

Question 3 Pine Tree Power Initiative: Our Analysis

The outcome of the November 7 vote on Question 3, Pine Tree Power Initiative, will profoundly impact Maine's ability to meet the urgency of the climate crisis. Question 3 proposes to replace Maine's largest investor-owned utilities, Central Maine Power (CMP) and Versant, with a quasi-public one, Pine Tree Power. After careful consideration and evaluation, we believe that the structure of Pine Tree Power and the process of creating it will significantly and adversely impact our ability and obligation to meet the requirements of Maine's climate laws, including its [climate action plan](#). Therefore, CLF opposes Question 3.

In recent years, Maine's families and businesses have lost trust that CMP and Versant are looking out for anyone but themselves and their shareholders. However, no single solution – including the Pine Tree Power initiative – will address Mainers' issues with these companies. Instead, a combination of measures can establish and enforce the higher level of utility accountability that Mainers deserve.

Question 3 creates too much uncertainty at a time when we must focus on moving forward Maine's clean energy future.

If approved, Question 3 would create Pine Tree Power, combining Maine's investor-owned utilities into a quasi-public utility run by a 13-member board, with 7 elected and 6 appointed members. The board would then hire a third party to operate the combined utility and manage the same employees and assets that CMP and Versant oversee today. The stated goals of this initiative are to increase public transparency, spur better service, lower costs, and allow for greater investment in the transmission and distribution system necessary for the transition to a clean electric grid.

We support those goals. However, too many uncertainties exist about whether the proposal can fulfill its aspirations, something even Pine Tree Power's proponents acknowledge. Maine's Public Advocate has highlighted those uncertainties [here](#).

Given the very real certainties of climate change, as experienced this summer by our neighbors in Canada ([raging wildfires](#)) and Vermont ([flooding](#)), as well as in our own [Gulf of Maine](#), CLF has concluded, after careful review, that we cannot support the Pine Tree Power proposal.

Specifically, we have three main concerns:

1. If passed, Pine Tree Power will face a protracted and litigious acquisition and transition process that the Public Advocate estimates will last as many as 5 to 10 years. Such a lengthy and adversarial process will consume valuable time, resources, and effort needed to move forward now with critical investments and operational changes in our electricity transmission and delivery system.
2. The transition cost will require investments that could otherwise fund significant elements of the necessary system-wide upgrades and operational changes that Question 3 proponents and opponents agree are critical to our clean energy future. Maine literally cannot afford such a diversion of resources.
3. An elected board runs the real risk of partisan influence and paralysis. We cannot afford such a risk, given the stakes of the climate crisis. We have already seen fossil fuel companies hide behind [some environmentalists](#) and [animal conservation groups](#) to oppose clean energy projects that threaten their bottom lines. There is no reason to think elections for the Pine Tree Power board wouldn't fall subject to the same deceptive practices.

We can create a higher standard of utility accountability with less risk of stalling climate action.

Mainers' legitimate frustrations and concerns with CMP and Versant have been left unaddressed for too long. However, rather than changing the ownership structure of these utilities, we recommend aggressively using the tools we currently have to hold CMP and Versant accountable. We also recommend adding new tools to strengthen that accountability and meet the goals of the Pine Tree Power initiative more effectively.

Specifically, we propose the following:

1. **Create Greater Accountability** – Passed in 2022, the [Utility Accountability Law](#) requires the state to establish performance metrics, such as for service quality, to hold utilities accountable and enforce penalties when they fall short. That law must be enforced. Already overdue, the Mills administration and the Public Utilities Commission must commit to completing the law's adoption and enforcement – before the end of this year. In addition, the law should be amended in two ways:

First, metrics must be added to measure the utilities' performance regarding affordability, electric grid updates, transparency, and compliance with Maine's climate laws and goals.

Second, the penalties when a utility fails to meet the metrics must be strengthened. Current law provides for a penalty of \$1,000,000 or 10% of gross revenues when a utility fails to meet the performance metrics over a full calendar year. We propose that the performance review still occurs annually but that it be judged by quarter. Penalties would then be assessed for each quarter that metrics were not met, changing the maximum annual penalty from \$1,000,000 to \$4,000,000.

If the financial penalties are not enough incentive to improve performance, Maine must exercise its ability to revoke either or both utilities' right to do business. Under current [law](#), the Public Utilities Commission or the Public Advocate can initiate a proceeding to revoke the authority of any utility to operate. It is time for that authority to be more than an idle threat. The Public Utilities Commission must use its authority to initiate a proceeding to revoke the utilities' franchises to operate if CMP and Versant fail to significantly improve their performance based on the new metrics.

Mainers should also have a choice in what kind of utility replaces CMP and Versant should either choose to sell its franchise – including a legal right to purchase the utility outright. This right of first refusal would empower the State to take ownership and decide what utility structure or owner is best for Maine – and provide the potential for an orderly transition to a consumer-owned utility – if not simply influence to whom the utility is sold. The Legislature should take action to codify this right of first refusal into law.

2. **Make It Easier to Bring New Clean Energy Projects Online** – Mainers looking to clean up our grid and clean energy developers are justifiably frustrated with the costs and time it takes to connect to the utilities' transmission and delivery systems. This must change.

We recommend that Governor Mills create a team to focus exclusively on evaluating and recommending concrete solutions to issues such as time and cost overruns in connecting to the transmission system, grid-wide implications, and streamlining application review and approval processes. While the team could take various shapes, we propose that it include:

- four members of the public with expertise in clean energy generation, transmission, and distribution;

- the presidents of CMP and Versant;
- two renewable energy developers;
- a commissioner of the Public Utilities Commission;
- and the head of the Governor’s Energy Office.

This public/private partnership would be led by the Public Utilities Commission commissioner or the head of the Governor’s Energy Office. It should present recommendations to Governor Mills, the Public Utilities Commission, and the Legislature’s Energy, Utility, and Technology Committee by June 1, 2024.

3. **Rebuild Trust through Greater Transparency and More Opportunities for Public Input** – Public trust in CMP and Versant has eroded severely due to the companies’ poor service and lack of transparency. We cannot rely on the utility companies to rebuild that trust. The Legislature should establish a permanent consumer advisory panel with an even geographic representation. This panel would provide an additional layer of transparency into utility operations by participating in decision-making processes at the Public Utilities Commission and providing an annual report to all utility customers. The costs associated with this consumer advisory panel should be non-recoverable and borne by the utilities.

The utilities could show their commitment to rebuilding a modicum of trust with their customers by allowing consumer advisory panel members to attend their senior management and/or board meetings. Alternatively, the senior management teams at CMP and Versant could commit to two meetings a year with the advisory panel.

4. **Cuts to Climate-damaging Emissions Cannot Be Optional** – Currently, CMP and Versant have no obligation to assist Maine in cutting climate-damaging emissions as mandated by law. Mainers have made it clear that they expect these utilities to act as partners in cutting emissions and bolstering clean energy. We can better assure that the utilities are meaningful partners in this effort by amending current [law](#) so that in addition to the obligation to “furnish safe, reasonable and adequate facilities,” utilities will also be required to facilitate the achievement of the state’s emissions reductions and the climate action plan goals.

5. **Stop Utilities from Passing On Certain Costs to Consumers** – The costs utilities can charge families and businesses must be overhauled and reduced. The Utility Accountability Law already made some good advances there, banning CMP and Versant from charging Mainers for the costs of some lobbying, marketing, and industry associations, but more must be done. For example, utilities currently pass on the substantial costs associated with the often lengthy proceedings where electricity rates are set. But as utility customers and taxpayers, we’re already paying for the costs of the Public Utility Commission, Public Advocate, Attorney General, and other public agents who represent the public interest. We should not also be carrying the utility companies’ costs.

How utilities are compensated for capital projects such as new transmission infrastructure also must be overhauled. The concept of ensuring a healthy rate of return to utilities was intended to overcome the risk associated with building large-scale capital projects. The degree of risk associated with such projects has decreased significantly over the past two decades, but the rate of return has not decreased to reflect this lower risk.

6. **Ensure Adequate Resources for Oversight and Accountability** – The oversight of the utilities must be adequately resourced. In particular, the Public Utilities Commission and the Governor’s Energy Office must have the right personnel and expertise to hold the utilities to the high standard of accountability

that Mainers deserve. We can't keep adding responsibilities to these agencies without providing the resources necessary to carry them out.

We're at a critical point in Maine. The decisions we make today will determine how well we can respond to the climate crisis in the coming years.

Mainers are rightly frustrated with CMP and Versant. However, the state's response to the climate crisis will be unduly hampered by the uncertain outcomes and the years of litigation that almost all agree is inevitable if Question 3 passes.

A better approach to solving the frustrations with our utilities is to continue along the path that started in 2022 with the enactment of the Utility Accountability Law. We must press forward aggressively to expand and enforce its provisions, engage in focused problem-solving, and increase the transparency and understanding of how the system operates.

While we oppose Question 3, we will of course work with Pine Tree Power should that be the verdict of the voters. Either way, CLF will push to implement the recommendations above, as most of them apply to either model of ownership that voters choose on November 7.