



March 11, 2024

July Aube
Commission Assistant
Maine Commission on Governmental
Ethics & Elections Practices
135 State House Station
Augusta, ME 04333

Dear Members of the Commission:

Central Maine Power Company (CMP) respectfully submits the following comments regarding the proposed rules implementing 21-A M.R.S. § 1064, which prohibits U.S. companies from making campaign-related contributions and expenditures in Maine. CMP appreciates the Commission's time and attention to these comments. CMP, a 125-year-old Maine company, is Maine's largest electric utility and serves more than 600,000 retail electric customers in central, western, and southern Maine. As a Maine transmission and distribution utility, CMP is governed by executive officers and a board of directors that are all U.S. citizens. As a public utility, CMP is pervasively regulated under Maine law, and its activities are routinely the subject of proposed legislation. Because of the intimate connection between its operations and Maine public policy, CMP has long participated actively in Maine's public affairs through political advocacy. Most recently, CMP has been targeted by multiple referenda that would have deprived it of its property. As a result of these referenda, brought by political opponents and funded by competing fossil fuel energy companies, CMP has engaged in political speech to defend its business interests. Section 1064 purports to impose a gag on CMP (and many other American companies), thereby ensuring that Maine voters can only hear one side of a political debate in the future. Egregiously, Section 1064 would impose criminal penalties for engaging in political speech.

As the Commission is aware, CMP—together with other plaintiffs, including a coalition of Maine legislators and voters, the Maine Press Association, and the Maine Association of Broadcasters—has brought a First Amendment challenge to Section 1064 in federal court. As CMP has argued, Section 1064 infringes on the constitutional right to engage in free speech because it purports to silence numerous American companies because of passive investments by sovereign wealth funds or public pension funds. The sweeping provisions of Section 1064 have no relationship to any actual foreign government influence or control over campaign spending by American companies.

On February 29, 2024, the U.S. District Court for the District of Maine issued an injunction barring enforcement of Section 1064 because “a substantial number of the Act’s applications are likely unconstitutional.” Because of the extraordinary burden on speech imposed by Section 1064, the court applied strict scrutiny—the most stringent standard possible—which requires the state law to be “narrowly tailored” to serve a compelling government interest. The court concluded that Section 1064 was not narrowly tailored, but would instead “prohibit a substantial amount of protected speech.” Specifically, it would deprive U.S. citizens “of their First Amendment right to engage in campaign spending.” The court concluded that Section 1064’s thresholds were “arbitrarily chosen,” and observed that it could “not see how it can survive” under Supreme Court precedent. The court went on to note that Section 1064 “is likely to stifle the speech of domestic corporations regardless of whether a foreign government or foreign government-owned entity has any actual influence over their decision-making on campaign spending.” Accordingly, the court enjoined enforcement of all aspects of the law.

In light of the federal court’s clear ruling, CMP respectfully requests that the Commission suspend its rulemaking process. It is unwise, as a general matter, to engage in rulemaking while litigation is ongoing. It is certainly indefensible to adopt rules meant to enforce a law that a federal court has found to be facially unconstitutional. There is no reason, nor any benefit, to adopting rules until litigation is finally resolved. If Section 1064 is ultimately struck down as unconstitutional, as the court found to be

the most likely outcome of the litigation, then the rules would be meaningless. In the unlikely event some narrow aspect of the law survives, the court's final ruling in the matter will provide the Commission with guidance regarding the nature and scope of any permissible aspects of Section 1064, and in turn any future rulemaking efforts by the Commission. Until such time as the litigation concludes, however, no proposed rules should be adopted.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carlisle Tuggey".

Carlisle Tuggey, General Counsel