



Maine State Legislature Joint Standing Committee on Energy, Utilities and Technology

Testimony on LD 271, An Act Regarding a Transmission and Distribution Utility's Use of the Right of Eminent Domain to Locate Its Transmission Lines

The New England Power Generators Association (NEPGA)¹ appreciates the opportunity to provide testimony on LD 271, *An Act Regarding a Transmission and Distribution Utility's Use of the Right of Eminent Domain to Locate Its Transmission Lines*. NEPGA supports LD 271 because eminent domain should not be used for takings of private land for elective transmission upgrades. Instead, takings by eminent domain should be reserved for only those transmission projects that are specifically needed to maintain reliability of the power system.

NEPGA is the trade association representing competitive electric generating companies in New England. NEPGA's member companies represent approximately 25,000 MW – or about 90% of all generating capacity throughout New England - and roughly 2,291 MW of the generating capacity in Maine. NEPGA companies also provide thousands of well-paying, highly-skilled jobs to the state's workforce, pay millions of dollars in taxes to the state and its cities and towns and contribute millions of dollars in income taxes paid by employees.

The taking of private property by eminent domain is among the most serious and consequential powers that the state can exercise. Eminent domain is intended to be used for those projects that support a compelling public use, like the construction of highways and bridges, airports, and water and sewer systems. Takings by eminent domain may also be appropriate for electric transmission projects that address an identified reliability need in Maine or elsewhere in the ISO New England (ISO-NE) power system that are subject to Open Access requirements and open to all providers that can help meet consumer electricity demand.

On the other hand, closed and private elective transmission upgrades, like Avangrid's proposed 145-mile New England Clean Energy Connect (NECEC) project, are not necessary to ensure a reliable supply of electricity for Maine citizens or the ISO-NE region. NECEC would serve two purposes only: (1) to deliver hydroelectricity generated in Quebec to consumers in Massachusetts under a decades long contract; and (2) ensure a revenue stream for Avangrid and others that stand to profit from a project driven by Massachusetts' policies. As an elective transmission upgrade, the NECEC

¹ The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

project would not address a reliability need or any other compelling public use that would justify the taking of private property by eminent domain. Instead, NECEC is a private-use facility that will only be open to Hydro Quebec, which is different from virtually every other transmission line in New England. Unlike a public highway or other electric transmission line, this project serves as a long private extension cord from Canada into the New England market. Indeed, allowing takings of private lands or easements for an elective transmission project would turn the concept of public use on its head, particularly for those affected Maine landowners who would not derive a direct public benefit from the NECEC project.

By contrast, competitive power generators in Maine and elsewhere in New England do not have the right to site plants through the use of eminent domain – nor should they. Electricity industry restructuring in the late 1990s divested utilities of their generation resources, allowing independent generators to compete in an open marketplace, without any expectation of preferential treatment from the state or host community. Permitting the NECEC project to acquire lands and easements through eminent domain would amount to a public subsidy for a private project, placing merchant generators at a competitive disadvantage and undermining the investments those generators have made in their host communities, whether through property taxes or jobs.

Allowing elective transmission upgrades, like NECEC, to take land by eminent domain would also undercut the benefits that Maine's consumers have derived from the region's competitive wholesale electricity markets. Since electric restructuring, generators participating in New England's competitive wholesale electricity markets have invested billions of dollars in facilities to produce a reliable, cost-effective supply of electricity without guaranteed cost recovery or a guaranteed rate of return. In fact, 2016 and 2017 featured the lowest annual average wholesale electricity prices since the beginning of the competitive markets. The region's markets have also produced a cleaner, more efficient fleet of power plants, reducing more greenhouse gas emissions in New England than any other sector of the economy since 1990. Those benefits would be jeopardized if projects like NECEC are allowed to take advantage of state actions, including takings by eminent domain, that undermine the otherwise economic commercial activity of locally-based power plants.

NEPGA supports LD 271 because it would ensure that takings by eminent domain are confined to those projects that are needed to ensure the reliable delivery of electricity for consumers in Maine and the New England region. The bill strikes an appropriate balance between the rights of property owners in Maine and the public's need for a reliable supply of electricity. We urge the Committee to advance the commonsense principles embodied in LD 271.

NEPGA thanks the Committee for its consideration of this important legislation.

Respectfully submitted,

/s/

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