



May 1, 2024

By E-mail

Maine Commission on Governmental Ethics and Election Practices  
c/o Julie Aube  
135 State House Station  
Augusta, ME 04333-0135

Julie.Aube@maine.gov

**Re:Comments on Revised Proposed Amendments to Chapter 1, § 15: Rules Regarding Foreign Government-Influenced Entities**

Dear Commission:

I write to provide a second round of comments on behalf of Versant Power (“Versant”) regarding the Commission’s proposed revised amendments (the “Revised Amendments”) to the Rules regarding Foreign Government-Influenced Entities, 94-270 C.M.R. ch. 1, § 15 (the “Proposed Rule”). The Proposed Rule purports to implement “An Act to Prohibit Campaign Spending by Foreign Governments,” to be codified at 21-A M.R.S. § 1064 (the “Act”). Versant appreciates the Commission’s consideration of these additional comments.

Versant’s first round of comments, submitted on March 11, 2024, explained that the Proposed Rule shares and exacerbates the constitutional flaws contained in the Act, including under the First Amendment, Supremacy Clause, and Dormant Commerce Clause as set forth in its briefing in *Central Maine Power Co., et al. v. Maine Comm’n on Gov’t Ethics and Election Practices, et al.*, Docket No. 1:23-cv-00450 (D. Me.) (the “Lawsuit”). The Revised Amendments do not alleviate or remove those constitutional flaws. There is still no reason for the Commission to act now. Versant accordingly stands by its first round of comments and continues to urge the Commission to suspend this rulemaking.

The Revised Amendments illustrate why the best course of action would be for the Commission to suspend this rulemaking while the Lawsuit is pending. The new Section 9 “Effective Date” and Section 10 “Severability” in the Proposed Rule acknowledge the Lawsuit and present unenforceability of the Act and Proposed Rule. These provisions create more uncertainty regarding what provisions of the Proposed Rule are enforceable and when the Commission will enforce them.

By declining to suspend this rulemaking, the Commission is requiring those regulated by the Proposed Rule to monitor the Lawsuit in terms of both timing and substance. Persons and entities potentially subject to the Act and Proposed Rule will be forced to predict how a judgment in the Lawsuit affects the different provisions of the Proposed Rule and how to adjust their actions as necessary—without any guidance from the Commission. Principles of fairness indicate that the Commission should clarify whether and if so how the Court’s judgment concerning the Act’s constitutionality affects the provisions of the Proposed Rule before it enforces those provisions. The Commission should not rush to adopt the Proposed Rule when it is plan that the Commission cannot now anticipate the Lawsuit’s resolution and its ultimate impact on the Proposed Rule.

Rather than inject further uncertainty now, if any portion of the Act stands following the Lawsuit, the Commission should then re-initiate this rulemaking process and revise the Proposed Rule in a manner that reflects the terms of the Court’s final judgment. The Commission should suspend this rulemaking until that time. Accordingly, Versant continues to recommend that the Commission suspend this rulemaking, during the pendency of the Lawsuit.

Versant thanks the Commission for considering these comments.

Sincerely,

/s/ Arielle Silver Karsh

Arielle Silver Karsh

Vice President, Legal and Regulatory Affairs