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Today, Representative Seth Berry sent the **attached** letter to Chief of Staff Jeremy Kennedy, responding to a memo on the Act to Create Pine Tree Power Company distributed by Kennedy last night. See attached.

To be clear, under [LD 1708](#), the Pine Tree Power Company is **required** to make payments in lieu of taxes

Directly from the bill:

"The company **shall** make payments in lieu of taxes with respect to its utility facilities or utility property to any municipality, county or other political subdivision to which an investorowned transmission and distribution utility whose utility facilities the company acquired pursuant to this chapter paid taxes and in the same amount as those taxes would have been if the investorowned transmission and distribution utility had continued to own the utility facilities or utility property. The company shall make timely payments in lieu of taxes on all facilities or property it owns, including all facilities and property procured, constructed or improved after the company has commenced operations."

Directly from the bill summary:

"The company **is required** to make payments equivalent to property taxes to municipalities."



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June 16, 2021

Jeremy Kennedy
Chief of Staff to Governor Janet T. Mills
1 State House Station
Augusta, ME 04333

Dear Jeremy:

Thank you for last night's memo expressing the Governor's concerns relating to LD 1708. I appreciate knowing where things stand.

With little time to respond, I will do my best at this time and will follow up later this week in more detail. I will speak only for myself, but I hope my comments reflect the thinking of the bipartisan supporters and legislators who have contributed to this bill thus far.

1. Property tax payments. We agree that these are crucial. For my own three towns, the customers of Avangrid (through our rates) are our biggest "single" taxpayer. LD 1708 requires that all current and future property taxes, as paid for in our rates, are continued. The amended version also protects TIFs.

Since its creation in 1998, the consumer-owned Long Island (NY) Power Authority has not been required to provide payments to municipalities. Nevertheless, it has done so. We consider the legal requirement in LD 1708 to be an important added layer of protection, above and beyond the lived LIPA experience.

We should also note that at present, Versant customers are paying to build municipal sidewalks in a Canadian city. If municipal utilities in Canada have been so successful, perhaps it is time to replicate them here.

2. School funding and revenue sharing. This is a policy call. If we want to encourage the siting of more transmission and distribution infrastructure in the state to meet the Governor's climate goals, it will be a useful incentive to exempt such infrastructure from the state valuation. Those of us voting in favor of the bill do so with this in mind.

3. Operations. As you note, LD 1708 provides for a private-sector, competitively bid operations company. In their economic modeling, LEI assumed a full \$82 million per year in net profit for this operator beginning in 2024. Dr. Silkman in his review argues that the number is far less: closer to \$15 million. In both cases, this assumption leads the experts to project net savings for Maine utility customers.

Rewarding operations performance rather than mere capital investment is at the heart of this legislation. At present, due to US Supreme Court decisions made in the 1920s and 1940s, investor-owned utilities must be compensated for merely “prudent” capital investment, with a return on equity that is at least comparable to recent market performance. This creates a perverse incentive to overbuild infrastructure, to push for policies that are in the end more expensive to customers, and to undervalue performance and operations. We can pay extra for performance, but Maine is not a wealthy state.

Equally important, a private sector operations company can be replaced. Rather than a permanent state-granted monopoly, the operator will work as other free market companies do. Perform well, and business is good. Perform poorly, and you may be replaced.

4. Board makeup and governance. The board is required to fulfill and to report back to the Legislature annually on the following objectives. We would be pleased to consider additional parameters for the company in the next regular session.

- A. To deliver electricity to the company’s customer-owners in a safe, affordable and reliable manner;
- B. To ensure excellence, timeliness and accuracy in billing, metering and customer service;
- C. To provide an open, supportive and competitive platform to develop and deploy renewable generation, storage, efficiency and beneficial electrification technologies;
- D. To assist the State in rapidly meeting or exceeding the climate action plan goals established in Title 38, chapter 3-A;
- E. To improve the State’s Internet connectivity through more affordable access to utility poles and other infrastructure in unserved or underserved areas of the State, as defined in section 9202, subsection 5;
- F. To advance economic, environmental and social justice and to benefit company workers and all communities in the State;
- G. To provide for transparent and accountable governance; and
- H. To support, secure and sustain economic growth and benefits for the State.

5. PUC Oversight: Both the board and its contractual arrangements are fully regulated by the PUC. All additional resources requested by the PUC to oversee the transition are included in the bill’s fiscal impact statement. Transition costs for any merger or acquisition are to be expected and the many recent mergers and reorganizations of our private utilities have also imposed significant costs on ratepayers in order to protect ratepayer interests.

6. **PUC Regulation:** Maine’s existing COUs have demonstrated no need for significant PUC regulation. However, to ensure additional checks and balances, we did see fit to add full PUC oversight of the Pine Tree Power Company. We are not concerned about costs being passed on to ratepayers because a) the COU cost of capital is roughly half as much, b) COUs are eligible for FEMA assistance while IOUs are not, and c) the vast majority of IOU costs are also passed on to ratepayers.

7. **Eminent domain:** In the extensive, expert, independent LEI review, the legal analysis concluded that the use of eminent domain is unlikely to be necessary. That said, it is a right of the state, and ironically is one we allow just one type of private company to use – our private utilities.

8. **Climate change and clean energy:** No single obstacle to our effort to decarbonize over the last 2 years has been greater than our investor-owned utilities. While the transition will not be without challenges, our climate demands a 30- or 50-year plan that is demonstrably and affordably financed. COUs have proven themselves a far superior business model for decarbonization, serving all 6 of the nation’s first 6 communities to reach 100% clean electricity.

9. **Additional study:** In our judgement, LEI’s recommendations for business planning must be conducted by the board. The bill provides the board with the necessary resources and expertise, as well as ample time to complete this review. This mandatory business planning will ensure the board is well positioned to enter negotiations and effect a smooth transition.

Last but not least, the timeline attached provides that there are ample opportunities for further adjustment of the enabling Pine Tree Power legislation, and even for off-ramps if necessary. We have been at this for years, and it is too late to seek changes to this bill at this time, but we have always sought collaboration and we would embrace the opportunity to work with the Governor to adjust the statute in January, if the bill is passed and if the voters ratify the creation of the Pine Tree Power Company in November.

Thank you,


Seth Berry

L.D. 1708 Pine Tree Power Company Diligence and Implementation Time Line

Maine Power for Maine People coalition formed	January 29, 2019	LD 1646 announced
	Winter 2019	Meetings with utility finance, management, labor and consumer experts
	May 14, 2019	Public Hearing on LD 1646 (98 testified)
	June 2019 to February 2020	Independent Feasibility Analysis by London Economics International
	March to August 2020	Peer reviews of LEI Report by Dr. Rich Silkman and CMP's Consultant
MP4MP becomes Our Power; 30+ member organizations	August 2020-May 2021	Improved proposal designed, based on above studies and testimony
	May 20, 2021	Public Hearing on LD 1708 (168 testified)
	June 2021	Legislative decision to send to voters <---YOU ARE HERE.
	November 2021	Popular ratification vote
	<i>if ratified by voters, then:</i>	
PUC oversees transition; reviews and approves contracts; regulates Pine Tree Power Company	January 2022	Candidates for board declare in nonpartisan elections process
	Winter-Spring 2022	130th Legislature & Governor may adjust enabling legislation
	November 2022	Board elections
	January 2023	Board meets, adopts bylaws and selects additional expert members
	Winter 2023-Spring 2024	131st Legislature & Governor may adjust enabling legislation
	Spring 2023 to Spring 2024	Board hires staff and consultants; due diligence, business plan
	Spring 2024*	Board secures financing; makes initial offer for assets
	Summer 2024*	Refereed process to decide exact price
	Winter-Spring 2025	132nd Legislature & Governor may adjust enabling legislation
	Winter 2025*	Board hires private operations company by competitive bid
	Spring-Summer 2025*	PUC review
	Fall 2025*	Pine Tree Power Company assumes control and management of assets
<i>*Or later if board votes to postpone initial offer.</i>		