



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Commission Meeting 06/11/2021  
Agenda Item #2

To: Commission

From: Jonathan Wayne, Executive Director

Date: June 3, 2021

Re: Legal Objections to Subpoenas for Records – Stop the Corridor Investigation

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### **Introduction**

The Commission has received additional legal objections in its investigation of Stop the Corridor (“STC”), a limited liability company formed in 2018 to oppose the New England Clean Energy Connect (“NECEC”) transmission line project. During 2018 to 2020, STC engaged in grassroots activities and paid advertising to oppose the project. Much of these activities were not subject to campaign finance disclosure laws because they were unrelated to any candidate or ballot question election.

STC, however, was part of a coalition that began discussing whether to oppose NECEC through a citizen initiative during the summer of 2019. This first effort to stop NECEC through a citizen initiative endured from June 2019 (when the coalition began discussing a possible initiative) through August 2020 (removal of the question from the ballot by the State due to litigation). STC provided advice on strategy and public relations to Sandi Howard, who was one of the public leaders of the initiative. During the 3½ month period from October 18, 2019 to February 3, 2020, STC paid individuals to be involved with petitioning to qualify the initiative for the ballot.

STC’s involvement in petitioning in January 2020 resulted in a complaint to the Commission that STC should have registered as a political action committee (“PAC”) and filed campaign finance reports. The Commission staff raised the additional compliance question of whether STC qualified as a ballot question committee (“BQC”). STC argued that it was not required to register with the Commission because its limited activities to promote the initiative were reported as in-kind contributions by No CMP Corridor, a PAC associated with Ms. Howard.

On March 10, 2020, the Commission decided to investigate whether STC was a political action committee (“PAC”). On May 22, 2020, at the suggestion of its staff, the Commission expanded the scope of the investigation to include whether STC was a BQC. STC voluntarily provided some quarterly totals of its 2019 financial activity to demonstrate that its major purpose was not election-related but did not provide a detailed ledger of its transactions that listed vendors and funding sources by name. STC has declined to identify its sources of funding to the Commission, even confidentially for purposes of the investigation. On June 19, 2020, STC filed a Rule 80C proceeding in Maine Superior Court to appeal the Commission’s May 2020 decision to expand its investigation. After not receiving cooperation from STC on document requests, the Commission issued a first subpoena for records on September 18, 2020 to STC and its primary political consulting firm. STC and its consulting firm requested a stay of the subpoena from the Superior Court of Maine.

On December 14 and 22, 2020, the Superior Court (Justice Thomas D. Warren) made two decisions affirming the Commission’s May 2020 decision to expand its investigation and declining to stay or modify the subpoena. On February 1, 2021, the Commission received more than 600 pages of documents. After the staff reviewed these documents, the Commission Chair approved a second subpoena for records from STC and its primary political consulting firm, and another subpoena to a political consulting firm based in Virginia. The focus of the staff’s investigation is:

- Did STC’s funding sources receive communications that would lead the funders to believe that STC would spend a portion of the funding to promote the citizen initiative?
- Did STC engage in spending to support or promote the initiative that was *not* reported as an in-kind contribution by its coalition partner, No CMP Corridor?

If the answer to either of these questions is yes, STC may have been violated Maine’s campaign finance laws by not registering and filing reports as a BQC. The Commission staff recommends not vacating or modifying the subpoenas and asking the Office of Maine Attorney General to enforce the subpoenas in Maine or Virginia state courts as necessary. ***Please keep confidential any information that is shaded on pages 10-18.***

**Applicable Law. ETH. 48-62.**

Commission's Authority to Audit and Investigate

As Maine's campaign finance agency, the Commission is charged by statute, 1 M.R.S. § 1008(2), with the duty "[t]o administer and investigate any violations of the requirements for campaign finance reports and campaign financing" – all of which are set forth in Chapter 13 of Title 21-A.

Title 21-A, section 1003(1) expressly authorizes the Commission to "undertake audits and investigations to determine whether a person has violated this chapter [*i.e.*, chapter 13], chapter 14 [the Maine Clean Election Act, §§ 1121-1128] and the rules of the commission." Pursuant to this statute, the Commission staff conducts compliance reviews of campaign finance reports, and (with additional authorization in 21-A M.R.S. § 1125) audits Maine Clean Election Act candidates. The Commission's rules require staff to bring substantial violations to the Commission's attention. 94-270 C.M.R. Ch. 1, § 4(2)(A). If a source outside the Commission requests an investigation, the Commission is directed by the Election Law to conduct an investigation "if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred." 21-A M.R.S. § 1003(2). Regardless of the source of an investigation, the Commission's rules specify that "[o]nce any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings." 94-270 C.M.R. Ch. 1, § 5(2).

Confidentiality of Investigative Working Papers

Under 21-A M.R.S. § 1003(3-A), the Commission is required to keep confidential certain documents and information ("investigative working papers") acquired or prepared in the course of an audit, investigation or other enforcement matter, including:

- financial information not normally available to the public,
- information that, if disclosed, would reveal sensitive political or campaign information belonging to [an organization investigated by the Commission], and
- intra-agency communications, including records of interviews.

The Commission is authorized to disclose this information *only if* “the information or record is *materially* relevant to a memorandum or interim or final report by the commission staff or a decision by the commission concerning an audit, investigation or other enforcement matter.” 21-A M.R.S. § 1003(3-A) (emphasis added).

#### Subpoena Power

When persons under investigation do not voluntarily provide information or documents requested by the Commission, the Commission is authorized to subpoena witness testimony or records. 21-A M.R.S. § 1003(3-A). Under the Commission’s rules, “[t]he Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is necessary to disposition of the matter.” 94-270 C.M.R. Ch. 1, § 5(3). Persons receiving the subpoena may petition the Commission to vacate or modify the subpoena under the Maine Administrative Procedure Act, 5 M.R.S. § 9060(1)(C), as discussed below.

#### PAC Definition relating to Ballot Questions

Persons raising or spending money to influence a candidate or ballot question election that meet the definition of a PAC are required to register and file campaign finance reports with the Commission. As it relates to *ballot question* elections, the relevant paragraph of the PAC definition is:

A person, including any corporation or association, other than an individual, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose shall register as a PAC within seven (7) days of meeting that threshold.

21-A M.R.S. § 1052(5)(A)(4). To qualify as a PAC under this paragraph, an organization must: (1) have a major purpose of initiating or influencing a campaign (*i.e.*, a Maine candidate or ballot question election), and (2) have received or spent more than \$1,500 for the purpose of influencing that election.

### BQC Definition

Maine campaign finance law provides for an alternative committee classification, a BQC, for an individual or an organization that does not have as its major purpose initiating or influencing a campaign, but that receives contributions or make expenditures of more than \$5,000 to initiate or influence a ballot question:

A person [including an individual or organization] not defined as a PAC that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign is required to register as a ballot question committee ...

21-A M.R.S. § 1056-B. Subsections 1-4 of the BQC statute set out the registration, financial reporting, and record-keeping requirements for BQCs, which are similar to PACs.

### Contributions to a BQC

The BQC statute specifies that the definitions of contribution and expenditures in 21-A M.R.S. §§ 1052(3) and (4) apply to BQCs. 21-A M.R.S. § 1056-B(2). In addition, under subsection 2-A, the term “contribution” also includes:

1. Funds that the contributor specified were given in connection with a campaign.
2. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign.
3. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient’s activities regarding a campaign.
4. Funds or transfers from the general treasury of an organization filing a BQC report.

21-A M.R.S. § 1056-B(2-A).

### Donor Exception

The BQC definition contains an exception for an individual or organization that is influencing a ballot question *only by making contributions to a PAC or BQC* (referred to below in this memo as the “donor exception”):

A person whose only payments of money for the purpose of influencing a campaign in this State are contributions to political action committees or ballot question committees registered with the commission or a municipality and who has not raised and accepted any contributions for the purpose of influencing a campaign in this State is not required to register and file campaign finance reports under this section.

21-A M.R.S. § 1056-B (last sentence of first paragraph).<sup>1</sup> The PAC definition contains a similar exception for donors (an organization that is influencing an election only by making contributions to candidates, party committees, political action committees and ballot question committees). 21-A M.R.S. § 1052(5)(B)(4).

### Legal Standard for Vacating or Modifying a Subpoena

The Maine Administrative Procedure Act provides that a person subpoenaed by a state agency to testify or to produce documents may petition the agency to vacate or modify the subpoena.

After such investigation as the agency considers appropriate, the agency may grant the petition in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate to reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when the evidence is requested.

5 M.R.S. § 9060(1)(C).

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<sup>1</sup> STC relies on this donor exception to argue it is not a BQC.

## History of Investigation

This matter concerns a limited liability company, Clean Energy for ME, that has operated under the name of Stop the Corridor. From 2018-2020, STC engaged in public outreach through various media and grassroots organizing of volunteers to oppose NECEC in state and federal permitting processes and through municipal resolutions and decisions. STC paid for professional TV advertising in 2019, which included everyday Mainers expressing their opposition to the project and characterized NECEC as “A bad deal for Maine.”

In June 2019, at least two people involved in STC were part of a coalition opposing NECEC that began discussing a citizen initiative to prevent the project. Individuals associated with another anti-NECEC organization, led by Ms. Sandi Howard, applied to the Secretary of State and formed a political action committee, No CMP Corridor. Between October 18, 2019 and February 3, 2020, No CMP Corridor and other associations circulated petitions to qualify the initiative for the ballot. On March 4, 2020, the Secretary of State determined that the petitions were valid and, after legal challenges were resolved in May, the citizen initiative to reject NECEC was scheduled for the November 3, 2020 ballot. On August 13, 2020, the Maine Supreme Judicial Court ruled that the initiative could not appear on the ballot for constitutional reasons. *Avangrid Networks, Inc. v. Sec’y of State*, 2020 ME 109. (Please be aware that all compliance issues in this investigation relate to the *first* initiative to prevent NECEC which was removed from the ballot, and do not relate to the second initiative opposing the NECEC project that is scheduled for later this year.)

During the period of October 2019 - February 2020, STC compensated some staff members to engage in petitioning activities to qualify the initiative for the ballot. In addition to compensating staff, STC also paid for related costs such as travel reimbursements, printing, office supplies, and postage. STC viewed these activities as a donation to No CMP Corridor. In three quarterly campaign finance reports filed with the

Commission, No CMP Corridor PAC reported STC's expenses as in-kind contributions totaling \$85,727.

On January 17, 2020, Clean Energy Matters (a PAC funded to support the NECEC transmission project) requested an investigation into whether STC qualified as a PAC.<sup>2</sup> ETH. 1-2. The Commission staff raised the additional compliance question of whether STC should have registered as a ballot question committee (BQC).

In a February 12, 2020 response, STC argued that it is not a PAC because its major purpose was to encourage citizens to oppose NECEC through state and federal permitting proceedings, and in municipal resolutions or approval processes. ETH. 3-16. STC acknowledged that it worked with No CMP Corridor on the petition effort but described the project as a small and very ancillary part of STC's mission. According to STC, it was exempt under the donor exception because staffing and other costs incurred in petitioning were reported as in-kind contributions by No CMP Corridor. (In other words, STC argued that because it was merely a donor to a PAC registered with the Commission, it did not, itself, need to register and file reports as a BQC.) Stop the Corridor claimed that it had never solicited contributions for its work on the initiative and had not received funds specifically for its work on the referendum. In its February 12, 2020 response, STC provided no information about its structure, organization, personnel or any constituent members, other than noting that STC was an assumed name for a limited liability company in good standing with the Maine Secretary of State.

At a meeting on March 10, 2020, after thorough consideration of the written submissions and presentations by opposing counsel, the Commission voted (2-1) to adopt a motion to conduct an investigation to determine whether or not Stop the Corridor qualified as a PAC. Based on preliminary information provided by STC in March and April 2020 and a recommendation by the Commission staff, the Commission decided at a meeting on May

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<sup>2</sup> To avoid confusion, please note that Clean Energy for ME, LLC is the actual name of a limited liability company *opposing* the NECEC project that is operating under the name of Stop the Corridor and that has not registered with the Commission. Clean Energy Matters is a political action committee registered with the Commission that *supports* the NECEC project.



22, 2020, to expand the investigation to also consider whether STC qualified as a BQC. On May 13 and June 1, 2020, the Commission staff requested from STC's legal counsel an unredacted ledger of transactions that would list by name STC's sources of revenue and payees. The Commission staff viewed this transaction list as necessary to conducting an effective interview of STC's manager, but STC did not provide an unredacted ledger.

On June 19, 2020, STC filed a petition for review of final agency action seeking a declaration that the Commission's May 22 action to expand the investigation was illegal. Among other points, STC argued that because the pro-NECEC PAC that had initially requested the investigation (Clean Energy Matters) had not provided sufficient evidence to believe that STC was a BQC, the Commission was prevented from investigating this question.

On August 18, 2020, the Commission staff sent STC's counsel a letter requesting seven categories of documents relevant to whether STC qualified as a PAC or BQC. The request was addressed to STC and its primary political consulting firm. On the response deadline, they asked the Commission, in light of the removal of the initiative from the ballot, to reconsider the request for documents while the Rule 80C proceeding was underway in the Maine courts.

On September 18, 2020, after conferring with the Commission's counsel and executive director, the Commission Chair authorized an Investigative Subpoena to Produce Records which requested documents from STC and its political consulting firm. The respondents applied to the Maine Superior Court for a stay of the subpoena until the Maine Superior Court resolved the Rule 80C proceeding.

Through an Order dated December 14, 2020, the Superior Court of Maine (Justice Thomas D. Warren) the court denied STC's motion for a stay of the subpoena because STC did not demonstrate a likelihood of success on the merits and because the court concluded that the information sought in the subpoena appeared relevant to the question of whether STC qualified as a ballot question committee. ETH. 17-18. In a separate

Order dated December 22, 2020, the court decided that the Commission's May 22, 2020 expansion of the investigation was not an appealable final agency action. ETH. 19-24. In the alternative, the court held, if the Commission's decision to investigate was properly before the court, the court affirmed the Commission's decision to expand the investigation.

On February 1, 2021, the Commission received over 600 pages of documents from STC and its primary political consulting firm. After considering this evidence, the Commission staff requested the Chair to authorize two additional subpoenas for records:

- a second Investigative Subpoena to Produce Records to STC and its primary political consulting firm, [REDACTED] which the Chair signed on March 16, 2021. ETH. 25-32.
- an Investigative Subpoena to Produce Records to [REDACTED], which the Chair executed on April 2, 2021. ETH. 42-45.

The respondents have raised legal objections to these two subpoenas, discussed separately below.

### **Subpoena to STC and its Primary Political Consulting Firm**

In a letter dated April 16, 2021, counsel for STC and its primary political consulting firm objected to some of the requests in the Commission's second investigative subpoena for records. ETH. 33-35. The objections include vagueness, overbreadth, scope of the Commission's jurisdiction, and administrative burden. The Commission staff recommends no modifications of the subpoena and, if necessary, applying to the Superior Court of Maine to enforce the subpoena. Below we describe the rationale for each of these requests and some brief comments in response to the objections.

Rationale for Documents Requested from STC and [REDACTED]

The rationales for the first seven requests in the subpoena are set out in the chart below.

<i>Summary of Request #1</i>	Documents referring to the citizen initiative that were transmitted between STC and [REDACTED] from June 17, 2019 to August 13, 2020
<i>Relevance to Investigation</i>	STC paid a monthly fee to [REDACTED] for political consulting. Two of its employees were in regular email correspondence with STC. Obtaining correspondence and other documents transmitted between STC and [REDACTED] referring to the citizen initiative will lead to a fuller understanding of STC’s activities to promote the initiative, including whether STC engaged in other paid activities not reported as in-kind contributions by No CMP Corridor.
<i>Summary of Request #2</i>	Documents referring to the citizen initiative transmitted between STC and Calpine Corporation, Vistra Corp., and Mainers for Local Power from June 17, 2019 to August 13, 2020
<i>Relevance to Investigation</i>	Two Texas energy companies opposed to NECEC (Vistra Corp. and Calpine Corporation) formed a PAC to promote the first citizen initiative, Mainers for Local Power. During Dec. 2019 – March 2020, the PAC paid a signature-gathering firm roughly \$660,000 to gather signatures on petitions. These entities should be viewed as partners or allies of STC and No CMP Corridor. Obtaining correspondence and other documents transmitted between STC and these partners/allies referring to the citizen initiative will lead to a fuller understanding of STC’s activities to promote the initiative, including whether STC engaged in other paid activities not reported as in-kind contributions by No CMP Corridor.
<i>Summary of Request #3</i>	Invoices transmitted by STC to [REDACTED] from June 17, 2019 to August 13, 2020
<i>Relevance to Investigation</i>	Obtaining all invoices and requests for money during this period may lead to evidence of whether STC’s funding sources and its agents were specifically paying costs related to the citizen initiative. The request includes invoices prepared by STC or by other vendors. The only invoices provided in the first document production were 14 invoices from [REDACTED] to STC and some transmittal emails.

<i>Summary of Request #4</i>	Documents relating to television advertising from November 1, 2019 to January 31, 2020.
<i>Relevance to Investigation</i>	In support of its complaint, Clean Energy Matters provided information to the Commission concerning STC's spending on advertising based on information available to the public on the Federal Communications Commission website. This information suggests that STC engaged in significant television advertising through May 2019 and then took a hiatus for five or six months. According to this information, STC resumed its spending on television advertising sometime around December 2019 and that its television advertising spiked. The Commission staff seeks documents for the three-month period of Nov. 2019-Jan. 2020 to determine whether this increase in TV advertising was for the purpose of promoting petitioning that would continue through February 3, 2020 or to influence public opinion during the ballot question campaign that was anticipated for later in 2020.
<i>Summary of Request #5 - #6</i>	Documents relating to [REDACTED] and [REDACTED]
<i>Relevance to Investigation</i>	STC paid [REDACTED] to [REDACTED] and [REDACTED] to [REDACTED]. These two entities do not have any promotional, marketing or informational presence on the internet. The Commission staff is unable to determine the purpose of these payments and whether they may be expenditures to promote or support the citizen initiative.  [REDACTED]  [REDACTED] The

	Commission should verify whether payments to this contractor were to promote the citizen initiative.
<i>Summary of Request #7</i>	Polling questions for public opinion surveys concerning the citizen initiative
<i>Relevance to Investigation</i>	The first document production contained emails suggesting that STC engaged in polling that related, in part, to the first citizen initiative. STC may have been required to report these expenditures as a ballot question committee. STC forwarded invoices related to polling to [REDACTED]. We seek the polling questions to verify the purpose of this financial activity and to calculate how much of the costs of these polls should be attributed to the citizen initiative.

Commission Staff's Responses to Objections by STC and its Primary Consulting Firm

*Requests No. 1 and 2 (communications with consultant and coalition partners).* The first two requests in the subpoena is for certain documents relating to the NECEC initiative transmitted between STC (or its consultant) and its consultants [REDACTED] (Request #1) or its coalition partners Calpine Corporation, Vistra Corp. and Mainers for Local Power (Request #2). STC argues that the time period of June 17, 2019 to August 13, 2020 is overly broad based upon the Commission's own recognition that the initiative campaign began no earlier than August 1, 2019. But the June 17 beginning date is derived from STC's own document production. Specifically, it is derived from a June 17, 2019 email from STC indicating that it was part of a coalition that had been talking about whether to pursue a ballot question. Based on this newly discovered information, the Commission staff believes the relevant time period for document and informational requests related to the initiative should be June 17, 2019 (the approximate date of when an initiative was first considered) to August 13, 2020 (the date of the Avangrid decision removing the question from the November 3, 2020 ballot).

In the subpoena, the Commission defined the term "Activities to Support the NECEC Initiative" as:

Activities to support the NECEC initiative” means all activities supporting or promoting the Citizen Initiative to Reject NECEC, including but not limited to exploring the feasibility of the direct initiative, drafting legislation for the direct initiative, forming business entities, gathering signatures on petitions for the direct initiative, researching public opinion concerning the direct initiative, paying for video advertising or other communications to influence opinion concerning the direct initiative, or engaging in a political campaign in support of the direct initiative.

STC and its primary consulting firm argue this definition is vague, ambiguous, and overly broad.

On the contrary, the activities listed in the definition are clear and well-defined, and among the types of activities that PACs and BQCs typically need to disclose in campaign finance reports. The Commission seeks information about activities “supporting or promoting” the initiative because the term “influence” is defined in Maine campaign finance law to mean “promote, support, oppose or defeat.” 21-A M.R.S. § 1012(4-A). The Commission’s requests should lead to a fuller understanding of STC’s actual involvement in the initiative and STC’s financial activities to promote the initiative, including whether STC engaged in other paid activities not reported as in-kind contributions by No CMP Corridor.

*Request No. 3 (invoices transmitted by STC to [REDACTED]).* Under the ballot question committee statute, an organization that receives contributions exceeding \$5,000 for the purpose of initiating or influencing a ballot question campaign must register and file campaign finance reports as a ballot question committee. 21-A M.R.S. § 1056-B. Subsection 2-A of the statute defines "contribution" to include:

...

B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign;

C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed

in the context of the contribution and the recipient's activities regarding a campaign ....

21-A M.R.S. § 1056-B(2-A). The Commission is requesting “all invoices, bills or requests for money” from STC to its funding sources and their agents in order to verify whether STC received more than \$5,000 in contributions as that term is defined in § 1056-B(2-A). The four emails discussed in the accompanying confidential memo provide a factual basis to warrant further investigation of this issue. Based on a previous determination by the Commission concerning the National Organization for Marriage that was upheld in litigation, the Commission may take the position that a request for money by STC that led a funding source to believe that *a portion* of the funding would be used specifically to influence the NECEC initiative qualifies as a contribution under § 1056-B(2-A), even if part of the funds were used for other political purposes.

*Request No. 4 (documents relating to television advertising).* As noted above, the information provided by Clean Energy Matters suggests that STC engaged actively in television advertising through May 2019, took a five- or six-month hiatus, and then resumed television advertising in December 2019. The Commission staff seeks documents for the limited three-month period of November 2019 – January 2020 to determine whether this resumption in TV advertising was for the purpose of promoting petitioning that would continue through February 3, 2020 or to influence public opinion during the ballot question campaign that was anticipated for later in 2020.

STC argues that the request in the subpoena is overly broad and unduly burdensome because it does not focus on particular advertisements, but rather seeks documents concerning all such advertisements. However, it is impossible to narrow the request in this manner without excluding potentially relevant materials. The purpose of this request is to understand why STC resumed its advertising as initiative proponents were collecting signatures. Documents relating to any of the advertisements that STC ran during this period could shed light on this question.

*Request No. 5 and 6 (information concerning two specific payees).* STC objects to requests 5 and 6 on grounds that the major purpose of [REDACTED] and [REDACTED] [REDACTED] are not relevant to the investigation.

The Commission seeks to determine whether all expenditures by STC to initiate, promote or support the first citizen initiative were disclosed by No CMP Corridor as in-kind contributions, which would allow STC not to register as a BQC under the donor exception. STC made large payments to two limited liability companies [REDACTED] [REDACTED] that have no promotional, marketing, or informational websites on the internet.

[REDACTED] The Commission is requesting documents related to these two entities to determine if any payments to them were for the purpose of supporting or promoting the initiative. Additional information concerning this request is contained in the confidential memo.

*Request No. 7 (polling information).* The Commission has identified four polls arranged by STC between August 2019 and April 2020 for which there is reason to believe that they included questions related to the citizen initiative. The Commission should obtain the full polling questions for these four polls in order to reach a determination of what portion of the costs of these polls should be considered for the purposes of influencing the citizen initiative.

**Investigative Subpoena to [REDACTED]**

To carry out its responsibility to undertake audits and investigations, the Maine Legislature has authorized the Commission to subpoena witnesses and records “whether located within or without the State ...” 21-A M.R.S. § 1003(1). On April 2, 2021, the Commission Chair executed an Investigative Subpoena to Produce Records addressed to [REDACTED], a political consulting firm [REDACTED]. ETH. 41-45. The subpoena requests four categories of documents. The requested documents are relevant to a number of related questions:



- Were STC’s funding sources, or their agents, aware that STC was supporting or promoting the first citizen initiative opposing the NECEC project?
- Did STC’s funding sources, or their agents, provide funding to STC for the purpose of supporting or promoting the citizen initiative?
- Did STC’s funding sources, or their agents, provide funding in response to communications from STC that would lead the sources to believe that a portion of their funding would be used to support or promote the citizen initiative?

On April 23, 2021, a private process server engaged by the Commission served the subpoena [REDACTED], in conformance with 21-A M.R.S. § 1003(1)(A).

[REDACTED] arguing that the Commission is required to follow the procedures of the Uniform Interstate Depositions and Discovery Act (“UIDDA”), which Maine has adopted in 14 M.R.S. §§ 401-408, [REDACTED]

The UIDDA, adopted by Maine in 2019, requires that a party seeking to enforce an subpoena issued by an out-of-state court against a party in Maine “must submit a foreign subpoena to the clerk of a District Court in the district or to the clerk of the Superior Court of the county in which the discovery is to be conducted.” 14 M.R.S. § 403. ETH. 61-62. Since this case involves a subpoena issued in Maine to an out-of-state entity, Maine’s UIDDA is not applicable. Rather, the Commission’s issuance of out-of-state subpoenas is governed by the Commission’s statute, 21-A M.R.S. § 1003(1).

Nor is it clear that the UIDDA even applies to agency subpoenas. The UIDDA defines a “foreign subpoena” to mean a “subpoena issued *under authority of a court of record* of a foreign jurisdiction,” and likewise defines “subpoena” to mean “a document, however denominated, issued *under authority of a court of record. . .*” 14 M.R.S. § 402(2) & (5)

(emphasis added). [REDACTED]

[REDACTED]. The subpoena at issue in this matter was issued under authority of the Commission, pursuant to an express grant of authority from the Legislature in 21-A M.R.S. § 1003(1).

Notably, the Commission's statutory subpoena power expressly extends beyond the territorial borders of Maine. And, § 1003 includes a specific process for service of Commission-issued subpoenas, which differs from the process set forth in the UIDDA. There is no indication that the Maine Legislature, in enacting the UIDDA, intended to limit or modify the Commission's authority in § 1003.

Thank you for your consideration of this agenda item.

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January 17, 2020

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SENT VIA ELECTRONIC AND USPS

Dear Mr. Wayne:

On behalf of Clean Energy Matters, I am writing to request that the Commission undertake an immediate investigation into the activities of a group operating under the name 'Stop the Corridor.' We believe this entity was obligated to file as a political action committee pursuant to M.R.S. 21-A § 1004 (4) on or before December 19, 2019. The statutory provision requires a political action committee to be properly registered with the Commission within seven days after the minimum contribution or expenditure levels set forth in 21-A MRSA §1052-A have been met. Based upon the recent quarterly filing made by 'No CMP Corridor,' it would appear that 'Stop the Corridor' exceeded that threshold on or about December 12, 2019.

The fourth quarter PAC filing made by 'No CMP Corridor' identifies approximately \$50,000 of in-kind expenditures made by 'Stop the Corridor' to 'No CMP Corridor.' These items include postage, printing costs, office supplies and website development. In addition, the filing indicates an in-kind contribution of approximately \$40,000 for 'staff time for volunteer recruitment.' It would appear that the nature and intensity of these expenditures are focused exclusively on distributing petitions and collecting signatures for the current campaign regarding the clean energy transmission line.

'Stop the Corridor' is listed on the Secretary of State's Corporation Database as an assumed name for a limited liability company named "Clean Energy for ME, LLC" with a charter number 20185797DC. 'Stop the Corridor' operates a website and describes itself as "a coalition of concerned citizens and organizations." It lists a PO Box address in Westbrook, but indicates no other staff, board of directors or executive committee. The website was regularly running Twitter and Facebook updates encouraging visitors to sign the petition against the clean energy transmission line and providing contact information and locations to do so.

Among the three specific statutory definitions of a political action committee under Maine election law is the following:

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Page 2

Any person, including any corporation or association, other than an individual, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose; 21-A MRS § 1052 (5)(A)(4).

Notably, none of the exceptions to the definition set forth in 21-A MRS § 1052 (5)(B) apply.

Moreover, based upon publically available media sources, we believe that 'Stop the Corridor' purchased television and digital advertising in excess of \$1.4 million over the course of the past calendar year. Given that 'Stop the Corridor' had an obligation to file as a political action committee as of December 19, 2019, they would have had to report as part of their initial filing, pursuant to 21-A MRS § 1052-A et. seq. and 21-A MRS § 1057, **all contributions and expenditures** made since January 1<sup>st</sup> of the reporting year.

Pursuant to the Commission's authority under 21-A MRSA § 1003, we request that the Commission undertake an investigation into the political activities of 'Stop the Corridor.' The filing from 'No CMP Corridor' establishes sufficient grounds that a violation of 21-A MRS § 1004 (4) has occurred.<sup>1</sup> This is disturbingly consistent with a lack of transparency of unreported dark money that has already been spent by out of state fossil fuel interests opposed to the clean energy transmission line. In marked contrast to the full reporting by Clean Energy Matters, which included in its recent filing advertising costs that were not required to have been reported under Maine law, Stop the Corridor and other out-of-state groups are continuing to flaunt Maine election law by failing to report the actual amount and source of their funding.

Please advise at your earliest convenience as to your staff's determination of the appropriateness of a further investigation. If your staff or the Commission need any further supporting documentation or information pursuant to this request, please do not hesitate to let me know. Thank you in advance for your consideration.

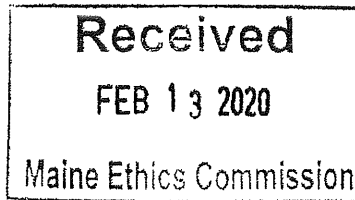
Sincerely,



Newell A. Augur  
Counsel for Clean Energy Matters

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<sup>1</sup> Based upon statute and existing Ethics Commission guidance, we do not believe that 'Stop the Corridor' can be properly characterized as a ballot question committee pursuant to 21-A MRSA § 1056-B. Even if such an argument could be made, the date 'Stop the Corridor' should have filed as a ballot question committee, at the absolute latest, would have been on or before January 7, 2020. 21-A MRSA § 1056-B 1-A. The entity exceeded the \$5,000 threshold no later than December 31, 2019, and likely did so prior to that date.



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February 13, 2020

Michael J. Dunn, Esq.  
Political Committee and Lobbyist Registrar  
State of Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333-0135

**RE: Request for Investigation – Stop the Corridor Response**

Dear Mr. Dunn:

I write on behalf of my client, Stop the Corridor<sup>1</sup>, providing an initial response to the request for investigation recently filed by Clean Energy Matters. Stop the Corridor (“STC”) appreciates the opportunity to respond and articulate to the Commission staff why it believes the request for investigation filed by Clean Energy Matters (“CEM”) is without merit.

***1. Stop the Corridor is not a political action committee.***

Maine law defines a political action committee (“PAC”) as “a Person, including any corporation or association, other than an individual, that has as its *major purpose* initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose shall register as a PAC within seven (7) days of meeting that threshold.” 21-A M.R.S.A. §1052(5)(A)(4); (emphasis added).

Critical to this 2-part definition is the requirement that the entity at issue have as its *major purpose* the initiating or influencing of a campaign.<sup>2</sup> While no definition of “major purpose”

<sup>1</sup> Stop the Corridor is the “assumed” name for Clean Energy for ME LLC, a limited liability company in good standing with the Maine Department of the Secretary of State.

<sup>2</sup> Clean Energy Matters request for investigation focuses solely on the expenditures made by STC and ignores the equally important major purpose component of the PAC definition. In addition, CEM appears to misunderstand the PAC statute in several important ways. First, it stipulates in its follow up correspondence to Commission staff that “Maine law does not define these political advertisements as “expenditures” since, technically, the ads did not specifically direct Maine people to sign the petition now being circulated” (CEM letter to commission staff dated January 31, 2020, page 4). That statement is contradicted in its original filing where it claims that all media expenses should have been reported after the in-kind contributions trigger a PAC registration. While these

exists in Maine election law or rule, Oxford University Press defines purpose as “the reason for which something is done or created or for which something exists.” They further define major as “greater or more important; main.”

It logically follows that the only entities which qualify under the PAC statute are those for which their primary purpose or top priority is to influence an election. Without that foundational focus, a PAC, by definition, doesn’t exist in this case.

Stop the Corridor was created in April 2018 out of concern that the proposed CMP corridor would result in catastrophic environmental and economic damage to the State of Maine. The purpose of STC was, and remains, to develop a coalition of allied organizations to stop the transmission corridor through participation and intervention in the local, state and national permitting process. That primary focus, from 2018 to the present, has always been on influencing the ongoing local, state and federal *permitting* process, not the referendum process, which began in October when petitions were available for circulation by No CMP Corridor PAC (“NoCMP”). To understand this point, we believe it is imperative to understand what that permitting process consists of, and how STC and allied organizations believe they can influence that process outside an electoral context.

In order to receive ultimate approval to move forward with the new proposed transmission line, CMP is required to participate in and receive approvals from federal, state and local entities including but not limited to:

- United States Army Corps of Engineers – *Clean Water Act, Section 404 Permit*;
- United States Department of Energy – *Presidential Permit*;
- State of Maine Department of Environmental Protection – *Natural Resources Protection Act Permit and Site Location of Development Act Permit*;
- State of Maine Land Use Planning Commission – *Special Exception Permit*;
- State of Maine Public Utilities Commission - *Certificate of Public Convenience and Necessity*;
- At least 38 individual municipal permits.

As a part of these lengthy permitting processes, the regulatory entities include *public input* as part of their decision-making proceedings. That public input is taken into consideration by the regulatory bodies in their deliberations and ultimate decision to approve or deny a permit application.

To influence and drive that public input, STC (and many other groups) undertook the task of educating Mainers about the flaws in the corridor project, both at the local and statewide level. Concurrent with that education, STC identified and trained citizen opponents to actively participate and oppose the project in public forums, meetings and hearings around the state.

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contradictory statements are confusing, we agree wholeheartedly that STC’s media spending is unrelated to the signature gathering effort.

To help understand what these efforts look like, we provide a general outline of STC's activities below:

**August 2018**

- Begin running Facebook ads opposing the corridor and identifying opponents;
- Began outreach to allied organizations who had expressed opposition to the corridor.

**September 2018**

- Began working with grassroots opponents on participation at the municipal level;
- Organized citizen opponents for rally in Augusta concurrent with DEP public hearings;
- Organized turnout for municipal votes to oppose the corridor;
- Developed and designed print mail for municipal votes.

**October 2018**

- Continued to engage in municipal votes with turnout and mail;
- Driving emails and phone calls to PUC opposing permit issuance.

**November 2018**

- Produced online video ads to oppose the corridor;
- Continued engagement in public hearing turnout through paid mail and engagement in municipal votes;
- Drove attendance and engagement in public information sessions in municipalities.

**December 2018**

- Produced and aired television ads to oppose the corridor to strengthen opposition for public comment proceedings;
- Continued to engage in turnout, paid mail and engagement in municipal votes.

**February 2019**

- Produced and aired internet advertising against the corridor;
- Continued to produce and air internet advertising opposing the corridor and encouraging public participation;
- Continued engagement in turnout, paid media and engagement in municipal votes.

**March 2019**

- Continued to engage in turnout, paid mail and engagement in municipal votes;
- Held rally at the statehouse to influence legislators on several legislative votes<sup>3</sup>;
- Continued organizing and turnout to both PUC and DEP public hearings.

**April 2019**

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<sup>3</sup> All activities involving legislation were carefully tracked and did not cross reporting thresholds.

- Began engagement with grassroots volunteers on engaging with legislators on several pieces of legislation which might have influenced the corridor project;
- Continued engagement with citizen opponents on upcoming municipal town halls and forums.

#### May 2019

- Continued engagement in legislative turnout and grassroots activity through social media;
- Continued to run television ads generally opposing corridor;
- Continued engagement in turnout, paid mail and engagement in municipal votes.

#### June 2019

- Continued engagement in turnout, paid mail and engagement in municipal votes;
- Continued to run social media ad encouraging grassroots opponents to contact legislators on pending legislation;
- Continued to run television ads generally opposing the corridor and encouraging public participation.

#### August 2019

- Continued to engage in turnout, paid mail, and engagement in municipal votes;
- Engaged grassroots network to submit letters and email to Army Corps public comment process.

### ***REFERENDUM PETITIONS ARE APPROVED TO CIRCULATE – OCTOBER 2020***

#### September 2019- December 2019

- Continued to engage in turnout, paid mail and engagement in municipal votes;
- Continued social media advertising opposing corridor and recruiting grassroots contacts as part of the ongoing public education campaign;
- Continued organizing for public input for Army Corps permit;
- Worked with NoCMP to help organize volunteers for signature effort (*reported staff time as in-kind contribution to NoCMP*);
- Encouraged efforts to gather signatures for referendum through non-paid social media and email (*staff time reported as in-kind to NoCMP*).

#### January 2020

- Continued production and airing of television ads opposing corridor (no mention of referendum) as part of ongoing public education campaign;
- Continued in-kind volunteer recruitment for signature efforts (*reported staff time as in-kind to NoCMP*).
- Continued to organize and work with allied groups to mobilize grassroots volunteers for upcoming municipal votes.



As is clear from this review, the primary purpose of STC is not, and has never been, to initiate or influence the citizen's initiative seeking to overturn the PUC permit. Once introduced by NoCMP, STC provided in-kind support mostly in the form of staff time organizing volunteers and petition management. While that in-kind support was given, STC continued its regular outreach and organizing activities focusing on influencing the ongoing permitting process. The referendum process seeks to stop the project through a Resolve – not through the broader federal, state and local array of permits which STC is working to influence.

It should also be noted that STC is just one of a group of organizations who are engaging volunteers to oppose the corridor through the permitting process. These groups, including but not limited to Patagonia, Natural Resources Council of Maine, the Appalachian Mountain Club and the Sierra Club have also been engaged in this broader effort of opposition – none have registered and reported as a PAC because of those activities.<sup>4</sup>

STC was founded and organized to stop the permitting of CMP's transmission corridor – not to influence the referendum campaign put forward by NoCMP. That purpose does not change, or morph based on the actions of an unaffiliated group. Instead, when the referendum was launched, STC continued with its core activities around permitting and began to carefully track (and report to the NoCMP) any time spent assisting the referendum effort. That assistance did not transform STC into a PAC, as its major purpose and the activities around that purpose fundamentally remained the same.

## *2. Stop the Corridor is not a ballot question committee.*

While CEM does not allege in its complaint that STC should have registered as a ballot question committee, we do wish to expressly address that question.

As noted in your letter dated January 31, 2020, a ballot question committee is defined in Maine law as “[a] person, including an individual or organization, not defined as a PAC that receives contributions or makes expenditures more than \$5,000 for the purpose of initiating or influencing a campaign.” 21-A M.R.S.A. § 1056-B.

In a document entitled “Guidance on Reporting as a Ballot Question Committee” adopted by the Commission on July 27, 2008 and updated by Commission staff on May 22, 2017, the issue on donating staff time or other services is directly addressed.

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<sup>4</sup> We attribute that lack of registration to the common understanding, acknowledged by CEM, that ads and activities directly generally to the corridor project (not to the referendum) are not expenditures to influence an election.

***What if an organization donates the time of its paid employees to a PAC or a BQC to influence a ballot question or makes payments to vendors for goods or services to influence a ballot question in coordination with a PAC or BQC?***

*Donating paid staff time to a PAC or BQC, and coordinating expenditures with a PAC or BQC are in-kind contributions to the PAC or BQC. They do not count toward the \$5,000 expenditure threshold that would trigger filing of a §1056(B) report by the donor; however, the PAC or BQC must report them as in-kind contributions.*

*An organization's expenditures to influence a ballot question may be considered an in-kind contribution to a PAC or BQC only if they are coordinated with the PAC or BQC or are accepted by a PAC or BQC. Expenditures to influence a ballot question made independently of the PAC or BQC should not be considered contributions to the PAC or BQC and would count toward the \$5,000 threshold.*

Stop the Corridor was very careful about their decision to coordinate and assist NoCMP with their signature gathering efforts. They reviewed the statutes governing both PACs and BQCs and, based on the above guidance adopted by the Commission, understood that they would have to carefully track and report all staff time to NoCMP as an in-kind contribution. As a result, they created a tracking system to account for time spent on referendum activities and accurately reported that time to NoCMP— who subsequently reported it in their January Quarterly<sup>5</sup>.

Stop the Corridor undertook no independent activities to influence the referendum. They worked closely with NoCMP and used their donated staff to assist the referendum with tasks they identified for STC (e.g. volunteer recruitment, petition management). As a result, the in-kind contributions given to the referendum do not constitute “expenditures” which count toward the threshold triggers for either a PAC or a BQC.

It is common practice for entities to contribute in-kind resources to PACs and BQCs. There are many examples of such contributions in ballot campaign and the question of how (and if) to regulate those types of contributions has been the subject of debate and discussion at the legislature. In 2018, the legislature heard testimony specifically on the issue of organizations making cash or in-kind contributions to ballot question committees. There was no question in the testimony that such contributions were allowed, but concerns were expressed about the large amounts of such donations. To address this issue, the Veterans and Legal Affairs Committee, at the request of commission staff enacted new reporting requirements for contributions over \$100,000. That requirement, the Major Donor Report, provides for additional donor disclosure once contributions exceed \$100,000. (See attachment B for commission staff testimony and chart of contributions for LD 1865).

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<sup>5</sup> Commission staff asked for additional detail on the in-kind contributions reported on NoCMP's Schedule A-1. That additional information is provided in Attachment A.

The legislative history of this new requirement is important because it makes clear that the kind of contributions made by STC to NoCMP have long been acknowledged and understood to be legal. In addition, CEM may claim a \$50,000 in-kind contribution is “intense,” but they fail to recognize that a specific threshold well below the STC contributions was recently debated and adopted. Perhaps most importantly, that threshold was specifically put forth and recommended by the commission itself.

Ballot question committee formation can also be triggered if an entity solicits or receives contributions which meet one of the four tests outlined in 21-A M.R.S.A §1056(2)(A). All four of these tests outline situations where contributions to an entity potentially trigger registration as a BQC.

STC has never solicited contributions for its work on the corridor referendum – nor has it received funds specifically for its work on the referendum. It receives, and has received, funds to stop the ongoing permitting of the corridor. Its in-kind work for the referendum was a small and very ancillary part of its mission. Funding for STC has remained consistent and unchanged since it was created in April 2018.

We are keenly aware that there is much curiosity about who is funding STC’s work. But curiosity alone should not justify compelling any entity to disclose financial information not required by the law.<sup>6</sup> Clean Energy Matters has not alleged that STC has solicited or received contributions triggering registration and reporting. They have put forth no evidence, despite their detailed outlining of email and social media posts from STC, that show STC ever solicited contributions from anyone to support any of their work. STC maintains its position that it has not received contributions which meet any of the four (4) criteria laid forth in the statute.

Stop the Corridor is neither a PAC nor a BQC. Clean Energy Matters assertions are incomplete and leave the public with a misleading and incomplete analysis of the actions undertaken by STC.

As laid out above, STC has attempted to provide enough detail to support its assertions that its major purpose is not referendum related, that its in-kind contributions do not trigger registrations and that its funding is entirely focused on the non-electoral work it has been doing for almost two (2) years.

The CMP transmission project is one of the most hotly contested statewide development projects in Maine history. We understand and respect that people on both sides feel passionately in their positions, but we firmly believe this request for investigation is, at its best, thin on the merits and at worst, a vehicle to score political points. We have attempted to provide you with ample

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<sup>6</sup> Commission staff in its letter dated January 31, 2020 asked STC to provide information about its sources of income. Without understanding more about how that question is relevant to this inquiry, STC is declining to provide this information. STC provides the same response to the staff’s question about the employment status of STC’s staff members. We remain open to further discussion about how these questions are relevant to the issues at hand and not outside the scope of this inquiry.

Stop the Corridor – Response to Request  
February 12, 2020  
Page 8

information to show STC is acting firmly within the law and we urge you to recommend that the commission take no further action.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katherine R. Knox', written over a horizontal line.

Katherine R. Knox

BQC Name: NO CMP CORRIDOR

**SCHEDULE A-1  
IN-KIND CONTRIBUTIONS**

- In-kind contributions are goods and services (including facilities) that a committee received at no cost or at a cost less than the fair market value. They include all goods and services purchased for the committee by others if the committee does not expect to reimburse the person who made the purchase.
- For contributors who gave more than \$50, the committee must report the contributor's name, address, occupation, and employer.
- If employment information has been requested from the contributor and the contributor has not provided it, indicate "information requested" for the occupation and employer.
- For contributions totaling \$50 or less, please enter "unitemized contributions" as the contributor and the total amount and the appropriate key code on a line on this page. Once a contributor has given the committee more than \$100 in a report period, you must list that contributor separately.

DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP CODE		DESCRIPTION (of goods, services, facilities, or discounts received)	TYPE (use key code)	VALUE (estimated fair market value)
11/30/2019	STOP THE CORRIDOR PO BOX 98 WESTBROOK, ME 04098	[for mailing petitions for certification]	POSTAGE	3	\$857.31
12/12/2019	STOP THE CORRIDOR PO BOX 98 WESTBROOK, ME 04098	[for mailing petitions for certification]	PRINTING COSTS	3	981.15
12/31/2019	STOP THE CORRIDOR PO BOX 98 WESTBROOK, ME 04098	[for mailing petitions for certification]	OFFICE SUPPLIES	3	486.59
12/31/2019	STOP THE CORRIDOR PO BOX 98 WESTBROOK, ME 04098	[driving to town offices for petition cert]	MILEAGE	3	4,583.42
12/31/2019	STOP THE CORRIDOR PO BOX 98 WESTBROOK, ME 04098	[two staff participating in planning mtg]	STAFF TIME FOR CAMPAIGN COORDINATION	3	12,750.00
12/31/2019	STOP THE CORRIDOR PO BOX 98 WESTBROOK, ME 04098	[staff time for volunteer management and recruitment]	STAFF TIME FOR VOLUNTEER RECRUITMENT	3	27,359.06
<b>Total in-kind contributions (this page only) =&gt;</b> (combined totals from all Schedule A-1 pages must be listed on Schedule F)					<b>\$46,996.53</b>

Key Codes:

1 = Individuals

3 = Commercial Source

4 = Non Profit Organization

5 = Political Action Committee

8 = Political Party Committee

7 = Ballot Question Committee

9 = Candidate/Candidate Committees

10 = General Treasury Transfer

13 = Contributors giving \$100 or Less

16 = Financial Institution

Duplicate as needed.

NOTE: Further explanation noted in yellow

12/2017

PAC/BQC Name: NO CMP CORRIDOR

**SCHEDULE A-1  
IN-KIND CONTRIBUTIONS**

- In-kind contributions are goods and services (including facilities) that a committee received at no cost or at a cost less than the fair market value. They include all goods and services purchased for the committee by others if the committee does not expect to reimburse the person who made the purchase.
- For contributors who gave more than \$50, the committee must report the contributor's name, address, occupation, and employer.
- If employment information has been requested from the contributor and the contributor has not provided it, indicate "information requested" for the occupation and employer.
- For contributions totaling \$50 or less, please enter "unitemized contributions" as the contributor and the total amount and the appropriate key code on a line on this page. Once a contributor has given the committee more than \$50 in a report period, you must list that contributor separately.

DATE RECEIVED	CONTRIBUTOR'S NAME, ADDRESS, ZIP		DESCRIPTION (of goods, services, facilities, or discounts received)	TYPE (use key code)	VALUE (estimated fair market value)
10/02/2019	STOP THE CORRIDOR PO BOX 98 WESTBROOK, ME 04098	[staff time to assist in starting website]	WEBSITE DEVELOPMENT	3	\$2,500
11/01/2019	STOP THE CORRIDOR PO BOX 98 WESTBROOK, ME 04098	[payment fee to host website]	WEB HOSTING	3	259
<b>Total In-kind contributions (this page only) ⇒</b>					<b>\$2,759</b>
(combined totals from all Schedule A-1 pages must be listed on Schedule F)					

**Key Codes:**

- |                                |                                       |
|--------------------------------|---------------------------------------|
| 1 = Individuals                | 7 = Ballot Question Committee         |
| 3 = Commercial Source          | 9 = Candidate/Candidate Committees    |
| 4 = Non Profit Organization    | 10 = General Treasury Transfer        |
| 5 = Political Action Committee | 12 = Contributors giving \$50 or Less |
| 6 = Political Party Committee  | 16 = Financial Institution            |



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

**Testimony of Jonathan Wayne, Executive Director of the  
Commission on Governmental Ethics and Election Practices  
before the Joint Standing Committee on Veterans and Legal Affairs  
March 20, 2018**

Senator Mason, Representative Luchini, and distinguished members of the committee: my name is Jonathan Wayne, and I am the Executive Director of the Maine Commission on Governmental Ethics and Election Practices. Thank you for the opportunity to testify concerning L.D. 1865. I am going to testify concerning section 7, which is a proposal to shed light on organizations contributing more than \$100,000 to Maine-based PACs and ballot question committees (BQCs). Last year, the Ethics Commission made a similar proposal in L.D. 1480, but it was heard too late in the session to be given serious consideration.

In Maine, PACs and BQCs may receive unlimited amounts from their contributors. Many of the largest contributors influencing ballot questions are non-profit organizations based outside of Maine that seek to influence public policy in different states. In some cases, Mainers may have heard of these organizations (*e.g.*, the NRA or the National Education Association), but others are far from household names. L.D. 1865 would provide one more layer of reporting to give members of the Maine public a fighting chance to understand who these contributors are, by requiring them to file a one-time report with the Commission.

The scope of organizations affected by this proposal would be narrow. LD 1865 (§ 7) only covers organizations that have contributed more than \$100,000 to a

Maine PAC or BQC for purposes of influencing a ballot question. In some years, this could be as many as two dozen organizations – most of them from outside of Maine.

To provide you with a general idea of the types of organizations that might be affected if this proposal were enacted, I have attached a chart of contributors that gave cash and in-kind contributions to PACs or BQCs totaling more than \$100,000 in 2016 or 2017 for purpose of influencing a ballot question.

I have also attached a summary of the types of information the major contributor would have to report about themselves: basic contact information about the organization and a responsible officer, as well as the type of organization and a description of its purpose. The major contributor would need to disclose the five largest sources of funds.

The organization would also certify that it had not raised money for the purpose of influencing Maine elections (if true). This would function as a verification that the organization is exempt from registering as a PAC or BQC in Maine. While this statement is not a 100% guarantee, it would provide more assurance than the State and its citizens currently receive under Maine law.

Thank you for your consideration of this testimony.



**Contributors Giving Cash and In-Kind Contributions > \$100,000 in 2016 or 2017 to Maine PACs and BQCs Influencing Ballot Questions**

Year	Contributor	Recipient Maine PAC/BQC	Total Cash and In-Kind Received	Support/ Oppose	Ballot Question
2016	EVERYTOWN FOR GUN SAFETY ACTION FUND	Mainers for Responsible Gun Ownership Fund	\$4,420,570	Support	Firearm Background Checks
2016	CAPITAL SEVEN LLC	Lisa Scott	\$3,000,865	Support	York County Casino
2016	NEW APPROACH PAC	CAMPAIGN TO REGULATE MARIJUANA LIKE ALCOHOL	\$2,194,872	Support	Marijuana Legalization
2016	REGENT ABLE ASSOCIATE CO., LTD	Miami Development Concepts, LLC	\$1,213,100	Support	York County Casino
2016	NATIONAL RIFLE ASSOCIATION	NRA INST. FOR LEGISLATIVE ACTION	\$1,135,360	Oppose	Firearm Background Checks
2016	NATIONAL EDUCATION ASSOCIATION	CITIZENS WHO SUPPORT MAINE'S PUBLIC SCHOOLS	\$1,100,000	Support	Surcharge for Education Fund
2016	EVERYTOWN FOR GUN SAFETY ACTION FUND	MAINE MOMS DEMAND ACTION FOR GUN SENSE FUN	\$855,634	Support	Firearm Background Checks
2016	AMERICANS FOR RESPONSIBLE SOLUTIONS PA	Mainers for Responsible Gun Ownership Fund	\$449,782	Support	Firearm Background Checks
2016	MAINE EDUCATION ASSOCIATION	CITIZENS WHO SUPPORT MAINE'S PUBLIC SCHOOLS	\$419,760	Support	Surcharge for Education Fund
2016	ALLIANCE FOR HEALTHY MARIJUANA POLICY	Mainers Protecting Our Youth and Communities	\$267,183	Oppose	Marijuana Legalization
2016	NATIONAL EDUCATION ASSOCIATION	Mainers for Fair Wages PAC	\$231,000	Support	Raise Minimum Wage
2016	THE FAIRNESS PROJECT	THE FAIRNESS PROJECT MAINE PAC	\$180,000	Support	Raise Minimum Wage
2016	ACTION NOW INITIATIVE	THE CHAMBERLAIN PROJECT PAC	\$170,000	Support	Ranked-Choice Voting
2016	RESTAURANT OPPORTUNITIES CENTER	MAINERS FOR FAIR WAGES PAC & BQC	\$159,320	Support	Raise Minimum Wage
2016	MAINE PEOPLE'S ALLIANCE	CITIZENS WHO SUPPORT MAINE'S PUBLIC SCHOOLS	\$125,840	Support	Surcharge for Education Fund
2016	DRUG POLICY ACTION	CAMPAIGN TO REGULATE MARIJUANA LIKE ALCOHOL	\$125,000	Support	Marijuana Legalization
2016	FAIR VOTE	Fair Vote - BQC	\$103,607	Support	Ranked-Choice Voting
2017	CAPITAL SEVEN, LLC	Progress For Maine	\$2,950,000	Support	York County Casino
2017	ATLANTIC & PACIFIC REALTY CAPITAL LLC	Progress For Maine	\$1,900,000	Support	York County Casino
2017	SIXTEEN THIRTY FUND	Mainers for Health Care!	\$865,606	Support	Medicaid Expansion
2017	BB DEVELOPMENT LLC	A Bad Deal for Maine	\$700,000	Oppose	York County Casino
2017	THE FAIRNESS PROJECT	THE FAIRNESS PROJECT MAINE PAC	\$696,000	Support	Medicaid Expansion
2017	THE FAIRNESS PROJECT	Mainers for Health Care!	\$357,385	Support	Medicaid Expansion
2017	MAINE PEOPLE'S ALLIANCE	Mainers for Health Care!	\$215,130	Support	Medicaid Expansion
2017	OPEN SOCIETY POLICY CENTER	MAINE PEOPLE'S ALLIANCE - BQC	\$200,000	Support	Universal Homecare
2017	NATIONAL EDUCATION ASSOCIATION	CITIZENS WHO SUPPORT MAINE'S PUBLIC SCHOOLS	\$175,000	Support	State Pension Reform
2017	MAINE EQUAL JUSTICE PARTNERS	Mainers for Health Care!	\$153,548	Support	Medicaid Expansion
2017	OPEN SOCIETY POLICY CENTER	Center for Community Change Action	\$150,000	Support	Universal Homecare
2017	REGENT ABLE ASSOCIATE CO., LTD	Progress For Maine	\$149,978	Support	York County Casino

**Total \$24,664,539**

Source: totals compiled by Maine Ethics Commission staff from PAC and BQC campaign finance reports

**Contents of One-Time Report Filed by Major Contributors (proposed in LD 1865)**

Name and contact information for the major contributor, and a responsible officer

Form of organization, and a statement of its purpose

Amount and date of each contribution given by the major contributor to the Maine PAC or BQC

Certification whether the major contributor

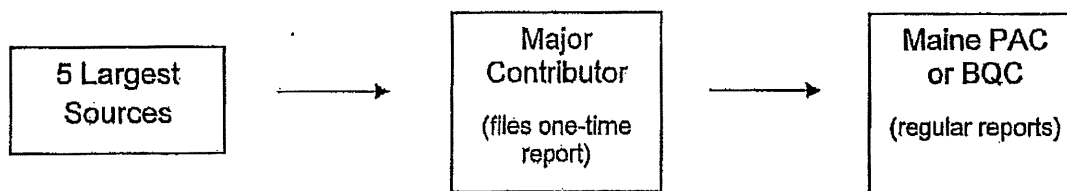
- has – or has not – received contributions (in whole or in part) for the purpose of influencing the Maine ballot question
- if so, the major contributor must disclose the dates, sources and amounts of the contributions

5 largest sources of funds received by the major contributor

Statement whether the organization is tax-exempt, and has filed campaign finance reports in other states

Commission *could* by rule require additional information to facilitate disclosure to Maine citizens of financial activity conducted for the purpose of influencing Maine elections

**Five Largest Sources of Funds Received by the Major Contributor (proposed in LD 1865)**



The Commission could permit major contributors to exclude sources of funds that are restricted to purposes unrelated to the Maine ballot question

**Triggers to Qualify as a Ballot Question Committee (current law)**

- receiving more than \$5,000 in contributions for purpose of influencing a ballot question, or
- spending more than \$5,000 for purpose of influencing a ballot question (other than making a contribution to a PAC or BQC)

mev

STATE OF MAINE  
CUMBERLAND, ss

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-20-14

CLEAN ENERGY FOR ME LLC,

Plaintiff

v.

ORDER

MAINE COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES,

Defendant

and

REC'D CUMS CLERKS OF  
DEC 15 '20 AM 8:42

CLEAN ENERGY MATTERS,

Party in Interest

The court held a hearing over Zoom today on the pending appeal and on the motion by plaintiff Clean Energy for ME LLC for a stay.

The motion for a stay is denied because, assuming this matter is properly before the court,<sup>1</sup> plaintiff has not demonstrated a likelihood of success on the merits. The court also denies plaintiff's alternative request to modify or limit the subpoena issued by the Commission (Exhibit A to plaintiff's motion to stay) because, having reviewed the subpoena again after the hearing, the court concludes that the information sought appears to be relevant to the question of whether plaintiff conducted activity that would qualify it as a ballot question committee within the meaning of 21-A M.R.S. § 1056-B even if not as a political action committee.

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<sup>1</sup> Counsel for the Commission argues that there is a reason to doubt that issuance of a subpoena constitutes final and appealable agency action since it was agency action undertaken at the outset of an investigatory process that has not resulted in an agency decision. Even if the issuance of the subpoena could have been separately appealed, moreover, plaintiff did not file such an appeal.

As the court stated at the hearing, once again assuming that the issue is properly before the court,<sup>2</sup> it will also affirm the decision of the Commission to undertake an investigation to determine whether plaintiff qualifies as a ballot question committee and will therefore deny plaintiff's appeal. A further order shall be issued with respect to the appeal.

The entry shall be:

Plaintiff's motion for a stay and in the alternative to modify the agency's subpoena is denied. The clerk shall incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: December 14, 2020

  
\_\_\_\_\_  
Thomas D. Warren  
Justice, Superior Court

Entered on the Docket: 12/15/20.

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<sup>2</sup> On this issue there is a significant question whether the decision of the Commission to undertake an investigation constitutes final agency action appealable under 5 M.R.S. § 11001(1).

me

STATE OF MAINE  
CUMBERLAND, ss

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-20-14

CLEAN ENERGY FOR ME LLC,

Plaintiff

v.

ORDER

MAINE COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES,

Defendant

and

REC'D CIVIL CLERK'S OF  
DEC 22 '20 PM 2:13

CLEAN ENERGY MATTERS,

Party in Interest

On December 14, 2010 the court held a hearing over Zoom on the pending appeal and on the motion by plaintiff Clean Energy for ME LLC for a stay. As set forth on the record and in the court's order dated December 14, 2020, plaintiff's motion for a stay was denied.

With respect to the appeal, the initial question is whether the issue is properly before the court. Plaintiff is appealing a May 22, 2020 order of the Commission on Governmental Ethics and Election Practices to authorize its staff to investigate whether plaintiff (referred to in the record and in its pleadings under a d/b/a of "Stop the Corridor" or "STC") qualified as a "ballot question committee" within the meaning of 21-A M.R.S. § 1056-B and was therefore required to file reports pursuant to that section. (R. 185).<sup>1</sup> A "ballot question committee" is an entity that, although not

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<sup>1</sup>At the same time the Commission voted to seek an understanding of the broad range of STC's activities, to investigate STC's funding and reasons why its funding sources provided financial assistance to STC, and to require STC to provide unredacted documents. (R. 184-85).

qualifying as a political action committee under 21-A M.R.S. § 1052(5), receives contributions or makes expenditures in excess of \$5,000 for the purpose of initiating or influencing a campaign relating to a ballot question.

The Commission and party-in-interest Clean Energy Matters argue that this did not constitute final agency action appealable under 5 M.R.S. § 11001(1) because the undertaking of an investigation is a preliminary procedural action that is not independently reviewable. STC responds that it may appeal now because review of a final agency determination as to whether it constituted a ballot question committee would not provide an adequate remedy, citing the final sentence of 5 M.R.S. § 11001(1). This argument is based on STC's contention that, before any final decision is made, the Commission may pursuant to 21-A M.R.S. § 1003(3-A) disclose its investigative working papers, including STC's financial information, if those records are "materially relevant" to a report by the Commission staff or a decision by the Commission. In that case, STC argues, its information could be disclosed before there is a final agency action from which it can appeal.

The statute does not contemplate broad disclosure but rather limited disclosure to the extent materially relevant to a Commission decision or a staff report in connection with a Commission decision. "Materially relevant" means not just relevant but sufficiently important to potentially affect the outcome of a decision. *See, e.g., Day's Auto Body, Inc. v. Town of Medway*, 2016 ME 121 ¶ 6, 145 A.3d 1030. The record reflects that while some limited disclosure may be a theoretical possibility under the statute, the practice of the Commission and the Commission staff is not to make any such disclosure. Instead, disclosure would only occur after STC were found to be a ballot question committee and ordered to file reports – a decision that would be a final agency action subject to appeal before the reports were made public.

For that reason, the court concludes that the last sentence of 5 M.R.S. § 11001(1) does not apply to this appeal. The decision of the Commission to undertake an investigation is not final agency action subject to review. Otherwise parties subject to a potential investigation could stall the investigation in its tracks while appealing the initiation of the investigation, undercutting the purpose of the statute to provide timely financial disclosure information to the public from parties seeking to initiate or influence a ballot question campaign.

In the alternative, assuming that STC's appeal is properly before the court, the decision of the Commission is affirmed on the merits.

Pursuant to 21-A M.R.S. § 1003(1) the Commission "may undertake audits and investigations to determine whether a person has violated [chapter 13 of Title 21-A]." Chapter 13 includes the registration and filing requirements for ballot question committees pursuant to 21-A M.R.S. § 1056-B, and "person" is defined to include an organization. 21-A M.R.S. § 1001(3).

STC's argument is that the Commission did not have jurisdiction under § 1003(1) to authorize an investigation of whether STC constituted a ballot question committee because it had previously, in response to a complaint by party in interest Clean Energy Matters, undertaken an investigation under 21-A M.R.S. § 1003(2) of whether STC qualified as a political action committee.<sup>2</sup>

The court can find absolutely no basis in the statute or in the public policy underlying the statute to conclude that the Commission jurisdictionally handcuffed itself from exercising its discretionary authority to commence a ballot question committee investigation by its previous response to the request by Clean Energy Matters. Indeed, contrary to STC's position in this case,

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<sup>2</sup> Section 1003(2) provides that the Commission "shall" undertake an investigation upon the request of any person when the requestor shows sufficient grounds for believing a violation has occurred.

the record demonstrates that counsel for STC twice agreed that the Commission had the authority to broaden its investigation. *See* March 10, 2020 Commission Meeting Tr. 33-34; May 22, 2020 Commission Meeting Tr. 50-51.

STC's final argument is that the Commission's investigation has been rendered moot and must be terminated because of the Law Court's August 13, 2020 decision in *Avangrid Networks Inc. v. Secretary of State*, 2020 ME 109. That decision caused the citizen-initiated resolve to reject the New England Clean Energy Connect Transmission Project to be removed from the ballot at the past election. In support of its argument, STC argues that a Commission staff member was reported in an online publication to have stated that the removal of the referendum question eliminated the need for entities to register and report activities to influence the vote on that referendum.

There are three problems with STC's argument. The first is that the statement by the Commission staff member on which STC relies is not in the record, and the court cannot rely on extra-record hearsay. The second is that the alleged statement by the Commission staff member is not the Commission's position with respect to whether the ballot question committee investigation of STC has been rendered moot.

The third is that, even assuming that the removal of the citizen-initiated resolve meant that after August 13, 2020 there was no longer a referendum campaign that a ballot question committee could seek to influence, ballot question committees are defined as organizations that receive contributions or make expenditures "for the purpose or initiating or influencing a campaign." 21-A M.R.S. § 1056-B(1) (emphasis added). Therefore, if STC qualifies as a ballot question



committee, it should have registered and filed reports for time periods in which the signatures were being gathered to “initiate” the campaign.<sup>3</sup>

Just because reports may not be due for the time period after August 13, 2020 in light of the Law Court’s *Avangrid* decision, it does not follow that STC – if it qualifies as a ballot question committee– should be excused from filing reports for an earlier time period relating to the initiation of the citizen initiated referendum.

The Law Court has ruled that “the public has an interest in the release of information about the donors behind ballot initiatives,” which continued to apply in a case where six years had passed since the referendum campaign in question had ended. *See National Organization for Marriage v. Commission on Governmental Ethics and Election Practices*, 2015 ME 103 ¶ 27, 121 A.3d 792. In the *National Organization for Marriage* case, the Law Court noted that because the ballot initiative in question had occurred so long ago, there was no pressing public interest in disclosure although the Court nevertheless ultimately denied the National Organization for Marriage’s request for a stay.

In this case, in contrast, the public interest in disclosure of STC’s financial information – if it qualifies as a ballot question committee – is not merely retrospective because it is not disputed that signatures are now being gathered for a second citizen-initiated referendum opposing the New England Transmission Project.

The court finds that that STC’s attempt to prevent the Commission from investigating whether STC should file reports as a ballot question committee is without merit.

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<sup>3</sup> In this case it appears that signature-gathering occurred during an approximate time period beginning in October 2019 and lasting until February 3, 2020.

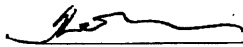
The entry shall be:

1. The Commission's May 22, 2020 decision to investigate whether plaintiff qualifies as a ballot question committee is not final agency action that is appealable under 5 M.R.S. § 11001(1), and plaintiff's appeal is therefore dismissed.

2. In the alternative, to the extent that the Commission's May 22, 2020 decision to investigate whether plaintiff qualifies as a ballot question committee is properly before the court, the Commission's decision is affirmed and plaintiff's appeal is denied.

3. The clerk shall incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: December 22, 2020

  
\_\_\_\_\_  
Thomas D. Warren  
Justice, Superior Court

Entered on the Docket: 12/22/20  
me /



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

March 22, 2021

**By Email & Regular Mail**

James Monteleone, Esq.  
Bernstein Shur  
PO Box 9729  
Portland, ME 04104-5029

RE: Investigative Subpoena to Produce Records

Dear Jim:

Thank you for the February 1, 2021 production of documents in connection with the Ethics Commission's investigation of Stop the Corridor. I have enclosed a second Investigative Subpoena to Produce Records. I would appreciate it if you would acknowledge receiving the subpoena by signing the enclosed Acceptance of Service and returning it to me. If you have any questions, the letter contains contact information for the Commission's Counsel, Jonathan Bolton, and directions on page 3 if your clients wish to raise legal objections to the subpoena. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Wayne'.

Jonathan Wayne  
Executive Director

cc: Jonathan Bolton, Esq. (via email)

Enclosure

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

**ETH. 25**

**STATE OF MAINE**  
**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES**

**In Re: Stop the Corridor**                    )  
  )     **INVESTIGATIVE SUBPOENA TO**  
  )     **PRODUCE RECORDS**

To: Stop the Corridor and [REDACTED]  
c/o James G. Monteleone, Esq.  
Bernstein Shur  
P.O. Box 9729  
Portland, ME 04104-5029

**YOU ARE HEREBY ORDERED**, in the name of the State of Maine Commission on Governmental Ethics and Election Practices, pursuant to 21-A M.R.S. § 1003, to produce the following designated materials on or before April 23, 2021, at the offices of the Commission on Governmental Ethics and Election Practices for the State of Maine, located on the second floor of the building at 45 Memorial Circle, Augusta, Maine, by delivering in hand or sending the materials by first class U.S. mail to Jonathan Wayne, Executive Director, Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333:

1. All Documents, including but not limited to electronic mail and text or instant messages, that were transmitted from June 17, 2019 to August 13, 2020 between Stop the Corridor (“STC”) or [REDACTED] referring to activities to support the NECEC initiative, as defined below.
2. All Documents, including but not limited to electronic mail and text or instant messages, that were transmitted from June 17, 2019 to August 13, 2020 between STC or [REDACTED] and Calpine Corporation, Vistra Corp., or Mainers for Local Power referring to activities to support the NECEC initiative.
3. All invoices, bills, or requests for money transmitted by STC or [REDACTED] to [REDACTED] or [REDACTED] from June 17, 2019 to August 13, 2020 for any activity to oppose NECEC. This request includes invoices, bills, or requests for money created by entities other than STC or [REDACTED]. To avoid duplication, you may omit the invoices and electronic mail communications provided in the February 1, 2021 document production listed below.

4. All Documents relating to television advertising concerning NECEC during the period of November 1, 2019 to January 31, 2020 transmitted between STC, [REDACTED] and any other person, including but not limited to:
  - a. electronic mail by or to [REDACTED] media buyers, or television outlets;
  - b. written plans, outlines of activities, campaign plans;
  - c. cost estimates or quotes; and
  - d. invoices.
  
5. All Documents relating to [REDACTED] or entities funded by or through [REDACTED], including but not limited to:
  - a. Documents transmitted between [REDACTED] and STC or [REDACTED] including but not limited to electronic mail, text or instant messages;
  - b. Documents containing descriptions of services or activities to be conducted by [REDACTED] or entities funded by or through [REDACTED];
  - c. Documents reflecting services provided by [REDACTED] or entities funded by or through [REDACTED], including but not limited to petitioning services, strategic advice, campaign management, advertising, or public opinion research;
  - d. Invoices or other requests for payment;
  - e. Documents reflecting payments to [REDACTED], including but not limited to checks or electronic transfers of funds, and
  - f. Documents reflecting the formation of [REDACTED] or registration as a business entity with a state government, such as a limited liability company operating agreement or a certificate or articles of incorporation.
  
6. All Documents relating to [REDACTED] or entities funded by or through [REDACTED], including but not limited to:
  - a. Documents transmitted between [REDACTED] and STC or [REDACTED], including but not limited to electronic mail, text or instant messages;
  - b. Documents containing descriptions of services or activities to be conducted by [REDACTED];
  - c. Documents reflecting services provided by [REDACTED] or entities funded by or through [REDACTED] including but not limited to petitioning services, strategic advice, campaign management, advertising, or public opinion research;


- d. Invoices or other requests for payment;
  - e. Documents reflecting payments to [REDACTED], including but not limited to checks or electronic transfers of funds, and
  - f. Documents reflecting the formation of [REDACTED] or registration as a business entity with a state government, such as a limited liability company operating agreement or a certificate or articles of incorporation.
7. Documents sufficient to show all polling questions for the following public opinion surveys:
- a. the August 2019 poll referenced in the documents produced by STC and [REDACTED] on February 1, 2021 that were bates-stamped STC00006, STC00161, and STC00169;
  - b. the November 2019 poll referenced on STC00005;
  - c. the January 2020 poll referenced on STC00009;
  - d. the April 2020 poll referenced on STC00542; and
  - e. any other public opinion survey conducted during the period of June 17, 2019 to August 13, 2020 that was financed by STC, [REDACTED] and that asked questions concerning a direct initiative relating to NECEC.
8. The contextual memorandum relating to polling results, referred to in the September 4, 2019 email from [REDACTED] (STC00161).
9. The campaign memo/recommendations document referred to in the March 16, 2020 email from [REDACTED] (STC00487).

This subpoena is issued on behalf of the Commission on Governmental Ethics and Election Practices, in conjunction with a Commission investigation to determine whether Stop the Corridor complied with campaign finance requirements in Title 21-A, Chapter 13, pursuant to 21-A M.R.S.A. § 1003. The Commission's attorney is Jonathan Bolton, Assistant Attorney General, Office of the Attorney General, 6 State House Station, Augusta, Maine 04333-0006. He may be contacted at (207) 626-8551 or Jonathan.Bolton@maine.gov.

**NOTICE:** A statement of your rights and duties pursuant to this subpoena is set out in 5 M.R.S. § 9060(1)(C) and (D). If you object to the subpoena, you must petition the Commission on Governmental Ethics and Election Practices to vacate or modify the subpoena before April 9, 2021. After such investigation as the Commission considers appropriate, it may grant the petition in whole or in part upon a finding that the testimony or evidence for which production is required does not relate with reasonable directness to any manner in question, or that a subpoena for the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when the evidence is requested.

**WARNING: Failure to comply with this subpoena shall be punishable as for contempt of court, pursuant to 21-A M.R.S.A. § 1003(1), 5 M.R.S.A. § 9060(1)(D) and Rule 66(c) of the Maine Rules of Civil Procedure.**

Dated: 3/16/2021

  
\_\_\_\_\_  
WILLIAM A. LEE III, Esq., Chair  
Commission on Governmental Ethics  
and Election Practices

## Definitions

“██████████” means ██████████ and its members, officers, board of directors, employees, and agents.

“Activities to support the NECEC initiative” means all activities supporting or promoting the Citizen Initiative to Reject NECEC, including but not limited to exploring the feasibility of the direct initiative, drafting legislation for the direct initiative, forming business entities, gathering signatures on petitions for the direct initiative, researching public opinion concerning the direct initiative, paying for video advertising or other communications to influence opinion concerning the direct initiative, or engaging in a political campaign in support of the direct initiative.

“██████████” means ██████████ and its members, officers, board of directors, employees, and agents.

“██████████” means ██████████ and its members, officers, board of directors, employees, and agents.

“Calpine Corporation” means Calpine Corporation and its members, officers, board of directors, employees, and agents.

“Citizen Initiative to Reject NECEC” means the direct initiative to enact legislation entitled “Resolve, To Reject the New England Clean Energy Connect Transmission Project” which the Maine Secretary of State approved on March 4, 2020 as having met the petitioning requirements for submission to the Legislature.

“Communication” means, without limitation, any exchange or transfer of information by any means (*e.g.*, whether oral, written, electronic, or by other methods). The term includes but is not limited to electronic mail, text or instant messages, regular U.S. Mail or other delivery service, or postings on social media.

"Documents" means all written, printed, or digitally or electronically stored material (translated, if necessary, into a reasonably usable form). The term includes but is not limited to Communications (as defined above), agreements, contracts, invoices, purchase orders, ledgers, financial statements, accounts, proposals, plans, budgets, projections of financial activity, government filings, computer-stored data or material, and audio/visual recordings.

“██████████” means the person(s) providing funding to ██████████ to finance activities by Stop the Corridor or ██████████ to oppose NECEC.

“██████████” means ██████████ and its members, officers, board of directors, employees, and agents.



“[REDACTED]” means [REDACTED] and its members, officers, board of directors, employees, and agents.

“Mainers for Local Power” means the political action committee of the same name registered with the Commission and its members, officers, board of directors, employees, volunteers, and agents.

“NECEC” means the New England Clean Energy Connect transmission project.

“No CMP Corridor” means the political action committee of the same name registered with the Commission and its members, officers, board of directors, employees, volunteers, and agents.

“Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

“Say No to NECEC” means Say No to NECEC and its members, officers, board of directors, employees, volunteers, and agents.

“STCXXXXX” refers to pages from the February 1, 2021 production of documents by Stop the Corridor and [REDACTED] that were bates-stamped with a five-digit number (e.g., STC00001).

“Stop the Corridor” and “STC” mean Clean Energy for ME, LLC and its members, officers, board of directors, employees, and agents.

“Vistra Corp.” means Vistra Corp. and its members, officers, board of directors, employees, and agents.

**Previously provided invoices and other requests for money**

For purposes of request #3 above, you may omit the 14 invoices from [REDACTED] provided in the February 1, 2021 document production (STC00001-STC00014) and the eleven emails requesting money (STC00135, STC00169, STC00323, STC00496, STC00497, STC00501, STC00575, STC00580, STC00596, STC00615, and STC00616).

**ACCEPTANCE OF SERVICE**

On March \_\_\_, 2021, I accepted service of the attached subpoena on behalf of my clients, Stop the Corridor and [REDACTED] to produce the requested records at the Commission on Governmental Ethics and Election Practices, 45 Memorial Circle, Augusta, Maine, 04333, on or before April 23, 2021.

Date: \_\_\_\_\_

\_\_\_\_\_

(Print Name)

\_\_\_\_\_

(Signature)



**Bernstein, Shur,  
Sawyer & Nelson, P.A.**  
100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029

T (207) 774 - 1200  
F (207) 774 - 1127

*Via E-mail*

April 16, 2021

Commission on Governmental Ethics  
and Election Practices  
c/o Jonathan Wayne, Executive Director  
135 State House Station  
Augusta, ME 04333-0135

**Re: *Objections to Commission's March 22, 2021 Subpoena to Produce Records***

Dear Mr. Wayne:

Stop the Corridor ("STC") and [REDACTED] object to the subpoena dated March 22, 2021 (the "Subpoena") issued by the Commission on Governmental Ethics and Election Practices (the "Commission") as follows:

**Request Nos. 1 and 2:** The requests for documents transmitted between June 17, 2019 and August 1, 2019 referring to activities to support or promote the NECEC Initiative is overly broad based upon the Commission's own recognition that the Initiative campaign began no earlier than August 1, 2019.

Additionally, the Subpoena's general definition of "Activities to Support the NECEC Initiative," incorporated in Request Nos. 1-2 by reference, is vague, ambiguous, and overly broad. The definition is vague and ambiguous because the reference to "activities supporting and promoting" is subject to multiple meanings, and the Commission's intended meaning is unknown. Further, the request for records of "activities supporting and promoting" the NECEC Initiative is overly broad and outside the Commission's lawful jurisdiction to regulate and investigate activities associated with "initiating or influencing a campaign." Maine law imposes no legal obligations on entities or individuals for merely "supporting and promoting" any campaign or issue where such conduct is *not* "initiating or influencing a campaign." (*see e.g.*, 21-A M.R.S. §§ 1052, 1055-A, 1059). Any effort to impose Commission reporting obligations for mere

support or promotion of any political view would result in an unlawful chilling of political speech in violation of the First Amendment to the United States Constitution, and Article I, Section 4 of the Maine Constitution.

**Request No. 3:** The request for “invoices, bills, or requests for money” for “any activity to oppose NECEC” is vague, ambiguous and overly broad. First, the phrase “activities to oppose NECEC” is subject to multiple meanings, and the Commission’s intended meaning is unknown. Second, the request for general opposition to a governmental issue or policy, such as the NECEC, is outside this Commission’s jurisdiction to regulate and investigate activities that relate to initiating or influencing a *campaign*, not a general governmental issue or policy.

**Request No. 4:** The request for “all documents relating to television advertising concerning NECEC” is overly broad and unduly burdensome. The Commission is already in possession of records identifying every television advertisement purchased by STC concerning NECEC, and can reasonably narrow this request to identify which particular advertisement is relevant to the Commission’s investigation of activities to initiate or influence a campaign.

**Request Nos. 5 and 6:** The requests for documents relating to [REDACTED] (No. 5) and [REDACTED] (No. 6) are overly broad and exceed the Commission’s lawful jurisdiction to investigate activities to initiate or influence a campaign, because the request fails to distinguish the request in a manner reasonably associated with campaign activities. Neither entity’s “major purpose” is subject to the Commission’s pending investigation. Accordingly, inquiries beyond the scope of activities to initiate or influence a campaign are extra jurisdictional and barred by protections guaranteed by the Fourth Amendment to the United States Constitution, and Article I, Section 5 of the Maine Constitution.

**Request No. 7:** This request for documents showing “all polling questions” is overly broad and unduly burdensome to the extent that it compels disclosure of polling information unrelated to any initiative campaign, and outside the Commission’s jurisdiction to investigate activities to initiate or influence a campaign. Moreover, information gleaned from any polling identifies the state of public opinion, and is not itself an activity to initiate or influence a campaign.

Generally, any compelled disclosure of nonpublic corporate activity that is entirely unrelated to campaign activity subject to the Commission’s jurisdiction will constitute an unlawful violation of STC and [REDACTED] First Amendment and Fourth Amendment rights under the federal Constitution, and the additional rights guaranteed by Article I, Sections 4 and 5 of the Maine Constitution.

Accordingly, STC and [REDACTED] request that the Commission modify the Subpoena to clarify the ambiguities identified herein and eliminate requests for compelled disclosure of materials that are outside the Commission’s jurisdiction to regulate those activities to initiate or influence a Maine election campaign. I would be happy to get on a call with

April 16, 2021  
Page 3

you and/or Jonathan Bolton to discuss and try to come to an agreement on appropriate modifications.

Very truly yours,

A handwritten signature in black ink, appearing to read "James G. Monteleone", with a long, sweeping horizontal stroke at the end.

James G. Monteleone

JGM:js

cc: Jonathan Bolton, Esq.

## 1 M.R.S.

Current with the Second Regular Session of the 129th Maine Legislature.

### **§ 1008. General duties**

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The general duties of the commission shall be:

- 1. Legislative ethics.** To investigate and make advisory recommendations to the appropriate body of any apparent violations of legislative ethics;
- 2. Election practices.** To administer and investigate any violations of the requirements for campaign reports and campaign financing, including the provisions of the Maine Clean Election Act and the Maine Clean Election Fund;
- 3. Ethics seminar.** To conduct, in conjunction with the Attorney General and the Chair of the Legislative Council or their designees, an ethics seminar for Legislators after the general election and before the convening of the Legislature, in every even-numbered year. The Attorney General shall provide each Legislator with a bound compilation of the laws of this State pertaining to legislative ethics and conduct;
- 4. Lobbyist activities.** To administer the lobbyist disclosure laws, Title 3, chapter 15, and enforce the waiting period required before former Legislators may engage in compensated lobbying as provided by section 1024;
- 5. Maine Clean Election Act and Maine Clean Election Fund.** To administer and ensure the effective implementation of the Maine Clean Election Act and the Maine Clean Election Fund according to Title 21-A, chapter 14; and
- 6. Enhanced monitoring.** To provide for enhanced monitoring and enforcement of election practices and the electronic submission of reports and computerized tracking of campaign, election and lobbying information under the commission's jurisdiction.

## 5 M.R.S. § 9060

Current with the Second Regular Session of the 129th Maine Legislature.

### § 9060. Subpoenas and discovery

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#### 1. Proceedings.

In any adjudicatory proceeding for which the agency, by independent statute, has authority to issue subpoenas, any party shall be entitled as of right to their issuance in the name of the agency to require the attendance and testimony of witnesses and the production of any evidence relating to any issue of fact in the proceeding.

In any proceeding in which the conducting agency lacks independent authority to issue subpoenas, any party may request the issuance of a subpoena by the agency, and the agency is hereby authorized to issue the same if it first obtains the approval of the Attorney General or of any deputy attorney general. Such approval shall be given when the testimony or evidence sought is relevant to any issue of fact in the proceeding.

When properly authorized, subpoenas may be issued by the agency or by any person designated by the agency for that purpose, in accordance with the following provisions:

**A.** The agency may prescribe the form of subpoena, but it shall adhere, insofar as practicable, to the form used in civil cases before the courts. Witnesses shall be subpoenaed only within the territorial limits and in the same manner as witnesses in civil cases before the courts, unless another territory or manner is provided by law. Witnesses subpoenaed shall be paid the same fees for attendance and travel as in civil cases before the courts. Such fees shall be paid by the party requesting the subpoena.

**B.** Any subpoena issued shall show on its face the name and address of the party at whose request it was issued.

**C.** Any witness subpoenaed may petition the agency to vacate or modify a subpoena issued in its name. The agency shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the agency considers appropriate, it may grant the petition in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when the evidence is requested.

D. Failure to comply with a subpoena lawfully issued in the name of the agency and not revoked or modified by the agency as provided in this section shall be punishable as for contempt of court.

**2. Adoption of Rules.** Each agency having power to conduct adjudicatory proceedings may adopt rules providing for discovery to the extent and in the manner appropriate to its proceeding.



## 21-A M.R.S.

Current with the Second Regular Session of the 129th Maine Legislature.

### **§ 1003. Investigations by commission**

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**1. Investigations.** The commission may undertake audits and investigations to determine whether a person has violated this chapter, chapter 14 or the rules of the commission. For this purpose, the commission may subpoena witnesses and records whether located within or without the State and take evidence under oath. A person or entity that fails to obey the lawful subpoena of the commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the commission. The Attorney General may apply on behalf of the commission to the Superior Court or to a court of another state to enforce compliance with a subpoena issued to a nonresident person. Service of any subpoena issued by the commission may be accomplished by:

**A.** Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;

**B.** Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or

**C.** Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business.

**2. Investigations requested.** A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

**2-A. Repealed.** Laws 2001, c. 535, § 1.

**3. State Auditor.** The State Auditor shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and has all necessary powers to carry out these responsibilities.

**3-A. Confidential records.** Investigative working papers of the commission are confidential, except that the commission may disclose them to the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of reporting, investigating or prosecuting a criminal or civil violation. For purposes of this subsection, "investigative working papers" means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an audit, investigation or other enforcement matter:

- A. Financial information not normally available to the public;
- B. Information that, if disclosed, would reveal sensitive political or campaign information belonging to a party committee, political action committee, ballot question committee, candidate or candidate's political committee, or other person who is the subject of an audit, investigation or other enforcement matter, even if the information is in the possession of a vendor or 3rd party;
- C. Information or records subject to a privilege against discovery or use as evidence; and
- D. Intra-agency or interagency communications related to an audit or investigation, including any record of an interview, meeting or examination.

The commission may disclose investigative working papers or discuss them at a public meeting, except for the information or records subject to a privilege against discovery or use as evidence, if the information or record is materially relevant to a memorandum or interim or final report by the commission staff or a decision by the commission concerning an audit, investigation or other enforcement matter. A memorandum or report on the audit or investigation prepared by staff for the commission may be disclosed at the time it is submitted to the commission, as long as the subject of the audit or investigation has an opportunity to review it first to identify material that the subject of the audit or investigation considers privileged or confidential under some other provision of law.

**4. Attorney General.** Upon the request of the commission, the Attorney General shall aid in any investigation, provide advice, examine any witnesses before the commission or otherwise assist the commission in the performance of its duties. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

## 21-A M.R.S. § 1052

Current with the First Regular Session, the First Special Session, and Chapter 555 of the Second Regular Session of the 129th Maine Legislature.

### § 1052. Definitions

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As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Campaign.** “Campaign” means any course of activities to influence the nomination or election of a candidate or to initiate or influence any of the following ballot measures:

- A.** A people’s veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;
- B.** A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;
- C.** An amendment to the Constitution of Maine under Article X, Section 4;
- D.** A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;
- E.** The ratification of the issue of bonds by the State or any agency thereof; and
- F.** Any county or municipal referendum.

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**3. Contribution.** “Contribution” includes:

- A.** A gift, subscription, loan, advance or deposit of money or anything of value made to a political action committee, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- B.** A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a political action committee;
- C.** Any funds received by a political action committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or
- D.** The payment, by any person or organization, of compensation for the personal services of other persons provided to a political action committee that is used by the political action committee to initiate or influence a campaign.

**4. Expenditure.** The term “expenditure:”

**A.** Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and
- (3) The transfer of funds by a political action committee to another candidate or political committee; and

**B.** Does not include:

- (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee, candidate or the spouse or domestic partner of a candidate;
- (2) Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;
- (3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;
- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$250 with respect to any election;
- (5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election; and
- (6) Any communication by any political action committee member that is not made for the purpose of influencing the nomination or election of any person to state or county office.

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**4-B. Initiate.** “Initiate” includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

**5. Political action committee.** The term “political action committee.”

**A. Includes:**

- (1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to initiate or influence a campaign;
- (4) Any person, including any corporation or association, other than an individual, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose; and
- (5) Any person, other than an individual, that does not have as its major purpose influencing candidate elections but that receives contributions or makes expenditures aggregating more than \$5,000 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office; and

**B. Does not include:**

- (1) A candidate or a candidate’s treasurer under section 1013-A, subsection 1;
- (2) A candidate’s authorized political committee under section 1013-A, subsection 1, paragraph B;
- (3) A party committee under section 1013-A, subsection 3; or
- (4) An organization whose only payments of money in the prior 2 years for the purpose of influencing a campaign in this State are contributions to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality and that has not raised and accepted any contributions during the calendar year for the purpose of influencing a campaign in this State.

## 21-A M.R.S. § 1056-B

Current with the First Regular Session, the First Special Session, and Chapter 555 of the Second Regular Session of the 129th Maine Legislature.

### § 1056-B. Ballot question committees

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A person not defined as a political action committee that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign shall register as a ballot question committee and file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to influence the nomination or election of a candidate. A person whose only payments of money for the purpose of influencing a campaign in this State are contributions to political action committees or ballot question committees registered with the commission or a municipality and who has not raised and accepted any contributions for the purpose of influencing a campaign in this State is not required to register and file campaign finance reports under this section. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign.

**1. Filing requirements.** A report required by this section must be filed with the commission according to the reporting schedule in section 1059. After completing all financial activity, the committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The committee shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5.

**1-A. Ballot question committee registration.** A person subject to this section who receives contributions or makes expenditures that exceed \$5,000 shall register with the commission as a ballot question committee within 7 days of receiving those contributions or making those expenditures. A ballot question committee shall have a treasurer and a principal officer. The same individual may not serve in both positions unless the person establishing the ballot question committee is an individual. The ballot question committee when registering shall identify all other individuals who are the primary decision makers and fund-raisers, the person establishing the ballot question committee and the campaign the ballot question committee intends to initiate or influence. The ballot question committee shall amend the registration within 10 days of a change in the information required in this subsection. The commission shall prescribe forms for the registration, which must include the information required by this subsection and any additional information reasonably required for the commission to monitor the activities of the ballot question committee.

**2. Content.** A report required by this section must contain an itemized account with the date,

amount and purpose of each expenditure made for the purpose of initiating or influencing a campaign; an itemized account of contributions received from a single source aggregating in excess of \$50 in any election; the date of each contribution; the date and purpose of each

expenditure; the name and address of each contributor, payee or creditor; and the occupation and principal place of business, if any, for any person who has made contributions exceeding \$50 in the aggregate. The filer is required to report only those contributions made to the filer for the purpose of initiating or influencing a campaign and only those expenditures made for

those purposes. The definitions of “contribution” and “expenditure” in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

**2-A. Contributions.** For the purposes of this section, “contribution” includes, but is not limited to:

- A.** Funds that the contributor specified were given in connection with a campaign;
- B.** Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign;
- C.** Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient’s activities regarding a campaign; and
- D.** Funds or transfers from the general treasury of an organization filing a ballot question report.

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## CMR 94-270-001

This document reflects changes current through October 6, 2020

### 94 270 001. PROCEDURES

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#### SECTION 4. INITIATION OF PROCEEDINGS

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##### 2. Election Campaign Reporting and Maine Clean Election Act Violations

**A. Compliance Review.** The Commission staff will review all campaign finance reports filed by candidates pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the financial disclosure and documentation requirements set by statute or rule. The staff will review a selection of other campaign finance reports filed by non-candidate committees with the Commission for compliance with legal requirements. Notice of any omission, error, or violation will be given to the filer by electronic mail or U.S. Mail. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. The Commission staff shall schedule any substantial violations for possible action by the Commissioners at a public meeting. If the filer fails to remedy minor violations, the Commission staff will use its discretion whether to take any further action. Minor violations include, but are not limited to, failing to report the employment information for a contributor or misusing an expenditure code to describe the purpose of an expenditure.

**B. Late Reports and Registrations.** Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:

- (1) Lateness of report or registration,
- (2) Reason for lateness,
- (3) Kind of report (more stringent application for pre-election reports),
- (4) Amount of campaign funds not properly reported,
- (5) Previous record of the filer; and
- (6) Good faith effort of the filer to remedy the matter.

**C.** Any person (as defined in 21-A M.R.S.A. §1001) may make an official complaint or request for a Commission investigation by filing a signed written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. A copy of the signed request may be filed by facsimile or by electronic mail, provided that the original signed request is submitted to the Commission. Statements should be made upon personal



knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the candidate or organization alleged to have violated the statutory requirements. The Director may conduct preliminary fact finding to prepare a matter for presentation to the Commission. The Director, in consultation with Counsel, will prepare a summary of staff findings and recommendations for inclusion on the agenda.

**D.** An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified.

**E.** The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

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## **SECTION 5. FACT FINDING AND INVESTIGATIONS**

**1.** Before Commission Meeting. With respect to any inquiry, complaint, or request for Commission action properly filed in accordance with the preceding section, or any potential violation that comes to the attention of Commission staff through an audit or review of reports, the Director may conduct such preliminary investigation as is deemed prudent and desirable. If the preliminary investigation suggests that a complaint is without factual basis, the Director may inquire with the person filing the complaint whether he wishes to withdraw the request for further investigation. When a matter is ready for presentation to the Commission, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.

**2.** By the Commission. Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting. Consultations between the Commission and its Counsel concerning an investigation (including the issuance of subpoenas) where premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage may be held in executive session pursuant to 1 M.R.S.A. §§ 405(6)(E), 1005, and 1013(3-A).

**3.** Use of Commission's Subpoena Power. The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or

the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Any oral testimony compelled by a subpoena issued by this provision will be presented to the Commission or its staff.

4. Hearings. The Commission may hold a hearing to receive testimony under oath. Any hearing must be conducted in accordance with the Maine Administrative Procedure Act [5 M.R.S.A. §§ 8001 et seq. ] and Chapter 2 of the Commission's Rules.

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## 14 M.R.S.

Current with Chapter 59 of the 2021 first regular session of the 130th Maine Legislature.

### § 401. Short title

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This chapter may be known and cited as “the Uniform Interstate Depositions and Discovery Act.”

### § 402. Definitions

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As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Foreign jurisdiction.** “Foreign jurisdiction” means a state other than this State.
2. **Foreign subpoena.** “Foreign subpoena” means a subpoena issued under authority of a court of record of a foreign jurisdiction.
3. **Person.** “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.
4. **State.** “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe or any territory or insular possession subject to the jurisdiction of the United States.
5. **Subpoena.** “Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:
  - A. Attend and give testimony at a deposition;
  - B. Produce and permit inspection and copying of designated books, documents, records, electronically stored information or tangible things in the possession, custody or control of the person; or
  - C. Permit inspection of premises under the control of the person.

### § 403. Issuance of subpoena

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The issuance of a subpoena is governed by this section.

1. **Request issuance.** To request issuance of a subpoena under this section, a party must submit a foreign subpoena to the clerk of a District Court in the district or to the clerk of the Superior Court of the county in which the discovery is to be conducted. A request for the issuance of a subpoena under this Act does not constitute an appearance in the courts of the State.

**2. Submission of foreign subpoena.** When a party submits a foreign subpoena to a clerk of court in the State, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

**3. Requirements.** A foreign subpoena submitted under subsection 2 must:

**A.** Incorporate the terms used in the foreign subpoena; and

**B.** Contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

#### **§ 404. Service of subpoena**

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A subpoena issued by a clerk of court under section 403 must be served in compliance with the Maine Rules of Civil Procedure, Rule 45.

#### **§ 405. Deposition, production and inspection**

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The Maine Rules of Civil Procedure and the provisions of Title 16, sections 101, 102 and 251 apply to depositions and discovery carried out under this Act and subpoenas issued under section 403.

#### **§ 406. Application to court**

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An application to the court for a protective order or to enforce, quash or modify a subpoena issued by a clerk of court under section 403 must comply with the Maine Rules of Civil Procedure and be submitted to the District Court in the district or to the Superior Court of the county in which the discovery is to be or is being conducted.

#### **§ 407. Uniformity of application and construction**

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In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

#### **§ 408. Application to pending actions**

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Notwithstanding Title 1, section 302, this Act applies to requests for discovery in cases pending on the effective date of this Act.