



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

To: Commission
From: Jonathan Wayne, Executive Director
Date: October 21, 2020
Re: Request to Vacate Subpoena in Investigation of Stop the Corridor

Introduction

This matter concerns a limited liability company that operates under the name of Stop the Corridor (“STC”) which, at various times from August 2018 to 2000, engaged in grassroots activities and paid advertising to oppose the New England Clean Energy Connect (“NECEC”) transmission line project. A significant portion of its activities, particularly during its first year of operations, were not subject to campaign finance reporting requirements because they were unrelated to any election campaign.

[REDACTED]

[REDACTED] From 2018-2020, STC engaged in outreach to the public, public education through media advertising, and grassroots organizing of volunteers to oppose NECEC through participation 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.” [REDACTED]

[REDACTED]

In July and August 2019, members of another anti-NECEC organization began discussing the possibility of a ballot question to oppose NECEC. They formed the No CMP Corridor political action committee to initiate and promote a citizen initiative aimed at reversing a certificate of public convenience and necessity issued by the Public Utilities Commission. 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.

During the period of Oct. 2019 - Feb. 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. ETH-80.

In January 2020, the Commission received a complaint from a pro-NECEC PAC (Clean Energy Matters) questioning why STC had not registered with the Commission as a political action committee (PAC) or a ballot question committee (BQC), even though it had paid staff to support the initiative through petitioning. ETH 39-40. In summary, STC responded:

- The major purpose of STC is not promoting or supporting the citizen initiative to reject NECEC. Rather, its major purpose is to encourage Mainers to oppose NECEC by participating in state and federal permitting processes and municipal resolutions or approval processes.
- STC had not received funding specifically to support the initiative.
- All of STC's spending to promote the initiative was reported by No CMP Corridor PAC as in-kind contributions. STC did not have to register as a BQC because it was covered by an exception in the BQC definition for donors.

ETH 41-52.

At a meeting on March 10, 2020, the Commission decided to investigate whether STC 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 22, 2020 to expand the investigation to also consider whether STC qualified as a BQC. On June 19, 2020, STC filed a court proceeding under Rule 80C of the Maine Rules of Civil Procedure seeking a declaration that the Commission's May 22, 2020 expansion of the investigation was beyond the agency's jurisdiction.

STC did not provide documents in response to three requests by the Commission staff during May-August 2020 (discussed below). 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 seven categories of documents from STC [REDACTED]. ETH 1-3. STC [REDACTED] requesting that the Commission vacate the subpoena unless and until the Maine Superior Court resolves the Rule 80C proceeding in the Commission's favor. ETH 4-25. This memo sets out the history of the investigation and provides the staff's response to the request to vacate the subpoena.

Applicable Law

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. ETH-26.

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." ETH 29-30. 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). ETH-36. 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). ETH-29. 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). ETH-37.

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. ETH 29-30.

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). ETH-29. 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). ETH 37-38. 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. ETH 27-28.

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). ETH-33. 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 with a different major purpose 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. ETH 34-35. 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). ETH-35. 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). ETH-35.

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). ETH-34. 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). ETH-33.

History of Investigation

Commission's Decision to Investigate (March 10, 2020)

On January 17, 2020, Clean Energy Matters (a PAC funded by Central Maine Power to support the NECEC transmission project) requested an investigation into whether STC qualified as a PAC. ETH 39-40. At that time, members of STC staff were currently engaged in the petitioning effort to qualify No CMP Corridor's citizen initiative for the ballot. Clean Energy Matters argued that STC qualified as a PAC because:

- STC's spending to promote the initiative had exceeded the \$1,500 PAC threshold, and
- STC's major purpose was now preventing NECEC through the citizen initiative.

ETH 39-40.

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 41-54. STC asserted that it helped No CMP Corridor with its petition effort, but this was a small and ancillary part of STC's activities. According to STC, it was not required to register as a BQC because its paid assistance was reported as an in-kind contribution by No CMP Corridor and therefore was exempt under the donor exception. (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 not received funds specifically for the NECEC initiative, although it provided little information about how it had received its funding. In fact, 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 and had an obligation to register and report as a PAC because sufficient evidence has been presented to suggest that the major purpose of Stop the Corridor became to initiate or influence a campaign.” Commissioners William Lee and Richard Nass voted in favor of the motion, and Commissioner Meri Lowry voted against.

Preliminary Factual Information Received (March-April 2020)

Following the March 10, 2020 meeting, STC’s legal counsel provided information and documents intended to demonstrate that STC’s major purpose was not initiating or influencing the anti-NECEC citizen initiative. On March 25, 2020, STC’s legal counsel shared the following information by telephone conference:

- STC is an assumed name for Clean Energy for ME, LLC.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] kept track of the staff time spent on the referendum. This information was provided to No CMP Corridor PAC to be publicly reported as an in-kind contribution.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

On April 14, 2020, STC's attorneys transmitted 16 pages of documents, including:

- [REDACTED]
- [REDACTED]

These five pages, which provide a partial overview of STC's finances for 2019, are attached for your reference. ETH 55-59. [REDACTED]

Also in April 2020, No CMP Corridor PAC filed another quarterly report indicating that it had received more in-kind assistance from Stop the Corridor during January-March 2020. Between three campaign finance reports covering August 19, 2019 to March 30, 2020, No CMP Corridor reported receiving in-kind services from STC totaling \$85,727. A chart of these in-kind contributions is attached as ETH-80.

Recommendation by Commission Staff to Expand Investigation (May 2020)

The information received by the Commission in March-April 2020 increased the Commission staff's concern that STC may have met the definition of a BQC. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Based on our experience investigating ballot question

campaigns, advocates seeking large donations from a potential source often provide the funder with some communication concerning how those revenues would be spent. This is only natural: most donors/funders being asked for six-figure donations presumably would want to know some specifics concerning how the funding will advance their political objectives. [REDACTED]

Secondly, the Commission staff's examination of documents revealed a mismatch or discrepancy between [REDACTED] and the declining opportunities during this time period for members of the public to comment against NECEC in municipal resolutions and approval processes and state and federal agency permitting proceedings.

- A majority of the relevant municipal proceedings were concluded prior to December 2019.
- In May 2019, the Maine PUC issued its certificate of public convenience and necessity.
- The Land Use Planning Commission's record closed on November 26, 2019.
- Comments to the Department of Environmental Protection (DEP), originally due earlier in the year, were extended until November 2019 on one issue relating to Beattie Pond.
- The Army Corp of Engineers' invitation to comment expired on January 6, 2020.

[REDACTED]

Because of STC's insistence that the Commission's only authority was to investigate STC's major purpose and the limiting of information it would make available in the investigation, the Commission staff scheduled another discussion of the STC investigation for consideration by the Commission at its May 22 meeting, to consider the scope of the inquiry and procedures for the investigation. STC submitted a memo for the meeting and STC's counsel participated in the May 22 meeting.

Expansion of Investigation (May 22, 2020)

At the May 22, 2020 meeting, the Commission provided the following direction to the staff:

- The investigation should result in an understanding of the broad range of STC's financial activities and the purposes of those activities, not just petitioning for the initiative to reject NECEC.
- The Commission staff should investigate STC's receipt of funds [REDACTED]
- The Commission should not accept redactions and the withholding of names in financial records and interview responses.
- The investigation should include consideration of whether or not Stop the Corridor qualified as a BQC.

All three members of the Commission supported this direction.

Rule 80C Proceeding (June 19, 2020)

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. STC argued that because the pro-NECEC PAC (Clean Energy Matters) that had initially requested the investigation had not provided sufficient evidence to believe that STC was a BQC, the Commission was prevented from investigating this question. This argument ignores the Commission's ability to modify an investigation based on new evidence and recommendations by Commission staff.

In a petitioner's brief dated September 18, 2020, STC added another argument against the May 22, 2020 expansion of the investigation. ETH 8-25. Relying on a misquote of a Commission employee in a September 2020 news article, STC claimed, inaccurately, that "the Commission" had "eliminated" all financial reporting requirements related to the initiative to reject NECEC.¹ The Commission staff sent a corrective letter to STC's counsel on October 1, 2020 confirming that the Commission had not taken the action as described by STC in the Petitioner's Brief. ETH 81-82.

On October 19, 2020, the Commission's counsel submitted a responsive Rule 80C Brief arguing that the decisions in March and May 2020 to investigate and expand the investigation were plainly interlocutory (rather than final agency action) and therefore not appealable in a Rule 80C proceeding. ETH-. Counsel also asserted the Commission's authority to modify the scope of the investigation regardless of the scope of the request filed initially by the pro-NECEC PAC, Clean Energy Matters. STC has until November 2, 2020 to file a reply brief, after which the case will be ready for oral argument in the Superior Court, but the scheduling of that is hard to predict.

¹ In early September 2020, the Commission employee commented to the Maine Monitor website that because the Law Court's decision led to removal of the initiative from the Nov. 2020 ballot, a hypothetical or future online forum by a local chamber of commerce to discuss the NECEC transmission line project would not be subject to campaign finance reporting requirements. This had no impact on the duty of PACs and BQCs to report financial activity to influence the initiative that had occurred *prior to* the Law Court's August 13, 2020 decision.

STC's Refusal to Provide Financial Records Requested by the Commission

On May 13 and June 1, 2020, the Commission staff requested from STC's legal counsel an unredacted ledger of transactions by STC that would have disclosed financial activity through the spring of 2020. STC did not provide the requested record, and initiated the Rule 80C proceeding on June 19, 2020.

In August 2020, the Commission staff conferred with counsel concerning the impact on the Commission's STC investigation of the August 13, 2020 decision by the Law Court leading to removal of the NECEC citizen initiative from the November 3, 2020 ballot. *Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109. We determined that the Law Court decision had no impact on the legal duty of organizations to disclose financial activities that occurred *prior to August 13, 2020* for the purpose of initiating or influencing the NECEC citizen initiative.

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. [REDACTED]

[REDACTED]
[REDACTED] On the last day to respond, counsel [REDACTED] 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.

The Commission staff conferred with the Commission Chair and counsel on how to proceed. On September 18, 2020, the Commission Chair authorized an Investigative Subpoena to Produce Records requesting the same seven categories of documents [REDACTED]. [REDACTED] ETH 1-3. The respondent [REDACTED] petitioning the Commission to vacate the subpoena unless and until the Maine Superior Court resolves the Rule 80C proceeding in the Commission's favor. ETH 4-25.

Commission Staff Response to Objections to the Subpoena

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). ETH-27.

In a letter dated October 2, 2020, STC [REDACTED] requested that the Commission vacate its investigative subpoena “unless and until the Rule 80C Appeal is resolved in [the Commission’s] favor.” The Commission staff responds to three of STC’s principal arguments below. We recommend denying the requested relief.

STC argument #1: STC will be harmed by cooperating with the Commission’s investigation

Campaign finance reporting is an honor system. When a factually sound predicate has been presented, it is a necessary and important governmental function to “look under the hood” of a political organization to verify that it has complied with Maine’s campaign disclosure laws. If political organizations are left to police themselves, they will sometimes cut corners on registering and financial reporting in order to maintain relationships with donors or keep other arrangements private.

Investigations to verify the extent of an organization’s campaign finance activities often require examining documents that would not ordinarily be disclosed publicly, such as bookkeeping or financial records, email and other communications, solicitations,

campaign budgets, *etc.* To facilitate the Commission's investigations, the Legislature has directed the Commission to keep "investigative working papers" confidential. 21-A M.R.S. § 1003(3-A). The intention of this subsection is that:

- the Commission should have access to sensitive political or campaign information necessary to investigate compliance with campaign finance laws, but
- the Commission must keep that information private so that the information is not released to the public (except as authorized by the statute).

STC's concern that the Commission will disclose its non-electoral activities "as it sees fit" is unfounded. ETH-5. The Commission is permitted to release confidential investigatory records or 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). In other words, confidential material would typically be publicly disclosed by the Commission only as part of a finding that a violation occurred. Any report on the investigation presented by staff may be disclosed but only after it is first reviewed by the subject of the investigation to identify any material that may be considered privileged or confidential.

As the Commission staff expressed in a prior memo to the Commission, we are mindful that political campaigns sometimes become contentious. The battle over NECEC is not new in this regard. The Commission staff and members have a successful track record over the past twelve years since 21-A M.R.S. § 1003(3-A) was enacted of receiving sensitive information in the context of hard-fought ballot question campaigns and responsibly exercising its discretion concerning confidential records. In this investigation, the Commission staff will work in a politically disinterested manner and will treat all investigative working papers as highly protected. A party's unfounded concern that confidential information may be released publicly should not frustrate the Commission's performance of its statutory mandate to conduct investigations.

STC argument #2: the Commission's requests are overbroad because they seek material unrelated to the NECEC citizen initiative

At the Commission's May 22, 2020 meeting, the Commission accepted the staff's recommendation that the Commission should understand the broad range of STC's financial activities and the purposes of those activities (*i.e.*, not just STC's petitioning costs, but also its spending on television and other paid communications, polling, and payments to allies). This is appropriate for two reasons.

First, one critical element of STC's compliance defense is that *every* expenditure it made to support the NECEC citizen initiative was reported by another organization (No CMP Corridor) as an in-kind contribution. Given the emerging high stakes of the citizen initiative in late 2019 and early 2020 as a means of stopping NECEC, the Commission staff believes it would be prudent to test that claim by verifying that no initiative-related expenditure by STC was omitted from the campaign finance reports filed by No CMP Corridor PAC. The Commission staff should review the details of STC's transactions and make its own judgments that all initiative-related costs were reported by No CMP Corridor, rather than rely entirely on STC's representations.

Second, another of STC's central defenses is that STC's major purpose was to encourage Maine people to participate in permitting and municipal proceedings and that STC's purpose did not change over time. The Commission staff should review STC's overall activities in order to carefully assess that claim. For this reason, the subpoena requests contracts, campaign plans and budgets, [REDACTED], and transactional information.

STC argument #3: there is no compelling reason to "expedite" the Commission's investigation

The Commission should seek to conclude this investigation expeditiously. If STC had fully cooperated with the Commission's investigation by providing unredacted versions of requested documents and facilitating a few interviews, the staff estimates that we could have reported back to the Commission within three months (by mid-June 2020), reducing

Request #2	All Documents containing a plan or outline of activities to oppose NECEC [REDACTED] including but not limited to budgets or strategy plans.
<i>Relevance to Investigation</i>	Any plans or outlines of activities to oppose NECEC [REDACTED] are relevant to: <ol style="list-style-type: none"> 1) the major purpose of STC, and 2) the extent of expenditures made by STC to influence the citizen initiative to reject NECEC, and whether all such expenditures were reported as in-kind contributions by No CMP Corridor.
Request #3	An unredacted version of STC's general ledger provided to the Commission on April 14, 2020 updated to include financial transactions through April 30, 2020, in Microsoft Excel or .csv format.
<i>Relevance to Investigation</i>	The unredacted ledger is relevant to: <ol style="list-style-type: none"> 1) the extent of expenditures made by STC to influence the citizen initiative to reject NECEC, and whether all such expenditures were reported as in-kind contributions by No CMP Corridor, and 2) the major purpose of STC.
Request #4	A general ledger or other bookkeeping Document that displays all expenditures [REDACTED] from January 1, 2019 through April 30, 2020, in Microsoft Excel or .csv format.
<i>Relevance to Investigation</i>	The unredacted ledger or bookkeeping document is relevant to: <ol style="list-style-type: none"> 1) the extent of expenditures made on behalf of STC to influence the citizen initiative to reject NECEC, and whether all such expenditures were reported as in-kind contributions by No CMP Corridor, and, 2) the major purpose of STC.

Request #5	<p>All Documents transmitted among or between STC, [REDACTED] on or after May 1, 2019 referring to the Citizen Initiative to Reject NECEC or any proposed or potential direct initiative opposing NECEC, including but not limited to:</p> <ol style="list-style-type: none"> a. electronic mail, and text or instant messages; b. proposals, purchase orders, price quotations for goods or services, and invoices; c. budgets; and d. written plans or outlines of activities.
Rationale	<p>The emails, proposals, invoices, budgets and campaign plans referring to the initiative to reject NECEC are relevant to:</p> <ol style="list-style-type: none"> 1) the extent of expenditures made on behalf of STC to influence the initiative, and whether all such expenditures were reported as in-kind contributions by No CMP Corridor, 2) whether any funds received by STC met the definition of a contribution in § 1056-B(2-A), and 3) the major purpose of STC.
Request #6	<p>All Documents [REDACTED] on or after August 1, 2019 by [REDACTED] STC [REDACTED] containing a request for money, specifying an amount of funds necessary for activities to oppose NECEC, or reflecting [REDACTED]. This request is not limited to Documents referring to the Citizen Initiative to Reject NECEC.</p>
<i>Relevance to Investigation</i>	<p>The requests for money and other documents are relevant to:</p> <ol style="list-style-type: none"> 1) whether funds received by STC met the definition of a contribution in § 1056-B(2-A), and 2) the major purpose of STC.

<p>Request #7</p>	<p>All Documents, including but not limited to electronic mail and text or instant messages, that were transmitted on or after August 1, 2019 between STC [REDACTED] and Say No to NECEC or No CMP Corridor referring to the Citizen Initiative to Reject NECEC or any proposed or potential direct initiative opposing NECEC. Please include any Documents transmitting or responding to [REDACTED] Say No to NECEC provided to the Commission on April 14, 2020 and marked as STC 015-016.</p>
<p><i>Relevance to Investigation</i></p>	<p>The emails and other communications are relevant to:</p> <ol style="list-style-type: none"> 1) the extent of expenditures made on behalf of STC to influence the initiative, and whether all such expenditures were reported as in-kind contributions by No CMP Corridor, 2) the cooperation between STC and No CMP Corridor, which is the basis of STC's defense that it is not a BQC.

Thank you for your consideration of this memo.

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

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

To: Stop the Corridor [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 October 9, 2020, 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 contracts among or between Stop the Corridor ("STC"), [REDACTED] to provide services related to NECEC, and any modifications of those contracts.
2. All Documents containing a plan or outline of activities to oppose NECEC [REDACTED] including but not limited to budgets or strategy plans.
3. An unredacted version of STC's general ledger provided to the Commission on April 14, 2020 updated to include financial transactions through April 30, 2020, in Microsoft Excel or .csv format.
4. A general ledger or other bookkeeping Document that displays all expenditures [REDACTED] from January 1, 2019 through April 30, 2020, in Microsoft Excel or .csv format.
5. All Documents transmitted among or between STC, [REDACTED] on or after May 1, 2019 referring to the Citizen Initiative to Reject NECEC or any proposed or potential direct initiative opposing NECEC, including but not limited to:
 - a. electronic mail, and text or instant messages;
 - b. proposals, purchase orders, price quotations for goods or services, and invoices;
 - c. budgets; and
 - d. written plans or outlines of activities.

6. All Documents [REDACTED] on or after August 1, 2019 by [REDACTED] STC [REDACTED] containing a request for money, specifying an amount of funds necessary for activities to oppose NECEC, or reflecting how STC [REDACTED] would spend funds [REDACTED]. This request is not limited to Documents referring to the Citizen Initiative to Reject NECEC.
7. All Documents, including but not limited to electronic mail and text or instant messages, that were transmitted on or after August 1, 2019 between STC [REDACTED] and Say No to NECEC or No CMP Corridor referring to the Citizen Initiative to Reject NECEC or any proposed or potential direct initiative opposing NECEC. Please include any Documents transmitting or responding to [REDACTED] Say No to NECEC provided to the Commission on April 14, 2020 and marked as STC 015-016.


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 Phyllis Gardiner, Assistant Attorney General, Office of the Attorney General, 6 State House Station, Augusta, Maine 04333-0006. She may be contacted at (207) 626-8830.

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 October 2, 2020. 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: _____

9/18/2020



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

Definitions

“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, 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.

[REDACTED]

[REDACTED]

“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.

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



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Via E-mail and First-Class Mail

October 2, 2020

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

Re: Objections to Commission's September 18, 2020 Subpoena

Dear Mr. Wayne:

Stop the Corridor ("STC") [REDACTED] object to the subpoena dated September 18, 2020 (the "Subpoena") issued by the Commission on Governmental Ethics and Election Practices (the "Commission"). The bases of the objection are more particularly described herein. For all of those reasons, STC [REDACTED] request that the Commission vacate the Subpoena.

A. The Subpoena Should Be Vacated Because The Commission Lacks Jurisdiction

STC [REDACTED] object to the Commission's efforts to compel disclosure of [REDACTED] private corporate information because, as STC has argued in its pending appeal to the Superior Court (the "Rule 80B Appeal"), the Commission lacks jurisdiction to investigate STC as a ballot-question committee ("BQC") in light of the circumstances that:

- (i) Commission staff have publicly represented that there is no NECEC "campaign" for Commission reporting purposes now that the NECEC ballot question was eliminated, rendering the investigation moot; and
- (ii) The Commission's jurisdiction to investigate STC based upon the application from Clean Energy Maine ("CEM") for an investigation is

limited by statute to those issues CEM presented, and CEM expressly waived any request for investigation of STC's BQC status.

A more comprehensive discussion of STC's position on these issues is laid out in STC's brief filed in the 80C Appeal on September 18, 2020, which is incorporated herein by reference and a copy of which is attached hereto as Exhibit A.

At its core, the 80C Appeal addresses STC's right to keep confidential certain information about its corporate operations that are not subject to public disclosure pursuant to Maine law and existing Commission guidance. The 80C Appeal seeks a declaration that the Commission lacks jurisdiction to continue its investigation against STC and/or that the investigation has been mooted by the Commission. Those issues directly impact the validity of the Subpoena: Without an extant lawful investigation, the Commission cannot issue a lawful subpoena. Compelled disclosure of STC's [REDACTED] private corporate information in the absence of the Commission possessing lawful jurisdiction would violate STC's [REDACTED] speech and privacy rights guaranteed by the First Amendment and Fourth Amendment to the United States Constitution, and supplemented by the Maine Constitution, Art. I, §§ 4-5. Forcing any such disclosure prior to final adjudication of the 80C Appeal in the Commission's favor would render that adjudication meaningless because disclosure of STC's [REDACTED] private information is a bell that cannot be un-rung. If disclosure of their private information is compelled at this stage, that privacy can never be restored by the Court.

The Commission's statutory option to keep investigatory materials confidential is an inadequate protection of STC's [REDACTED] privacy rights because 21-A M.R.S.A. § 1003(3-A) provides the Commission "may disclose" investigation materials however it sees fit. Consequently, STC [REDACTED] would have no ability to protect their confidential information after initial disclosure.

There is no compelling reason to expedite the Commission's investigation pending resolution of the 80C Appeal. The NECEC referendum, which was the reference point for the Commission's investigation, has now been removed from the November ballot. Neither the Commission, any individual person or entity, nor the public at large will suffer any prejudice by delay in awaiting final resolution of the 80C Appeal. Therefore, the Commission should vacate the Subpoena unless and until the 80C Appeal is resolved in its favor.

B. Specific Objections To Individual Document Requests

STC [REDACTED] further object to the Commission's specific document requests set out in the Subpoena as set forth below:

Request No. 1: This request for documents relating to "services related to NECEC" is overbroad and not reasonably limited to documents relating to the Commission's investigation of STC's campaign activity. Request No. 1 seeks disclosure of any NECEC-related work, not just NECEC ballot initiative-related work. Given the

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Commission's limited jurisdiction to investigate ballot initiative campaign activity, all private corporate activities outside an initiative campaign are not a proper subject for compelled disclosure. Additionally, Request No. 1 is overbroad in its failure to limit the requested disclosure to the time period after August 1, 2019, when the NECEC ballot initiative campaign was determined by the Commission to have begun.

Request No. 2: This request for documents relating to any "activities to oppose NECEC" similarly is overbroad and not reasonably limited to documents relating to the Commission's investigation of STC's campaign activity. The request omits any limitation to those documents relating to the NECEC ballot referendum activity, which is the limit of any lawful jurisdiction Commission could have in these circumstances. Additionally, Request No. 2 is overbroad in its failure to limit the requested disclosure to the time period after August 1, 2019, when the NECEC ballot initiative campaign was determined by the Commission to have begun.

Requests No. 3 and 4: These requests for STC's [REDACTED] general ledger are overbroad because they each seek to compel disclosure of corporate financial activity dating back to STC's establishment in 2018, more than a year prior to the August 1, 2019 date that the Commission has previously recognized potential NECEC ballot referendum campaign activity to have begun.

Request No. 5: This request for all documents "referring" to the NECEC ballot initiative is overbroad and not reasonably limited to documents relating to the Commission's investigation of STC's campaign activity. Mere reference or discussion of the campaign activity of others does not constitute campaign activity within the scope of the Commission's lawful jurisdiction. Additionally, Request No. 5 is overbroad in its failure to limit the requested disclosure to the time period after August 1, 2019, when the NECEC ballot initiative campaign was determined by the Commission to have begun.

Request No. 6: This request for documents "containing a request for money, specifying an amount of funds necessary for activities to oppose the NECEC, or reflection how STC [REDACTED] would spend funds provided" is overbroad and not reasonably limited to documents relating to the Commission's investigation of STC's campaign activity. This request extends far beyond funding for ballot initiative activity. Communications regarding activities and expenditures unrelated to any ballot initiative campaign but involving general NECEC opposition are outside of the Commission's lawful jurisdiction to investigate.

Request No. 7: This request for all documents "referring" to the NECEC ballot initiative is overbroad and not reasonably limited to documents relating to the Commission's investigation of STC's campaign activity. Mere reference or discussion of the campaign activity of others does not constitute campaign activity within the scope of the Commission's lawful jurisdiction.

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At bottom, any compelled disclosure of nonpublic corporate activity that is entirely unrelated to campaign activity subject to the Commission's jurisdiction would constitute a violation of STC's 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.

Note that these objections are made in express reliance upon guidance received from the Commission's counsel that any omission of more particular bases of objection would not be deemed by the Commission as a waiver of STC's [REDACTED] preserved objections to the Subpoena's individual requests. Accordingly, STC [REDACTED] reserve the right to supplement these objections with more particular bases of objection.

We welcome the opportunity to further address these objections and the request that the Commission vacate the Subpoena at the Commission's upcoming board meeting.

Very truly yours,



James G. Monteleone

JGM:js

cc: Phyllis Gardiner, Esq. (w/ encl.)

STATE OF MAINE
CUMBERLAND ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP 20-14

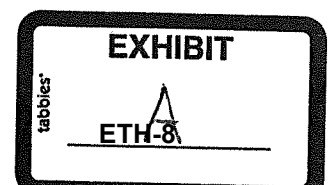
CLEAN ENERGY FOR ME, LLC,)
)
Petitioner)
)
v.)
)
MAINE COMMISSION ON)
GOVERNMENTAL ETHICS AND)
ELECTIONS PRACTICES, an agency of)
the State of Maine,)
)
Respondent)
)
and)
)
CLEAN ENERGY MATTERS,)
)
Party-in-Interest)

PETITIONER'S BRIEF

Petitioner Clean Energy for ME, LLC, doing business under the name "Stop the Corridor" ("STC"), by and through its undersigned counsel, pursuant to 5 M.R.S.A. § 11001, *et seq.*, and M.R. Civ. P. 80C, submits this Brief in support of its Petition for Review of Final Agency Action by the Maine Commission for Governmental Ethics and Elections Practices (the "Commission").

PRELIMINARY STATEMENT

The Court should enter judgment declaring that (i) the Commission rendered moot any further investigation into STC's obligations to report campaign activity relating to the "New England Clean Energy Connect" ("NECEC") referendum when the Commission determined that no campaign exists for Commission reporting purposes upon the Law Court's removal of the NECEC referendum from the November ballot; and (ii) the Commission's May 22 action to expand a pending investigation of STC pursuant to 21-A



M.R.S.A. § 1003(2) exceeded the Commission's statutory jurisdiction to conduct the investigation requested by a third party. Accordingly, Petitioner respectfully requests that the Court reverse the Commission action authorizing investigation of STC's activity not otherwise subject to the Commission's oversight.

STANDARD OF REVIEW

The Superior Court has jurisdiction pursuant to the Maine Administrative Procedure Act to reverse or modify an agency's acts, particularly in cases where the record demonstrates that the agency's action either (i) was taken in violation of a constitutional or statutory provision; (ii) exceeded the agency's statutory authority to act; (iii) was affected by bias or error of law; or (iv) was taken arbitrarily, capriciously, or in an abuse of discretion. 5 M.R.S.A. § 11007(4)(C).

Appeals of an agency action for violation or error of law are reviewed *de novo*. *Kroeger v. Dep't of Envtl. Prot.*, 2005 ME 50, ¶ 7, 870 A.2d 566. Where the error of law turns on proper construction of a clear and unambiguous statute, the Court construes the statutory provision based upon its plain meaning, without any deference to the agency's interpretation of the law. *Street v. Bd. of Licensing of Auctioneers*, 2006 ME 6, ¶ 9, 889 A.2d 319. ("If the statute is unambiguous, the Court plainly construe[s] the unambiguous statute without deference to the Board's construction" (internal quotations omitted)). The Court may defer to the agency's interpretation of a statute the agency administers only in cases where the statute is shown to be ambiguous. *Id.*

Where the agency's error derives from its abuse of discretion, the Court reviews the record to determine whether the action "exceeded the bounds of reasonable choices available to it, considering the facts and circumstances of the particular case and the

governing law.” *Forest Ecology Network v. Land Use Regulation Comm'n*, 2012 ME 36, ¶ 28, 39 A.3d 74.

FACTS

A. STC's Formation, Purpose, And Activities

STC is a Maine limited liability corporation formed in 2018 to express opposition to the NECEC corridor that was proposed for installation through Maine.¹ Agency Record (“R.”) 42. STC was not formed or operated for the purpose of engaging in any election issue subject to Maine’s campaign reporting laws that the Commission is charged to enforce. *Id.* STC’s has not engaged in any election campaign activity for which Maine law imposes public registration or reporting requirements.² R.45-46. No ballot referendum regarding the NECEC will appear in Maine’s November 2020 election. *See Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, ¶ 39.

B. CEM's Request To Investigate Whether STC Qualifies As A PAC

Party-in-Interest Clean Energy Matters (“CEM”) is a Maine political action committee (“PAC”) of Central Maine Power Company that has promoted the NECEC through direct engagement in electoral politics. On January 17, 2020, CEM submitted a written request to the Commission asking that it investigate STC for failing to register as a PAC (as a PAC is defined in 21-A M.R.S.A. § 1052(5)(A)(4)) in violation of 21-A M.R.S.A. § 1004(4) (the “PAC Investigation Request”). R.1-2. CEM requested that the Commission investigate whether STC became an unregistered Section 1052(5) PAC based upon three factual allegations. *Id.*

¹ The NECEC is a proposed 145-mile electricity transmission line will be built on land owned or controlled by Central Maine Power Co. (“CMP”).

² STC has made contributions to an unaffiliated ballot question committee (“BQC”) that had engaged in electoral campaign activity; these contributions were properly documented by the BQC that had initiated and promoted electoral issues relating to the NECEC. R.45-46.

First, CEM asserted that another entity, “No CMP Corridor,” filed a fourth-quarter 2019 campaign finance report with the Commission that “identifies approximately \$50,000 of in-kind expenditures made by ‘Stop the Corridor’ to ‘No CMP Corridor,’” described as “staff time for volunteer recruitment.”³ R.1. Second, CEM alleged that STC’s “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.” *Id.* Finally, CEM alleged that it “believe[d] that ‘Stop the Corridor’ purchased television and digital advertising in excess of \$1.4 million over the course of the past calendar year.” R.2.

CEM summarized its PAC Investigation Request of STC as follows:

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 filings made by ‘No CMP Corridor,’ it would appear that ‘Stop the Corridor’ exceeded that threshold on or about December 12, 2019.

R.1. CEM’s PAC Investigation Request expressly excluded any claim or supporting allegations that STC should be investigated as a ballot question committee (“BQC”) pursuant to 21-A M.R.S.A. § 1056-B. In fact, CEM’s PAC Investigation Request specifically stated that it was *not requesting an investigation that STC ever became a BQC*, stating “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 M.R.S.A. § 1056-B.” R.2 at n.1.

³ See n.2 *supra*.

C. The Commission's Response To CEM's PAC Investigation Request

1. The March 10, 2020 Hearing And Decision To Investigate Whether STC Qualified As A PAC

On March 10, 2020, the Commission conducted a hearing to consider CEM's PAC Investigation Request. In advance of the March 10 hearing, Commission staff provided the commissioners with a memo framing the issue in manner that exceeded the scope of CEM's request to investigate (the "March Staff Memo"). See R.96-109. The memo stated, in pertinent part, that, "[t]he compliance issue before the Commission is whether Stop the Corridor was required to register with the Commission as a political action committee ('PAC') or as a ballot question committee ('BQC') due to recent activities in support of a citizen initiative to reject the NECEC." R.96 (emphasis added). The March Staff Memo additionally observed that "Clean Energy Matters seems to conclude that Stop the Corridor is not a BQC, but the Commission staff recommends that you consider this compliance question as well – because a determination that Stop the Corridor is a PAC depends on its major purpose, which can be difficult to ascertain." R.100 (emphasis added).

The Commission voted 2-1 on March 10, 2020 to undertake the investigation into STC's PAC status pursuant to CEM's request (the "PAC Investigation"). R.140. Commissioners Nass and Lee voted in favor of the PAC Investigation. *Id.* Commissioner Nass, during the March 10 meeting, observed that CEM "gave up the argument" that a Commission investigation into STC's BQC status was available. See Tr. of Proceedings, March 10, 2020 ("March Tr.") at 28:23-29:10. The investigation that the Commission authorized on March 10 based on the evidence CEM alleged was limited "to determine whether Stop the Corridor qualifies as a PAC based upon evidence presented to suggest

its major purpose became to [initiate or] influence an election result.” March Tr. 97:3- 11.

2. The Commission Staff Again Requests That The Commission Expand the PAC Investigation To Investigate Whether STC Qualified As A BQC

On May 1, 2020, the Commission staff submitted a memo to the Commissioners regarding the PAC Investigation (the “May Staff Memo”), requesting “guidance from you [the Commissioners] *concerning the scope and procedures for the investigation you authorized at your March 10, 2020 meeting* concerning whether Stop the Corridor (STC) qualified as a political action committee (PAC).” R.169. (emphasis added). The May Staff Memo asked that the Commission act on the staff’s request to expand the authorized investigation to then include whether STC qualifies as a BQC pursuant to Section 1056-B (the “Expanded Investigation Request”). *Id.*

The Commission staff invited STC and CEM to submit written responses to the staff’s Expanded Investigation Request. CEM, on May 12, 2020, submitted comments requesting—without offering any additional factual grounds to indicated a violation had occurred—that the Commission broaden the PAC Investigation CEM had requested to include the expanded BQC investigation suggested by Commission staff. R.160. CEM’s May Comments reversed its earlier admission in the CEM PAC Investigation Request that STC *did not* qualify as a BQC. R.163; *cf.* R.2 at n.1. CEM then claimed for the first time—without citing any grounds of support for the allegation— that STC’s potential qualification as a BQC was then “an open question” that should be *added* to the pending PAC Investigation that CEM had requested. R.163.

3. The May 22, 2020 Action To Expand the PAC Investigation To Investigate Whether STC Qualified As A BQC

On May 22, 2020, the Commission conducted a public hearing *via* remote videoconference at which it took final action that broadened the scope of its investigation of STC to include whether STC qualified as a BQC under Section 1056-B. R.176. At the hearing, the Commission voted to broaden the PAC Investigation requested by CEM based upon staff recommendations relating to topics that CEM's investigation request never identified or included (the "Expanded Investigation"). R.185. The Expanded Investigation included: (i) an investigation "to gain an understanding of the broad range of Stop the Corridor's financial activities and the purposes of those activities that not only includes Stop the Corridor's petitioning costs but also its spending on television, other paid communications, polling and payments to allies;" (ii) an investigation into STC's "receipt of funds and why its funding sources provided funds to Stop the Corridor; and (iii) an investigation into "whether Stop the Corridor qualifies as a ballot question committee." R.184. Additionally, the Commission took action on logistical aspects of the expanded investigation requested by Commission staff, directing staff to "require Stop the Corridor to provide unredacted documents and the disclosure of names in documents and interview responses, for example the funder, vendors and allied organizations." *Id.*

STC timely appealed the Commission's final action taken on May 22, 2020 with a petition for M.R. Civ. P. 80C review filed on June 19, 2020. The Attorney General's Office, representing the Commission, timely filed the agency record with the Court on July 20, 2020.

D. Removal Of The NECEC Ballot Question From The November Election Resulted In “No Campaign” for Commission Purposes

The NECEC referendum at the core of the Commission’s STC investigation was removed from the ballot on August 13, 2020 when the Law Court’s held in *Avangrid Networks, Inc. v. Sec’y of State* that the question did not present a constitutionally valid legislative question. 2020 ME 109, ¶ 39.

The Commission has since declared through its representatives that the Commission cannot and will not require any registration or reporting from entities that had engaged in prior activity relating to the NECEC referendum.⁴ See Katie Brown, “CMP, Avangrid spent dark money to drum up support for controversial power corridor on top of record-breaking \$11.3M public campaign,” *The Maine Monitor* (Sept. 13, 2020) (<https://www.themainemonitor.org/cmp-avangrid-spent-dark-money-to-drum-up-support-for-controversial-power-corridor-on-top-of-record-breaking-11-3m-public-campaign>). The Commission’s registrar for political committees, Michael Dunn, stated on behalf of the Commission: “Without there being a referendum, there is no campaign for our purposes, so there’s no requirement that they register and report to us.” *Id.* Mr. Dunn additionally said it would be “unfair” for the Commission to now require campaign finance registration or reporting of unregistered entities’ prior campaign activity relating to the NECEC referendum question. *Id.* The result of the Commission’s updated determination is that a CEM affiliate entity —“Mainers for Clean Energy Jobs”— and any other entities that had previously campaigned regarding the NECEC referendum, are not required to report their prior, unreported NECEC referendum activity. *See id.*

⁴ This Court may take judicial notice of remarks publicly stated by Commission representatives on the Commission’s behalf because the quoted remarks are admissible statements of an opposing party that are expressly excluded from the rule against hearsay. *See* M.R. Evid. 801(d)(2).

ARGUMENT

This Court should declare that the Commission's investigation into STC's reporting requirements must cease. There are at least two reasons why this is so. First, the Commission's determination that the withdrawal of the NECEC ballot referendum obviated prior campaign reporting obligations has rendered moot any investigation into STC's obligation to report NECEC campaign activity, and any continuation of a moot investigation is an arbitrary and capricious abuse of Commission discretion. Second, even if the Commission's investigation is not rendered moot, the Commission unlawfully exceeded its statutory jurisdiction to investigate STC when it modified the pending PAC Investigation to tack on the separate BQC investigation at the request of the Commission's staff.

A. The Commission's Elimination Of All NECEC Referendum Reporting Requirements Moots Any Investigation Of STC For Alleged NECEC Referendum Campaign Activity, Barring Further Commission Action.

The Commission's pending investigation of whether STC was required to register and report NECEC referendum campaign activity either as a PAC pursuant to 21-A M.R.S.A. § 1052, or as a BQC, pursuant to § 1056-B, is moot and nonactionable since the Commission has now determined that "[w]ithout there being a referendum, there is no campaign for our purposes, so there's no requirement that [entities] register and report to us." *Maine Monitor supra* at 7.

The registration and reporting requirements for qualifying as a PAC or BQC are triggered by "campaign" activity set forth in Section 1052 and 1056-B defining reportable PAC or BQC activity. "Campaign" is defined in the statute as "any course of activities to ... to initiate or influence ... a direct initiative of legislation under the constitution of Maine, Article IV, Part Third, Section 18," such as the former NECEC referendum. 21-

A M.R.S.A. § 1052(1)(B). Where no campaign exists, neither PACs nor BQCs are subject to any finance reporting with the Commission. 21-A M.R.S.A. § 1051 (Statutes governing required campaign finance disclosures “appl[y] to the activities of political action committees and ballot question committees that accept contributions, incur obligations, or make expenditures ... to initiate or influence a campaign, as defined in this subchapter.”).

The Commission has recently stated that the elimination of the NECEC referendum on August 13, 2020 means that there is “no campaign for [Commission] purposes,” eliminating the statutory requirements for PAC or BQC registration or reporting to the Commission. *See* Maine Monitor *supra* at 7. Where no NECEC campaign is recognized by the Commission, STC cannot, as a matter of law, qualify as either a PAC or a BQC for campaign finance reporting purposes. *See* § 1051. Here, the NECEC referendum is the *only* initiative at issue in the Commission’s investigation of STC. *See* R. 130.

An inquiry is moot where the issue lacks a “real and substantial controversy,” *Clark v. Hancock Cty. Comm’rs*, 2014 ME 33, ¶ 11, 87 A.3d 712. Mootness is triggered where the issues presented have “lost their controversial vitality.” *Id.* Mooted issues generally survive for continued review only where one of three exceptions apply: (i) “sufficient collateral consequences will result from the determination,” (ii) the matter presents “questions of great public concern”; or (iii) the issues are capable of repeating but evade review because they are fleeting. *Id.* at ¶ 11, 13. Here, none of the exceptions apply here to warrant the Commission’s further investigation to determine whether campaign finance requirements *would have* applied to STC had a NECEC campaign existed.

Mainers for Fair Bear Hunting v. Dep't of Inland Fisheries & Wildlife, 2016 ME 57, 136 A.3d 714 held that an inquiry into alleged ballot question campaign activity was moot and unfit for review once the ballot question campaign was over. 2016 ME 57 ¶ 10. The ended campaign did not trigger any of the exceptions to review of moot questions because the Court recognized that, even if the referendum campaign recurs, the subsequent election campaign will provide sufficient time to fully litigate any questions that may repeat through activity during that future campaign. *Id.*

The Commission has stated that no reporting or registration requirements apply to activities relating the NECEC referendum campaign, including activity that occurred prior to the Law Court's August 13, 2020 decision to eliminate the NECEC referendum. *See Maine Monitor supra* at 7. It follows that, where no reportable campaign is recognized by the Commission, no STC activity could trigger reporting or registration requirements with the Commission as a NECEC referendum PAC or a BQC. Reporting requirements occur only where a campaign exists. *See* 21-A M.R.S.A. § 1051. Consequently, the Commission's pending investigations into whether STC's is required to register and report NECEC referendum activity as either a PAC or BQC is rendered moot, and the Commission should be barred from taking any further investigatory action into any moot or theoretical reporting requirement.

The Commission's continuation of either prong of its STC investigation after its determination that no referendum campaign exists for Commission reporting purposes constitutes an arbitrary and capricious abuse of the agency's discretion. The investigatory question of whether STC had any legal obligation to report prior campaign activity as either a PAC or BQC is now a dead letter. Even if the Commission were to ultimately determine from its investigation that STC was required to report its NECEC

referendum activity as a PAC or BQC, the Commission has represented that prior NECEC activity need not be reported to the Commission at this stage. The Commission investigation of STC does not avail itself to any mootness doctrine exceptions. Continued investigation under these circumstances strikes a punitive chord, and “exceeds the bounds of the reasonable choices available” to the Commission in light of the Commission’s now-eliminated NECEC reporting requirements. *See Forest Ecology Network*, 2012 ME 36, ¶¶ 28, 39.

A fundamental unfairness would result from any continuation of the Commission’s investigation into STC’s obligations to report its prior NECEC referendum activity when the Commission has now absolved a CEM-affiliated political entity from its obligations to report its own NECEC referendum activity that had occurred prior to the Law Court’s removal of the NECEC referendum question. *See Maine Monitor supra* at 7. In other words, CEM—the entity that initiated the STC investigation in the first place—gets a pass for prior NECEC referendum activity, while STC would face ongoing investigation for prior referendum activity. Where “no campaign for [Commission] purposes” frees other entities from disclosing prior, reportable campaign activity, that absolution of reporting requirements must similarly extend to STC. *See Clark*, 2014 ME 33, ¶ 11. At bottom, any continuation of the Commission investigation into STC’s NECEC activity it now deems non-reportable constitutes an arbitrary and capricious abuse of agency discretion. *See* 5 M.R.S.A. § 11007(4)(C)(authorizing the Court to reverse agency action taken arbitrarily, capriciously, or in an abuse of its discretion).

B. The Commission Lacked Jurisdiction To Add An Investigatory Question Waived By The Third-Party Requesting The Investigation.

Even if the Commission's investigation were not mooted by the Commission's elimination of NECEC referendum reporting requirements, the Commission exceeded its investigatory jurisdiction by expanding an existing 21-A M.R.S.A. § 1003(2) investigation of STC's PAC status to add an additional investigation into STC's BQC status based on grounds that were never asserted in, and in fact waived by, CEM's request for an investigation of STC. Section 1003(2)'s restraints on the Commission's jurisdiction to investigate bar the Commission from supplanting the investigation requested by CEM with its own investigatory theories.

The Superior Court has authority to review and reverse the Commission's action to initiate an investigation into STC's status as a BQC committee because the Commission action "exceeded the agency's statutory authority to act," 5 M.R.S.A. § 11007(4)(C). Appeals of an agency action for violation or error of law are reviewed *de novo*. See *Kroeger*, 2005 ME 50, ¶ 7.

The original investigation into STC's PAC status was initiated by the Commission pursuant to 21-A M.R.S.A. § 1003(2) based on factual allegations that CEM presented to the Commission in its January 2020 request for the Commission to investigate STC as a PAC. Section 1003(2) limits the Commission's lawful investigation to only those matters supported by the third-party application for Commission investigation. 21-A M.R.S.A. § 1003(2) provides that:

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.

The Commission lacked jurisdiction under Section 1003(2) to independently tack the BQC question onto the pending Section 1003(2) investigation that CEM requested. CEM's PAC Investigation Request was expressly limited to the question whether STC was required to register as a PAC. In fact, the PAC Investigation Request conceded that, "[b]ased 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 M.R.S.A. § 1056-B." R.2 at n.1.

The Commission is vested with a defined but limited jurisdiction to conduct investigations that are requested by third parties pursuant to 21-A M.R.S.A. § 1003(2). "Administrative agencies are creatures of statute, and can only have such powers as those expressly conferred upon them by the Legislature, or such as arise therefrom by necessary implication to allow carrying out the powers accorded to them." *Valente v. Board of Envtl. Protection*, 461 A.2d 716, 718 (Me.1983). Accordingly, the Commission cannot re-write the statutes that impose reasonable restrictions to rein the Commission's jurisdiction to initiate or modify an investigation of an entity that does not report to the Commission.

Section 1003(2) is unambiguous in its restrictions limiting the Commission's jurisdiction to investigate any person⁵ based upon a third party's application for investigation of that person. It states, in pertinent part, that "... 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." 21-A M.R.S.A. §1003. On review, this Court should plainly construes this unambiguous

⁵ Person is defined in the controlling statutory chapter to include any "individual, committee, firm, partnership, corporation, association or organization. 21-A M.R.S.A. § 1001(3).

statute without deference to the Commission's construction. *See Street v. Bd. of Licensing of Auctioneers*, 2006 ME 6, ¶ 9.

Simply put, when the Commission conducts a Section 1003(2) investigation of an entity that was requested by a third-party, that investigation is limited to the matters of investigation for which the third-party demonstrated sufficient grounds for the Commission to recognize that a violation may have occurred. Section 1003(2) does not include any option for the Commission to expand the requested investigation with additional issues of its own design.⁶

While the Commission may have authority pursuant to Section 1003(1) to initiate an independent investigation of STC as a BQC based upon its own reasonable suspicion of cause, the action the Commission took on May 22, 2020 was *not* an initiation of an independent investigation of the BQC issue. Rather, the May 22 investigatory action was a modification of the pending PAC Investigation initiated on March 10 in response to CEM's investigation request, not a separate an independent investigation undertaken based upon the Commission's own reasonable suspicion of a violation.

Here, the Commission's investigation of STC was undertaken pursuant to Section 1003(2) based upon CEM's January 2020 PAC Investigation Request. *See* R.1, R.130. This fact is evinced by CEM's continued participation throughout the Commission's subsequent proceedings, including invitations from the Commission for CEM to submit briefing in response to STC's position statements and argument in support of the

⁶ While the Commission may have authority pursuant to Section 1003(1) to initiate an independent investigation of STC as a BQC based upon its own reasonable suspicion of cause, the action the Commission took on May 22, 2020 was not an initiation of an independent investigation of the BQC issue. As explained *infra*, the May 22 investigatory action was a modification of the pending PAC Investigation initiated on March 10 in response to CEM's investigation request, not a separate an independent investigation undertaken based upon the Commission's own suspicion of a violation.

requested investigation at both the March 10, 2020 hearing where the Commission adopted the PAC investigation requested by CEM, *and* the May 22, 2020 hearing where the Commission voted to modify CEM's PAC investigation to add investigation of STC's BQC status despite CEM's prior waiver of any BQC violation. *See e.g.*, R.55; R.129; R.160; R.176.

The record further demonstrates that the Commission's May 22 vote to expand the STC investigation is inextricably linked to the investigation undertaken by the Commission on March 10 based on CEM's request for investigation of STC's PAC status—a request that expressly excluded any allegation that STC was in violation of BQC requirements. Notably, the May 22 meeting was called based upon staff's request to the Commission for “guidance from you concerning the scope and procedures for the investigation you authorized at your March 10, 2020 meeting concerning whether Stop the Corridor (STC) qualified as a political action committee,” R.169. Commission staff noted their request for additional Commission direction was needed “to stay within [the Commission's] intended scope and to efficiently move this investigation along with a minimum of disagreements.” R. 175.

The Commission action on May 22, however, did *not* “stay within” the investigation's scope. *Cf.* R.175. On the contrary, the Commissioners voted to expand the PAC Investigation to additionally include the BQC Investigation that CEM had affirmatively waived. The Commission staff's repeated efforts to press the BQC Investigation, despite CEM's affirmative waiver, demonstrates that staff improperly drove the expanded investigation with erroneous instructions to the Commission that it in fact had authority “to change the scope of the investigation based on new information” if the Commission wanted to do so. R.180-81.

The Commission's Expanded Investigation into STC's BQC status was obviously beyond the scope of the Section 1003(2) investigation the Commission undertook based upon CEM's application; CEM's application for the original investigation specifically excluded the BQC issue from its request for investigation. Again, CEM's application for Commission investigation acknowledged that "we [CEM] do not believe that 'Stop the Corridor' can be properly characterized as a ballot question committee pursuant to 21-A M.R.S.A. § 1056-B." R.2 at n.1.

The Commission, nonetheless, voted on May 22 to *expand* its pending Section 1003(2) investigation by adding the BQC issue. No such expansion of the CEM-requested investigation was available to the Commission pursuant to the limited jurisdiction of Section 1003(2). The Commission thereby exceeded the statutory limitation on its jurisdiction over the pending CEM investigation. The May 22 expansion of the Section 1003(2) investigation consequently exceeded the Commission's jurisdiction to act, requiring reversal of the agency action on appeal pursuant to 5 M.R.S.A. § 11007(4)(C).

CONCLUSION

Petitioner Clean Energy for ME, LLC, for the reasons set forth herein, respectfully requests that the Court (i) declare that the Commission's investigation of whether STC is required to report campaign activity relating to the eliminated NECEC referendum is barred as moot; and/or (ii) declare that the Commission's May 22, 2020 final action to authorize an expanded investigation into STC's status as a ballot question committee unlawfully exceeded the Commission's statutory jurisdiction to conduct investigations requested by third parties pursuant to 21-A M.R.S.A. § 1003(2).

DATED at Portland, Maine this 18th day of September 2020.

/s/ Paul McDonald
Paul McDonald, Bar No. 5244

/s/ James G. Monteleone
James G. Monteleone, Bar No. 5827

Attorneys for Petitioner
Clean Energy for ME, LLC

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1 M.R.S.

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

§ 1008. General duties

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

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

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

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.

...

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.

...

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

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

...

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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January 17, 2020

Jonathan Wayne
Executive Director
Maine Ethics Commission
45 Memorial Circle
Augusta, ME 04330

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 M.R.S. §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:

[Manager]
January 17, 2020
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 1st 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.¹ 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.

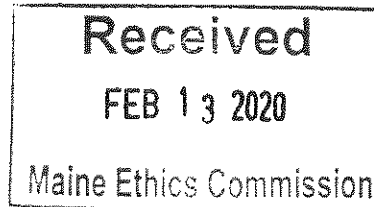
Please advise at your earliest convenience as to your staff's determination of the appropriateness of a further investigation. If your staff or the Commission need any further supporting documentation or information pursuant to this request, please do not hesitate to let me know. Thank you in advance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

Sincerely,



Newell A. Augur
Counsel for Clean Energy Matters

¹ 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 Corridor¹, 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.² While no definition of “major purpose”

¹ 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.

² 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.

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 votes³;
- Continued organizing and turnout to both PUC and DEP public hearings.

April 2019

³ 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.⁴

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.

⁴ 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 Quarterly⁵.

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 on 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).

⁵ 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.⁶ 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

⁶ 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, consisting of several overlapping loops and curves, positioned above the printed name.

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 (estimate of 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	485.59
12/31/2019	STOP THE CORRIDOR PO BOX 98 WESTBROOK, ME 04098	[driving to town offices for petition cert]	MILEAGE	3	4,563.42
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
Total in-kind contributions (this page only) => (combined totals from all Schedule A-1 pages must be listed on Schedule F)					\$46,996.53

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 | 13 = Contributors giving \$100 or Less |
| 6 = Political Party Committee | 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
Total In-kind contributions (this page only) => (combined totals from all Schedule A-1 pages must be listed on Schedule F)					\$2,759

Key Codes:

- | | |
|--------------------------------|---------------------------------------|
| 1 = Individuals | 7 = Ballot Question Committee |
| 3 = Commercial Source | 9 = Candidate/Candidate Committees |
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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 PAC	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		

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

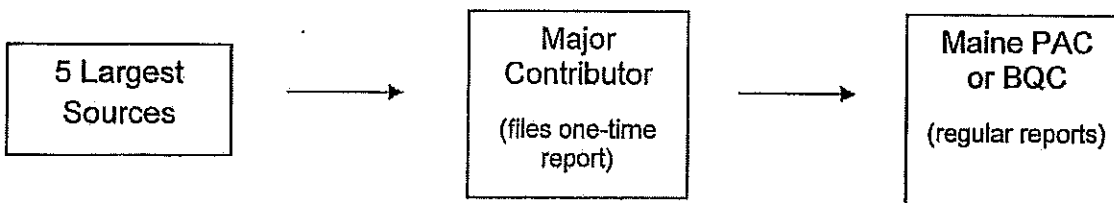
- has – or has not – received contributions (in whole or in part) for the purpose of influencing the Maine ballot question
- if so, the major contributor must disclose the dates, sources and amounts of the contributions

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)

CONFIDENTIAL INFORMATION REDACTED

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CONFIDENTIAL INFORMATION REDACTED

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
Docket No. AP-20-14

CLEAN ENERGY FOR ME, LLC,)
)
 Petitioner)
)
 v.)
)
 MAINE COMMISSION ON)
 GOVERNMENTAL ETHICS AND)
 ELECTION PRACTICES, as agency of)
 the State of Maine)
)
 Respondent)
)
 and)
)
 CLEAN ENERGY MATTERS,)
)
 Party-in-Interest)

**RESPONDENT’S RULE 80C
BRIEF**

In this Rule 80C appeal, Petitioner Clean Energy for ME, LLC challenges a preliminary decision by Respondent Maine Commission on Governmental Ethics and Election Practices (“Commission”) to modify the scope of an investigation conducted pursuant to its authority under 21-A M.R.S.A. § 1003 (2008). The purpose of the investigation is to gather facts in order to determine whether Petitioner must register and file campaign finance reports as a ballot question committee or a political action committee, disclosing its financial activities related to a citizen initiative that sought to prevent construction of the New England Clean Energy Connect transmission line project. The Commission’s decision to investigate is plainly interlocutory and therefore not appealable pursuant to 5 M.R.S.A. § 11001(1) (2013) and the final judgment rule. No exceptions apply. Accordingly, this Court lacks subject matter jurisdiction, and the Rule 80C petition should be dismissed pursuant to M. R. Civ. P. 12(b)(1). Alternatively, it should be

denied because the Commission has acted within the scope of its statutory authority and its investigation is not moot.

STATUTORY FRAMEWORK

Under Maine’s campaign finance laws, entities that seek to influence voters on a ballot question (either a direct initiative or a people’s veto referendum) must register and file regular campaign finance reports with the Commission if they meet the definition of a political action committee (“PAC”) or a ballot question committee (“BQC”).

PACs: A PAC includes “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.” 21-A M.R.S.A. § 1052(5)(A)(4) (2008 & Supp. 2020). To qualify as a PAC, therefore, an organization must: (1) have a major purpose of initiating or influencing a campaign (for a Maine candidate or a ballot question), and (2) have received or spent more than \$1,500 for the purpose of initiating or influencing that campaign. The term “campaign” is defined in section 1052(1) to include “any course of activities to influence the nomination or election of a candidate or to initiate or influence any of the following ballot measures” including state and local initiatives and referenda.

BQCs: An organization that does not have such a major purpose and thus does not meet the definition of a PAC must register and file as a BQC if it receives contributions or makes expenditures aggregating more than \$5,000 to initiate or influence an initiative or referendum campaign. 21-A M.R.S.A. § 1056-B (2008 & Supp. 2020). There is a key exception in section 1056-B, known as “the donor exception,” which provides that:

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 staff time spent for the purpose of initiating or influencing a campaign.

BQCs are required to report less information than PACs. For example, whereas PACs have to list all the contributions they receive and all the expenditures they make, BQCs are required to report “only those contributions made to the [committee] for the purpose of initiating or influencing a campaign and only those expenditures made for those purposes.” *Id.* § 1056-B(2).

A “contribution” is specifically defined in the BQC law to include:

- 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 ballot question; and
- D. Funds or transfers from the general treasury of an organization filing a ballot question report.

Id. § 1056-B(2-A). The Commission adopted written guidance in 2008 (updated in 2017 to reflect statutory amendments) to answer frequently asked questions about the reporting by BQCs. R. 120-124. These specifically address the effect of giving funds to a registered PAC or BQC (R. 123), as well as how to handle in-kind contributions (R. 124).

Commission’s powers and duties. The Commission is charged by statute, 1 M.R.S.A. § 1008(2) (2016), 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. The Commission has the power make findings of violations and to impose or waive penalties for violations of the registration and reporting requirements. *See, e.g.*, 21-A M.R.S.A. §§ 1004-A, 1004-B, 1020-A & 1062-A (2008).

Title 21-A, section 1003 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.” Subsection 2 expressly authorizes any person to apply to the Commission requesting an investigation, and further requires the Commission to act on such requests “if the reasons stated ... show sufficient grounds for believing that a violation may have occurred.”¹

The Commission has adopted rules setting forth procedures for handling complaints and requests for investigation, as well as “any potential violation that comes to the attention of the Commission staff through an audit or review of reports.” 94-270 Code Me. Reg. Chapter 1, § 5(1). The 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.” *Id.* § 5(2).

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Clean Energy for ME, LLC, doing business as “Stop the Corridor” (“STC”), was formed in April 2018 for the purpose of opposing the New England Clean Energy Connect or “NECEC” transmission line project. STC describes its activities as primarily outreach, public education through media advertising, and grassroots organizing of volunteers to “voice objections and to oppose the local permitting and approval processes required to facilitate NECEC’s development.” Petition for Review (“Pet.”) ¶2; Agency Record (“R.”) 43-44. In the

¹ 21-A M.R.S.A. § 1003(3-A) (Supp. 2020) authorizes the Commission to maintain the confidentiality of certain types of materials provided during an investigation. This is discussed in detail in the argument below.

fall of 2019, another group called “No CMP Corridor” was formed as a political action committee (“PAC”) for the express purposes of initiating, promoting, and supporting a citizens’ initiative, entitled “Resolve, to Reject the New England Clean Energy Connect Transmission Project” (the Initiative), which was aimed at reversing a certificate of public convenience and necessity for the NECEC project issued by the Public Utilities Commission in May of 2019. R. 96. STC spent money to assist with the drive to collect signatures on initiative petitions. *Id.* Approximately \$50,000 of spending by STC was reported as in-kind contributions to the No CMP Corridor PAC on the PAC’s report for the period from October 2019 through December, 2019. R. 17-18.

On January 27, 2020, Clean Energy Matters (“CEM”), which is a PAC formed to support the NECEC corridor project, submitted a letter to the Commission requesting an investigation into the activities of STC and alleging that STC had engaged in additional activities that triggered an obligation to register and file reports as a PAC. R. 1-2. In a response requested by Commission staff (R. 23-27), STC indicated that it was primarily involved in generating grass roots opposition to the NECEC project in various permitting proceedings and that its only activities in support of the initiative campaign were those reported as in-kind contributions to No CMP Corridor. R. 41-54. CEM subsequently submitted additional materials in support of its contention that STC was a PAC. R. 55-95.

The Commission staff presented CEM’s request for investigation to the Commission for its consideration at a public meeting on March 10, 2020.² R. 96-128. The staff memorandum to

² Although referred to as a “hearing” in Petitioner’s brief (Pet. Br. at 5, 7), this was a regular public meeting, not a formal hearing. The Commission considers many types of enforcement matters at its regular monthly meetings, including requests for a waiver of penalties for late filing of campaign finance reports, as well as alleged violations of reporting obligations by candidate committees, party committees, PACs, and BQCs, and by those engaging in independent expenditures on campaigns. *See* <https://www.maine.gov/ethics/meetings>. When it reaches each matter on the agenda, the Commission

the Commission discussed the preliminary information gathered to date and its analysis, noting that “Clean Energy Matters seems to conclude that Stop the Corridor is not a BQC, but the staff recommends that you consider this question as well.” R. 100. During STC’s presentation to the Commission that day, the Commission Chair had the following exchange with STC’s counsel, Katherine Knox, Esq.:

Mr. Lee: ... The complaint was filed alleging a PAC.

Ms. Knox: Correct.

Mr. Lee: The issue has been raised by Commission staff that we should look at it -

Ms. Knox: Correct.

Mr. Lee: -- possible BQC –

Ms. Knox: Correct.

Mr. Lee: -- and I don’t think the fact that the complaint did not expressly say – allege a BQC violation prevents us, if we receive evidence that suggests it from considering it. And no final determination is being made here today.

Ms. Knox: I don’t disagree with that, so –

Transcript of March 10, 2020 Commission meeting (“Tr. 3/10/20”) at 33-34. After a lengthy discussion involving counsel for both STC and CEM, 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 and had an obligation to register and report as a PAC because sufficient evidence has been presented to suggest that the major purpose of Stop the Corridor became to initiate or influence a campaign.” R. 140.

Following the March 10 Commission meeting, staff initiated the investigation.

During a telephone conference with Commission staff, STC’s counsel argued that the

hears from its Executive Director and from all interested parties before deliberating and voting on any proposed action. *See, e.g.*, R. 129-147. Once it has embarked on an investigation, the Commission may choose to hold a formal adjudicatory hearing to receive testimony under oath. Such hearings are conducted in accordance with the MAPA and Chapter 2 of the Commission’s rules. *See* 94-270 Code Me. Reg. ch. 1, § 5(4) and ch. 2. *See also Fichter v. Bd. of Environmental Protection*, 604 A.2d 433, 436-38 (Me. 1992) (though not an adjudicatory “court-type” hearing, regular Board meeting provided full opportunity for parties to present all evidence they had and for Board to develop full record for determination).

scope of the inquiry must be limited to STC's major purpose, and that STC was only willing to produce materials it considered relevant to the major purpose determination.

R. 175. At the end of April, STC produced 16 pages of documents, all of which were kept confidential pursuant to 21-A M.R.S.A. § 1003(3-A), but nonetheless contained significant redactions. *See* Volume II of Agency Record ("R. C.") at 1-21.

On May 1, 2020, the staff provided STC's submission under seal to the Commission, along with a memorandum summarizing its analysis of the situation and potential violations and asking for further guidance regarding the scope of the investigation. R. C. 22-36 & R. 169-185. The staff expressed its view that the Commission had authorized staff "to investigate whether STC qualified as a PAC, which could encompass not just STC's major purpose, but also money raised or spent for purposes of the ballot question." R. 175, n. 2. The Commission considered the staff's request to clarify the scope of its investigation at a regular meeting on May 22, 2020. Minutes of the meeting reflect a lengthy discussion among counsel for STC and CEM, staff and Commissioners. R. 176-185. STC's counsel argued for limiting the inquiry into the organization's major purpose, while staff noted that the information provided so far "strengthened the factual basis for questioning whether STC violated the BQC statute." R. 180. The Commission Chair addressed the BQC issue in questioning STC's counsel as follows:

Mr. Lee: ... from my own review of information provided, it does raise the question in my mind whether or not we might have a BQC here. You're not suggesting that because our investigation authorization focused on one particular point that we are somehow restricted from broadening it if we obtain information that suggests that there might be a violation in another area; am I correct? You're not suggesting that, are you?

Ms. Knox: No.

Mr. Monteleone: No.
Ms. Knox: Sorry. Go ahead, Jim.

Mr. Monteleone: No, we're not suggesting at all that the Commission doesn't have the authority to broaden its investigation. Rather, what we're stating is that there's been questions raised by the Commission staff as being kind of the next steps that they'd like to pursue, and what we're emphasizing that even within the scope of the investigation the Commission has already approved, those questions can be asked and answered and get to the bottom of what has been presented here as an open unresolvable question.

To the extent that that raises other information and raises new questions, then certainly it's the Commissioners' authority to modify that scope.

Tr. 5/22/20 at 50-51.

At the conclusion of the May 22 meeting, the Commission took a series of votes on the staff's three specific inquiries, concluding that:

- 1) The staff should engage in an investigation to gain an understanding of the broad range of STC's financial activities and the purpose of those activities, that is not just STC's petitioning costs but also its spending on television and other paid communications, polling, and payments to allies;
- 2) The staff should investigate STC's receipt of funds and why its funding sources provided financial assistance to STC; and
- 3) The Commission should require STC to submit unredacted documents and disclose names in documents and interview responses (e.g., of the funder, vendors, and allied organizations).

R. 184-185. Finally, the Commission also voted "to authorize the Commission staff to include as part of its investigation, whether or not Stop the Corridor qualifies as a BQC," noting that the information received to date "provided sufficient grounds to warrant an investigation into whether STC qualifies as a BQC." R. 185.

Based on this guidance, the Commission staff wrote to STC on June 1, 2020, asking that unredacted materials be submitted by June 12, 2020. STC did not comply with that request, and instead filed this Rule 80C action attempting to stop the investigation entirely. R. 186.

ARGUMENT

Standard of Review: Whether the court has subject matter jurisdiction over the claims asserted in a petition for review is a question of law. *Tomer v. Maine Human Rights Comm'n*, 2008 ME 190, ¶ 8, 962 A.2d 335, 338. Statutes must be reviewed de novo as a matter of law to carry out the intent of the Legislature, giving effect to the statute's plain language if it is unambiguous. *Reed v. Sec'y of State*, 2020 ME 57, ¶ 14, ___ A.3d ___. If statutory language is "reasonably susceptible to differing interpretations," the court must defer to the agency's reasonable construction if the statute is one the agency is tasked with administering and it falls within the agency's expertise. *NextEra Energy Res., LLC v. Me. Pub. Utils. Comm'n*, 2020 ME 34, ¶ 22, ___ A.3d ___.

I. This Court lacks subject matter jurisdiction to review the Commission's preliminary decision to initiate an investigation and should therefore dismiss this Rule 80C action.

- A. The Commission's decision to investigate, and to modify the scope of its investigation, is not final agency action.

The right to judicial review is governed by statute and is jurisdictional, *Tomer*, 2008 ME 190, ¶ 8, and the Maine Administrative Procedure Act ("MAPA"), 5 M.R.S.A. § 11001 (2013), is the statute that governs the extent to which Commission decisions are subject to judicial review, *Lindemann v. Comm'n on Governmental Ethics and Election Practices*, 2008 ME 187, ¶ 11, 961 A.2d 538. To be appealable under the MAPA, the Commission's decision must be a "final agency action," which is defined by statute to mean:

[A] decision by an agency which affects the legal rights, duties or privileges of specific persons, which is *dispositive of all issues*, legal and factual, and *for which no further recourse, appeal or review is provided within the agency*.

5 M.R.S.A. § 8002(4) (2013) (emphasis added). “Preliminary, procedural, intermediate or other nonfinal agency action shall be independently reviewable *only if review of the final agency action would not provide an adequate remedy.*” *Id.* §11001(1) (emphasis added).

Absent special and narrow exceptions, none of which apply here, only final rulings of administrative agencies may be appealed to Superior Court; interlocutory agency decisions are not ordinarily appealable. *See Brickley v. Horton*, 2008 ME 111, ¶ 9, 951 A.2d 801, 802; *see* M.R. Civ. P. 80C; 5 M.R.S.A. § 11001(1) (2013); *Carroll v. Town of Rockport*, 2003 ME 136, ¶ 16, 837 A.2d 148, 154. It has been well-established for more than 30 years that the final judgment rule is equally applicable to administrative decisions. *Mechanic Water Falls Co. v. Public Utilities Commission*, 381 A.2d 1080, 1087 (1977) (“The final decision requirement is equally applicable to administrative decrees”).

There are many sound reasons for the final judgment rule:

It helps curtail interruption, delay, duplication and harassment; it minimizes interference with the trial process; it serves the goal of judicial economy; and it saves the appellate court from deciding issues which may ultimately be mooted, thus not only leaving a crisper, more comprehensible record for review in the end but also in many cases avoiding an appeal altogether.

Id. at 946-947. These apply with equal force to an administrative proceeding, which is conducted by a separate branch of government. Indeed, judicial interference with an ongoing administrative proceeding violates the separation of powers under the Maine Constitution. *See Bar Harbor Banking & Trust Co. v. Alexander*, 411 A.2d 74, 77 (Me. 1980).

A decision to initiate an investigation, pursuant to 21-A M.R.S.A. § 1003(2), is by its nature preliminary, in that it merely starts a process of agency fact-finding. No conclusions are reached or pre-determined at this stage. A decision to modify the scope of an investigation, which the Commission took on May 22, 2020, is also preliminary. The predicate for both is

simply that the Commission find “sufficient grounds for believing that a violation *may have* occurred.” 21-A M.R.S.A. § 1003(2). The purpose of the Commission’s investigation is to determine *whether* STC must register and file reports – either as a PAC or as a BQC – regarding its activities to initiate or influence the NECEC corridor initiative campaign, pursuant to 21-A M.R.S.A. §§ 1052 & 1056-B. The decision to launch an investigation does not dispose of any of the factual or legal issues raised to date – those remain to be investigated and determined based on further factual inquiry.

After the investigation is complete, the Commission staff will bring back to the full Commission any one of several possible recommendations. Staff may recommend that the Commission find that STC was required to register and filed reports as a PAC, or as a BQC, or neither. Any staff recommendation will go to the Commission with a detailed staff report, to which STC will have a full opportunity to respond before the Commission takes any action. *After* the Commission makes a final decision, applying the law to the facts based on a full record, any party aggrieved by that final determination will have an opportunity to seek judicial review pursuant to section 11001 of MAPA and Rule 80C. Until this administrative procedure is followed to its conclusion, no right of appeal exists. *Tomer*, 2008 ME 190, ¶ 14 (“There being no final agency action, the Superior Court [does] not have subject matter jurisdiction to hear [STC’s] appeal.”).

- B. The Commission’s preliminary decision to modify the scope of its investigation is not appealable now under section 11001(1) of the MAPA, nor under any exception to the final judgment rule.

As noted above, the MAPA provides for review of “[p]reliminary, procedural, intermediate or other nonfinal agency action” in very limited circumstances – “*only if review of the final agency action would not provide an adequate remedy.*” 5 M.R.S.A. §11001(1)

(emphasis added). This language echoes the exceptions to the final judgment rule. *See Northeast Occupational Exchange, Inc. v. Bureau of Rehabilitation*, 473 A.2d 406, 410 (Me. 1984) (review of nonfinal agency actions should be undertaken only when parties face prospect of irreparable injury, with no effective relief at the end the proceedings). Thus, an agency order compelling disclosure of material that the appellant claimed to be “highly proprietary, confidential and protected by the trade secret privilege” warranted review under the death knell exception to the final judgment rule. *Me. Health Care Ass’n v. Superintendent of Insurance*, 2009 ME 5, ¶¶ 6-7, 962 A.2d 968. *See also Friedman v. Board of Environmental Protection*, 2008 ME 156, ¶¶ 11-12, 956 A.2d 97 (appeal allowed where right to petition Board had been denied without further recourse within agency). These are the rare exceptions.

Petitioner STC has not asserted any claim of irreparable injury from having to respond to Commission inquiries in this case, nor could it do so credibly. Indeed, none of the traditionally recognized exceptions to the final judgment rule apply. *See Bryant v. Town of Camden*, 2016 ME 27, ¶ 11 n. 2, 132 A.2d 1183; and *Brickley*, 2008 ME 111, ¶ 10.

The death knell exception has no application here because of the confidentiality protections provided in statute that will prevent premature disclosure of any non-public information. The Commission has express statutory authority to maintain the confidentiality of any information sought during an investigation that fits within any of the following categories:

- A. Financial information not normally available to the public;
- B. Information that, if disclosed, would reveal sensitive political or campaign information belonging to a ... political action committee, ballot question 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[.]

21-A M.R.S.A. § 1003(3-A). The information that STC has provided so far, in response to the Commission's initial inquiries, has, in fact, been kept confidential pursuant to this statute. Indeed, the material STC submitted to the Commission was filed with this Court under seal as a separate volume of the agency record for this very reason. *See* Vol. II of Agency Record. No public disclosure will occur during the pendency of the investigation. *See Nat'l Org. for Marriage v. Comm'n on Governmental Ethics and Election Practices*, 2013 ME 53, ¶ 3, 66 A.3d 679. And at the conclusion of the investigation, if the Commission determines that STC must register as a BQC or PAC, STC will be required to disclose only the information that is expressly required by statute. *See Nat'l Org. for Marriage v. Comm'n on Governmental Ethics and Election Practices*, 2015 ME 103, 121 A.3d 792.

Moreover, it is undisputed that once the staff completes their investigation, the matter will come back to the five-member Commission³ for a determination after a full consideration of all factual and legal issues. STC will have a full opportunity to respond to the staff's recommendations in that proceeding, to present any other relevant facts, and to make any arguments to the Commission regarding whether it should be deemed a PAC or a BQC. The Commission will articulate factual findings and legal conclusions in a final determination that will be subject to judicial review pursuant to Rule 80C and section 11001 of the MAPA.⁴

³ The Commission's enabling statute provides for five members, 1 M.R.S.A. § 1002 (2016), but two seats were unfilled at the time of the proceedings at issue in this appeal. Two additional members have since been confirmed.

⁴ Attached as Addenda to this Brief, as examples, are copies of the Commission's final determinations in two cases that were appealed pursuant to the MAPA. *See Lindemann*, 2008 ME 187, ¶ 4; and *Nat'l Org. for Marriage*, 2015 ME 103, ¶ 7.

- C. The doctrines of separation of powers, primary jurisdiction, exhaustion of administrative remedies, and ripeness further support dismissal of this Rule 80C action.

The provisions of the MAPA on judicial review “must be read in light of the constitutional doctrine of separation of powers,” *Brown v. State, Dept. of Manpower Affairs*, 426 A.2d 880, 884 (Me. 1981), which “forbid precipitous ... interference with the legitimate, ongoing executive function” of an agency charged with investigative and enforcement powers, *Bar Harbor Banking*, 411 A.2d at 77. “[J]udicial interference with apparently legitimate executive department activity not only disrupts the administrative process but also encourages the circumvention of statutorily authorized investigation and enforcement mechanisms.” *Id.*

“The doctrine of primary jurisdiction holds that ‘courts should avoid ruling, on appeal, on matters committed by law to the decision-making authority of an administrative agency before the administrative agency has first had an opportunity to review and decide on the merits of the matter at issue.’” *Bryant*, 2016 ME 27, ¶ 9, 132 A.2d 1183, quoting *Christian Fellowship & Renewal Ctr. v. Town of Limington*, 2006 ME 44, ¶ 40, 896 A.2d 287. The “closely allied” doctrine of exhaustion of remedies requires a party to proceed in the administrative “arena until all possible administrative remedies are exhausted before initiating action in the courts.” *Bryant*, 2016 ME 27, ¶ 10, quoting *Cushing v. Smith*, 457 A.2d 816, 821 (Me. 1983). Until an agency has taken final action disposing of the entire matter, an appeal also is not ripe and “an appellate court cannot undertake complete and meaningful appellate review. *Bryant* 2016 ME 27, ¶ 12 (and cases cited therein).

Allowing this appeal to go forward would be contrary to all of the above doctrines. The determination of whether a person or entity qualifies as a BQC or a PAC has plainly been committed to the Commission by statute; the Commission’s administrative proceedings have

only just begun; and STC has the opportunity to contest any factual or legal issues that may arise from the investigation during proceedings at the agency level before the Commission makes its determination. Until those proceedings have concluded, and the Commission has reached a final determination on the matters within its primary jurisdiction, this Court should not intervene.

STC's Rule 80C petition should be dismissed in its entirety for the reasons set forth above. Alternatively, it should be denied because STC's claims are entirely without merit.

II. The Commission has authority to modify the scope of its investigation regardless of the scope of the request filed by CEM.

STC asserts that because CEM only asked the Commission to investigate whether STC's activities may have required it to register and file campaign finance reports as a PAC, and not as a BQC, the Commission was precluded as a matter of law from modifying the scope of its investigation on May 22, 2020 to include the BQC question. STC contends that 21-A M.R.S.A. § 1003(2) "limits the Commission's lawful investigation to only those matters supported by the third-party application for Commission investigation." *See* Pet. Br. at 13. This is a complete misreading of the plain language of Section 1003. It also directly contradicts statements made by STC's counsel in response to questions from the Chair during the Commission's deliberations on May 22, 2020. Tr. 5/22/20 at 50-51 (quoted *infra* at 7-8).

Section 1003 begins with a broad statement of the Commission's investigative authority in subsection 1:

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....

The reference to "this chapter" means chapter 13 of Title 21-A, which includes all of the campaign finance reporting requirements for PACs and BQCs. *See* 21-A M.R.S.A. §§ 1051-

1063 (subchapter IV of chapter 13). Subsection 2 of section 1003 then provides a method by which a member of the public – any “person” – may “apply in writing to the commission requesting an investigation as described in subsection 1.” In other words, the Commission can act on its own initiative to launch an investigation, or another person may request it. And under the Commission’s rules, once the matter reaches the Commission’s agenda, “the Commission will control any further investigation or proceedings.” 94-270 Code Me. Reg. Chapter 1, § 5(2). This applies to any matter, whether raised initially by staff or by a third party. *Id.*

If the Commission receives an application for an investigation pursuant to subsection 2, the language of that provision *obligates* the Commission to “review the application” and to “make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.” 21-A M.R.S.A. § 1003(2). The fact that the Commission *must* investigate a matter when a third-party request sets forth sufficient grounds for believing that a violation may have occurred neither expresses nor implies that the Commission *may not* investigate anything other than what the third party requests. Indeed, that would be an absurd reading of the statute.⁵

“It is an elementary principle of administrative law that an agency has only those powers expressly conferred by statute or such as arise therefrom by necessary implication to allow the agency to carry out the powers accorded them.” *Rockland Plaza Realty Corp. v. LaVerdiere’s Enterprises, Inc.*, 531 A.2d 1272, 1274 (Me. 1987); *Valente v. Bd. of Environmental Protection*, 461 A.2d 716, 718 (Me. 1983). In this case, the Legislature has delegated broad authority to the

⁵ It is equally absurd for STC to argue that while the Commission “may have authority pursuant to Section 1003(1) to initiate an independent investigation of STC as a BQC based upon its own reasonable suspicion of cause” (Pet. Br. at 15 n. 6), because the Commission’s action on May 22 arose out of CEM’s initial request that STC be investigated as a PAC, it somehow forfeited its statutory authority. There is simply no legal basis for this claim.

Commission to investigate whether a person has violated the campaign finance provisions pertaining to both PACs and BQCs. 1 M.R.S.A. § 1008(2) & 21-A M.R.S.A. § 1003(1). No third-party request can limit the scope of the Commission’s authority to carry out its statutory charge.

III. Removal of the citizen initiated “Resolve to Reject the New England Clean Energy Connect Transmission Project” from the November 2020 ballot has not rendered moot the investigation into STC’s past activities in support of the initiative.

On August 13, 2020, the Law Court held that the citizen-initiated Resolve to Reject the New England Clean Energy Connect Transmission Project “fail[ed] to meet the constitutional requirements for inclusion on the ballot because it exceed[ed] the scope of the people’s legislative powers conferred by article IV, part 3, section 18 of the Maine Constitution.” *Avangrid Networks, Inc. v. Sec’y of State*, 2020 ME 109, ¶ 2. As a result, the question will not appear on the ballot for this election. *Id.* ¶ 39.

STC argues that this means BQCs and PACs no longer have any reporting obligations related to the initiative, and that the Commission’s investigation is therefore moot. STC further contends – based entirely on a quote in a news article published on-line in the Maine Monitor on September 13, 2020 – that the Commission has determined “that the withdrawal of the NECEC ballot referendum obviated prior campaign reporting obligations” thereby rendering any continued investigation moot. Pet. Br. at 9-12. Both contentions are wrong, as a matter of fact and of law.⁶

⁶ Notably, STC has chosen to rely on remarks quoted in a newspaper article without approaching the Commission. As discussed in part I(B) of this argument, a party to an administrative agency proceeding must exhaust its administrative remedies before raising those issues in court. *See Bryant*, 2016 ME 27, ¶ 10; *Cushing v. Smith*, 457 A.2d 816, 821 (Me. 1983). It would be inappropriate under any circumstances for this court to rule that a Commission investigation was rendered moot by external events without the Commission first considering that question.

First, as a factual matter, the Commission has made no determination to terminate all BQC and PAC reporting obligations related to this citizen initiative, which STC well knows. *See* letter to counsel for STC from the Commission’s Executive Director, dated October 1, 2020, and attached hereto (last page of Addenda). Moreover, remarks by a single Commission staff member quoted in a news article and taken out of context do not constitute an admission on the part of the Commission, which is a five-member public body. Petitioner has provided no analysis to support such a claim, nor has it properly sought to supplement the agency record or to take additional evidence. *See* M. R. Civ. P. 80C (e) & (f); 5 M.R.S.A. § 11006(1) (2013).

Second, removal of the initiative from the November 2020 ballot means that there are no ongoing activities to influence a vote at this upcoming election, but that has no bearing on whether STC was obligated to register and file reports as a PAC or BQC for its activities in late 2019 or early 2020. The definition of “campaign” in 21-A M.R.S.A. § 1052(1) includes “any course of activities ... to initiate or influence any of the following ballot measures” such as the direct initiative of legislation under article IV, part 3, section 18 of the Maine Constitution. The term “initiate” includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot,” and “influence” means “to promote, support, oppose or defeat” an initiative. 21-A M.R.S.A. § 1052(4-A) & (4-B) (2008 & Supp. 2020).

Efforts to qualify a citizen initiative for the ballot in order to block the NECEC transmission line project began in August of 2019; signatures on petitions were filed with the Secretary of State’s office on February 3, 2020; and 30 days later, the Secretary of State determined that the petition contained a sufficient number of valid signatures to qualify for the ballot. *See Reed v. Sec’y of State*, 2020 ME 57, ¶¶ 6-7. A campaign to initiate and then influence a citizen initiative was ongoing, therefore, from August 2019 at least until the *Avangrid*

decision was issued in August 2020. The investigation launched by the Commission that is the subject of this Rule 80C proceeding concerns STC’s activities during this time period, and is thus unaffected by the *Avangrid* decision.

As a matter of law, termination of the campaign for this particular initiative does not render moot the Commission’s efforts to hold entities accountable for any violations of the laws governing disclosure of financial activities in such campaigns that may have occurred prior to the conclusion of that campaign. Indeed, a high-profile example of this is the Commission’s investigation into activities of the National Organization for Marriage (“NOM”) to support a people’s veto referendum rejecting the legalization of same-sex marriage. The referendum question was on the ballot in November 2009, but the investigation did not conclude until June 30, 2014, when the Commission issued its final determination that NOM met the definition of a BQC and should have registered and filed campaign finance reports of its activities in that 2009 campaign.⁷ The Commission ordered NOM to file a consolidated campaign finance report for 2009, and imposed a penalty for the late filing. *Nat’l Org. for Marriage*, 2015 ME 103, ¶¶ 3, 5, 6. In considering a NOM’s request for a stay of that decision, the Law Court found “the public has an interest in the release of information about the donors behind ballot initiatives” even though six years had passed since the referendum campaign ended. *Id.* ¶ 27. The same public interest applies here, and the Commission’s duty to administer and enforce the campaign finance laws continues even though this particular initiative is not on the ballot this November.⁸

⁷ It should be noted that the six-year delay was not the result of the Commission’s failure to act expeditiously but rather was due to a series of lawsuits filed by NOM in both state and federal courts. See *Nat’l Org. for Marriage*, 2015 ME 103, ¶ 4 (summarizing the litigation history).

⁸ The principal case upon which STC relies for its mootness argument, *Mainers for Fair Bear Hunting v. Dep’t of Inland Fisheries & Wildlife*, 2016 ME 57, 136 A.3d 714, is completely inapposite. That case concerned a challenge to the expenditure of public resources by DIF&W to oppose a bear-baiting referendum. The challengers’ motion for a preliminary injunction was denied before the election, and

The Commission acted within its statutory authority in deciding to modify the scope of its ongoing administrative investigation to determine whether STC has an obligation to disclose certain financial activities in support of the citizen initiative that have already taken place.

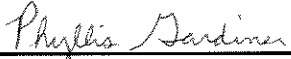
CONCLUSION

For the foregoing reasons, the Commission urges the Court to dismiss this Rule 80C appeal from nonfinal agency action for lack of subject matter jurisdiction, or alternatively deny the appeal on the merits.

DATED: October 19, 2020

Respectfully submitted,

AARON M. FREY
Attorney General



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Attorneys for Respondent
Maine Commission on Governmental
Ethics and Election Practices

after the election was over, their appeal was dismissed as moot because DIF&W was no longer spending staff time and resources on the campaign. The focal point in that case was the legality of spending, which had ceased. The focus of the Commission's investigation is compliance with statutory obligations to disclose the sources and amounts of funds raised and spent on a campaign.

In-Kind Contributions from Stop the Corridor, as reported by No CMP Corridor PAC

Date	Description	Amount	Report Name
9/25/2019	Printing Cost	\$330.22	October Quarterly Report
9/30/2019	In-kind staff time for volunteer recruitment	\$637.50	October Quarterly Report
9/30/2019	In-kind staff time for campaign coordination	\$1,150.00	October Quarterly Report
10/2/2019	Website Development	\$2,500.00	January Quarterly Report
11/1/2019	Web Hosting	\$259.00	January Quarterly Report
11/30/2019	Postage	\$857.31	January Quarterly Report
12/12/2019	Printing Costs	\$981.15	January Quarterly Report
12/31/2019	Office Supplies	\$485.59	January Quarterly Report
12/31/2019	Mileage	\$4,563.42	January Quarterly Report
12/31/2019	Staff Time for Campaign Coordination	\$12,750.00	January Quarterly Report
12/31/2019	Staff Time for Volunteer Recruitment	\$27,359.06	January Quarterly Report
1/24/2020	Website hosting	\$239.00	April Quarterly
2/24/2020	Website hosting	\$239.00	April Quarterly
3/24/2020	Website hosting	\$239.00	April Quarterly
3/31/2020	Staff time for campaign coordination	\$6,200.00	April Quarterly
3/31/2020	Staff time for volunteer recruitment	\$20,673.34	April Quarterly
3/31/2020	Mileage	\$5,063.36	April Quarterly
3/31/2020	Postage	\$723.05	April Quarterly
3/31/2020	Office supplies	\$476.74	April Quarterly
TOTAL		\$85,726.74	



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

October 1, 2020

By E-Mail and Regular Mail

James G. Monteleone, Esq.
Bernstein Shur
P.O. Box 9729
Portland, ME 04104-5029

Re: *Clean Energy For ME, LLC v. Maine Commission on Governmental Ethics and Election Practices, CV-20-14 (Me. Sup. Ct., Cumberland County, June 19, 2020)*

Dear Jim,

On behalf of the Ethics Commission staff, I am writing to confirm the registration and financial reporting responsibilities of political action committees (PACs) and ballot question committees (BQCs) with respect to the Resolve, To Reject the New England Clean Energy Connect Transmission Project, a citizen initiative which the petitioners sought to place on the November 3, 2020 ballot. We are concerned that the Petitioner's Brief filed in the Rule 80C proceeding misstates these requirements, and we would like to avoid any further miscommunication by you in the court proceeding or any other context (including conversations with your legal clients).

The August 13, 2020 decision of the Maine Supreme Judicial Court in *Avangrid Networks, Inc. v. Secretary of State* removed the initiative from the November 3rd ballot. That does *not* eliminate the duty of PACs and BQCs to file campaign finance reports to disclose contributions and expenditures that must be reported under 21-A M.R.S. §§ 1056-B & 1060. If PACs or BQCs received contributions or made expenditures for purposes of influencing the initiative, those must be reported in campaign finance reports filed with the Commission, along with any other transactions required under §§ 1056-B & 1060. Unfortunately, the Maine Monitor news story referenced in your brief mischaracterized the comments of Political Committee and Lobbyist Registrar Michael Dunn.

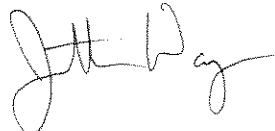
James G. Monteleone, Esq.

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October 1, 2020

Thank you for your help in avoiding any further misunderstandings by entities regulated under Maine campaign finance law. Please call me if you have any questions concerning this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne". The signature is fluid and cursive, with the first name being more prominent.

Jonathan Wayne
Executive Director

cc: Paul McDonald, Esq.
Kate R. Knox, Esq.
Phyllis Gardiner, Esq.