



Testimony in Support of LD 325, An Act to Require Transparency in Transmission and Distribution Utility Advertising Expenditures,” sponsored by Senator Michael Tipping

February 16, 2023

Senator Lawrence, Representative Zeigler and members of the Joint Standing Committee on Energy, Utilities and Technology:

My name is Mark Gallagher of Drummond Woodsum and I reside in Kennebunk. I appear today on behalf of Our Power in support of LD 325. Our Power is a group of Maine ratepayers, business leaders, energy experts, conservationists, and others working to put the Pine Tree State’s energy future more firmly back in the hands of Maine people.

The sponsor’s amendment to LD 325 is about updating ratepayer protection and disclosure by all public utilities, and we applaud Senator Tipping for bringing it forward. Attached to our testimony is alternative language, which we think is a modest improvement. The differences are discussed in an attachment to this testimony.

Maine laws and PUC rules exist to protect utility customers from having to fund political influence by utilities, but these laws and rules have not been updated since 1987. They are written for a different time.

In 1987, our utilities were small, and locally owned. Today’s complex, global web of affiliated companies, holding companies, and other affiliated interests not only didn’t exist, but was hard to even imagine. It was also a time before the internet, before the Citizens United ruling, and before the rise of new and powerful tools to allow dark money to cast a long and corrosive shadow of influence. For these reasons, MRSA Sec. 302 and 302-A and the PUC’s Chapter 83 are badly overdue for an update and overhaul.

In a nutshell, the NRCM/Our Power amendment to LD 325 would update our disclosure laws and customer protections as follows. First, it would prevent political, charitable or public education expenditures by a public utility or its affiliate from being included in customer rates, except for public education expenditures with prior approval. Second, it would require detailed reporting of these expenditures. Third, it would require the commission to update its rules to administer the prohibition.

We also understand the bill sponsor appreciates and supports this approach, with one addition that we would also support.

Why this bill? What is unique about our utilities? Unlike free-market business, "public utilities" are given extraordinary powers and privileges. While some are not-for-profit, Maine's for-profit public utilities are quasi-governmental in nature: supported by the government, but privately managed. These governmental supports include use of eminent domain, use of the public rights-of-way, and the unparalleled privilege of a government-granted monopoly. In return for these privileges, utilities are expected to surrender many of the rights most persons enjoy. These include rate-setting by state and federal regulators, within bounds established by law, by rule, and by the courts. This trade-off is generally known as the regulatory bargain. But unfortunately, this compromise can create problems. With no free-market competition for customers, the principle means by which powerful utilities are able to protect and grow shareholder returns is to exert ever-greater political influence on regulators, on lawmakers, on the public, and on the courts.

This bill is not about campaign spending or lobbying, as regulated by the Maine Ethics Commission. These are only one very narrow form of influence. They differ in important ways from our laws and rules to protect ratepayers and ensure utility transparency.

Under Section 302 and 302-A, and Chapter 83, utilities are purportedly expected to disclose all political funding in their annual reports. CMP's most recent annual report barely scratches the surface of its political activities. On sheet 17b, "Political Expenses," the company lists a total of \$327,732 for the calendar year. This was the same year when tens of millions were being spent by CMP's "affiliated interest," Avangrid, in relation to the CMP Corridor campaign.

Today, utilities of all kinds are especially important given that we increasingly depend on them for our lives and our livelihoods, and to decarbonize. For these reasons, both customers and their rates must be carefully and jealously protected from influence campaigns of any kind. This measure, as amended, will provide for a much-needed update to our laws and rules.

More information is attached. Thank you for your attention, and I am happy to try to answer any questions you may have.

Additional Background on LD 325:

- Disclosure at the Maine Ethics Commission does not relate to utility rates, and includes only disclosure of lobbying (over 8 hours/month to influence lawmakers), and direct campaign advocacy (e.g., ads to vote for X)
- MRSA 35-A Sec. 302, last amended in 1987, prohibits the following from being included in rates: “Contributions or gifts to political candidates, political parties, political or legislative committees or any committee or organization working to influence referendum petitions or elections.”
- Sec. 302-A further allows the PUC to write rules “concerning promotional advertising; promotional allowances, including, but not limited to, the granting of promotional rebates or credits; advertising to promote corporate image or goodwill; or political activities by public utilities.”
- The PUC has adopted Chapter 83, defining and enforcing these.
- These laws and rules DO NOT require disclosure, or ban ratepayer recovery, for many types of influence campaigns. For example, MRSA Sec. 302 does not clearly or necessarily include the following:
 - Charitable giving, such as sponsorship of public radio, or a large land grant to a sportsmen’s or veteran’s organization, or creation of a nonprofit to influence a major statewide ballot question
 - Educational spending, such as spending on ads, website upgrades, or public relations that may seek to burnish a company’s reputation
 - Lobbying of under 8 hours per month by any individual, such as calls from a former Governor on a bill (both of the last two have done this for Avangrid)
 - Certain work by membership organizations, such as the Edison Electric Institute
 - Representation of and advocacy for the utility’s views when working on a policy working group convened by the Legislature and or Governor (allowed by Ch. 83)
 - Advocacy for the utility’s position at the PUC, such as supporting a rate hike (this work is generally billed to ratepayers)
- Recent national reports have drawn attention to the startlingly widespread use of ratepayer money to fund political influence campaigns. An article by the author of one such report by the Energy Policy Institute, published two weeks ago, is attached to this testimony. This bill follows many of the reports’ recommendations to update and clarify state-level protections, while stopping short of others such as a complete ban on all utility advertising.
- The PUC’s current authority under 302-A does not clearly extend to a utility’s affiliated interests, but only to spending “by public utilities” themselves. As an example, spending by Avangrid and by NECEC, LLC on political efforts as well as “goodwill” donations were not disclosed in CMP’s recent annual reports with the PUC.

Sponsor's Amendment vs. NRCM/Our Power Amendment:

Unlike the very good amendment circulated earlier this week by the sponsor, the language presented by NRCM and Our Power:

- Applies to **all public utilities**, such as water and natural gas, not just electric transmission & distribution utilities.
- Refers to an existing definition of “**affiliated interest**” in Title 35-A Section 707 that appears to be sufficiently broad and specific, i.e., 10% ownership stakes in parent, children and sibling entities, to capture entities that may be indirectly channeling funds to influence political affairs in Maine.
- Expands the existing political prohibition under Section 302 to include **charitable and unapproved educational spending** by a utility and **affiliated interests**, barring those expenses from being paid for through rates; and
- Expands the existing disclosure requirements under Section 302-A to **include charitable and educational spending** and **spending by affiliated interests**.