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Admitted in: ME

October 23, 2023

Hon. William Schneider, Chair
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

Re: October 25, 2023 Agenda Item on Stop the Corridor Investigation

Chair Schneider and members of the Ethics Commission:

On behalf of Clean Energy Matters and its successors in interest, I would like to again register our belief that the Committee's deliberations on the substantive issues raised in our complaint, filed over three years ago in January 2020, should take place in public.

As a preliminary matter, we believe the Commission Staff should provide basic information in advance of the meeting about the potential action being taken on this investigation. On multiple prior occasions, the Commission has been forced to take additional administrative action to conduct this investigation. Among these actions were Commission votes: to clarify that it had, in fact, voted to investigate Stop the Corridor's campaign activities, funding sources and expenditures and to request, among other things, that Stop the Corridor refrain from redacting documents requested by Commission Staff (May 2020); to deny an effort to vacate a properly issued subpoena (October 2020); and to affirm that the Commission's subpoena authority extends beyond the territorial borders of Maine (June 2021).

These prior administrative and legal maneuvers have already prevented the Commission from completing its investigation in time for the November 2021 election. As you no doubt are aware, a referendum funded and promoted by Stop the Corridor was approved during that election. While that referendum was ultimately found to be unconstitutional, its passage imposed substantial delays and additional costs to the NECEC project. These delays are part of a broader and deliberate strategy by entrenched companies opposed to the New England Clean Energy Connect – likely the very same companies bankrolling Stop the Corridor out of sight of Maine voters. This all even though the project has secured the

necessary state and federal permits and has successfully defended every challenge to those permits.

At present, we are unsure as to whether the October 25 agenda item is the result of yet another challenge to the Commission's authority by Stop the Corridor or parties that worked with Stop the Corridor, like those described above. In those prior instances, the public was apprised of the specific barriers to completing the investigation, Clean Energy Matters was afforded the opportunity to provide comment to the Commission prior to its deliberation, and also to monitor the resulting discussion. We would expect the same opportunity in this instance.

If Staff have reached a substantive recommendation as a result of its investigation, at a minimum we would request that the Commission allow public access to that discussion and, at the discretion of the Chair, allow Clean Energy Matters to participate. The Commission retains full and exclusive authority regarding any hearing on this investigation. 94-270 C.M.R. Ch. 1, § 5(2) of the Commission rules state in pertinent part that "[o]nce any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings." An open hearing that affords the public access to the Commission's deliberative process is also consistent with Maine's Freedom of Access Act (1 MRS §§ 400-412).

The statute governing records in a Commission proceeding, 21-A MRS §1003 (A), permits certain records provided to the Commission as part of an investigation to be deemed "confidential." Stop the Corridor has already expanded the breadth of this statute by insisting that the identity of its political consultants remain "confidential," a protection found nowhere in the statute. Confidentiality should not be further extended to deny public access to the entire investigation, or to the final decision on whether Stop the Corridor must file as a PAC or BQC.

Stop the Corridor and its associate entities would be in error to request that 21-A MRS § 1003 (A) be expanded, again, to prevent the publication of the Staff recommendation or the Commission's deliberation on a final agency action. Relevant documents can be redacted to protect true confidential information, if needed, as has been done with the Staff briefing memo related to prior Commission decisions challenging this investigation. We are confident that the Commission can conduct a public discussion on the results of this investigation - or any investigation - mindful of documents in its possession that, for the moment, have been assigned confidential status.

The Commission's statutory mission is to ensure that the people of Maine are aware of who is funding campaign activity in our state. We believe that continuation of the unusual level of secrecy that has accompanied this investigation will severely

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compromise that mission. Accordingly, we would encourage the Commission to make this proceeding as open to the public as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "NAUGUR", with a long horizontal flourish extending to the right.

Newell A. Augur