



Minutes of the March 10, 2020, Meeting of the  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; Meri N. Lowry; and Hon. Richard A. Nass.

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Commissioner Lee convened the meeting at 9:05 a.m. He said Commissioners Lowry and Nass were also present. There were two vacancies on the Commission; however, two nominations to fill the vacant seats have been made and were going through the vetting process.

The Commission considered the following items:

**1. Presentation to Bradford A. Pattershall, aka William Pattershall, aka Brad Patterson**

Mr. Lee said, over the years, Mr. Pattershall has appeared under a variety of names in news reports about Commission meetings. He said it has been a pleasure to work with former Commissioner Pattershall for the last three and a half years and, even though Mr. Lee was a Democrat and Mr. Pattershall was a Republican, they had voted together approximately 95% of the time. Mr. Lee attributed Mr. Pattershall's 5% error rate to youthful impetuosity, which will improve as Mr. Pattershall gets older. He expressed appreciation for the many insightful comments and questions by Mr. Pattershall, many of which persuaded him to change his opinion on a case. He said he knew the people appearing before Commission appreciated the dignity and respect with which Mr. Pattershall treated them. Mr. Pattershall has fulfilled the statutory obligation of a Commissioner to serve with judgment, probity, and objectivity in an exemplary manner. Mr. Lee said Mr. Pattershall resigned from the Commission to pursue a political career and, in jest, warned him that it would be a mistake for him to appear before the Commission as a candidate. Mr. Pattershall agreed and said it was very different being before the Commission on the other side. Mr. Lee presented Mr. Pattershall with a plaque to commemorate his service on the Commission. Mr. Pattershall said it has been an absolute pleasure serving on the Commission and working with the Commission staff. He said he learned a lot of the years and will miss serving on the Commission.

## **2. Ratification of Minutes of December 18, 2019 Meeting**

Mr. Nass moved to adopt the December 18, 2019 minutes as presented. Ms. Lowry seconded.

Motion passed (3-0).

## **3. Request to Investigate Stop the Corridor**

Mr. Wayne said Clean Energy Matters was a political action committee (PAC) opposed to the citizen initiative to stop the New England Clean Energy Corridor (NECEC) transmission project (the Corridor). It has requested that the Commission investigate whether Stop the Corridor should have registered as a PAC. Stop the Corridor was one of the groups opposed to the construction of the Corridor and has been active since 2018. It has been encouraging grassroots opposition to the Corridor, including through advertising, and has been involved in various levels of the permitting process for the Corridor. More recently, Stop the Corridor has been involved in the efforts to obtain petition signatures to place the citizen initiative on the ballot in November. The citizen initiative effort was started by another group, Say No to NECEC. Clean Energy Matters contended that Stop the Corridor should be required to register as a PAC by virtue of its efforts regarding the citizen initiative. The staff recommended the Commission also consider whether Stop the Corridor qualified as a ballot question committee, instead of a PAC.

Newell Augur, Esq., appeared on behalf of Clean Energy Matters. Mr. Augur said it was likely that Stop the Corridor's major purpose changed when it became involved in the citizen initiative process. He said he had four points to support his argument. The first point was, given the name of the entity and the millions of dollars it has spent so far, it was unlikely that Stop the Corridor would not be involved in the citizen initiative, which was probably the last hurdle to the construction of the Corridor. The second point was that while there was no citizen initiative when Stop the Corridor was created and during much of the time while the permitting process was ongoing, the State permitting proceedings were essentially concluded in December 2019: the PUC process was done in May; the appeal of the PUC's decision was concluded in November; the DEP proceeding also concluded in November; and the Army Corps of Engineers permitting process concluded at the beginning of 2020. There were only approximately six local permitting processes still pending. The third point was the extraordinary amount of money Stop the Corridor spent on advertising to oppose the Corridor. Mr. Augur said the purchase of those ads did not necessarily trigger the

requirement to register as a PAC, but it did not seem plausible that the Stop the Corridor would spend \$1,300,000 just to influence local planning board meetings in small western Maine towns. Mr. Augur said the fourth point was that Stop the Corridor's major purpose had changed in the latter part of 2019 and was focused on the signature gathering process for the citizen initiative. He pointed to multiple documents submitted by Clean Energy Matters as exhibits to illustrate that Stop the Corridor was deeply involved in the petitioning process. The petition logs from the town clerks and letters from Stop the Corridor to the town clerks were just a sampling of the evidence of Stop the Corridor's involvement. He said the Commission did not have to decide at this meeting whether Stop the Corridor was a PAC; the Commission's only decision for today was to decide whether to conduct an investigation.

Mr. Nass said Stop the Corridor appeared to be involved in a mix of land use issues and local town meetings and elections. He asked if the Commission had any jurisdiction over issues related to local land use and local elections. Mr. Augur replied that Maine's campaign finance law did apply to certain large towns and cities, but he would defer to Ms. Gardiner for a definitive answer. Mr. Lee asked whether efforts to influence a local election would constitute efforts to influence a campaign under Title 21-A and trigger the requirement to register as a PAC. Ms. Gardiner said the definition of "campaign" in 21-A M.R.S. § 1052(1) did include any county or municipal referendum. She did not know as a factual matter that there were any municipal referenda at issue here because it was not discussed in the materials provided. A planning board meeting or permit would not be a referendum. She said it was possible that a referendum at the local level could fit the definition of a campaign under Title 21-A.

Mr. Augur said he would not make the argument that Stop the Corridor's efforts at the local level were the kinds of activities that would require it to register as a PAC. He said it was significant that when Commission staff asked Stop the Corridor to identify its employees working on this initiative, there was a deafening, troubling silence. Mr. Nass asked if it was silence or a statement that Stop the Corridor was not required to provide this information. Mr. Augur said it was a statement but deferred to Ms. Knox to speak further on this issue.

Mr. Lee asked whether Mr. Augur was saying Stop the Corridor started with one purpose but over time its major purpose may have changed as evidenced by Stop the Corridor's efforts on the citizen initiative. Mr. Augur agreed and said it was appropriate for the Commission to review the facts,

supported by the exhibits in Clean Energy Matters' submission, regarding Stop the Corridor's activities and determine whether, after the citizen initiative petition was approved in October, Stop the Corridor's major purpose was to influence a campaign. Mr. Lee pointed to the Commission's guidance which states that an organization that spends money in coordination with a PAC or BQC makes an in-kind contribution to the committee and would not be required to register with the Commission as a result of that in-kind contribution. He asked Mr. Augur if organizations ought to be able to rely on that guidance. Mr. Augur said they should, but the evidence in this matter indicated that Stop the Corridor's involvement was far more extensive than its in-kind contributions reported in No CMP Corridor's campaign finance reports. (No CMP Corridor was another PAC opposed to the Corridor.)

Mr. Lee said he was struggling to discern the point at which an organization, initially involved in various efforts, turns into an organization with the major purpose of influencing a campaign. He said the Commission's guidance allows an organization to assist a PAC or BQC without having to register with the Commission. However, there was a question as to how to differentiate between giving assistance to a PAC or BQC and engaging in activities which by themselves would qualify an organization as a PAC.

In response to a question from Mr. Lee, Mr. Wayne said the rationale behind the policy to accommodate organizations that were only making cash contributions to or spending money in coordination with a registered PAC or BQC was that the financial activity would be reported by the recipient PAC or BQC and the donor organization would not take on the administrative burden of registering and reporting to the Commission. Mr. Lee said the question was at what point did this assistance rise to the level which would require a group to register as a PAC or BQC.

Mr. Lee asked Mr. Augur why he was not suggesting that Stop the Corridor should have registered as a BQC. In the Commission staff memo, the staff stated Stop the Corridor may have spent up to \$6,999 to support the referendum, apparently independently of No CMP Corridor. He said that was over the \$5,000 threshold that would trigger the requirement to register. Mr. Augur said he probably should not have excluded that possibility. He said Stop the Corridor's level of spending, the types of activities it was engaged in, and the timing of that spending and those activities give the solid impression that Stop the Corridor was acting as an organization with the major purpose of influencing this citizen initiative. In other words, it was acting as a PAC. The problem was that the

Commission did not have the information needed to make a determination of whether Stop the Corridor was a PAC or BQC.

Kate Knox, Esq., counsel for Stop the Corridor, appeared before the Commission. Ms. Knox said there was a lot of innuendo that Stop the Corridor was being secretive, that Central Maine Power (CMP) had uncovered information Stop the Corridor tried to hide. But everything Stop the Corridor did was in full public view. She said Stop the Corridor tracked its staff time and transferred that information to No CMP Corridor to report as an in-kind contribution. She said the list of activities in Stop the Corridor's response to the Commission staff was intended to provide a general outline, not a comprehensive list, of the kind of activities Stop the Corridor was involved in and the timing of those activities in relation to the formation of Stop the Corridor and No CMP Corridor, and the citizen initiative process. The argument that Stop the Corridor's major purpose changed simply because it participated in a citizen initiative effort launched by a third party acting on its own was unjust and illogical. Concurrently with the signature gathering efforts, Stop the Corridor continued to be engaged in other efforts regarding the Corridor as it has since the organization's formation. Ms. Knox said there were three permitting proceedings still ongoing and there were moratorium votes still pending in some of the affected towns. Given the range of Stop the Corridor's other activities and its spending on those activities, it just did not make sense that a \$50,000 in-kind contribution of staff time would turn the organization into a PAC. The argument that because some employees of Stop the Corridor identified themselves as such on the petition logs maintained by the municipal clerks did not mean that Stop the Corridor had acted independently of No CMP Corridor. The Commission's guidance established a bright line to determine whether an expenditure was an in-kind contribution. If an organization's expenditure to influence a campaign was made in coordination with and accepted by a registered PAC or BQC, the expenditure was an in-kind contribution to the PAC or BQC and did not count toward the \$5,000 threshold for registering with the Commission. No CMP Corridor controlled the signature gathering process and identified ways Stop the Corridor could help. Stop the Corridor paid its staff to assist in the signature gathering process and No CMP Corridor accepted that assistance as an in-kind contribution and disclosed it in a campaign finance report.

Mr. Nass said the Corridor was an extremely controversial issue in which people were keenly interested. He said the Commission's job was to provide the public with clarity about where the

money was coming from and who was involved on both sides of the issue. Ms. Knox said there was a statutory standard that established the criteria for when financial disclosure was required. The Commission's complaint procedure should not be used as a fishing expedition. She said there was no evidence that Stop the Corridor solicited or accepted contributions to fund its efforts regarding the citizen initiative. CMP has given the Commission pages of details about Stop the Corridor's ad buys but no evidence that it has raised money for the purpose of working on the initiative. She said, absent some sort of evidence of a violation of statute to justify an investigation, there was a right to keep that information private.

Mr. Lee said it looked like Stop the Corridor may have spent up to \$6,999 on advertising to influence an election, which would appear to trigger the requirement to register as a PAC or BQC. He asked whether the burden shifted to Stop the Corridor to provide evidence that the donor exception applied. Ms. Knox said it was her understanding that an organization could make an expenditure to benefit a PAC or BQC, and that expenditure would be considered an in-kind contribution to the PAC or BQC. If Stop the Corridor had spent money on Facebook ads to raise money for itself to spend on the initiative, that expense would count toward the registration trigger. However, the Facebook ads in question asked people to make contributions to Say No to NECEC. Because the expenditure was for the benefit of Say No to NECEC, it counted as an in-kind contribution under the donor exception. Mr. Wayne agreed that if an organization spent money to benefit a coalition partner, it would be an in-kind contribution. He said the spending by Stop the Corridor on Facebook ads could be viewed as unreported in-kind contributions to No CMP Corridor which could be included in an amended report. Ms. Knox said the first two Facebook ads should have been reported as in-kind contributions in No CMP Corridor's report because they occurred during the petition exploratory phase, but the third ad should not be included. The total spent on the first two Facebook ads was approximately \$1,400. Mr. Lee said, in essence, Stop the Corridor is saying the burden has not shifted because it has not spent more than \$5,000 and the donor exception would not come into play.

Mr. Lee asked what activities Stop the Corridor was engaged in that were not related to influencing an election. Ms. Knox said there was active engagement to get the 28 affected towns to vote for moratoriums on the Corridor. She said none of the 28 towns met the statutory criteria for Title 21-A to apply to election-related spending in those towns. Mr. Lee asked when Stop the Corridor was

created. Ms. Knox said there were initial organizational activities in July 2018, and it became more active publicly in August. Mr. Nass, reading from Stop the Corridor's response, said the organization was created in April 2018.

In response to a question from Mr. Lee, Ms. Gardiner said the application for approval to circulate a petition was submitted to the Secretary of State on August 29, 2019. The Secretary of State approved the petition form on October 18, 2019 and the signature collection process could begin on that date.

Mr. Lee said Ms. Knox was arguing that Stop the Corridor was created prior to the referendum so there was no election to influence when it formed. In addition, the organization has been engaged in other activities unrelated to the initiative for a significant period. A year and half after Stop the Corridor was created, the citizen initiative process started. Although Stop the Corridor has participated in the signature gathering process, that involvement did not change the organization such that its major purpose became to influence a campaign. Ms. Knox said that was a correct summary.

Ms. Knox said Stop the Corridor lent staff to No CMP Corridor to perform activities coordinated and directed by No CMP Corridor. Contrary to CMP's narrative, Stop the Corridor was not the only organization involved in the signature gathering effort but was one of many groups gathering signatures. Stop the Corridor did not raise any money to influence an election. In the absence of any evidence that money was raised, Ms. Knox said CMP has not met the statutory standard necessary for the Commission to initiate an investigation.

Mr. Nass suggested it would eliminate a lot of confusion if Stop the Corridor revealed its donors. Ms. Knox said the proceeding before the Commission was to determine whether there was sufficient evidence to initiate an investigation. It was a legal proceeding to determine compliance with campaign finance law, not a policy discussion to determine what kind of compliance would be in the public interest. Ms. Knox said there was nothing unusual in the way Stop the Corridor operated and it was in compliance with the Commission's current statutes and policies.

Mr. Lee asked whether it would be easier to disclose the information and not appear to be hiding something. Ms. Knox said her client believed it has followed the law and disclosed what it was supposed to disclose. She said CMP has been waging an incredibly negative and aggressive

campaign. It was important to understand that Stop the Corridor had to take CMP's aggressive campaign tactics into account when considering how much information to disclose.

Mr. Lee said one issue before the Commission was whether Stop the Corridor's major purpose changed over time and now its major purpose was to influence an election. To determine that, the Commission may need more financial information about Stop the Corridor. Ms. Knox said she found the concept that a major purpose changed because an organization made in-kind contributions to a political action or ballot question committee to be troubling. She was not aware of any Commission decision or policy stating that an organization did not have the right to identify its major purpose. She said Stop the Corridor continued to focus on the permitting process, which was ongoing. Mr. Nass said the permitting process was largely over. Ms. Knox said there were three significant outstanding permits: DEP, the Army Corps of Engineers, and Presidential permits.

Ms. Lowry said she was not convinced that, when looking at the activity of a long-term organization, it was sufficient to focus only on two months to determine whether an organization has changed its major purpose. In looking at this particular organization, its purpose was to stop the CMP corridor project by engaging in various activities to the end. That overall purpose has not changed because it became involved in a ballot question campaign at the same time as it was engaged in other activities.

Mr. Augur said the Commission should look at the actual activity of an organization and not its representation of those activities to determine its major purpose. It was within the province of the Commission to review Stop the Corridor's activities to determine whether its major purpose changed, especially those activities occurring after the citizen initiative petition was approved. He said an organization's major purpose could change in two months in a fast-paced political environment. He said signature gathering was an intensive process and Stop the Corridor's activities in connection to this process were significant. He has provided ample evidence of that fact. He said there were a few pending permits but, by and large, the public comment period was over.

Mr. Lee said Stop the Corridor has engaged in a variety of activities, all related to the purpose of stopping the Corridor. He said there was no question that one of its activities in the fall became the petition signature drive. But the question was whether that activity changed the organization to



such a degree that its major purpose was to influence an election even though it was still involved in the permit process. Mr. Augur again stated that the public comment period for the three pending permits was over.

Mr. Lee read the statutory definition of a political action committee and asked what timeframe the Commission should be looking at to determine whether there had been a shift in major purpose.

Ms. Gardiner said this was a situation in which they need to interpret the law and apply it to a set of facts; there was no precise answer in the law as to what parameters were applicable in analyzing the facts. She said the definition suggested looking at the major purpose of the whole organization and its activities over a significant period and not just two or three months; however, whether to do so was a judgment call for the Commission to make based on the specific facts presented. In this instance, the question was, as Commissioner Lowry pointed out, did the organization's major purpose actually change. The petition signature gathering activity was different from the organization's previous activities, but it was consistent with its organizational purpose of stopping the Corridor.

Mr. Lee asked if Stop the Corridor had a statement of purpose when it was formed. Mr. Augur said the organization was formed as a limited liability company. Mr. Wayne said the organization was formed long before there was a citizen initiative and a statement of purpose would likely not include activities to influence a campaign. Mr. Wayne said the staff initially considered Stop the Corridor's major purpose to be something other than influencing a campaign, but Mr. Augur has provided some information that may influence the staff's perspective. However, the staff thought the benefit of analyzing these facts under the BQC statute would be to remove the issue of trying to discern whether Stop the Corridor's major purpose was to influence a campaign. Ms. Gardiner said the BQC statute was created to provide a reporting mechanism for organizations that have some major purpose other than influencing campaigns but that get involved in ballot question campaigns from time to time. She said a key difference between the two committee types was that a PAC must report all contributions received regardless of whether the contribution was made to influence a campaign, but a BQC only reported what it received specifically for the purpose of influencing a campaign.

Mr. Augur reiterated his argument that the evidence he has presented to the Commission showed the very significant extent to which Stop the Corridor was involved in the citizen petition effort and

could only mean that its major purpose was to influence that campaign. Ms. Lowry contrasted Mr. Wayne's and Mr. Augur's comments. She said that Mr. Wayne was saying it would be necessary to review a significant amount of information and after that review, it could still be unclear if Stop the Corridor's major purpose had changed. Mr. Augur was saying that one only had to look at the organization's activities related to gathering petition signatures alone. Ms. Lowry said she was skeptical that there would be enough information to provide evidence that there has been a shift in major purpose. That was the reason why the staff was also asking the Commission to consider whether Stop the Corridor was a BQC.

Mr. Lee asked what the staff would be looking for if it conducted an investigation into whether Stop the Corridor qualified as a PAC. He said he was not inclined to pursue a line of inquiry into whether Stop the Corridor qualified as a BQC because of the relatively small amount of money involved and the funds spent seem to fall within the in-kind donor exception. Mr. Wayne said the decision to initiate an investigation should take into consideration that it was an iterative process and was very time and resource intensive for the Commission staff and the respondent. Mr. Wayne said the staff would be looking into the sources of Stop the Corridor's funding, what activities those sources intended to fund, how the money was spent, names of personnel, copies of bank statements, and possibly internal communications. Mr. Lee asked how long it would take to conduct an investigation. Mr. Wayne said it would take at least a couple of months. Mr. Lee expressed concern that, at a minimum, Stop the Corridor has had a change in focus, but it remained unclear if that also meant there has been a change in its major purpose. Ms. Lowry said she did not believe a change of focus necessarily meant a change in purpose.

Ms. Knox said the timing of the permitting processes was highly relevant as the Commission considers whether there could have been a change in Stop the Corridor's major purpose. There were still ongoing permitting processes underway. More importantly, there were permitting processes going on during the September to December timeframe, which was the period CMP's complaint focused on. She said the Army Corps' public comment period was from September to December and was extended to January 6<sup>th</sup>; the Land Use Planning Commission public comment period was closed and then reopened during the September to December period; the Presidential permit public comment timeframe was still open. She said there were three of five permits pending and that did not include the local permit process. It was not accurate to say the permitting process

and public comment period have wound down. Ms. Knox said that just because Stop the Corridor became involved in another prong or approach to oppose the construction of the Corridor, that by itself did not outweigh all the other activities the organization has been involved in for the past year and a half to such a degree that Stop the Corridor's major purpose has changed. She said as long as there was substantial permitting process ongoing, the organization's major purpose remained the same despite the additional activities the organization got involved in. She said CMP has not presented sufficient evidence to warrant an investigation.

Mr. Nass said he believed the voters have a right to know where the money came from and how it was spent. Ms. Knox said the campaign finance law established the parameters to determine who must disclose their financial activity and what information must be disclosed. The Commission's responsibility was to determine whether an organization fits within those parameters. Curiosity should not be a factor in deciding whether to investigate an organization. The Commission must have a reason based on the law and sufficient factual evidence to initiate an investigation.

Ms. Gardiner said the Commission's power and authority come from the statutory framework as enacted by the Legislature. She said if an organization was engaged in activities that fall outside of the reporting obligations under campaign finance law, the Commission has to apply the law as written, even if the Commission believed there were strong policy reasons to wish the law was written differently. If the Commission initiated an investigation, an organization may request that certain information be kept confidential if, for example, it was financial information not normally available to the public. That information would be kept confidential during the investigation stage. Mr. Lee said the information obtained in the investigation would remain confidential unless the Commission were to decide the organization should register as a PAC.

Mr. Lee said the question was whether sufficient grounds have been established to warrant further investigation to determine if the organization's major purpose has shifted as a result of its activities on the citizen initiative such that it would be required to register as a PAC. Ms. Lowry said she did not understand why the Commission would want to focus only on a limited four-month period rather than to consider the entirety of its existence. Mr. Lee said it would not be necessary to look into the organization's activities early in its existence because there was no citizen initiative in progress and the organization's major purpose would not have been to influence an election. However, after the petition was filed on August 29<sup>th</sup>, the investigation's focus should be on the

organization's financial activity and other activities to influence the citizen initiative. Ms. Lowry said she believed a longer timeframe would provide better information about whether the major purpose actually shifted as a result of the citizen initiative. Mr. Lee said once the organization's focus changed to influencing an election, the public's interest in knowing more about the organization came into play. He said there was enough evidence before them to suggest that there may have been a seismic shift in Stop the Corridor's purpose to trigger the disclosure of financial information to the public.

Mr. Lee moved that the Commission staff conduct an investigation to provide the Commission with evidence to determine whether or not Stop the Corridor qualified as a PAC and therefore had to register as one and the meet requirements of any PAC that has to register. Mr. Nass seconded the motion.

Mr. Lee asked Ms. Gardiner if the motion was sufficiently clear and whether she would suggest any changes. Ms. Gardiner suggested that he may want to address the reason why an investigation should be conducted. The motion could state the request for an investigation has shown sufficient grounds for believing that a violation may have occurred. The motion as stated addressed what the Commission wanted the investigation to do. She suggested that the motion should address the reason for the investigation.

Mr. Lee moved that an investigation be conducted to determine whether or not Stop the Corridor qualified as a PAC because there has been sufficient evidence presented to suggest that its major purpose became to influence an election result.

Ms. Gardiner asked Mr. Lee to clarify if he meant to initiate or influence an election. Mr. Lee said both terms should be included in the motion.

Ms. Lowry asked Ms. Gardiner to read back the motion. Ms. Gardiner said Commissioner Lee moved that the staff conduct an investigation to determine whether or not Stop the Corridor qualified as a PAC and had an obligation to register and report as a PAC because sufficient evidence has been presented to suggest that the major purpose of Stop the Corridor became to initiate or influence a campaign. Mr. Nass confirmed that he seconded the motion.

Motion passed 2-1, with Ms. Lowry opposed.

#### **4. Request to Investigate Say No to NECEC**

Mr. Wayne said Clean Energy Matters PAC requested the Commission investigate whether Say No to NECEC should have registered as a PAC. Say No to NECEC was a non-profit corporation formed to oppose the New England Clean Energy Corridor (NECEC). It has been involved in grassroots activity at the municipal level. Some of the group's leaders decided to pursue a citizen initiative and formed a PAC, No CMP Corridor, for that purpose. Mr. Augur contended that Say No to NECEC has solicited and received contributions to explore whether to launch a citizen initiative. Say No to NECEC countered that the funds were received prior to the decision to start the citizen initiative process and should not count toward the threshold for PAC registration.

Newell Augur, Esq., appeared on behalf of Clean Energy Matters. Mr. Augur said this was a similar situation as the prior matter and he would support a similar conclusion. He said if Say No to NECEC had completed its fundraising activities prior to the filing of the citizen initiative, he would stipulate that those funds would not count toward the threshold. However, it had continued to fundraise after the petition was filed with the Secretary of State.

James Kilbreth, Esq., appeared on behalf of Say No to NECEC. Mr. Kilbreth said Mr. Augur just indicated that the date on which the petition was approved and the signature gathering phase began was the date when the campaign began. He said there was no evidence the organization continued to raise money for the campaign after that date, but Say No to NECEC did fundraise on behalf of the No CMP Corridor PAC. He said Say No to NECEC was comprised of private citizens who have been active in grassroots activities at the municipal level to oppose the Corridor for the past year and a half. During that time, the organization raised funds to support those efforts. He said that in a Facebook post on August 6<sup>th</sup>, Say No to NECEC raised the possibility of pursuing a citizen initiative and requested donations to explore that option. The Commission staff's position was that initiating a campaign included exploratory activities. However, the initiation of a referendum was defined in statute (21-A M.R.S. § 901) as the filing of an application with the Secretary of State. He said the general understanding was the date of initiation was the date on which the Secretary of State issued the petition. Mr. Kilbreth said there was no relevant expenditure or solicitation that legally can occur before issuance of the petition or, at a minimum, the filing of the application. He said it was important to note the date of the application was August 29<sup>th</sup>, the approval of the petition was October 18<sup>th</sup>, and the No CMP Corridor PAC was formed in September. There were no funds

raised, solicited or spent by Say No to NECEC after August 29<sup>th</sup> regarding the citizen initiative. Mr. Augur has not produced any evidence to the contrary.

Mr. Kilbreth said, with respect to Say No to NECEC's major purpose, the organization has been advocating to stop the Corridor at municipal, regulatory and legislative proceedings for the past year and a half. These proceedings were ongoing and the final decision on the DEP permit could be up to two years away. Say No to NECEC's major purpose has always been focused on the permitting process. Regarding whether Say No to NECEC should register as a BQC, he said it was important to note that the exception in § 1056-B applied when an organization has not raised or spent any money "for the purpose of influencing a campaign." That organization would not have to register as a BQC. That section of the statute did not mention money raised or spent for the purpose of initiating a campaign. Moreover, in order for the exception to apply, there would have to be a ballot measure to influence. Mr. Kilbreth said as a matter of law, there was no basis for the Commission to initiate an investigation.

Mr. Lee asked Ms. Gardiner and Mr. Wayne for a response to Mr. Kilbreth's arguments. Ms. Gardiner said Mr. Kilbreth had read the statute accurately. She said the last sentence of that section again references the exception, but she would have to review the history of the statute to see how that language evolved. Mr. Kilbreth pointed to the language in 21-A M.R.S. § 901 that required a voter to submit a written application to initiate proceedings for the direct initiative of legislation. Until that step has been taken by a voter, the citizen initiative process has not been initiated. Mr. Nass said Say No to NECEC was claiming that it had not raised or spent any money for the initiative, but it had created a Go Fund Me page. Mr. Kilbreth said the organization did create a Go Fund Me page to raise money to pay for a variety of purposes, primarily legal fees for the regulatory process. In August 2019, the organization changed its Go Fund Me page to request funds to explore launching a citizen initiative, but no money was spent on referendum activity, such as drafting the referendum.

Dr. Sandra Howard, of Say No to NECEC, appeared before the Commission. Dr. Howard clarified that the promise of a \$5,000 matching contribution was made in August, but the actual deposit did not occur until September. She said the only expenditures Say No to NECEC has made for anything related to the referendum were three contributions totaling \$16,000 to No CMP Corridor which were reported in its PAC reports; it has not made any other expenditure for the referendum.

Mr. Lee asked if the organization continued to raise money. Dr. Howard said it was raising funds to pay ongoing legal fees because the DEP permit has not yet been determined and was likely to go to appeal. Mr. Kilbreth said there were currently two fundraising efforts: one directed contributors to Say No to NECEC for its general operations and the other directed contributors to No CMP Corridor PAC to make contributions related to the referendum.

Mr. Lee said there were three dates to focus on: August 29<sup>th</sup>, the application for the petition; October 18<sup>th</sup>, the approval of the petition; and the dates of the three contribution by Say No to NECEC, which occur after the petition was approved. Mr. Wayne said the Commission staff did not track petition application dates, but he said it would provide clarity if there was a date that would signify when a referendum was initiated. If the Commission were to accept August 29<sup>th</sup> as the date when the referendum was initiated, he said it appeared that most of the money was raised prior to the initiation of the petition. In that case, there was a low likelihood this organization met the threshold to trigger registration as a BQC.

The Commission discussed the interpretation of 21-A M.R.S. § 1056-B.

Mr. Kilbreth said Say No to NECEC made three contributions to No CMP Corridor, a PAC registered with the Commission. Under the donor exception if that was all the organization did, it was not required to register. Mr. Lee said that covered the first prong of the exception. Mr. Kilbreth said the second prong was met, both factually and legally, because the organization never solicited any money to influence a campaign or, for that matter, to initiate a campaign. Mr. Lee asked about the fundraising activities. Mr. Kilbreth said some funds were used to pay legal fees and some funds were used to explore the filing of the petition. He said there was ongoing fundraising to pay legal fees associated with the permitting process. The funds used to make the contributions to No CMP Corridor were made with general treasury funds. After August 29<sup>th</sup>, Say No to NECEC did not solicit any contributions for the purpose of initiating or influencing a campaign.

Mr. Lee asked how the Commission could know money was not being raised and spent to initiate or influence a campaign. Mr. Wayne said it was clear the three contributions to No CMP Corridor were to influence a campaign and fit under the first prong of the donor exception in § 1056-B. Mr. Lee asked whether the timing of spending money and raising money to influence a campaign could be a factor in this matter. Ms. Gardiner said that was the factual question regarding what the

organization was asking the donors for in its solicitations. She said it appeared the organization was soliciting funds to support the exploratory effort for a citizen initiative, which pre-dated initiation and would not fall under the definition of initiating or influencing a campaign; or soliciting donors to send money to No CMP Corridor, which was formed after initiation. However, the Commission did not have any documentation showing the content of the organization's solicitations to donors.

Mr. Wayne said the probability of there being a violation in this case was lower than the prior matter. He said a lot of the money came in prior to the filing of the petition. Mr. Lee asked if the staff had enough information to make a recommendation regarding an investigation. Mr. Wayne said it was a close call whether there was enough evidence that a violation may have occurred. He said he did not believe the evidence was strong enough to justify an investigation and there was a small amount of money spent. Mr. Lee said they did not want to tie up staff resources on an investigation if the staff received enough information today to recommend against an investigation. Mr. Wayne said he would not recommend an investigation based on the evidence already provided to the Commission.

Mr. Nass made a motion that there was not sufficient evidence to warrant to proceed with an investigation into this matter. Ms. Lowry seconded the motion.

Motion passed 3-0.

##### **5. Mainers for Local Power PAC: Penalties for Providing Late Notice to Major Contributors**

Mr. Wayne said this matter involved a new statute that required major contributors who have given more than \$100,000 to a PAC or a BQC to influence a ballot question campaign to file a one-time report disclosing their funding sources. Mainers for Local Power PAC requested a waiver of penalties for failing to provide timely written notice to two major contributors that they were required to file a major contributor report with the Commission. The two contributors were Calpine Corporation and Vistra Energy Corp., and they also formed the Mainers for Local Power PAC. The preliminary penalties for the two late notices were \$24,660 and \$28,770, respectively. The PAC's treasurer and the Commission's Political Committee and Lobbyist Registrar, Michael Dunn, had been in contact frequently on a variety of issues. The staff believed the PAC was making a good faith effort to be in compliance with its reporting obligations. However, the PAC was claiming it



was unaware of this new disclosure requirement. Information about the new requirement was on the Commission's website but not in the PAC guidebook. The staff viewed the preliminary penalties as disproportionate and recommended a reduction of the penalty to \$2,500. Mr. Lee asked why the staff was recommending such a substantial reduction in the penalty. Mr. Wayne said this was a new disclosure requirement that many people were not aware of; in other respects, the PAC was diligent in complying with the law; and the harm to the public was mitigated because the contributions from Calpine and Vistra were disclosed in the PAC's reports. Ms. Lowry expressed sympathy for the PAC because the guidance on this requirement was not easy to find on the Commission's website. Mr. Wayne said the guidance was posted but was not linked to the PAC/BQC page. He said that has now been corrected.

James Kilbreth, Esq., appeared on behalf of Mainers for Local Power PAC. He said the PAC appreciated the staff recommendation and that the PAC was committed to complying with all requirements. He said it was important to note that, though the notice to the major contributors was late, the contributors filed their reports on time and the information was disclosed to the public in a timely manner. He said the penalty should be in the normal PAC penalty range of \$750. Mr. Nass expressed concern about setting a precedent with a low penalty for such a large contribution amount. Mr. Kilbreth said what was different about this situation was this violation involved a notice the PAC was supposed to send to the contributors to notify the contributors they had to file a report with the Commission. It was not a late-filed report to disclose financial activity to the public. He said the PAC did report the contribution and the major contributors did file their reports in a timely fashion.

Newell Augur, Esq. appeared on behalf of Clean Energy Matters PAC. He said they do not oppose the staff recommendation.

Mr. Lee said he was also comfortable with the staff recommendation. He said that the correction to the website guidance would allow the Commissioners to differentiate between this case and any future cases.

Mr. Nass moved to adopt the staff recommendation to impose a \$2,500 penalty. Mr. Lee seconded the motion and added that they adopt the staff recommendation to treat the two violations as one.

Motion passed 3-0.

## **6. Study Report of Maine Clean Election Act**

Candidate Registrar Emma Burke provided the Commissioners with an overview of the Study Report of the Maine Clean Election Act (MCEA). Ms. Burke explained that every four years the Commission was required to provide a report on the MCEA to the Veterans & Legal Affairs Committee, which was the oversight committee for the Commission. She said the report was supposed to document, evaluate, and make recommendations regarding the administration, implementation, and enforcement of the MCEA. The report covered the last four elections in 2012, 2014, 2016, and 2018. She said the interesting dynamic was that MCEA used to have a matching funds component, which was removed in 2011. The 2012 and 2014 elections did not have any matching or supplemental funds available and there was a decrease in participation. In 2015, the citizen initiative expanded the MCEA by giving candidates more money in the 2016 and 2018 elections. Mr. Lee asked for the rationale behind the removal of matching funds. Ms. Burke said Arizona had a similar matching funds component in its public campaign financing program that was challenged in court and ultimately struck down because the U.S. Supreme Court considered matching funds to have a chilling effect on free speech. Ms. Burke said the report showed the amount of funds spent, cost of the program, participation rates, payment amounts for each type of office, and how the candidates spent those funds. Overall, participation rates appeared to be trending upward with the introduction of the supplemental payments after declining with the removal of matching funds. In response to a question about candidates going for the maximum MCEA payment, Ms. Burke said most candidates only go for the amount of funds necessary to run their campaign. She noted there have been large returns of funds from candidates who received the maximum amount of MCEA funds.

Ms. Burke explained there was a lot of work put into certifying MCEA candidates. In 2018, she and Erin Gordon, the other Candidate Registrar, processed over 55,000 QCs. In response to Mr. Lee's question about sustainability of the fund, Ms. Burke said the fund was partially maintained through the collection of qualifying contributions.

Mr. Lee said the overall conclusion was the system was working, the fund was sustainable, participation was up, and MCEA candidates, on average, had a higher success rate. Ms. Burke agreed and said candidates were using the system correctly and were not abusing the availability of additional funds.

### **Other Business**

Mr. Wayne provided the Commissioners with an update on the development of an on-line filing system for the annual Statement of Sources of Income for legislators, executive employees, constitutional officers, and candidates. He said the Commission staff had hoped the system would go live in April, but due to ongoing development issues, it may be necessary to extend the filing deadline for executive employees and constitutional officers to file their reports. The Commissioners unanimously agreed to leave it to the Commission staff's discretion to extend the filing deadline and the length of that extension. Mr. Wayne said the Commission staff would provide a firm deadline, in writing, to the executive employees required to file this report.

### **Adjournment**

Mr. Nass made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 1:58 p.m.

Respectfully submitted,

/s/ Jonathan Wayne

Jonathan Wayne, Executive Director