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STATE OF MAINE  
ONE HUNDRED AND THIRTIETH LEGISLATURE  
COMMITTEE ON ENERGY, UTILITIES AND TECHNOLOGY

MEMORANDUM

TO: Senator Anne Carney, Chair  
Representative Thom Harnett, Chair  
Joint Standing Committee on Judiciary

FROM: Senator Mark Lawrence, Chair ML  
Representative Seth Berry, Chair SB  
Joint Standing Committee on Energy, Utilities and Technology

DATE: June 2, 2021

RE: Public records exception review of LD 1708

The Joint Standing Committee on Energy, Utilities and Technology is requesting the Judiciary Committee’s review of a portion of the majority report amendment to LD 1708, *An Act To Create the Pine Tree Power Company, a Nonprofit Utility, To Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence* (Representative Berry, sponsor) pursuant to Title 1, section 434. For reference, attached to this memorandum is a copy of the original version of the bill and a draft amendment<sup>1</sup> to LD 1708, proposed by its sponsor, that was incorporated as the majority report amendment to the bill.

A majority of our Committee voted “ought to pass as amended” on LD 1708, to adopt the draft amendment to the bill proposed by Representative Berry.<sup>2</sup> We do not have available at this time a copy of the final majority report amendment to LD 1708, however, that amendment does not make any changes to the specific provisions in the original bill for which this review is requested.

LD 1708, as amended in the majority report, creates the Pine Tree Power Company (“the company”), a privately operated, nonprofit, consumer-owned utility controlled by an elected board (“the board”). The company's purposes are to provide for its customer-owners in this State reliable, affordable electric transmission and distribution services and to help the State meet its climate, energy and connectivity goals in the most rapid and affordable manner possible. The Public Utilities Commission is directed under the bill, by January 1, 2024 to find a transmission and distribution utility unfit to serve and to direct the sale of the utility if within the previous 5 years the utility has been found to have been rated the lowest for customer satisfaction, has reported reliability in the lowest decile of utilities of a similar size in the

<sup>1</sup> Attached is the amendment the committee had before it at the work session, but added 3 additional changes to the bill that are still in process, but do not impact section 4008.

<sup>2</sup> There are 10 members on the majority report amendment. 3 members voted “ought not to pass” (Senator Stewart, Representatives Wadsworth and Foster).

country or has charged its customers residential delivery rates in the highest decile among utilities of a similar size in the country. Under the bill, the company would purchase the facilities of investor-owned electric transmission and distribution utilities in the State, financing such purchases through the issuance of debt against the company's future revenues. The board would contract a nongovernmental team to operate facilities acquired by purchase from the investor-owned electric transmission and distribution utilities in the State.

LD 1708 would enact new Title 35-A, section 4008 (see pages 9-10 of the bill), which designates as confidential the following records of the company:

A record obtained or developed by the company that a person, including the company, to whom the record belongs or pertains has requested be designated confidential and that the company has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information, except through the company's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; and

A record that contains usage or other nonpublic information regarding a customer of a transmission and distribution utility in the State.

The bill also prohibits a board member, employee, agent, other representative of the company or other person from knowingly divulging or disclosing such records designated as confidential except for in a number of specific, enumerated circumstances.

Reviewing the statutory criteria for the proposed exception to public records in the majority report amendment to LD 1708, we would comment as follows:

**A. Need to collect the information.** The records designated as confidential under the bill may need to be collected or developed by the company in order for it to carry out its statutory purposes of providing for its customer-owners in the State reliable, affordable electric transmission and distribution services.

**B. Value in maintaining the information.** Maintenance of those records is necessary for the company to effectively administer the services it provides to its customers.

**C. Federal law.** We are unaware of any federal law requiring this information to be confidential.

**D. Balancing the individual's privacy rights and the public interest.** Review of the balancing of interests under this proposed exception is perhaps better considered under criteria E and G.

**E. Balancing the effect of disclosure on business competition against the public interest.** Public disclosure of certain records may place the owner or user of the record at a business or competitive disadvantage and does not appear to serve a significant public interest.

**F. Interfering in public negotiations.** We are unaware of any connection between this information and negotiations involving a public body.

**G. Balancing the public interest and potential jeopardy to public safety or a member of the public.** Public disclosure of records containing usage or other nonpublic information regarding a customer of a transmission and distribution utility in the State could compromise the security of that customer if such disclosure involves customer

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addresses or other personally identifying information and does not appear to serve a significant public interest.

**H. Narrowness of the exception.** The exception only applies to certain records obtained or developed by the company that is designated as confidential, is not otherwise publicly available and the disclosure of which could place the owner or user of the record at a business or competitive disadvantage or compromise the security of a customer of the company.

**I. Any other criteria.**

Thank you for reviewing this proposed public records exception. Please let us know if you require any additional information.



# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1708

H.P. 1269

House of Representatives, May 17, 2021

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**An Act To Create the Pine Tree Power Company, a Nonprofit  
Utility, To Deliver Lower Rates, Reliability and Local Control for  
Maine Energy Independence**

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Received by the Clerk of the House on May 13, 2021. Referred to the Committee on Energy, Utilities and Technology pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Robert B. Hunt*

ROBERT B. HUNT  
Clerk

Presented by Representative BERRY of Bowdoinham.  
Cosponsored by Senator BENNETT of Oxford and  
Representatives: CARLOW of Buxton, GROHOSKI of Ellsworth, NEWELL of the  
Passamaquoddy Tribe, POIRIER of Skowhegan, Senators: BRENNER of Cumberland,  
President JACKSON of Aroostook, WOODSOME of York.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 5 MRSA §12004-G, sub-§36 is enacted to read:

3 36.

4 <u>Public</u>	<u>Pine Tree Power Company Board</u>	<u>\$110/Day and</u>	<u>35-A MRSA</u>
5 <u>Utilities</u>		<u>Expenses</u>	<u>§4002</u>

6 Sec. 2. 21-A MRSA §354, sub-§5, ¶G, as enacted by PL 1985, c. 161, §6, is  
7 amended to read:

8 G. For a candidate for State Representative, at least 50 and not more than 80 voters;  
9 and

10 Sec. 3. 21-A MRSA §354, sub-§5, ¶H, as enacted by PL 1985, c. 161, §6, is  
11 amended to read:

12 H. For a candidate for county charter commission member, at least 50 and not more  
13 than 80 voters; and

14 Sec. 4. 21-A MRSA §354, sub-§5, ¶I is enacted to read:

15 I. For a candidate for member of the Pine Tree Power Company Board under Title  
16 35-A, section 4002, subsection 2, paragraph A, at least 300 and not more than 400  
17 voters.

18 Sec. 5. 35-A MRSA §1511-A is enacted to read:

19 §1511-A. Fitness to serve

20 By January 1, 2024, the commission shall find a transmission and distribution utility  
21 with 50,000 or more customers unfit to serve and shall require the sale of the utility if the  
22 commission determines that the utility has, within the previous 5 years been found to have  
23 met 2 or more of the following criteria for unfitness:

24 1. Customer satisfaction. Repeatedly been rated in the lowest decile of utilities of a  
25 similar size for customer satisfaction on a reputable national survey of utility business or  
26 retail customers;

27 2. Reliability. Repeatedly reported reliability, with or without major event days, in  
28 the lowest decile of utilities of a similar size in the country; and

29 3. Cost. Repeatedly charged its customers residential delivery rates in the highest  
30 decile among utilities of a similar size in the country.

31 Sec. 6. 35-A MRSA §3501, sub-§1, ¶D, as amended by PL 2019, c. 311, §2, is  
32 further amended to read:

33 D. The portion of any municipal or quasi-municipal entity located in the State  
34 providing transmission and distribution services; and

35 Sec. 7. 35-A MRSA §3501, sub-§1, ¶E, as amended by PL 2019, c. 311, §2, is  
36 further amended to read:

37 E. Any transmission and distribution utility wholly owned by a municipality located  
38 in the State; and

39 Sec. 8. 35-A MRSA §3501, sub-§1, ¶F is enacted to read:



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F. The Pine Tree Power Company established in chapter 40.

**Sec. 9. 35-A MRSA §3502, first ¶**, as amended by PL 1999, c. 398, Pt. A, §86 and affected by §§104 and 105, is further amended to read:

Notwithstanding section 310, any consumer-owned transmission and distribution utility, except for the Pine Tree Power Company established in chapter 40, that proposes to increase rates, tolls or charges by not more than 15% of the utility's annual operating revenues or proposes to decrease rates, tolls or charges in any amount may elect to set rates pursuant to this section and section 3503.

**Sec. 10. 35-A MRSA c. 40** is enacted to read:

**CHAPTER 40**

**PINE TREE POWER COMPANY**

**§4001. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Acquired utility.** "Acquired utility" means an investor-owned transmission and distribution utility whose facilities or property are purchased or intended for purchase pursuant to this chapter.

**2. Board.** "Board" means the Pine Tree Power Company Board established in Title 5, section 12004-G, subsection 36.

**3. Company.** "Company" means the Pine Tree Power Company established in section 4002.

**4. Cost of service.** "Cost of service" means the total amount that must be collected by the company to recover its costs but does not include any return on capital investment unless a return is required as security for debt service.

**5. Customer-owner.** "Customer-owner" means a person to whom the company provides electricity.

**6. Generating source.** "Generating source" means a machine or device that produces electric energy by any means.

**7. Utility facility.** "Utility facility" means any portion of a plant used or useful in providing transmission and distribution utility service and includes, but is not limited to, transmission lines, office buildings, equipment and transportation equipment.

**8. Utility property.** "Utility property" means any tangible or intangible asset, liability, obligation, plan, proposal, share, agreement or interest of a utility: any facility in development or planning by the utility as of January 1, 2020; and, without limitation, the entire utility and any part or portion of the utility.

**§4002. Pine Tree Power Company established; purpose**



1           The Pine Tree Power Company is established to provide for its customer-owners in this  
2 State reliable, affordable electric transmission and distribution services in accordance with  
3 this chapter.

4           **1. Company purposes.** The company shall use its access to low-cost capital and its  
5 ability to manage the electric transmission and distribution system in a manner that is not  
6 focused on ensuring shareholder profits for the following purposes:

7           A. To deliver electricity to the company's customer-owners in a safe, affordable and  
8 reliable manner;

9           B. To ensure excellence, timeliness and accuracy in billing, metering and customer  
10 service;

11           C. To provide an open, supportive and competitive platform to develop and deploy  
12 renewable generation, storage, efficiency and beneficial electrification technologies;

13           D. To assist the State in rapidly meeting or exceeding the climate action plan goals  
14 established in Title 38, chapter 3-A;

15           E. To improve the State's Internet connectivity through more affordable access to  
16 utility poles and other infrastructure in unserved or underserved areas of the State, as  
17 defined in section 9202, subsection 5;

18           F. To advance economic, environmental and social justice and to benefit company  
19 workers and all communities in the State;

20           G. To provide for transparent and accountable governance; and

21           H. To support, secure and sustain economic growth and benefits for the State.

22           **2. Governance; board.** The company is created as a body corporate and politic and  
23 is governed by the Pine Tree Power Company Board in accordance with this section.

24           The board is composed of 11 members, 7 of whom are elected, voting members and 4 of  
25 whom are expert advisory members selected by the voting members. All members must  
26 be residents of the State.

27           A. Each of the 7 elected, voting members must be a legal citizen of the United States  
28 for at least 5 years, be at least 21 years of age, be a legal Maine resident for at least 1  
29 year and have lived in the area the member represents as provided in this paragraph for  
30 at least 3 months. Each elected, voting member must represent 5 of the State's 35 State  
31 Senate districts, as set out in Title 21-A, section 1203-B, as follows:

32           (1) One member represents State Senate districts 1 to 5;

33           (2) One member represents State Senate districts 6 to 10;

34           (3) One member represents State Senate districts 11 to 15;

35           (4) One member represents State Senate districts 16 to 20;

36           (5) One member represents State Senate districts 21 to 25;

37           (6) One member represents State Senate districts 26 to 30; and

38           (7) One member represents State Senate districts 31 to 35.

1 B. The 4 expert advisory members must be selected by the elected, voting members.  
2 The expert advisory members must collectively possess expertise and experience  
3 across the following 4 areas:

4 (1) Utility law, management, regulation or finance;

5 (2) Clean energy and the environment;

6 (3) The concerns of utility employees; and

7 (4) The concerns of electricity consumers.

8 C. Candidates for election to the board pursuant to paragraph A are eligible for funding  
9 through the Maine Clean Election Act, in amounts and under terms commensurate with  
10 those for candidates for the State Senate. The Commission on Governmental Ethics  
11 and Election Practices, established pursuant to Title 5, section 12004-G, subsection 33,  
12 shall adopt rules to implement this paragraph. Rules must include, at a minimum, the  
13 procedures for qualifying and certification and for allocation of distributions from the  
14 fund and other provisions necessary to ensure consistency with the provisions of the  
15 Maine Clean Election Act. Rules adopted pursuant to this paragraph are major  
16 substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

17 The nomination and election of the elected, voting members of the board are governed by  
18 the provisions of Title 21-A concerning nonpartisan elections for county office other than  
19 county commissioner or county charter commission member, except that the determination  
20 of the elections is governed by Title 21-A, section 723-A. The Secretary of State may  
21 adopt rules governing the election of members of the board and shall consult with the  
22 commission in developing the rules. Rules adopted under this subsection are routine  
23 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

24 **3. Term of office.** An elected, voting member of the board serves for a term of 6 years  
25 and an expert advisory member of the board serves for a term of 4 years. An elected, voting  
26 member serves from December 1st to November 30th and an expert advisory member  
27 serves from February 1st to January 31st. A majority of elected, voting members shall  
28 declare a vacancy on the board upon the resignation, death or incapacitation of an elected,  
29 voting member, in the event that a member is absent without leave of the chair for at least  
30 half of all board meetings held in a 180-day period or in the event of a member's gross and  
31 continual neglect of duty. If there is a vacancy on the board of an expert advisory member,  
32 it must be filled within 180 days in the same manner as described in subsection 1 and the  
33 person selected to fill a vacancy serves for the unexpired term of the member whose  
34 vacancy the person is filling. If there is a vacancy on the board of an elected, voting  
35 member, the board shall notify the Governor and the vacancy must be filled within 180  
36 days in the same manner as for a State Senator under Title 21-A, sections 366 and 381, and  
37 the person elected to fill a vacancy serves for the unexpired term of the member whose  
38 vacancy the person is filling. Expert advisory members may be reselected and voting  
39 members may be reelected.

40 **4. Quorum and chair.** Four elected, voting members of the board constitute a  
41 majority and a quorum. The board shall elect from its elected, voting members a chair and  
42 a vice-chair. The vice-chair shall serve as acting chair in the absence of the chair.

43 **5. Voting.** Except as otherwise provided in this Title, all decisions of the board must  
44 be made by a majority vote of the elected, voting members of the board. Whenever

1 possible, the board shall attempt to achieve consensus among voting and nonvoting  
2 members.

3 **6. Bylaws; due diligence.** The board shall adopt bylaws, conduct due diligence as it  
4 considers necessary and develop a transition plan and a business plan for the company prior  
5 to making a purchase price offer for any utility facility or utility property.

6 **7. Board review.** Four years after the first meeting of the board, the board shall review  
7 the effectiveness of the company governance structure and shall report to the joint standing  
8 committee of the Legislature having jurisdiction over energy and utilities matters the  
9 outcome of this review. The report may suggest necessary changes to the governance  
10 structure of the company. The committee may report out legislation pertaining to the  
11 recommendations in the report.

12 **§4003. Powers and duties; acquisition of utility facilities and utility property**

13 **1. Powers; generally.** The company is a consumer-owned transmission and  
14 distribution utility and has all the powers and duties of a transmission and distribution  
15 utility under this Title, as affected by the provisions of chapter 35, within the service  
16 territories of the investor-owned transmission and distribution utilities whose utility  
17 facilities it acquires under this chapter.

18 **2. Limits on company; generating property.** The company may not own or operate  
19 a generating source or purchase electric capacity or energy from a generating source, except  
20 as the commission may approve in order to allow the company to maintain or improve  
21 system reliability.

22 **3. Operations.** The company shall contract by means of a competitive public  
23 solicitation the services of a qualified nongovernmental entity, referred to in this chapter as  
24 "the operator," or "the operations team," to provide cost-effective, private sector operations,  
25 maintenance, customer accounts management and customer service and information and to  
26 assist as necessary in regulatory affairs, capital planning and administrative services. In  
27 requesting and evaluating bids for the provision of these services, the board shall consider  
28 anticipated costs; professional, operational and managerial experience; familiarity with the  
29 systems to be administered; and ability to improve customer service and employee morale.  
30 The company may establish additional criteria for its solicitation and shall determine the  
31 period and the specific terms of each operations contract.

32 **4. Operator employees.** The employees of the operations team retained to operate  
33 the company's facilities are considered private employees, with all the rights and  
34 responsibilities of private employees. The operator shall hire any person who was an  
35 employee of the acquired utility at the time the company acquired the utility facilities who  
36 is a qualified, nonexempt employee subject to collective bargaining agreements of the  
37 acquired utility. To ensure continuity and an experienced local workforce, the operations  
38 team shall offer to these employees a retention bonus of 6% of annual gross pay for the  
39 first year of work and 4% of annual gross pay for the 2nd year of work. This bonus must  
40 be payable on the earlier of the anniversary of the date of hire and the date of a termination  
41 of employment that occurs following the date of hire, as long as the termination is due to  
42 the employee's death or disability, by the employer without cause or by the employee for  
43 good reason. The operations team shall maximize opportunities for internal promotion,  
44 additional staffing and on-the-job training for all employees and may not contract with  
45 other businesses to perform work that could reasonably have been performed by qualified,

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1 nonexempt employees of the operations team. The operator shall assume all retirement  
2 benefit obligations to the workers of and retirees of an acquired utility, unless these  
3 obligations have remained with the acquired utility, its corporate parent or a pension plan  
4 trust regulated by the federal Employee Retirement Income Security Act of 1974. The  
5 operator shall honor and maintain the terms of any collective bargaining agreements in  
6 effect at the time the company acquired the investor-owned transmission and distribution  
7 utility for the remaining term of any collective bargaining agreement, except that, when 2  
8 or more contracts exist, the employees' wages, salaries and benefits must be made  
9 reasonably equal to the higher of those provided in the contracts or must exceed those  
10 previously paid by the acquired utility.

11 Upon the conclusion of a contract pursuant to subsection 3, the company, in soliciting for  
12 a new contract, shall give preference to service providers who agree to maintain or improve  
13 the terms of the collective bargaining agreement in existence on the conclusion of the prior  
14 contract.

15 **5. Acquisition of utility facilities and utility property.** Notwithstanding any other  
16 provision of this Title, rules adopted under this Title or any other applicable law to the  
17 contrary, the company shall purchase or acquire by the exercise of the right of eminent  
18 domain all utility facilities in the State owned or operated or held for future use by any  
19 investor-owned transmission and distribution utility, in accordance with this subsection,  
20 and may also purchase or acquire by the exercise of the right of eminent domain in  
21 accordance with this subsection any other investor-owned transmission and distribution  
22 utility property should the board determine such an acquisition to be in the interest of its  
23 customer-owners. The company shall finance the purchase or acquisition of utility  
24 facilities or utility property under this subsection by issuing debt in accordance with chapter  
25 9. The board may not purchase or acquire by the right of eminent domain any utility  
26 facilities or utility property under this subsection until 12 months after the effective date of  
27 this chapter or 6 months after the first meeting of the board, whichever is later.

28 A. Within 18 months after the effective date of this chapter or 12 months after the first  
29 meeting of the board, whichever is later, unless further delayed to a date certain by a  
30 vote of at least 5 elected, voting members of the board, the company shall:

31 (1) Identify the utility facilities and any other utility property in the State owned  
32 or operated or held for future use by any investor-owned transmission and  
33 distribution utility to be purchased by the company;

34 (2) Determine a purchase price offer to be made for the utility facilities and other  
35 utility property. The purchase price offer must include compensation for the cost  
36 of preparing and submitting necessary regulatory filings, including but not limited  
37 to those required by the federal Department of Energy, Federal Energy Regulatory  
38 Commission; and

39 (3) Deliver notice of the purchase price offer, including detailed description of the  
40 utility facilities and other utility property to be purchased, to the investor-owned  
41 transmission and distribution utility that owns, operates or holds for future use the  
42 subject utility facilities and utility property.

43 B. After the receipt of a notice of the purchase price offer under paragraph A,  
44 subparagraph (3), the investor-owned transmission and distribution utility may, within  
45 30 days of the date of receipt, submit a counteroffer to the board. If the board rejects

1 the counteroffer, within 30 days of the date of receipt of the rejection the investor-  
2 owned transmission and distribution utility may petition the Superior Court of  
3 Kennebec County to determine and order an alternative purchase price for the subject  
4 utility facilities or utility property in accordance with this paragraph. The purchase  
5 price determined by the court must include compensation for the cost of preparing and  
6 submitting necessary regulatory filings, including but not limited to those required by  
7 the federal Department of Energy, Federal Energy Regulatory Commission. After the  
8 filing of a petition by an investor-owned transmission and distribution utility under this  
9 paragraph, the Superior Court, as expeditiously as possible, shall:

10 (1) Select, in consultation with the company and the petitioner, a referee or referees  
11 with relevant expertise and capabilities to determine a recommended purchase  
12 price for the utility facilities and utility property;

13 (2) Complete a trial or hearing, as appropriate, for the presentation of evidence to  
14 referees, who shall submit a recommended purchase price to the court; and

15 (3) Render a decision and, based upon the recommended purchase price submitted  
16 under subparagraph (2) and any other information available to the court, order a  
17 purchase price to be paid by the company to the petitioner for possession and  
18 ownership of the subject utility facilities and utility property.

19 The decision of the Superior Court under this paragraph is appealable to the Law Court  
20 as in any civil action.

21 C. The taking of utility facilities and utility property by the company is governed by  
22 this paragraph.

23 (1) Notwithstanding any law to the contrary, if a petition is filed under paragraph  
24 B, the company may, after any appeals are resolved, take the subject utility  
25 facilities and utility property identified in paragraph A by eminent domain at the  
26 final price rendered by the court, in the same manner and under the same conditions  
27 as set forth in chapter 65.

28 (2) Notwithstanding any law to the contrary, if a petition is not filed under  
29 paragraph B, the company may take the subject utility facilities and utility property  
30 identified in paragraph A by eminent domain at the purchase price offer, in the  
31 same manner and under the same conditions as set forth in chapter 65.

32 Within 45 days of the date upon which the purchase price is either mutually agreed upon  
33 by the company and the investor-owned transmission and distribution utility or is finally  
34 determined through the judicial process set forth under paragraph B, the investor-owned  
35 transmission and distribution utility shall prepare and submit any regulatory filings  
36 necessary to the transfer of subject utility facilities and utility property, including but not  
37 limited to those required by the federal Department of Energy, Federal Energy Regulatory  
38 Commission. If the investor-owned transmission and distribution utility does not prepare  
39 and submit such filings within 45 days, the company may request that the commission  
40 investigate the utility's failure to prepare and submit the filings. Upon such a request from  
41 the company, the commission shall, in a timely manner, investigate the utility's failure to  
42 prepare and submit the filings. If the commission finds the investor-owned transmission  
43 and distribution utility unreasonably delayed or failed to prepare and submit the filings, or  
44 failed to prosecute and pursue federal regulatory approvals of the transfer in good faith, the

1 commission shall direct the utility to do so by a date certain and may order other remedies,  
2 including deducting the cost of preparing and submitting such regulatory filings from the  
3 purchase price or otherwise preventing the utility from recouping the cost.

4 The commission shall impose such conditions on the acquisition of all utility facilities and  
5 utility property in the State owned or operated or held for future use by any investor-owned  
6 transmission and distribution utility as it determines are necessary to protect the public  
7 interest during the period between the effective date of this chapter and the date on which  
8 ownership and control are fully assumed by the company and the operations team. The  
9 commission shall take all necessary actions to ensure that the investor-owned transmission  
10 and distribution utilities and their owners cooperate fully and cost-effectively with the  
11 company during the transition in ownership and control.

12 **6. Regional transmission.** The service territories of the company initially remain in  
13 the transmission system to which they belonged on the effective date of this chapter until  
14 changed by majority vote of the board.

15 **7. Names.** The company may adopt one or more alternative or regional names to  
16 distinguish its service territories or for any other purpose.

17 **8. Rules.** The company may adopt rules pursuant to Title 5, chapter 375, subchapter  
18 2-A for establishing and administering the company and carrying out its duties. Rules  
19 adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter  
20 375, subchapter 2-A.

21 **9. Bylaws.** The company shall adopt bylaws, through the board, consistent with this  
22 section for the governance of its affairs.

23 **10. Consumer-owned transmission and distribution utilities; application.** This  
24 subsection controls the treatment of consumer-owned transmission and distribution utilities  
25 and the application of law to the company.

26 A. This chapter may not be construed to affect the powers, authorities or  
27 responsibilities of any consumer-owned transmission and distribution utility other than  
28 the company created under this chapter. The company may not oppose the extension  
29 of the service territory of a consumer-owned transmission and distribution utility  
30 existing prior to the effective date of this chapter to include the entirety of a  
31 municipality in which the consumer-owned transmission and distribution utility  
32 provides electric service as long as the company is reasonably compensated for the  
33 assets and appurtenances required.

34 B. Notwithstanding any other provision of this chapter or any other provision of law  
35 to the contrary, the company is subject to section 310; section 3104; section 3132,  
36 subsection 2-D; sections 3132-A, 3132-B, 3132-C and 3132-D; section 3144; section  
37 3210-C, subsections 3, 7 and 11; sections 3212 and 3212-B; and section 3214,  
38 subsection 2-A.

39 **11. Board staff; transition.** The board may hire a director or manager, support staff  
40 and counsel. Additionally, assistance and counsel may be provided to the board by the  
41 Office of the Treasurer of State, the Office of the Attorney General, the Maine Municipal  
42 Bond Bank, the Finance Authority of Maine, the commission, the Office of the Public  
43 Advocate and others. All initial activities and expenditures of the board prior to the final  
44 acquisition of utility facilities and utility property must be funded by short-term debt of the

1 company, to be retired in the initial financing and acquisition of the investor-owned  
2 transmission and distribution utility facilities and utility property. Debt incurred by the  
3 board for its initial activities and expenditures is guaranteed by the retail customers of each  
4 of the State's 2 investor-owned transmission and distribution utilities, and, notwithstanding  
5 any provision of law to the contrary, the costs of these initial activities and expenditures  
6 must be considered by the commission to be just and reasonable for rate-making purposes.

7 **§4004. Cost-of-service rates; no use of state funds or tax dollars**

8 The rates and all other charges of the company must be sufficient to pay in full the cost  
9 of service, including the cost of debt and any payments in lieu of taxation. No debt or  
10 liability of the company is a debt or liability of the State or any agency or instrumentality  
11 of the State other than the company, and neither the State nor any agency or instrumentality  
12 of the State other than the company guarantees any debt or liability of the company.

13 **§4005. Tax-exempt; payments in lieu of taxes**

14 **1. Tax exemptions.** The company is a public municipal corporation within the  
15 meaning and for the purposes of Title 36, section 651, and the property of the company is  
16 exempt from taxation to the extent provided in that section. Notwithstanding any provision  
17 of law to the contrary, income of the company is exempt from all taxation or assessment  
18 by the State or any political subdivision of the State.

19 All bonds, notes and other evidences of indebtedness issued by the company in accordance  
20 with chapter 9 are legal obligations of the company, and the company is a quasi-municipal  
21 corporation within the meaning and for the purposes of Title 30-A, section 5701. All bonds,  
22 notes and other evidences of indebtedness issued by the company are legal investments for  
23 savings banks in this State and are exempt from state income tax.

24 **2. Payments in lieu of taxes.** Rates charged by the company must include sufficient  
25 amounts to allow the company to make payments in lieu of taxes in accordance with this  
26 subsection. The company shall make payments in lieu of taxes with respect to its utility  
27 facilities or utility property to any municipality, county or other political subdivision to  
28 which an investor-owned transmission and distribution utility whose utility facilities the  
29 company acquired pursuant to this chapter paid taxes and in the same amount as those taxes  
30 would have been if the investor-owned transmission and distribution utility had continued  
31 to own the utility facilities or utility property. The company shall make timely payments  
32 in lieu of taxes on all facilities or property it owns, including all facilities and property  
33 procured, constructed or improved after the company has commenced operations.

34 **§4006. No debt or liability of the State**

35 The company serves a public purpose in the carrying out of the provisions of this  
36 chapter, but no debt or liability of the company may be considered a debt or liability of the  
37 State.

38 **§4007. Termination of the company**

39 The company may not be dissolved or cease operations except by authorization of law  
40 and only if all debt and liabilities of the company have been paid or a sufficient amount for  
41 the payment of all debt and liabilities has been placed in an irrevocable trust for the benefit  
42 of the holders of the debt.

43 **§4008. Freedom of access; confidentiality**

1           The proceedings and records of the company are subject to the freedom of access laws,  
2 Title 1, chapter 13, except as specifically provided in this section.

3           **1. Confidential records.** The following records are designated as confidential for  
4 purposes of Title 1, section 402, subsection 3, paragraph A:

5           A. A record obtained or developed by the company that a person, including the  
6 company, to whom the record belongs or pertains has requested be designated  
7 confidential and that the company has determined contains information that gives the  
8 owner or a user an opportunity to obtain a business or competitive advantage over  
9 another person who does not have access to the information, except through the  
10 company's records, or access to which by others would result in a business or  
11 competitive disadvantage, loss of business or other significant detriment to any person  
12 to whom the record belongs or pertains; and

13           B. A record that contains usage or other nonpublic information regarding a customer  
14 of a transmission and distribution utility in the State.

15           The company shall provide to a legislative committee, on written request signed by the  
16 chairs of that committee, any information or records, including information designated  
17 confidential under this subsection, specified in the written request. The information or  
18 records may be used only for the lawful purposes of the committee and in any action arising  
19 out of any investigation conducted by the committee, subject to protective order.

20           **2. Exceptions.** Notwithstanding subsection 1, the following are not confidential and  
21 are public records:

22           A. Any otherwise confidential information the confidentiality of which the company  
23 determines to have been satisfactorily and effectively waived;

24           B. Any otherwise confidential information that has already lawfully been made  
25 available to the public; and

26           C. Impersonal, statistical or general information.

27           **3. Disclosure prohibited; further exceptions.** A board member, employee, agent,  
28 other representative of the company or other person may not knowingly divulge or disclose  
29 records designated confidential by this section, except that the company, in its discretion  
30 and in conformity with legislative freedom of access criteria in Title 1, chapter 13,  
31 subchapter 1-A, may make or authorize any of the following disclosures of information:

32           A. If necessary in connection with processing any application for, obtaining or  
33 maintaining financial assistance for any person;

34           B. To a financing institution or credit reporting service;

35           C. Information necessary to comply with any federal or state law, regulation or rule or  
36 with any agreement pertaining to financial assistance;

37           D. If necessary to ensure collection of any obligation in which the company has or  
38 may have an interest;

39           E. In any litigation or proceeding in which the company has appeared, introduction for  
40 the record of any information obtained from records designated confidential by this  
41 section; and

1 F. Pursuant to a subpoena, request for production of documents, warrant or other order,  
2 as long as the order appears to have first been served on the person to whom the  
3 confidential information sought pertains or belongs and as long as the order appears on  
4 its face or otherwise to have been issued or made lawfully.

5 **§4009. Annual report**

6 By April 15th of each year, beginning no more than one year after the first meeting of  
7 the board, the company shall submit a report to the joint standing committee of the  
8 Legislature having jurisdiction over energy and utilities matters summarizing the activities  
9 and performance of the company in meeting its obligations to its customer-owners and its  
10 responsibilities under sections 4002 and 4003 during the preceding calendar year and its  
11 plans for the current year and subsequent 5 years. Each annual report must describe in  
12 detail how the company's decisions, operations and use of low-cost financing have  
13 supported and will support the State's progress toward the climate action plan goals  
14 established under Title 38, chapter 3-A and how such financing has affected and will affect  
15 job creation and gross state product.

16 **§4010. Initial 5-year plan**

17 Within 18 months of the date in which the company and the operations team fully take  
18 ownership and control of all utility facilities in the State owned or operated or held for  
19 future use by any investor-owned transmission and distribution utility, the company shall  
20 submit to the commission for approval a 5-year plan to meet initial affordability, reliability,  
21 decarbonization and connectivity goals.

22 **1. Plan minimum requirements.** At a minimum, the 5-year plan under this section  
23 must also include a program to:

24 A. Establish lower rates for low-income residential customers;

25 B. Build across the State accessible, rapid charging infrastructure for electric vehicles;

26 C. Reduce make-ready and pole attachment costs for open-access fiber-optic cable in  
27 unserved and underserved areas of the State as defined in section 9202, subsection 5;  
28 and

29 D. Make rapid investments in the distribution network to upgrade reliability and to  
30 improve capacity for interconnections of new renewable generation and storage  
31 facilities.

32 **Sec. 11. Review of laws and report.** The Public Utilities Commission shall  
33 examine all laws that may be affected by this Act or need to be changed as a result of this  
34 Act, including laws governing the Pine Tree Power Company as established under the  
35 Maine Revised Statutes, Title 35-A, section 4002, and laws relating to investor-owned  
36 transmission and distribution utilities that may be eliminated as a result of this Act. The  
37 commission shall determine any modifications to laws that may be necessary or appropriate  
38 as a result of this Act or to effectuate the purposes of this Act and shall submit proposed  
39 legislation to the joint standing committee of the Legislature having jurisdiction over  
40 energy, utilities and technology matters no later than 6 months after the first meeting of the  
41 Pine Tree Power Company Board under Title 35-A, section 4002. The joint standing  
42 committee of the Legislature having jurisdiction over energy, utilities and technology  
43 matters may report out a bill relating to the subject matter of this Act and to the  
44 commission's report.



1 in the State. The fair market value of the acquisition is either negotiated or determined by  
2 a refereed process. The Pine Tree Power Company Board contracts a nongovernmental  
3 team to operate the facilities, and the operations team is required to retain all workers of  
4 the purchased utilities.

5 The company is required to make payments equivalent to property taxes to  
6 municipalities. The company is subject to ratemaking and other oversight by the Public  
7 Utilities Commission and is required to administer programs for net energy billing,  
8 nonwires alternatives, supply procurement and low-income assistance programs.

9 The company is governed by a board of 7 voting members, each elected to represent 5  
10 State Senate districts, as well as 4 expert advisory members. The board is subject to  
11 freedom of access laws and to laws preventing conflicts of interest.

12 The bill also directs the Public Utilities Commission by January 1, 2024 to find a  
13 transmission and distribution utility unfit to serve and to direct the sale of the utility if  
14 within the previous 5 years the utility has been found to have been rated the lowest for  
15 customer satisfaction, has reported reliability in the lowest decile of utilities of a similar  
16 size in the country or has charged its customers residential delivery rates in the highest  
17 decile among utilities of a similar size in the country.

18 This bill requires that, before the Act becomes effective, the Act must be submitted to  
19 the legal voters of the State at a statewide election held in the month of November following  
20 passage of this Act in order to allow the legal voters of the State to vote on the creation of  
21 the Pine Tree Power Company.

Committee: EUT  
LA: DS  
File Name:  
LR (item)#: 004302  
New Title?: N  
Add Emergency?: N  
Date: May 30, 2021

**Proposed Amendment to LD 1708, An Act To Create the Pine Tree Power Company, a Nonprofit Utility, To Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence**

**Add the following after line 17 on page 1**

**Sec. X. 21-A MRSA §1011 is amended to read:**

This subchapter applies to candidates for all state and county offices and to campaigns for their nomination and election. Candidates for municipal office as described in Title 30-A, section 2502, subsection 1 and candidates for the board of the Pine Tree Power Company as described in Title 35-A, section 4002 are also governed by this subchapter. The commission does not have jurisdiction over financial activities to influence the nomination or election of candidates for federal office.

**Amend section 5 of the bill as follows:**

**Sec. 5. 35-A MRSA §1511-A is enacted to read:**

**§1511-A. Fitness to serve**

By No earlier than January 1, 2024, the commission shall find a transmission and distribution utility with 50,000 or more customers unfit to serve and shall require the sale of the utility if the commission determines that the utility has, within the previous 5 years been found to have met 2 or more of the following criteria for unfitness:

1. Customer satisfaction. Repeatedly been rated in the lowest decile of utilities of a similar size for customer satisfaction on a reputable national survey of utility business or retail customers;
2. Reliability. Repeatedly reported reliability, with or without major event days, in the lowest decile of utilities of a similar size in the country; and
3. Cost. Repeatedly charged its customers residential delivery rates in the highest decile among utilities of a similar size in the country.

**Amend section 10 of the bill as follows:**

**Sec. 10. 35-A MRSA c. 40 is enacted to read:**

CHAPTER 40

PINE TREE POWER COMPANY

**§4001. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Acquired utility.** "Acquired utility" means an investor-owned transmission and distribution utility whose facilities or property are purchased or intended for purchase pursuant to this chapter.
2. **Board.** "Board" means the Pine Tree Power Company Board established in Title 5, section 12004-G, subsection 36.
3. **Company.** "Company" means the Pine Tree Power Company established in section 4002.
4. **Cost of service.** "Cost of service" means the total amount that must be collected by the company to recover its costs but does not include any return on capital investment unless a return is required as security for debt service.
5. **Customer-owner.** "Customer-owner" means a person to whom the company provides electricity.
6. **Generating source.** "Generating source" means a machine or device that produces electric energy by any means.
7. **Utility facility.** "Utility facility" means any portion of a plant used or useful in providing transmission and distribution utility service and includes, but is not limited to, transmission lines, office buildings, equipment and transportation equipment.
8. **Utility property.** "Utility property" means any tangible or intangible asset, liability, obligation, plan, proposal, share, agreement or interest of a utility; any facility in development or planning by the utility as of January 1, 2020; and, without limitation, the entire utility and any part or portion of the utility.

**§4002. Pine Tree Power Company established; purpose**

The Pine Tree Power Company is established to provide for its customer-owners in this State reliable, affordable electric transmission and distribution services in accordance with this chapter.

1. **Company purposes.** The company shall use its access to low-cost capital and its ability to manage the electric transmission and distribution system in a manner that is not focused on ensuring shareholder profits for the following purposes:

- 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.

**2. Governance; board.** The company is created as a body corporate and politic and is governed by the Pine Tree Power Company Board in accordance with this section.

The board is composed of 11 members, 7 of whom are elected, voting members and 4 of whom are expert advisory members selected by the voting members. All members must be residents of the State.

A. As of the date established for filing a nomination petition, ~~Each~~ each of the 7 elected, voting members must be a legal citizen of the United States for at least 5 years, be at least 21 years of age, be a legal Maine resident for at least 1 year and have lived in the area the member represents as provided in this paragraph for at least 3 months. Each elected, voting member must represent 5 of the State's 35 State Senate districts, as set out in Title 21-A, section 1203-B, as follows:

- (1) One member represents State Senate districts 1 to 5;
- (2) One member represents State Senate districts 6 to 10;
- (3) One member represents State Senate districts 11 to 15;
- (4) One member represents State Senate districts 16 to 20;
- (5) One member represents State Senate districts 21 to 25;
- (6) One member represents State Senate districts 26 to 30; and
- (7) One member represents State Senate districts 31 to 35.

If during an elected, voting member's term, the member's place of residence is no longer included in one of the 5 State Senate district the member was elected to represent as a result of reapportionment, the member may continue to serve the remainder of the term.

B. The 4 expert advisory members must be selected by the elected, voting members. The expert advisory members must collectively possess expertise and experience across the following 4 areas:

- (1) Utility law, management, regulation or finance;
- (2) Clean energy and the environment;
- (3) The concerns of utility employees; and
- (4) The concerns of electricity consumers.

C. Candidates for election to the board pursuant to paragraph A are eligible for funding through the Maine Clean Election Act, in amounts and under terms commensurate with

those for candidates for the State Senate. The Commission on Governmental Ethics and Election Practices, established pursuant to Title 5, section 12004-G, subsection 33, shall adopt rules to implement this paragraph. Rules must include, at a minimum, the procedures for qualifying and certification and for allocation of distributions from the fund and other provisions necessary to ensure consistency with the provisions of the Maine Clean Election Act. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Candidates for the board are subject to the requirements of Title 21-A, chapter 13.

The nomination and election of the elected, voting members of the board are governed by the provisions of Title 21-A concerning nonpartisan elections for county office other than county commissioner or county charter commission member, except that the determination of the elections is governed by Title 21-A, section 723-A. The nomination of candidates for elected, voting members of the board is governed by Title 21-A, chapter 5, subchapter 2, and the determination of the election is governed by Title 21-A, section 723-A. The Secretary of State may adopt rules governing the election of members of the board and shall consult with the commission in developing the rules. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**3. Term of office.** An elected, voting member of the board serves for a term of 6 years and an expert advisory member of the board serves for a term of 4 years. An elected, voting member serves from ~~December~~ January 1st to ~~November 30th~~ December 31st and an expert advisory member serves from ~~February~~ March 1st to ~~January 31st~~ February 28th. A majority of elected, voting members shall declare a vacancy on the board upon the resignation, death or incapacitation of an elected, voting member, in the event that a member is absent without leave of the chair for at least half of all board meetings held in a 180-day period or in the event of a member's gross and continual neglect of duty. If there is a vacancy on the board of an expert advisory member, it must be filled within 180 days in the same manner as described in subsection 2, paragraph B and the person selected to fill a vacancy serves for the unexpired term of the member whose vacancy the person is filling. If there is a vacancy on the board of an elected, voting member, the board shall notify the ~~Governor and the~~ vacancy must be filled within 180 days in the same manner as for a State Senator under Title 21-A, sections 366 and 381, and Secretary of State who shall establish a deadline no sooner than 60 days after being notified of the vacancy to accept nomination petitions for a special election. A special election must be held within 180 days of notification of the vacancy and declared in the manner prescribed by Title 21-A, section 366. ~~the~~ The person elected to fill a vacancy serves for the unexpired term of the member whose vacancy the person is filling. Expert advisory members may be reselected and voting members may be reelected.

**4. Quorum and chair.** Four elected, voting members of the board constitute a majority and a quorum. The board shall elect from its elected, voting members a chair and a vice-chair. The vice-chair shall serve as acting chair in the absence of the chair.

**5. Voting.** Except as otherwise provided in this Title, all decisions of the board must be made by a majority vote of the elected, voting members of the board. Whenever possible, the board shall attempt to achieve consensus among voting and nonvoting members.

**6. Bylaws; due diligence.** The board shall adopt bylaws, conduct due diligence as it considers necessary and develop a transition plan and a business plan for the company prior to making a purchase price offer for any utility facility or utility property.

7. Board review. Four years after the first meeting of the board, the board shall review the effectiveness of the company governance structure and shall report to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters the outcome of this review. The report may suggest necessary changes to the governance structure of the company. The committee may report out legislation pertaining to the recommendations in the report.

**§4003. Powers and duties; acquisition of utility facilities and utility property**

**1. Powers; generally.** The company is a consumer-owned transmission and distribution utility and has all the powers and duties of a transmission and distribution utility under this Title, as affected by the provisions of chapter 35, within the service territories of the investor-owned transmission and distribution utilities whose utility facilities it acquires under this chapter.

**2. Limits on company; generating property.** The company may not own or operate a generating source or purchase electric capacity or energy from a generating source, except as the commission may approve in order to allow the company to maintain or improve system reliability.

**3. Operations.** The company shall contract by means of a competitive public solicitation the services of a qualified nongovernmental entity, referred to in this chapter as "the operator," or "the operations team," to provide cost-effective, private sector operations, maintenance, customer accounts management and customer service and information and to assist as necessary in regulatory affairs, capital planning and administrative services. The company may contract with separate operators for each of the service territories of the acquired utilities. In requesting and evaluating bids for the provision of these services, the board shall consider anticipated costs; professional, operational and managerial experience; familiarity with the systems to be administered; and ability to improve customer service and employee morale. The company may establish additional criteria for its solicitation and shall determine the period and the specific terms of each operations contract. The commission shall review any contract between the company and an operator. The commission shall approve, reject or approve with conditions any contract between the company and an operator before it takes effect.

**4. Operator employees.** The employees of the operations team retained to operate the company's facilities are considered private employees, with all the rights and responsibilities of private employees. The operator shall hire any person who was an employee of the acquired utility at the time the company acquired the utility facilities who is a qualified, nonexempt employee subject to collective bargaining agreements of the acquired utility. To ensure continuity and an experienced local workforce, the operations team shall offer to these employees a retention bonus of 6% of annual gross pay for the first year of work and 4% of annual gross pay for the 2nd year of work. This bonus must be payable on the earlier of the anniversary of the date of hire and the date of a termination of employment that occurs following the date of hire, as long as the termination is due to the employee's death or disability, by the employer without cause or by the employee for good reason. The operations team shall maximize opportunities for internal promotion, additional staffing and on-the-job training for all employees and may not contract with other businesses to perform work that could reasonably have been performed by qualified, nonexempt employees of the operations team. The operator shall assume all retirement benefit obligations to the workers

of and retirees of an acquired utility, unless these obligations have remained with the acquired utility, its corporate parent or a pension plan trust regulated by the federal Employee Retirement Income Security Act of 1974. The operator shall honor and maintain the terms of any collective bargaining agreements in effect at the time the company acquired the investor-owned transmission and distribution utility for the remaining term of any collective bargaining agreement, except that, when 2 or more contracts exist, the employees' wages, salaries and benefits must be made reasonably equal to the higher of those provided in the contracts or must exceed those previously paid by the acquired utility.

Upon the conclusion of a contract pursuant to subsection 3, the company, in soliciting for a new contract, shall give preference to service providers who agree to maintain or improve the terms of the collective bargaining agreement in existence on the conclusion of the prior contract.

**5. Acquisition of utility facilities and utility property.** Notwithstanding any other provision of this Title, rules adopted under this Title or any other applicable law to the contrary, the company shall purchase or acquire by the exercise of the right of eminent domain all utility facilities in the State owned or operated or held for future use by any investor-owned transmission and distribution utility, in accordance with this subsection, and may also purchase or acquire by the exercise of the right of eminent domain in accordance with this subsection any other investor-owned transmission and distribution utility property should the board determine such an acquisition to be in the interest of its customer-owners. The company shall finance the purchase or acquisition of utility facilities or utility property under this subsection by issuing debt in accordance with chapter 9. The board may not purchase or acquire by the right of eminent domain any utility facilities or utility property under this subsection until 12 months after the effective date of this chapter or 6 months after the first meeting of the board, whichever is later.

A. Within 18 months after the effective date of this chapter or 12 months after the first meeting of the board, whichever is later, unless further delayed to a date certain by a vote of at least 5 elected, voting members of the board, the company shall:

(1) Identify the utility facilities and any other utility property in the State owned or operated or held for future use by any investor-owned transmission and distribution utility to be purchased by the company;

(2) Determine a purchase price offer to be made for the utility facilities and other utility property. The purchase price offer must include compensation for the cost of preparing and submitting necessary regulatory filings, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission; and

(3) Deliver notice of the purchase price offer, including detailed description of the utility facilities and other utility property to be purchased, to the investor-owned transmission and distribution utility that owns, operates or holds for future use the subject utility facilities and utility property.

By a vote of at least 5 elected, voting members of the board, the company may delay the purchase of one of the 2 the investor-owned transmission and distribution utility's facilities and any other utility property in the State and proceed with the purchase of the

utility facilities and any other utility property in the State owned or operated or held for future use by the other investor-owned transmission and distribution utility.

B. After the receipt of a notice of the purchase price offer under paragraph A, subparagraph (3), the investor-owned transmission and distribution utility may, within 30 days of the date of receipt, submit a counteroffer to the board. If the board company rejects the counteroffer, within 30 days of the date of receipt of the rejection the investor-owned transmission and distribution utility may petition the Superior Court of Kennebec County to determine and order an alternative purchase price for the subject utility facilities or utility property in accordance with this paragraph. The purchase price determined by the court must include compensation for the cost of preparing and submitting necessary regulatory filings, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission. After the filing of a petition by an investor-owned transmission and distribution utility under this paragraph, the Superior Court, as expeditiously as possible, shall:

- (1) Select, in consultation with the company and the petitioner, a referee or referees with relevant expertise and capabilities to determine a recommended purchase price for the utility facilities and utility property;
- (2) Complete a trial or hearing, as appropriate, for the presentation of evidence to referees, who shall submit a recommended purchase price to the court; and
- (3) Render a decision and, based upon the recommended purchase price submitted under subparagraph (2) and any other information available to the court, order a purchase price to be paid by the company to the petitioner for possession and ownership of the subject utility facilities and utility property.

The decision of the Superior Court under this paragraph is appealable to the Law Court as in any civil action.

C. The taking of utility facilities and utility property by the company is governed by this paragraph.

- (1) Notwithstanding any law to the contrary, if a petition is filed under paragraph B, the company may, after any appeals are resolved, take the subject utility facilities and utility property identified in paragraph A by eminent domain at the final price rendered by the court, in the same manner and under the same conditions as set forth in chapter 65.
- (2) Notwithstanding any law to the contrary, if a petition is not filed under paragraph B, the company may take the subject utility facilities and utility property identified in paragraph A by eminent domain at the purchase price offer, in the same manner and under the same conditions as set forth in chapter 65.

Within 45 days of the date upon which the purchase price is either mutually agreed upon by the company and the investor-owned transmission and distribution utility or is finally determined through the judicial process set forth under paragraph B, the investor-owned transmission and distribution utility shall prepare and submit any regulatory filings necessary to the transfer of subject utility facilities and utility property, including but not limited to those required by the federal Department of Energy, Federal Energy Regulatory Commission. If the investor-owned transmission and distribution utility does not prepare and

submit such filings within 45 days, the company may request that the commission investigate the utility's failure to prepare and submit the filings. Upon such a request from the company, the commission shall, in a timely manner, investigate the utility's failure to prepare and submit the filings. If the commission finds the investor-owned transmission and distribution utility unreasonably delayed or failed to prepare and submit the filings, or failed to prosecute and pursue federal regulatory approvals of the transfer in good faith, the commission shall direct the utility to do so by a date certain and may order other remedies, including deducting the cost of preparing and submitting such regulatory filings from the purchase price or otherwise preventing the utility from recouping the cost.

If at any time during the process prescribed in this subsection the company and either of the investor-owned transmission and distribution utilities reach an agreement on the purchase price of all utility facilities and utility property in the State owned or operated or held for future use by that investor-owned transmission and distribution utility the sale may be finalized in accordance with that agreement.

The commission shall impose such conditions on the acquisition of all utility facilities and utility property in the State owned or operated or held for future use by any investor-owned transmission and distribution utility as it determines are necessary to protect the public interest during the period between the effective date of this chapter and the date on which ownership and control are fully assumed by the company and the operations team. The commission shall take all necessary actions to ensure that the investor-owned transmission and distribution utilities and their owners cooperate fully and cost-effectively with the company during the transition in ownership and control.

**X. Existing obligations.** All existing agreements, obligations and contracts, including but not limited to long-term contract obligations and net energy billing agreements of the investor-owned transmission and distribution utility shall be transferred to the company and the counterparties to the agreements, obligation or contract shall accept the assignment of the investor-owned transmission and distribution utility to the company.

**6. Regional transmission.** The service territories of the company initially remain in the transmission system to which they belonged on the effective date of this chapter until changed by majority vote of the board.

**7. Names.** The company may adopt one or more alternative or regional names to distinguish its service territories or for any other purpose.

**8. Rules.** The company may adopt rules pursuant to Title 5, chapter 375, subchapter 2-A for establishing and administering the company and carrying out its duties. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**9. Bylaws.** The company shall adopt bylaws, through the board, consistent with this section for the governance of its affairs.

**10. Consumer-owned transmission and distribution utilities; application.** This subsection controls the treatment of consumer-owned transmission and distribution utilities and the application of law to the company.

A. This chapter may not be construed to affect the powers, authorities or responsibilities of any consumer-owned transmission and distribution utility other than the company

created under this chapter. The company may not oppose the extension of the service territory of a consumer-owned transmission and distribution utility existing prior to the effective date of this chapter to include the entirety of a municipality in which the consumer-owned transmission and distribution utility provides electric service as long as the company is reasonably compensated for the assets and appurtenances required.

B. Notwithstanding any other provision of this chapter or any other provision of law to the contrary, the company is subject to section 310; section 3104; section 3132, subsection 2-D; sections 3132-A, 3132-B, 3132-C and 3132-D; section 3144; section 3210-C, subsections 3, 7 and 11; sections 3212 and 3212-B; and section 3214, subsection 2-A.

**11. Board staff; transition.** The board may hire a director or manager, support staff and counsel. Additionally, assistance and counsel may be provided to the board by the Office of the Treasurer of State, the Office of the Attorney General, the Maine Municipal Bond Bank, the Finance Authority of Maine, the commission, the Office of the Public Advocate and others. All initial activities and expenditures of the board prior to the final acquisition of utility facilities and utility property must be funded by short-term debt of the company, to be retired in the initial financing and acquisition of the investor-owned transmission and distribution utility facilities and utility property. Notwithstanding any provision of the law to the contrary, ~~Debt~~ debt incurred by the board for its initial activities and expenditures ~~is must~~ be considered by the commission to be a just and reasonable expense incurred on behalf of the customers of the State's investor-owned transmission and distribution utilities and must be fully recoverable through the transmission and distribution rates charged to those customers ~~guaranteed by the retail customers of each of the State's 2 investor-owned transmission and distribution utilities, and, notwithstanding any provision of law to the contrary, the costs of these initial activities and expenditures must be considered by the commission to be just and reasonable for rate-making purposes.~~

**§4004. Cost-of-service rates; no use of state funds or tax dollars**

The rates and all other charges of the company must be sufficient to pay in full the cost of service, including the cost of debt and any payments in lieu of taxation. ~~No debt~~ or liability of the company is a ~~debt or liability~~ not a general obligation or moral obligation of the State or any agency or instrumentality of the State other than the company, and neither the State nor any agency or instrumentality of the State other than the company guarantees any debt or liability of the company.

**§4005. Tax-exempt; payments in lieu of taxes**

**1. Tax exemptions.** The company is a public municipal corporation within the meaning and for the purposes of Title 36, section 651, and the property of the company is exempt from taxation to the extent provided in that section. Notwithstanding any provision of law to the contrary, income of the company is exempt from all taxation or assessment by the State or any political subdivision of the State.

All bonds, notes and other evidences of indebtedness issued by the company in accordance with chapter 9 are legal obligations of the company, and the company is a quasi-municipal corporation within the meaning and for the purposes of Title 30-A, section 5701. All bonds, notes and other evidences of indebtedness issued by the company are legal investments for savings banks in this State and are exempt from state income tax.

**2. Payments in lieu of taxes.** Rates charged by the company must include sufficient amounts to allow the company to make payments in lieu of taxes in accordance with this subsection and shall also include sufficient amounts to fully replace payments made under any tax increment financing agreement with an acquired utility, subject to all the terms of the agreement and all statutory limitations on a recipient's use of tax increment financing funds. 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 investor-owned 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 investor-owned 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.

**§4006. No debt or liability of the State**

The company serves a public purpose in the carrying out of the provisions of this chapter, but ~~no debt or liability of the company may be considered a debt or liability~~ is not a general obligation or moral obligation of the State.

**§4007. Termination of the company**

The company may not be dissolved or cease operations except by authorization of law and only if all debt and liabilities of the company have been paid or a sufficient amount for the payment of all debt and liabilities has been placed in an irrevocable trust for the benefit of the holders of the debt.

**§4008. Freedom of access; confidentiality**

The proceedings and records of the company are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section.

**1. Confidential records.** The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the company that a person, including the company, to whom the record belongs or pertains has requested be designated confidential and that the company has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information, except through the company's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; and

B. A record that contains usage or other nonpublic information regarding a customer of a transmission and distribution utility in the State.

The company shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee, subject to protective order.



**2. Exceptions.** Notwithstanding subsection 1, the following are not confidential and are public records:

- A. Any otherwise confidential information the confidentiality of which the company determines to have been satisfactorily and effectively waived;
- B. Any otherwise confidential information that has already lawfully been made available to the public; and
- C. Impersonal, statistical or general information.

**3. Disclosure prohibited; further exceptions.** A board member, employee, agent, other representative of the company or other person may not knowingly divulge or disclose records designated confidential by this section, except that the company, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any of the following disclosures of information:

- A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;
- B. To a financing institution or credit reporting service;
- C. Information necessary to comply with any federal or state law, regulation or rule or with any agreement pertaining to financial assistance;
- D. If necessary to ensure collection of any obligation in which the company has or may have an interest;
- E. In any litigation or proceeding in which the company has appeared, introduction for the record of any information obtained from records designated confidential by this section; and
- F. Pursuant to a subpoena, request for production of documents, warrant or other order, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made lawfully.

**§4009. Annual report**

By April 15th of each year, beginning no more than one year after the first meeting of the board, the company shall submit a report to the joint standing committee of the Legislature having jurisdiction over energy and utilities matters summarizing the activities and performance of the company in meeting its obligations to its customer-owners and its responsibilities under sections 4002 and 4003 during the preceding calendar year and its plans for the current year and subsequent 5 years. Each annual report must describe in detail how the company's decisions, operations and use of low-cost financing have supported and will support the State's progress toward the climate action plan goals established under Title 38, chapter 3-A and how such financing has affected and will affect job creation and gross state product.

**§4010. Initial 5-year plan**

Within 18 months of the date in which the company and the operations team fully take ownership and control of all utility facilities in the State owned or operated or held for future use by any investor-owned transmission and distribution utility, the company shall submit to

the commission for approval a 5-year plan to meet initial affordability, reliability, decarbonization and connectivity goals.

**1. Plan minimum requirements.** At a minimum, the 5-year plan under this section must also include a program to:

- A. Establish lower rates for low-income residential customers;
- B. Build across the State accessible, rapid charging infrastructure for electric vehicles;
- C. Reduce make-ready and pole attachment costs for open-access fiber-optic cable in unserved and underserved areas of the State as defined in section 9202, subsection 5; and
- D. Make rapid investments in the distribution network to upgrade reliability and to improve capacity for interconnections of new renewable generation and storage facilities.

**Amend section 13 of the bill as follows:**

**Sec. 13. Statutory referendum procedure; submission at statewide election; form of question; effective date.** This Act must be submitted to the legal voters of the State at a statewide election held in the month of November following passage of this Act. The municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of this Act by voting, notwithstanding Title 21-A, section 906, subsection 6-A, on the following question:

"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?"

The legal voters of each city, town and plantation shall vote by ballot on this question and designate their choice by a cross or check mark placed within a corresponding square below the word "Yes" or "No." The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns. If a majority of the legal votes are cast in favor of this Act, the Governor shall proclaim the result without delay and this Act becomes effective 30 days after the date of the proclamation.

The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this Act necessary to carry out the purposes of this referendum.

**Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.**

## SUMMARY

This amendment does the following:

1. It adds provisions to specify that candidate for the board of the Pine Tree Power Company are subject to the provisions of Maine Revised Statute, Title 21-A, chapter 13;
2. It amends the fitness to serve provision to specify that beginning January 1, 2024, the Public Utilities Commission shall make a determination regarding a transmission and distribution utility's fitness to serve instead of by January 1, 2024;
3. It specifies a "start" date by which to measure the duration of residence to determine if a candidate for the board meets durational residency requirements;
4. It specifies that an elected, voting board member continues to serve the member's term, if the member's place of residence is no longer included in one of the 5 State Senate district the member was elected to represent as a result of reapportionment;
5. It clarifies the nomination and election process for candidate for the board;
6. It amends the term of office for elected, voting member and expert advisory members of the board;
7. It clarifies the process to be used to fill a vacancy on the board of an elected, voting member;
8. It allows the company to contract with separate operators for each of the service territories of the acquired utilities;
9. It requires the commission to review any contract between the company and operator and requires the commission to approve, reject, or approve with conditions any contract between the company and operator;
10. It allows the company to delay the purchase of one investor-owned transmission and distribution utility and proceed with the acquisition of the other with the vote of at least 5 members of the board;
11. It clarifies that at any time during the process described for the acquisition of the transmission and distribution utility the parties reach an agreement on a purchase price the sale may be finalized in accordance with that agreement;
12. It requires the company to charge rates in a sufficient amount to replace payments made under any tax increment financing agreement with an acquired utility;
13. It specifies that all existing, agreements and obligations of an investor-owned transmission and distribution utility are transferred to the company; and
14. It fixes technical errors and clarifies language.

LD 1708  
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**PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST**

Revised 2/13/12

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)		
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)		
C. Whether federal law requires the record to be confidential		
Does the proposed exception meet one or more of the following (D, E, F, G or I)		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception		
H. Whether the proposed exception is as narrowly tailored as possible		
<b><i>If the proposed exception creates broad confidentiality for an entity: 2-A. Accountability review of agency or official.</i></b> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
<b>2-B. Accessibility of public records.</b> In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		