mostly related to net energy billing and it amounts to almost $100M this year and closer to $150M next year. The utilities didn't cause that, and the PUC tried to inform the legislature as to the predictable result of this policy, to no avail.

In most cases, rates are adjusted to reflect the actual cost of providing service and earning a controlled profit, but when CMP failed in much of its required work a few years ago, a penalty was applied that lowered their earnings potential by $10M and required the company to meet required benchmarks for 18 months before their rates could be re-adjusted. Benchmarks and reporting rules, with applicable penalties for failure, have since been written into law.

Claim: Our electric service is unreliable

Reliability is measured in the number of outages and the total duration of those outages, with and without major events such as storms. Maine's electric service is amongst the least reliable in the nation, but that's probably due more to the rural, coastal, and tree-covered territory than to the ownership model.

Other than some aspirational language, this initiative does not directly address reliability. It should be noted that reliability comes with a price tag, and that part of the recent delivery rate increases are due to efforts by the utilities to increase reliability. Older poles are being replaced with more robust ones, vegetation management has been increased, and technological improvements are helping to address those concerns.

Claim: The utilities are spending ratepayers' money to fight the referendum

This initiative is backed by a well-organized, politically-savvy grassroots campaign and opposed by political action committees funded by the utilities' parent companies. People are offended to be paying high utility bills, only for the utilities to spend millions on advertising and lobbyists to fight the referendum.

It is the utilities' parent companies that are funding the effort, not the utilities themselves. The funding is not being "added to our rates" as has been claimed. Those companies, regardless of how anyone feels about them, have a right to defend their ownership of a business unit that is being threatened.